



An Assessment of Professional Ethics in the KwaZulu-Natal Provincial Administration

Public Service Commission

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.

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FOREWORD



The Public Service is continuously under close scrutiny by the public and the media. Such scrutiny is necessary as public servants are the instruments through which the various mandates of government are executed. In performing their duties they are entrusted with public funds and their actions must therefore be above repute. The unfortunate reality is that corruption occurs within the public service as public servants are human beings with weaknesses which may be exploited.

Given the reality of corruption, government has introduced a variety of mechanisms to promote integrity and combat corruption. These include minimum anti-corruption capability requirements, a Code of Conduct for the Public Service, a financial disclosure framework for senior managers as well as a National Anti-Corruption Hotline (NACH) for the safe and anonymous reporting of corruption.

The Public Service Commission's (PSC) analysis of various anti-corruption instruments and mechanisms has revealed mixed levels of compliance and implementation across the Public Service. A recent study in terms of the state of professional ethics in the Free State province confirms that there are serious shortcomings both in terms of departmental capacity, as well as commitment to address corruption and promote integrity. The PSC therefore decided to conduct a similar study in KwaZulu-Natal (KZN). The assessment of the state of professional ethics in the Provincial Administration of KZN includes all of the elements related to a minimum anti-corruption capability as required by government.

The PSC is therefore pleased to present this report, with recommendations, in the hope that it will assist departments in KZN to strengthen the areas of concern mentioned in the report and so contribute to a higher and more efficient level of response to corruption and the management of professional ethics in the province.

A handwritten signature in black ink, appearing to read 'Sangweni'.

PROF SS SANGWENI
CHAIRPERSON

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GLOSSARY OF ABBREVIATIONS AND DEFINITIONS

COC :	Code of Conduct for the Public Service
DLGTA :	Department of Local Government and Traditional Affairs
EA's :	Executive Authorities
FPP's :	Fraud Prevention Plans
KZN :	KwaZulu-Natal Province
KZNPA :	KwaZulu-Natal Provincial Administration
KZNPT :	KwaZulu-Natal Provincial Treasury
MPSA :	Minister for the Public Service and Administration
NACF :	National Anti-Corruption Forum
NACH :	National Anti-Corruption Hotline
NGO's :	Non-Governmental Organisations
OTP :	Office of the Premier
PAIA :	Promotion of Access to Information Act
PAJA :	Promotion of Administration Justice Act
PFMA :	Public Finance Management Act
PIAU :	Provincial Internal Audit Unit
PRECCCA :	Prevention and Combating of Corrupt Activities Act
PSACS :	Public Service Anti-Corruption Strategy
PSC :	Public Service Commission
SAPS :	South African Police Service



Executive summary

Background to the study

The Public Service Commission (PSC) through its activities is in a position to reflect holistically on the state of professional ethics in the Public Service. In pursuance of its mandate, the PSC has therefore deemed it appropriate to conduct an evaluation of professional ethics and anti-corruption measures in the KwaZulu-Natal (KZN) province. Accordingly, this report provides an assessment of the current ethics and anti-corruption infrastructure in the KZN, and also provides an analysis of the gaps and problems identified with these initiatives.

Findings

Ineffective Anti-corruption forum

Civil society does not form part of the current arrangement of the provincial forum. This omission impacts on the ability of the forum to function in a fully representative manner.

Anti-corruption strategies in KZN only in draft stage

There is no approved provincial anti-corruption strategy. The OTP cannot therefore play a leadership role through monitoring and support of the departments.

Ethical conduct is not being promoted

Training on the Code of Conduct only happens during induction. Apart from this there are no other awareness campaigns.

Only some departments have fraud prevention plans

Five departments have no fraud prevention plans in place. In addition risk assessments are not done continuously as part of the implementation of fraud prevention plans in those departments where they do exist.

Minimum anti-corruption capacity

Four departments do not have a minimum anti-corruption capability. Many departments believe that the Provincial Treasury should investigate corruption and fraud according to the KwaZulu-Natal Internal Audit Act. This causes confusion with respect to investigations.



Investigative procedures

None of the departments could produce procedure manuals for the investigation of corruption resulting in no standardized approach to investigations.

Agreements with anti-corruption agencies

Only one department has a formal arrangement with anti-corruption agencies for assistance. Other departments have informal arrangements in place.

Systematic monitoring of corruption

One third of departments only have developed databases on allegations of corruption. In addition there is no provincial-wide data-base on corruption incidents.

Poor compliance with financial disclosures

As at 31 May 2007, the date for compliance, no department had submitted their financial disclosure forms to the PSC. Currently, at the time of the writing of this report, the compliance rate is at 59%.

Dedicated financial resources to fight corruption

Only three departments have a dedicated budget to combat corruption, which hampers the ability of the province to adequately respond to it.

There is no systematic management of NACH cases

As at 30 September 2007, out of 199 cases referred through the NACH, feedback was received in respect of only 6. This hampers the ability of the NACH to respond effectively to whistle blowers and reflects negatively on its credibility.

Recommendations

Implementing the Provincial Anti-Corruption Strategy

The implementation of the draft Provincial Anti-Corruption Strategy of KwaZulu-Natal should be expedited and take into consideration the findings of this report. The confusion surrounding the responsibility for investigations and the development of anti-corruption policy should be clarified in a revised strategy for the province.

Effective fraud prevention plans

Where no fraud prevention plans exist in departments these should be developed and implemented as soon as possible. There should also be an annual review of these plans.

Provincial anti-corruption forum

A fully representative Provincial Anti-Corruption Forum needs to be established as a further priority in the province. Such a forum will give expression to the multi-sectoral approach to fighting corruption and will serve to promote awareness of professional ethics.

Minimum anti-corruption capacity

Anti-corruption investigators need to be given optimal training in both the prevention and detection of corruption. In the short-term the province should consider a mentorship programme with one of the anti-corruption agencies (such as SAPS) as most of the current investigators lack experience.

Effective reporting lines (whistle blowing)

Departments which do not have whistle blowing policies in place should adapt the one as provided by the Provincial Treasury for their unique circumstances. A whistle blowing guide is also available from the PSC.

Cooperation with other anti-corruption agencies

Formal cooperation agreements with relevant agencies should be finalised by all of the departments especially in the light of the confusion that reigns over who should investigate corruption allegations.

Systematic approach to fighting corruption

Departments who do not have data-bases on corruption cases (especially Provincial Treasury) should develop these as it can only enhance their respective capacities to respond to fraud and corruption in a coherent and systematic manner. Such a data-base should also be developed for the province as a whole.

Implementation of anti-corruption laws

Policies need to be implemented effectively and uniformly by departments with respect to PAIA, PAJA and PRECCA in order to give proper effect to the intention of Parliament and to practice responsible and accountable governance in the province.

Compliance with the financial disclosure framework

Departments need to ensure compliance in respect of the submission of financial disclosure forms to the PSC by 31 May of each year. This will provide for an effective partnership in helping to manage potential conflicts of interest early and effectively.



Responsiveness to the NACH

The province needs to decide on the entry point for cases referred from the PSC as well as an efficient referral and feedback process to and from departments. This decision should be reached by all departments in order to affect uniformity and improved responsiveness to the NACH.

Conclusion

From the above it is clear that the KZNPA has much to do in addressing shortfalls identified in the management of professional ethics and corruption. It has not performed adequately to address the state of professional ethics in the province and it would appear as if this lack of performance may be linked to management commitment.

