

## **Proposed amendments to the Public Service Act (PSA) and Public Administration Management Act (PAMA)** Submission of Public Comments

### **I. Introduction**

1. Since its establishment, the Public Affairs Research Institute (PARI) has been focused on the relationship between politics and the state administration, a relationship revealed by a particular analysis of South African politics. Research by PARI and others has shown that large parts of the South African state are currently afflicted by a politics that is destabilising and paralysing state organisations, directing attention and resources away from public programmes towards factional debates focused on private advancement. The effect, in some parts of the state, has been to crowd out concern with developing and implementing transformative policy aimed at building a more just and equal society. Shortfalls in service delivery have also resulted, with the poor and marginalised, who are more dependent on public services, particularly affected. Public confidence and trust in state institutions has been severely reduced. In our view, a project of state reform is necessary to reduce the influence of corruption and patronage on South African politics, and to develop a public administration that better serves its democratic mandate.
2. Ten years ago, one of the draft versions of the National Development Plan (NDP) warned explicitly about the need to stabilise and clarify the political-administrative interface, as failure to do so would render a focus on skills and professionalisation ineffective. In particular, it cautioned that the emphasis on 'political deployment' should be replaced by an emphasis on building a public service that serves government, but which is sufficiently autonomous to be insulated from political patronage.<sup>1</sup>
3. More recently, the *Draft National Implementation Framework towards the Professionalisation of the Public Service* also emphasized the need for a non-partisan approach, where persons in the bureaucracy loyally and diligently implement the political mandate set by voters and the party, but refrain from being political actors themselves. To achieve this distinction, the Framework proposes a number of decisive reforms, which include: "extending the tenure of Heads of Department (HoDs), creating the post of Head of the Public Service, implementing occupation specific competency assessments (not just the generic competency assessments currently in use), ensuring rotation of HoDs every 7 years (while at the same time, implementing the

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<sup>1</sup> National Planning Commission (2011), *National Development Plan: Vision for 2030*, 11 November 2011, available at: [https://www.gov.za/sites/default/files/gcis\\_document/201409/devplan2.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf), (accessed 3 May 2021), p.365.



revolving door policy and making secondment policy more flexible) and involving the Public Service Commission (PSC) or their nominated experts in the interviews of Deputy Directors-General (DDGs) and Directors-General (DGs)".<sup>2</sup>

4. In line with the above vision expressed inside and outside the state, PARI welcomes the proposed amendments to the Public Service Act (PSA) which seek to (1) devolve administrative powers to the heads of department while retaining strategic powers with the executive authority and to (2) increase the functions of the Director-General in the Presidency to include the functions envisaged by the NDP for an administrative head of the public service. It also welcomes amendments to PAMA in so far as they aim to standardise conditions of service across the public administration with a view to facilitating the creation of a single public service, and the transfer/movement of staff across spheres of government and public entities, after consideration of representations/submissions and based on existing operational needs.
5. The next sections deal with specific comments relating to the amendments proposed.

## II. Alignment of Recruitment and appointment powers

6. A number of the proposed amendments aim to align the financial responsibility of heads of department (HODs, DGs) with human resource administrative functions and to ensure that executive authorities hold HODs to account for the administration of their departments, as set out in the amendment to subsection 7 of Section 3. The current lack of alignment has been regularly highlighted in testimony before the Zondo Commission, as ministers often claim that DGs should be questioned instead. In PARI's view, these amendments are to be welcomed.
7. In this regard, amendments to Section 7(3)(b) of the PSA explicitly require HODs to manage their department's administration efficiently and effectively by, amongst others, maintaining discipline of staff and promoting sound labour relations, while also exercising the powers and performing the duties necessary for the recruitment, appointment, performance management, transfer, dismissal, remuneration and other career incidents of employees of that department. Accountability requires a clear assignment of responsibilities and therefore these amendments, which explicitly confer these duties and thereby empower officials who wish to take them seriously, are a critical start.
8. In particular, amendments to Section 9 of the PSA confer on heads of department the power to appoint any person in his or her department in accordance with the Act and in such manner and

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<sup>2</sup> National School of Government (2020), *A National Framework towards the Professionalisation of the Public Service*, Government Gazette No. 44031, 24 December 2020, available at: [https://www.thensg.gov.za/wp-content/uploads/2021/01/Nat\\_Gov\\_Gazette\\_24\\_December\\_2020.pdf](https://www.thensg.gov.za/wp-content/uploads/2021/01/Nat_Gov_Gazette_24_December_2020.pdf), p.39.



on such conditions as may be prescribed, as well as the powers to dismiss employees in line with the Labour Relations Act (Section 17).

9. However, as PARI has highlighted in previous submissions and in its position paper on recruitment and removal in the public service and municipalities, **what is of critical importance is the mechanism used to enable the process of selection and appointment** not only of HODs but also of those who such HODs now have powers to appoint. The mechanism used is significant particularly to check and balance political imperatives that might exist to favour particular candidates for senior positions. Rather than leaving selection, appointment and removal processes solely to the discretion of persons like the President, a future Head of the Public Service or HODs, regulations to the Public Service Act should be mandated to establish appropriate checks and balances.