The danger that many departments, both at provincial and at national level face, is that line function priorities overshadow the external elements that impact thereon. The prevention of corruption and the promotion of professional ethics are key elements that impact on departments' ability to deliver and as such must be prioritized.



Chapter One

Introduction

Background

The issue of corruption is a major concern especially in developing countries. This is largely because corruption seriously hampers development and diverts much needed resources from where they are needed most (such as in education and health). It is little wonder that given the poverty in South Africa, government has focused much effort on the fight against corruption and has placed effective service delivery high on its agenda.

The Public Service, which is the key driver of government programmes, has a constitutional obligation to be amongst others, ethical and accountable. The obligation on departments is to ensure that scarce public funds are effectively used, that ethical frameworks are in place and that staff display exemplary and professional conduct. A comprehensive legal and regulatory framework is in place to promote professional ethics and fight corruption. Such an approach takes into account both the prevention and combating of corruption and should lead to a systematic, coherent and holistic approach to the management of professional ethics by departments.

However, the implementation challenges in the South African Public Service, has shown that sound frameworks by themselves are not sufficient to ensure application. Implementation of such frameworks must be driven by the departments, placing a huge and necessary responsibility on the administrative leadership. The Public Service Commission (PSC) has not only contributed to the establishment of an ethics framework but also continues to monitor and evaluate the practice of professional ethics. It is for this reason that the PSC has decided to do an evaluation on the ability of the KwaZulu–Natal Provincial Administration (KZNPA) to both promote professional ethics and to counter fraud and corruption in the province.

This evaluation focuses on the state of professional ethics in the KZNPA and its ability to promote professional ethics and counter fraud and corruption. The results of such an evaluation, in turn, allow the province to reinforce good practice and address the gaps identified.

Objectives

The objectives of this evaluation are to:

- Assess the extent to which professional ethics is promoted in the KZNPA.
- Assess the effectiveness of professional ethics and anti-corruption measures in the KZNPA.
- Assess whether the KZNPA provincial departments have put in place structures to deal with corruption.
- Assess the level of compliance to anti-corruption measures in the province.
- Identify challenges and weaknesses with respect to the management of corruption in the provinces and create a common understanding of corruption in all its facets.
- Affirm key principles necessary for the establishment of effective and coordinated anti-corruption structures.
- Make recommendations to the KZN Provincial Legislature and departments.

PSC Mandate

In terms of section 196 of the Constitution, 1996, the PSC is mandated to promote a high standard of professional ethics in the Public Service and to investigate, monitor and evaluate the organisation and administration, and the personnel practices of the Public Service. In addition, the PSC may evaluate the application of public administration practices and report to executing authorities and legislatures. The PSC is also mandated through section 196 of the Constitution to promote the Constitutional principles governing public administration contained in section 195.

Constitutional Values and Principles¹

- *A high standard of professional ethics must be promoted and maintained*
- *The efficient, economic and effective use of public resources*
- *Public administration must be development-oriented*
- *Services must be provided impartially, fairly, equitably and without bias*
- *Peoples needs must be responded to and the public must be encouraged to participate in policy-making*
- *Public administration must be accountable*

¹ Republic of South Africa, *The Constitution of the Republic of South Africa, Act 108 of 1966.*

- *Transparency must be fostered by providing the public with timely, accessible and accurate information*
- *Good human resource management and career development practices, to maximize human potential, must be cultivated*
- *Public administration must be broadly representative of the South African people, with employment and personnel-management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past to achieve broad presentation*

This report meets the constitutional responsibilities of the PSC in that it promotes the abovementioned values and principles, particularly the promotion of a high standard of professional ethics.

Scope of assessment

The evaluation involved all 15 departments in the KZN provincial administration. All departments responded and submitted relevant documentation to support their responses to a questionnaire developed for the purpose of the evaluation. However, the Department of Economic Development failed to provide documentation to support its response.

Methodology

A questionnaire was designed and completed by officials with anti-corruption related responsibilities in the respective departments. Of the 14 respondents who completed the questionnaire, 46.6% were senior managers and 53.3% were deputy managers.

In developing the questionnaire, focus areas were identified against which departments were assessed. These focus areas assessed critical elements required in the promotion of professional ethics in line with the Public Service Anti-Corruption Strategy (PSACS) and the fight against corruption. The PSACS calls for departments, amongst others, to establish the capacity to implement fraud prevention plans, investigate allegations of corruption and install whistle blowing mechanisms. Over and above this, the evaluation also took into account other frameworks used by the PSC to assess professional ethics such as compliance with financial disclosures, extent of financial misconduct and the number and management of National Anti-Corruption Hotline (NACH)² cases.

2 The National Anti-Corruption Hotline was initiated in 2004 and housed at the Public Service Commission for the safe and anonymous reporting of corruption allegations.



The evaluation covered the following areas:

- Existence and functioning of anti-corruption fora.
- Provincial and departmental anti-corruption strategies.
- Extent of promotion of the Code of Conduct.
- Existence of an effective fraud prevention plan.
- Minimum anti-corruption capacity within departments.
- Investigative procedures.
- Effective reporting lines (whistle blowing).
- Anti-corruption workshops.
- Cooperation with other anti-corruption agencies.
- Systematic monitoring of corruption.
- Implementation of anti-corruption laws.
- Compliance with financial disclosure requirements.
- Corruption cases successfully prosecuted in the province.
- Resources allocated by departments to deal with corruption.
- Responsiveness to the NACH.
- Extent of financial misconduct cases and how these are dealt with.

Apart from the responses, supporting documentation received by departments served as a useful basis for deeper scrutiny and analysis. Follow-up interviews were also conducted with the departments of the KwaZulu-Natal Provincial Treasury (KZNPT) and the Office of the Premier (OTP) to clarify certain areas of overlap of functions between the two departments regarding the coordination and investigation of cases of corruption in the province, as well as reporting lines.

Statistics and information drawn from the Financial Disclosure Framework for senior managers, the National Anti-Corruption Hotline, performance agreements of Heads of departments and the information on financial misconduct cases submitted to the PSC by departments in terms of the Treasury Regulations were also obtained and used during the evaluation.

The results of the questionnaire and other additional information provided a holistic overview of anti-corruption capabilities of the

departments and a clear indication of areas where departments are performing well or not.

Regulatory framework

The following regulatory framework is relevant to this study and have been used where appropriate to assess various anti-corruption elements:

Table 1: Regulatory framework relevant to the Assessment of Professional Ethics in KZN

MATTER DISCUSSED	LEGISLATION/ REGULATION GOVERNING THE MATTER	PURPOSE
Public Finance	Public Finance Management Act, Act no 1 of 1999 ³	Sets the framework for accountable management of public funds
Transparency	The Promotion of Access to Information Act, Act no 2 of 2000 ⁴	Promotes openness in government
Accountability	The Promotion of Administrative Justice Act, Act no 3 of 2000 ⁵	Promotes fair administrative procedures and redress for citizens
Whistle Blowing	The Protected Disclosures Act, Act no 26 of 2000 ⁶	Promotes whistle blowing as a preventative corruption measure
Corruption	The Prevention and Combating of Corrupt Activities Act, Act no 12 of 2004 ⁷	Provide effective legislation to combat corruption in all its forms

3 Republic of South Africa. Public Finance Management Act, Act no 1 of 1999.

4 Republic of South Africa. The Promotion of Access to Information Act, Act no 2 of 2000.

5 Republic of South Africa. The Promotion of Administrative Justice Act, Act no 3 of 2000.

6 Republic of South Africa. The Protected Disclosures Act, Act no 26 of 2000.

7 Republic of South Africa. The Prevention and Combating of Corrupt Activities Act, Act no 12 of 2004.

MATTER DISCUSSED	LEGISLATION/ REGULATION GOVERNING THE MATTER	PURPOSE
Financial Misconduct	Treasury Regulation 4.3 ⁸	Monitor the incidents and trends of financial misconduct and make recommendations thereto
Financial Disclosures	Chapter 3 of the Regulations to the Public Service Act, Act no 94 of 1994, as amended ⁹	Promote integrity in the public service through the careful management of potential conflicts of interest
Anti-Corruption Strategy	Public Service Anti-Corruption Strategy ¹⁰	Provide a framework for the Public Service through which corruption is addressed in a systematic and coordinated manner

Outline of the report

In this report the findings of the study are discussed in detail in Chapter 2 of the report. This Chapter takes a critical look at the focus areas outlined above. Chapter 3 describes the “state of professional ethics in KZN”, with respect to the province’s ability to promote professional ethics and respond to corruption. Based on the findings of Chapters 2 and 3, recommendations are made with respect to the management of professional ethics in the province at Chapter 4. Chapter 5 concludes with a proposed way forward.

8 Republic of South Africa, *National Treasury Regulation according to which Departments are to report all finalized financial misconduct cases to the Public Service Commission.*

9 Republic of South Africa, *Chapter 3 of the Regulations to the Public Service Act, Act no 94 of 1994, as amended.*

10 *South African Public Service Anti-Corruption Strategy, approved by Cabinet, January 2001.*

Chapter Two

Assessment of Professional
Ethics Promotion and Corruption
Prevention in the KZNPA

Introduction

Cabinet resolved in September 2003 that all departments in the Public Service should have a minimum anti-corruption capability by July 2004. This capability includes certain elements with which departments had to comply with, including amongst others, an ability to investigate fraud and corruption, a whistle blowing mechanism and fraud prevention plans. Progress on the elements of a minimum anti-corruption capability form the basis of this assessment and provide insight into the state of professional ethics in the KZN provincial administration. This chapter therefore captures the findings with respect to each of these elements in the province. In order to give a holistic approach to the assessment, other elements were also included in the questionnaire developed for this purpose. These include matters related to provincial anti-corruption fora, the NACH and financial misconduct.

Existence and functioning of anti-corruption fora

There has always been a strong partnership dimension in the fight against corruption in South Africa. Evidence for this is the National Anti-Corruption Forum (NACF)¹¹. The NACF was formally launched in 2001, comprising equal representation from the public sector, the private sector and civil society. There was a strong view that this model be cascaded to the provinces. During preparations for the Second National Anti-Corruption Summit, the Minister for the Public Service and Administration (MPSA) forwarded a letter to all Premiers asking for preparatory meetings to be held in the provinces prior to the Summit. Many of these preparatory meetings in some provinces served as the launch of provincial anti-corruption fora.

A formal anti-corruption forum is still not established in KZN. Attempts are under way, spear-headed by the Office of the Premier (OTP) to create such a forum. Various meetings have been and continue to be convened, facilitated by the OTP towards the establishment of such a provincial forum. The following stakeholders are currently involved in this endeavour:

- Department of Justice;
- Directorate of Public Prosecutions;
- Provincial Treasury's Internal Audit;

11 At the 1st National Anti-Corruption Summit held in 1999, a resolution was passed to "rapidly establish a cross - sectoral task team to look into the establishment of a National Co-ordinating Structure with the authority to effectively lead, co-ordinate, monitor and manage the National Anti-Corruption Programme..." The Public Service Commission was given the task to facilitate this process which led to the launch of the NACF in 2001.

- Directorate of Special Scorpions (Scorpions);
- South African Police Service (SAPS);
- Special Investigations Unit;
- Office of the State Attorney;
- Department of Home Affairs; and
- Business against Crime.

The key to any successful anti-corruption coalition depends on its cross-sectoral nature and active and committed participation from sectors within society. At this early stage, in its attempts to get the forum off the ground, the OTP should actively pursue the participation of strategic stakeholders who have not been included in the forum such as civil society organizations in the form of labour unions and non-governmental organizations (NGO's).

The fact that civil society, to date, has been excluded from these deliberations is cause for concern. They form a vital part of anti-corruption coalition work through research and advocacy programmes. The inclusion of these organizations should therefore be addressed as soon as possible.

Provincial and departmental anti-corruption strategies

The PSACS requires that a holistic and integrated approach to fighting corruption be established in each government department. This requires a strategic mix of preventative and combative activities and an effective implementation of anti-corruption prescripts and legislation underpinned by an effective anti-corruption strategy for the province. Such a strategy guides departments to introduce effective measures to deal with corruption and fraud prevention. In this regard the questionnaire sought to determine the existence or otherwise of provincial and departmental anti-corruption strategies which would address corruption and promote professional ethics in the province.

The PSC found that a Draft Anti-Corruption Strategy for the province has been developed. The Strategy *inter alia* addresses policies and strategies to minimize fraud and corruption, the implementation of fraud prevention plans, guidelines to good practice and codes of conduct. The OTP is in the process of obtaining approval of its Draft Anti-Corruption Strategy from the

KZN Cabinet. The objectives of the draft strategy appear coherent and comprehensive. Upon perusal of the provincial anti-corruption strategy for the province, the KZNPA adopted a three-pronged approach to preventing fraud and corruption; detecting, reporting and investigating fraud and corruption and further implementation and maintenance.

The preventative section of the provincial strategy includes the promotion of the Code of Conduct for the Public Service¹² (COC), work policies and procedures, the Disciplinary Code and Procedures and internal controls. The detection of corruption includes all the necessary instruments for detection including internal audit, risk assessment, and a whistle blowing policy. It is trusted the approval of the strategy will be expedited to enable the OTP to ensure its effective implementation across all departments.

Promotion of the Code of Conduct

The COC for the Public Service was promulgated in 1997 and is contained in Chapter 3 of the Public Service Regulations (PSR). The COC is central to the promotion of ethical conduct and the fight against fraud and corruption. It is not only important that employees understand the COC but that they also imbue its ethos. In terms of the PSR, transgressions of the COC amount to misconduct and are subject to the Disciplinary Code and Procedures for the Public Service. The investigation sought to determine to what extent departments uphold the Code by promoting its principles, ensuring compliance by its employees as well as using it for disciplinary purposes.

Based on responses to the questionnaires, 10 of the 15 departments have provided every official with a personal copy of the Explanatory Manual on the Code of Conduct. (The manual contains a copy of the COC as well as detailed explanations on the various aspects of the COC). This means that 5 of the departments have not done so. They are the Provincial Treasury, the Royal Household, Health, Works and Agriculture and Environmental Affairs. Only seven (7) departments have disciplined staff for the transgression of the Code. Training on the COC only happens during induction and there is no ongoing education on it. The findings show an unequal application of the COC in the province with some departments

12 Code of Conduct for the South African Public Service, promulgated as Chapter 2 of the Regulations to the Public Service Act of 1994.

applying it and others not. If the ethos of the COC is to be instilled in the behaviour of employees, departments will have to rectify these weaknesses identified.

Anti-corruption workshops

The hosting of regular anti-corruption workshops is necessary as it helps to promote integrity in departments and keep employees abreast of the latest developments in corruption prevention methods. Only the departments of Works and Social Welfare and Population Development conduct anti-corruption workshops once a year. Both these departments could produce documentary evidence of corruption being reported by officials, albeit anonymously. This could be as a result of the hosting of such workshops and underscores its value. However, since the rest of the departments do not conduct such workshops it means that their employees may be ignorant of fraud indicators and “red-flags” to look out for. The level of awareness to corruption and fraud prevention may therefore be low in these departments. In terms of the mandate of the PSC to promote professional ethics¹³, these workshops can also be held with its assistance, as has been done in the past throughout the country.

Effective fraud prevention plans

Amongst the requirements for the establishment of minimum capacity in departments to deal with fraud and corruption, is the implementation of fraud prevention plans as required in terms of the PFMA. The implementation of these fraud prevention plans will enable departments to establish control mechanisms to prevent fraud from being perpetrated. One of these mechanisms is a risk assessment in departments to put in place effective controls to minimize the risks so identified. As a minimum, each department is therefore required to have a fraud prevention plan.

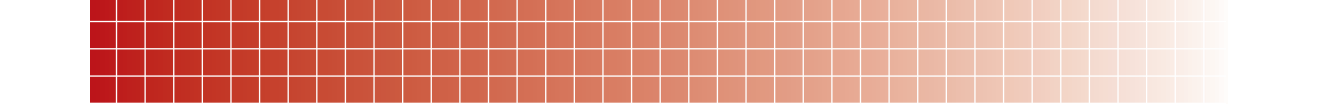
The table below shows the number of departments in KZN that were found to have fraud prevention plans and performed risk assessments:

13 Section 195, (1) (a), The Constitution of the Republic of South Africa, 1996.

Table 2: Departments with fraud prevention plans and risk assessments in place in KZN

DEPARTMENT	EXISTENCE OF FRAUD PREVENTION PLAN	RISK ASSESSMENT CONDUCTED
OTP	Yes	Yes
Royal Household	No	No
Sports & Recreation	No	No
Works	Yes	No
Education	Yes	Yes
Health	No	Yes
Housing	Yes	Yes
Agriculture & Environmental Affairs	Yes	Partially
Social Welfare & Population Development	Yes	Yes
Transport	Yes	Yes in draft
Provincial Treasury	Yes	Yes
Community Safety & Liaison	Yes	Yes
Local Government & Traditional Affairs	Yes	Yes
Arts, Culture & Tourism	No	No
Economic Development	Did not submit documentation	Did not submit documentation

The table above shows that ten (10) departments have fraud prevention plans and five (5) not. The latter include The Royal Household, Sports and Recreation, Health, Arts Culture and Tourism and Economic Development. Given that the PFMA was promulgated in 1999 it is not acceptable that in 2007 five (5) departments still do not have fraud prevention plans in place. These departments are in serious breach of the PFMA. Such breach becomes even more inexcusable in that all departments



in the province were given draft fraud plans as examples, to assist them in the development of their own by the Provincial Treasury. Eight (8) departments conducted a full risk assessment exercise and therefore demonstrated a certain level of implementation and readiness to manage fraud risk as is required by the PFMA. Five (5) departments had never done any risk assessments. They are the Royal Household, Sports and Recreation, Works, Arts, Culture and Tourism and Economic Development. One department, Agriculture and Environmental Affairs only did a partial risk assessment. These departments are therefore imminently at risk of fraud, a risk which can be addressed and mitigated almost as soon as a risk assessment is performed.

Minimum anti-corruption capacity and its objectives

The PSACS implies that the ability of departments to respond to corruption can only happen through the establishment of an appropriate capacity to combat corruption. In January 2002, Cabinet approved that, as part of the implementation of the PSACS, a minimum anti-corruption capability be established in departments. Cabinet set a deadline of 31 July 2004 for the implementation of such a capability. This is consistent with the PFMA which, amongst others, requires that each accounting officer (head of department) should provide a capability to investigate corruption, establish a whistle blowing mechanism, establish a system to track the progress of corruption allegations, and implement a programme to promote adherence to prescripts. These mechanisms can only be established as part of a dedicated capacity to give attention to such interventions. The evaluation therefore assessed the extent to which departments in KZN were geared towards the fulfillment of this goal through the establishment of a minimum anti-corruption capability. The anti-corruption units were also probed with respect to their stated objectives that guide their application of systems, policies, rules and regulations.

All departments, except for the departments of Arts, Culture and Tourism, Sport and Recreation, Transport, Community Safety and Liaison and the Royal Household, have dedicated units to deal with fraud and corruption. Only two (2) departments (Health and LGTA) have strategic objectives for their anti-corruption units. All other units operate without such strategic objectives which imply that planning and monitoring, measured against such objectives, cannot take place.

During interviews with departments, the PSC probed the reasons for the non-existence of dedicated anti-corruption units in those departments where they do not exist. Respondents argued their duty is to detect fraud and corruption but that the function to investigate such cases resides with the Provincial Treasury, which in its anticorruption unit has 12 investigators (which may be inadequate for the needs of the whole province). For this reason, they argued, it would be unfair to expect individual departments to have dedicated budgets when the investigative function for the province is located in another department.

Where anti-corruption investigators do exist in departments, responses to the questionnaire indicate they are concentrated in the 6 – 8 and 9 – 12 salary bands. Based on the responses received the majority of officials (68%) in these salary bands are still gaining experience. Departments therefore lack officials with the necessary skills to effectively deal with issues of corruption. This is cause for concern as fraudsters prey on vulnerable departments. Anecdotal evidence has shown that crime syndicates need the cooperation of departmental officials to perpetrate fraud successfully. “Insiders” may therefore be aware of the limitation of departments to combat corruption effectively and will target departments where anti-corruption systems are weakest with the collaboration of crime syndicates.

Financial resources for dealing with fraud and corruption

The ability and readiness of departments to deal with reported cases of fraud and corruption using dedicated financial resources for this purpose was investigated.

Only the departments of Health, Local Government and Housing have dedicated budgets between R1m and R5m to combat fraud and corruption. Of the three departments only one (Health) indicated that the budget is solely dedicated to the anti-corruption unit. In the other departments funds are shared with the internal audit unit. Two out of three departments (Health and Local Government) confirmed that their budgets are adequate for current needs.

There is confusion regarding creating resource allocation for investigation purposes in departments. Provincial departments indicated that section 2 (b) (i) of the KwaZulu-Natal Internal Audit Act, 2001 provides that the Provincial Internal Audit Unit (PIAU),

located in the Provincial Treasury, should investigate any matter it deems necessary. For that reason all investigations of fraudulent and corrupt activities within departments must be located in the Provincial Treasury. However, it appears that the responsibilities, accountability and reporting requirements of the PIAU are not clearly defined as suggested in the guide to Anti-Corruption Requirements Capacity¹⁴, in relation to the Office of the Premier and other departments. There appears to be no understanding whether anti-corruption capabilities are centralized and the sole responsibility of the PIAU, or, whether it is supposed to be a shared function.

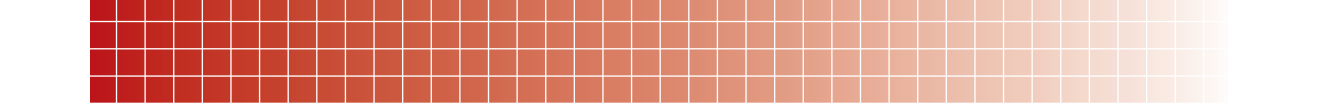
On probing this finding with Provincial Treasury, they agreed that they have the mandate to conduct investigations but observed that the service would be more effective if the responsibility is shared with departments. In support of this opinion Provincial Treasury referred to section 38 (1) (a) (i) of the PFMA which locates in the office of the accounting officer the responsibility to ensure that the department has and maintains effective, efficient and transparent systems of financial and risk management and internal control with the accounting officer. The confusion that currently exists amongst departments must be addressed speedily in order to ensure a uniform approach to anti-corruption in the province.

Investigative procedures

In order for anti-corruption units to be effective they should have investigative procedures in place that provides a standard for good practice on how investigations should be conducted. While each case to be investigated needs to be dealt with on its own merit, standard methodology and approaches allow for systematic, consistent and objective investigative methods to be followed. It was found that three of the departments claimed to have investigative procedures in place (Health, LGTA and Provincial Treasury). None however could provide documentary evidence for this.

Without documentary proof the PSC has to conclude that none of the provincial departments therefore have standard procedures for the investigation of fraud and corruption, which leaves the successful prosecution of corruption at great risk in the province.

14 P12, *Anti-Corruption Capacity Requirements, Guidelines for implementing Minimum Anti-Corruption Requirements in Departments and Organisational Components in the Public Service*. Department of Public Service and Administration, 2006.



The investigators within departments do not attend refresher courses either on investigations but only attend workshops on the Code of Conduct and other courses related to labour relations. This could lead to an unbalanced capability of the units with an emphasis rather on prevention than combating corruption through investigation. The PSC, as part of its efforts to improve responsiveness to the NACH has developed a Toolkit¹⁵ to assist departments with investigative procedures. This has been sent to all departments in the Public Service and will be made available again to the KZNPA given the need for training and procedures on investigation.

Responsiveness to the National Anti-Corruption Hotline (NACH)

The NACH was established to provide for a safe and anonymous mechanism to report corruption in the Public Service. The first batch of NACH cases were forwarded to the KZNPA province in December 2004 for investigation. The evaluation looked into what progress the KZNPA has made towards the investigation of these allegations and the feedback provided to the PSC. The findings on the responsiveness to the NACH are that none of the fifteen departments provided information indicating that NACH cases were stored in a dedicated database. Further, there is no systematic investigation of NACH cases in most departments except the departments of Education, Works, Social Welfare and Population Development. Even the departments that had provided evidence of conducting systematic investigations indicated that there is no dedicated official responsible for the management of NACH cases.

A further finding is that feedback on the NACH cases to the PSC is not done systematically. The referral protocols of the NACH agreed to with the KZNPA require that the PSC refers all cases to the OTP for onward transmission to the relevant departments. Thereafter departments should provide progress on all cases every 40 working days to the PSC and copy the OTP in turn. The referral process in the province appears not to be working well. This was evidenced by the fact that since the PSC forwarded its first batch of NACH cases to the OTP for forward transmission to provincial departments in 2004, some of the first reports were only received by departments from the OTP during

15 National Anti-Corruption Hotline Toolkit. Public Service Commission, 2006.

this investigation! Cases therefore take inordinately long to arrive at the point of actual investigation – an average of six months was reported by departments.

These constraints are alarming in view of the fact that the PSC held a workshop with stakeholder departments in early 2006 where these very issues had been discussed. Another workshop on the NACH Toolkit, where all departments were represented, was also held in May 2007. Among the resolutions agreed to at the workshop held in 2006, were that the province would address these concerns in order to respond more effectively to the NACH. Apparently this has not happened and is cause for concern as the allegations of corruption emanating from the NACH is a daily occurrence. The poor response received from the province since the inception of the Hotline since 2004 is reflected in table 3 below:

Table 3: NACH cases referred to KZN and feed back received

KWA-ZULU NATAL PROVINCE	NUMBER OF CASES REFERRED	FEEDBACK RECEIVED	CLOSED CASES
Premier's Office	1	0	0
Agriculture	4	0	0
Finance	2	0	0
Education	64	0	0
Health	32	3	0
Local Govt and Housing	41	3	1 (referred to raise awareness by the PSC)
Transport	19	0	1 (referred to raise awareness by the PSC) 1 (closed per caller's request)

KWA-ZULU NATAL PROVINCE	NUMBER OF CASES REFERRED	FEEDBACK RECEIVED	CLOSED CASES
Public Works	8	0	0
Social Development	12	0	0
Safety, Security and Liaison	15	1	2 (outside mandate) 1 (referred for noting by the PSC)
Traditional Affairs	1	0	0
Environmental Affairs and Tourism	0	0	0
TOTAL	199	7	6

In terms of table 3 above, of the six (6) cases closed, none were as a result of an investigation by the province. This could be as a result of the confusion which exists with respect to the department responsible for investigations, as discussed above, or, to poor referral protocols in the province. This lack of coordination, referral and investigation could lead to a sense of impunity amongst potential and current perpetrators of fraud and corruption. This needs to be addressed immediately in order to meet the requirements of the NACH. The credibility of the Hotline is under serious threat and the management of cases needs be corrected as a matter of urgency.

Prosecution of persons involved in corruption cases

The investigation also sought to find out if departments prosecuted officials that were involved in corrupt activities. This would show direct evidence of the will to combat corruption head-on as required by the PSACS. Departments that provide evidence of cases of officials that were disciplined for corrupt and fraudulent activities include Education, Local Government and Traditional Affairs, Works, Social Welfare and Population Development. Among the cases that these departments made available to the PSC were cases that were referred to the SAPS for further investigation and possible prosecution.



Effective reporting lines (whistle blowing)

The rest of the departments could not provide such documentary evidence. This is consistent with findings that there is a lack of a data base on cases of fraud and corruption in most departments and that the ability to effectively investigate such allegations is lacking.

Fear of victimization and intimidation are key obstacles to reporting corruption. However there is an obligation on all employees to report wrongdoing which is enforced in the COC. To address the fears of public servants, the Protected Disclosures Act (PDA) was passed to encourage employees to blow the whistle against unethical conduct. Inherent in this piece of legislation is that all incidents of corruption, fraud, theft and maladministration should be reported without fear of reprisal, in person, to an authorized person within departments. The evaluation therefore sought to determine whether departments have put an appropriate whistle blowing mechanism in place to meet the obligations of the PDA.

Six departments do not have whistle blowing policies in place (Economic Development, Agriculture and Environmental Affairs, the OTP, the Royal Household, Sport and Recreation and Arts Culture and Tourism). This implies that none of the potential whistle blowers in these departments will feel encouraged to blow the whistle on any unethical practice. Of concern is that these departments also have major capital projects (Economic Development and Agriculture and Environmental Affairs) and employ various service providers. The process of supply chain management, in these departments, may therefore be susceptible to corruption and fraud which, as a result of the lack of a whistle blowing mechanism could go undetected.

All of the departments with policies in place indicated that no consultation with stakeholders during the development of whistle blowing policies took place. This could result in a lack of buy-in by the very people one expects to blow the whistle on corruption and may be one of the reasons why 86.6% of departments' representatives indicated that officials are reluctant to blow the whistle for fear of reprisals.



Cooperation with other anti-corruption agencies

The fight against corruption often produces challenges of an investigative nature which only specialist investigative agencies with forensic investigative capacity outside of departments are able to assist with. The study found that only informal cooperation between government departments and other anti-corruption agencies exist. Examples of such informal cooperation exist between anti-corruption agencies and the OTP and Provincial Treasury.

Only the Department of Works produced a memorandum of understanding (MOU) between the Department, a service provider and the South African Police Service (SAPS). Given that investigations appear to be centralized at the Provincial Treasury the current informal arrangement by Provincial Treasury with anti-corruption agencies is of concern as this may not provide the necessary support to the Treasury on a continuous and dedicated basis.

Implementation of anti-corruption regulations/laws

Since 2000 various laws have been enacted which promote transparency, accountability and the combating and prevention of corruption. The investigation therefore focused on the extent to which departments had effectively implemented these laws that are meant to promote transparency and accountability as well as to assist in dealing with fraud and corruption. The relevant laws include the Protected Disclosure Act (No 26) of 2000 (PDA); Promotion of Access to Information Act (No 2) of 2000 (PAIA); Promotion of Administrative Justice Act, (No 3) of 2000 (PAJA); Prevention and Combating of Corrupt Activities Act, (No 12) of 2004 (PRECCA) and, the Public Finance Management Act (No 1) of 1999 (PFMA). The evaluation sought to assess if documentation such as policies and manuals existed to assist departments to put these acts into operation with a view to deal with fraud and corruption and promote transparency and accountability. The extent of implementation of the Acts are reflected in Table 4:

Table 4: Policies developed for legislation dealing with the promotion of professional ethics

ACTS/ LEGISLATION	POLICIES IN PLACE	POLICIES NOT IN PLACE
Public Finance Management Act, Act no 1 of 1999 ¹⁶	12 departments have policies in place	3 departments have not developed policies
The Promotion of Access to Information Act, Act no 2 of 2000 ¹⁷	7 departments have developed policies	8 departments have not developed policies
The Promotion of Administrative Justice Act, Act no 3 of 2000 ¹⁸	1 department (Education) has developed a policy	14 departments have not developed policies
The Protected Disclosures Act, Act no 26 of 2000 ¹⁹	9 departments have developed policies	6 departments have not developed policies
The Prevention and Combating of Corrupt Activities Act, Act no 12 of 2004 ²⁰	No departments have developed a policy	15 departments have not developed policies

In terms of the table above six departments do not have policies on the PDA. These are Education, the Royal Household, Agriculture and Environmental Affairs, Housing, Community Safety and Liaison and Sport and Recreation. As a result the Act is not being implemented uniformly in the province. This will lead to unevenness as far as whistle blowing is concerned and possibly lead to levels of ignorance with respect to corruption within the non-compliant departments. In terms of PAIA, 50% of departments had manuals that provide guidelines for access by the public to records that are in their custody. PAIA was enacted in 2000 and this lack of compliance by the other (Sport and Recreation, the Royal Household, Education, Agriculture and Environmental

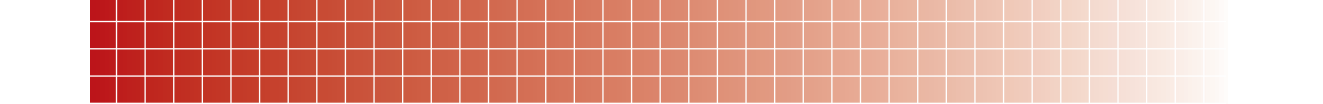
¹⁶ Republic of South Africa. Public Finance Management Act, Act no 1 of 1999.

¹⁷ Republic of South Africa. The Promotion of Access to Information Act, Act no 2 of 2000.

¹⁸ Republic of South Africa. The Promotion of Administrative Justice Act, Act no 3 of 2000.

¹⁹ Republic of South Africa. The Protected Disclosures Act, Act no 26 of 2000.

²⁰ Republic of South Africa. The Prevention and Combating of Corrupt Activities Act, Act no 12 of 2004.



Affairs, Works, Health and Economic Development) departments will limit the effectiveness of transparency as intended by the Constitution.

All departments, with the exception of Education did not have a policy on PAJA. This Act specifically promotes the accountability of government to its people with respect to decisions exercised on their behalf. If government cannot be held to account for its decisions it implies that the erring departments are not only failing in complying with the Constitution but also are ignorant to the rights of the people it seeks to serve.

All the Departments do not have policies pertaining to PRECCA. The PRECCA was enacted in 2004 and replaced the old Corruption Act of 1992. Under the requirements of the Act, departments are obliged to report any crime of corruption involving an amount of R100, 000 or more to the South African Police Service. As there is no policy in place within departments this may lead to non-compliance on this issue.

Except for the departments of Arts Culture and Tourism, Sports and Recreation and, the Royal Household, the rest of the departments have clear delegations in place in line with the requirements of the PFMA. In respect of the three erring departments this is disturbing as the PFMA holds Heads of Department ultimately responsible for financial management. What is encouraging though is that in the Departments of Education, Social Welfare and Population Development, Public Works and Local Government and Traditional Affairs, officials found to have breached any of the provisions of the PFMA were subjected to disciplinary measures. During interviews with departmental representatives a concern was expressed that the disciplinary system is unable to prevent officials who are ejected from the public service on account of serious violations of the PFMA, from entering it as service providers. This may point to the need to expedite the active management of a data-base on corruption for the province, which could also be linked to National Treasury's data-base on convicted service providers according to PRECCA and so assist the departments in preventing offenders from bidding for contracts in the province.

Compliance with financial disclosure requirements

There was general confusion in respect of the responsibility between departments and the OTP regarding who should compile policies that facilitate the implementation of such Acts. Departments argued that the responsibility for developing a uniform policy for the province in respect of these Acts should be coordinated in the OTP, instead of departments being expected to come up with individual policies.

Managing conflicts of interest in the Public Service has become a crucial instrument to prevent unwarranted financial gain or untoward behaviour by senior managers. In order to give effect to this senior managers are obliged to disclose their financial interests on an annual basis to their Executive Authorities. Departments in turn are then obliged to provide these disclosures to the PSC by 31 May of each year for assessment. According to PSC records no KZN department had complied with this deadline. Table 5 provides the latest statistics of compliance for the province as at 30 September 2007:

Table 5: Compliance of financial disclosures by KZN senior managers

NAME OF DEPARTMENT	NO. OF SMS MEMBERS	NO. OF FORMS RECEIVED	NO. OF FORMS OUT-STANDING
Provincial Administration: KZN (Office of the Premier)	55	0	55
Department of Agriculture and Environmental Affairs	32	19	13
Department of Economic Development	16	0	16
Department of Education	82	47	35
Department of Arts, Culture and Tourism	23	23	0

NAME OF DEPARTMENT	NO. OF SMS MEMBERS	NO. OF FORMS RECEIVED	NO. OF FORMS OUT-STANDING
Provincial Treasury	34	23	11
Department of Health	240	139	101
Department of Housing	19	0	19
Department of Royal Household	1	0	1
Department of Traditional and Local Government Affairs	38	38	0
Department of Transport	29	29	0
Department of Welfare and Population Development	28	21	7
Department of Works	23	21	2
Dept of Community Safety and Liaison	10	10	0
Department of Sport and Recreation	9	9	0
TOTAL	639	379	260

In terms of table 5 as at 30 September only 59% of senior managers had complied with the requirement to submit their financial disclosures. The low percentage compliance of disclosures by the KZNPA shows a lack of commitment towards transparency and accountability. Furthermore it undermines the role of the PSC to fully advise Executing Authorities about potential conflicts of

interest in the province. Potential conflicts, if not identified early, can easily turn into actual conflicts of interest and may cause serious harm to both the department and the manager involved. Of particular concern is that at the time of the writing of this report no financial disclosures had been received from the Office Of the Premier. The Office of the Premier is responsible for the overall guidance and administration of the province. It cannot play such a leadership role if its own compliance rate in this respect is at 0%.

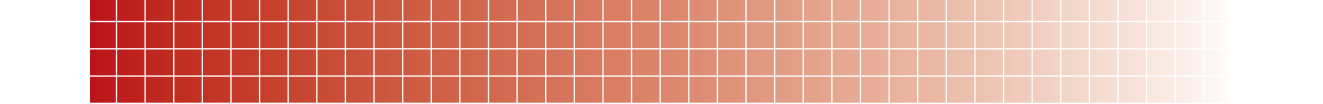
Dealing with financial misconduct

Departments are obliged by Treasury Regulation 4.3 to report finalized financial misconduct cases to the PSC as soon as the disciplinary proceedings are completed. It is not sufficient to identify corruption and misconduct but to prosecute this appropriately. Departments are therefore also required to reflect the number of cases successfully prosecuted. Table 6 below provides an overview of the handling of financial misconduct cases in the KZNPA from 2002/2003 to 2005/2006.

Table 6: Statistics on prosecution of financial misconduct cases

FINANCIAL YR	SANCTION					
	NO OF CASES	DISMISSAL	SUSPENSION	DEMOTION	WRITTEN WARNING	FINAL WARNING
2002/2003	110	67	0	10	12	0
2003/2004	55	28	7	1	11	0
2004/2005	40	13	5	0	8	5
2005/2006	50	18	0	0	8	2
TOTAL	255	126	12	11	39	7

From 2002/2003 to 2005/2006, a total of 126 persons were dismissed as a result of financial misconduct. During 2004/2005 a total amount of R126,317.47 was recovered from financial misconduct cases. In 2005/2006 the amount was R1,500.00. Given concerns raised around investigative capacity it is not certain that all financial misconduct is being detected and the actual extent of



misconduct could therefore be much higher. A concern was raised that there is no mechanism in place to prevent those dismissed for financial misconduct to obtain conflicts in the form of service providers. As such a database could be established and be linked to National Treasury's on prohibited contractors, which would prevent such perpetrators from obtaining government contracts.

Monitoring corruption

Tracking corruption trends within departments is of strategic importance to identify possible risks within the respective departments. A formal data-base of reported corruption and investigations is therefore crucial for effective monitoring.

Only 4 departments demonstrated the existence (provided evidence) of a formal approach to monitoring of corruption incidents where databases on such incidents exist (Health, Education, Social Welfare and Local Government and Traditional Affairs). The databases are updated in line with progress with investigations in these departments. Management is apprised of developments on each case on a quarterly basis.

The fact that the Provincial Treasury does not have a system in place for the monitoring of corruption cases is of concern as it would not be in a position to provide feedback to those departments on whose behalf it had undertaken investigations. Furthermore, it would not be able to establish trends on the types of fraud and corruption perpetrated which would again assist in the updating of the provincial anti-corruption strategy. The lack of feedback on cases of corruption emanating from the NACH is a clear indication of the fact that corruption is not being monitored. The OTP has the responsibility to refer cases for investigation and to obtain feedback. Without a monitoring mechanism such follow-up is difficult and as is the case, departments may merely indicate that they have no knowledge of allegations of corruption.

Chapter Three

The State of Professional Ethics in the KZNPA

Introduction

This study has shown an uneven approach to professional ethics and anti-corruption in the province. Many of the areas investigated during this study proved to be poorly managed. Of particular concern is that there is no systematic monitoring of corruption cases as well as confusion as to where the location for investigations and anti-corruption policy development lies. This in turn has led to a lack of coherence with respect to anti-corruption initiatives and left many cases of alleged corruption unattended to.

Ineffective Anti-corruption forum

Given that partnering with stakeholders across the societal spectrum is a cornerstone of anti-corruption coalitions it is of concern that civil society was not included as part of the process to establish a provincial anti-corruption forum. The principled approach since the First National Anti-Corruption Summit has been one of a united coalition against corruption. If all sectors are not included right from the start it will hamper and negatively affect the ability of the provincial government to fight corruption. It is clear that leadership from the Office of the Premier is needed on this matter to both provide guidance on participation as well as to galvanise the formation of a truly representative forum in order to give the province an integrated approach in the fight against corruption.

Anti-corruption strategies in KZN only in draft stage

Lack of an approved provincial-wide fraud and corruption prevention strategy shows a lack of leadership on the part of the OTP and could be the reason why some departments have not developed anti-corruption strategies. In the absence of such a provincial-wide strategy the OTP is therefore not able to play a monitoring and supportive role to departments. It could also lead to unevenness in the approach to the prevention and combating of corruption.

Ethical conduct is not being promoted

Creation of professional ethics and good conduct in the work place requires consistent training on the COC and departments' core values. It is the responsibility of departments to train officials on conduct that is ethical and acceptable so that they can be reminded regularly of the requirements of professional behaviour at all times. The fact that the COC is only used during induction while it forms the basis for professional conduct in the Public Service is of concern.

Apart from the COC there are no other awareness campaigns on professional ethics. Employees may therefore not be aware of what is expected of them in dealing with the public which in turn may lead to unethical behaviour.

Only some departments have fraud prevention plans (FPPs)

Fraud is often committed through innovative ways. Fraudsters change their tactics on almost a continuous basis. This necessitates consistent scanning of the environment and the reviewing of FPPs annually to keep abreast of the latest changes in fraud prevention. As five departments currently have no FPPs they are at risk of undetected fraud. A further concern is that risk assessments are not done continuously as part of the implementation of fraud prevention plans. This points to a weakness in the preventative systems of the province and places such departments at risk of losing public funding to fraudsters.

Not all departments have minimum anti-corruption capacity


In terms of the Cabinet directive, as well as the Public Service Anti-Corruption Strategy, departments had to create a minimum capability to deal with fraud and corruption by July 2004. According to the responses received, 4 departments do not have such a capacity. Currently, many departments believe that the Provincial Treasury should investigate corruption and fraud only, according to the KwaZulu-Natal Internal Audit Act. In the face of a lack of a clear policy on fraud and corruption from the OTP, this confusion will continue to prevail and should be clarified as a matter of urgency.

None of the departments have formal investigative procedures

None of the departments could produce procedure manuals for the investigation of corruption. Without manuals that detail steps to be followed in the investigation of fraud and corruption, cases are bound to be aborted and the province is likely to be ineffective in the combating of corruption through poor investigative techniques.

Only one department has a formal agreement with anti-corruption agencies

Only one department has a formal arrangement with anti-corruption agencies in place for assistance. Other departments have informal arrangements in place. This could be as a result of the reliance on the Provincial Treasury to initiate investigations. However, the Provincial Treasury itself does not have such an agreement in place. Given the poor state of investigative capabilities referred to previously this lack of formal cooperation poses a major risk in the investigation of more complex cases in the province.



The systematic monitoring of corruption is weak

The fact that only one third of departments have developed data-bases on allegations of corruption is a major weakness. The systematic tracking of corruption investigations is not only obligatory, but an integral part of successful risk management. The lack of such systems in the majority of departments undermines the effective addressing of risks through a risk trend analysis.

There is poor compliance with financial disclosure

Although compliance during the previous two reporting periods showed a progressive increase (from 18% - 87%), currently, the compliance for the 2006-2007 financial year is only at 59%. Of further concern is that on the actual compliance date of 31 May 2007, the province had a 0% compliance rate. Given the interface between business and government and the potential conflicts of interest this can lead to, such tardiness on the side of the province needs to be seriously addressed. The PSC is hampered by such late disclosures as it affects its obligation to timeously alert Executive Authorities (EA's) to potential conflicts of interest and therefore prevent actual conflicts of interest from occurring. On the other hand it may also lead to financial irregularities which could have been prevented if timeously detected by the PSC.

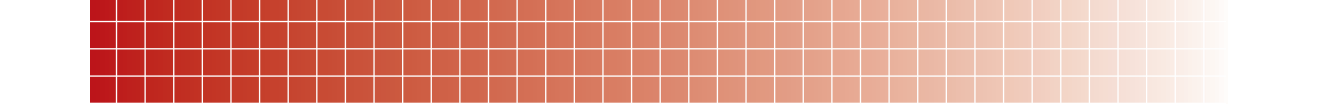
Few departments have dedicated financial resources to deal with corruption

A key test of the commitment by departments to combat corruption is to provide the necessary financial resources in order to do this. As only 3 of the departments have a dedicated budget for this it raises the question whether the province is committed to the fight against corruption. However, a further complicating factor is that the Provincial Treasury is perceived to be the lead (and only) department in the investigation of allegations of corruption. As alluded to earlier in this report this issue needs clarification urgently as it affects a range of issues with respect to anti-corruption initiatives in the KZNPA.

There is no systematic management of NACH cases

A key indicator for the prioritization of fraud and corruption is the degree to which departments are responding to the current list of NACH cases both in terms of conducting investigations and management of the cases from the Hotline. As at 30 September 2007 out of 199 cases referred through the NACH, feedback was received in respect of only 6.





Such a poor rate of feedback impacts negatively on the NACH in response to whistle blowers who made the effort to report such allegations.

Conclusion

From the above it is clear that the KZNPA has much to do in addressing shortfalls identified in the management of professional ethics and corruption. It has not performed adequately to address the state of professional ethics in the province and it would appear as if this lack of performance may be linked to management commitment.

The danger that many departments, both at provincial and at national level face, is that line function priorities overshadow the external elements that impact thereon. The prevention of corruption and the promotion of professional ethics are key elements that impact on departments' ability to deliver and as such must be prioritized.

Chapter Four

Recommendations

Introduction

The findings of this investigation suggest that the state of professional ethics in the KZNPA leaves much to be desired. Based on the findings, recommendations are made in this Chapter on how to improve the promotion of professional ethics and the prevention and combating of corruption in the KZNPA.

Implementing the Provincial Anti-Corruption Strategy

The implementation of the Provincial Anti-Corruption Strategy of KwaZulu-Natal should be expedited and take into consideration the findings of this report. The confusion surrounding the responsibility for investigations and the development of anti-corruption policy should be clarified in a revised strategy for the province.

Effective fraud prevention plans

Where no fraud prevention plans exist in departments these should be developed and implemented immediately. There should also be an annual review of these plans.

Provincial anti-corruption forum

A fully representative Provincial Anti-Corruption Forum needs to be established as a further priority in the province. Such a forum will give expression to the multi-sectoral approach to fighting corruption and will serve to promote awareness of professional ethics.

Minimum anti-corruption capacity

Anti-corruption investigators need to be given optimal training in both the prevention and detection of corruption. In the short-term the province should consider a mentorship programme with one of the anti-corruption agencies (such as SAPS) as most of the current investigators lack experience.

Investigative procedures

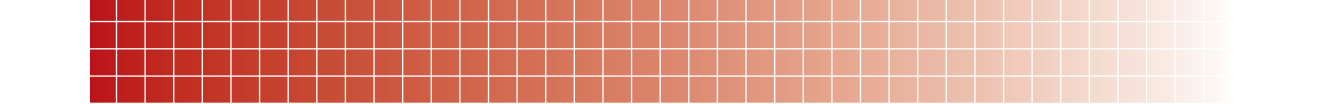
A uniform manual on investigative procedures for the province should be urgently developed and adapted by the respective departments to suit their respective mandates and circumstances.

Effective reporting lines (whistle blowing)

Departments which do not have whistle blowing policies in place should adapt the one as provided by the Provincial Treasury for their unique circumstances. A whistle blowing guide is also available from the PSC.

Cooperation with other anti-corruption agencies

Formal cooperation agreements with relevant agencies should be finalised by all of the departments especially in the light of the confusion that reigns over who should investigate corruption allegations.



Systematic approach to fighting corruption

Departments who do not have data-bases on corruption cases (especially Provincial Treasury) should develop these as it can only enhance their respective capacities to respond to fraud and corruption in a coherent and systematic manner. Such a data-base should also be developed for the province as a whole.

Implementation of anti-corruption laws

Policies need to be implemented effectively and uniformly by departments with respect to PAIA, PAJA and PRECCA in order to give proper effect to the intention of Parliament and to practice responsible and accountable governance in the province.

Compliance with the financial disclosure framework

Departments need to ensure compliance in respect of the submission of financial disclosure forms to the PSC by 31 May of each year. This will provide for an effective partnership in helping to manage potential conflicts of interest early and effectively.

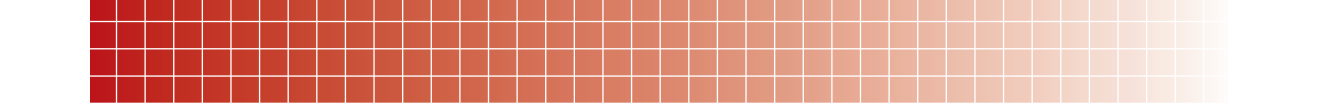
Responsiveness to the NACH

The province needs to decide on the entry point for cases referred from the PSC as well as an efficient referral and feedback process to and from departments. This decision should be reached by all departments in order to affect uniformity and improved responsiveness to the NACH.



Chapter Five

Conclusion

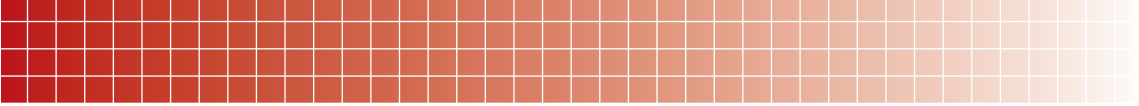


Through this report the KZNPA should be able to identify weaknesses in its approach to the combating of corruption and the promotion of integrity. Based on the findings it is clear that there is limited capacity in the province especially around the combating of corruption. The confusion which surrounds the role of the Provincial Treasury with respect to investigations in the province contributes to an incoherent approach to the fight against corruption and needs to be addressed immediately.

The study has further revealed that the OTP plays no leadership role in the province with respect to professional ethics. It is trusted that the implementation of the Provincial Anti-Corruption Strategy, will improve the extent to which the OTP gives direction and guidance towards the promotion of ethics and the combating of corruption.

Whilst the report may present a bleak picture of the state of professional ethics in the KZNPA, this should be seen as an ideal opportunity to seize the moment and put in place the required interventions to turn-around the situation.





Notes:

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