### *Proposed mechanism for recruitment and appointment*

10. In order for processes of appointment and removal to be effectively checked and balanced, it is imperative that these processes are divided into stages and that no single person or group should be able to decide the outcome across all stages. What this means is that these stages need to be separated out, placed under the authority of different people, and as far as possible these people must themselves not be directly or ultimately appointed by the same person or group. The Public Service Commission (PSC) fulfils these conditions, because its commissioners have constitutional independence, set terms, security of tenure, and are appointed through parliament and the provincial legislatures.
11. PARI has suggested that the process of appointments can be divided into four stages of process planning, process administration, short listing and final appointment, with the PSC playing a central role in process planning and administration and in the establishment of selection committees responsible for short-listing. This process can be adapted depending on the actual post that needs to be filled.
12. To illustrate, for the process of **appointment of the Head of the Public Service**,<sup>3</sup> public service commissioners, with the support of the Office of the PSC, should administer this process, including designing and conducting tests, long-listing applicants and establishing a selection committee chaired by a commissioner and made up of other independent persons, including

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<sup>3</sup> From the proposed amendments, and aligned to the NDP, it is envisioned that the Director General in the Presidency will become the administrative Head of the Public Service. See Public Service Amendment Bill, especially Section 1.3(b) on p.24 and Section 2.5 on p.26, available at: <http://www.dpsa.gov.za/dpsa2g/documents/acts&regulations/pama/Public%20Service%20Amendment%20Bill%20for%20public%20comment.pdf>



subject matter experts. The selection committee would be responsible for arriving at a short list of candidates, from which the President should then appoint.

13. In the **case of heads of department**, much the same process as for the head of the public service should be followed. The major difference should be that the head of the public service (or the President until such a position is established) should take over the planning, in consultation with the relevant minister or MEC. In order to preserve the arrangement of the Constitution respecting the provinces, national commissioners should be responsible for administering the process for national heads of department, while the relevant provincial commissioner should administer the process for provincial heads of department, with the support of the Office of the PSC. A selection committee, constituted and chaired by national or provincial commissioners, as the case may be, should again short-list and recommend. The President or relevant premier would then appoint.
14. Following the same logic as above, in the **case of deputy heads of department**, the relevant head of the public service (or President until the Head of the Public Service is established nationally<sup>4</sup>) should plan the process, in consultation with the relevant minister or MEC and the relevant head of department. The relevant commissioner should then administer the process, and a selection committee constituted and chaired by them should short list and recommend. In order to align the line of command with the head of department, the head should then appoint. In appointments to lower ranks, selection committees should be constituted and chaired by the deputy head responsible for human resources or their delegate. The head of department should then appoint, running a check and balance through the department's appointment processes. Leaving the PSC to focus on the higher appointments will avoid turning it into a bottleneck.
15. For a full description of the proposed process at national, provincial and municipal levels, please refer to [PARI's position paper on the subject](#),<sup>5</sup> as well as its [submission on the Draft National Implementation Framework towards Professionalisation of the Public Service](#).<sup>6</sup>

### III. Tenure of Heads of Department

16. Whereas the proposed PSA amendments allow for greater powers to be devolved to HODs, despite recommendations contained in the National Development Plan and in the Draft National

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<sup>4</sup> Ibid.

<sup>5</sup> The position paper can be accessed at <https://pari.org.za/position-paper-recruitment-in-the-public-service/>

<sup>6</sup> The submission can be accessed at <https://pari.org.za/professionalising-the-public-service-submission-on-the-draft-implementation-framework/>



implementation Framework<sup>7</sup>, PARI notes that **no amendments to the PSA are proposed to extend the tenure of HODs.**

17. It is possible that the apparent policy decision not to propose to amend such provisions, at this time, might be linked to the absence of reliable performance management mechanisms that can be invoked should performance not meet the necessary standard.
18. An extension of tenure might also be more sustainable once a more robust and independent approach to recruitment and selection, such as the one proposed by PARI, is adopted.

#### **IV. Remunerative work outside the state and conducting business with the state**

19. Amendments to the PSA and PAMA also focus on the ability of employees to conduct remunerative work outside the state, as well as to conduct business with the state.
20. Amendments to the PSA reiterate that a head of department has 30 days within which to decide to grant permission to an employee to perform outside work, failing which the permission is deemed to have been given. **There is a danger that failure by HODs to consider such requests timeously could perpetuate the already existing position that such requests are granted by default.**
21. Amendments to PAMA aim to tighten provisions to prevent employees from conducting business with the state, especially where they are directors of companies as defined in the Companies Act, 2008 (Act No. 71 of 2008), that conduct business with the state. As much as this provision is to be welcomed, it does not adequately address situations where employees might not be directors of such companies but are nonetheless the ultimate beneficiaries of such contracts.
22. To close such gaps, **information regarding beneficial owners or holders of shares of companies that do business with the state should also be taken into consideration.** The amendment should be expanded to state that employees who are not only directors but also beneficial owners or holders of shares of companies that do business with the state are not allowed to do so and failure to comply with such provision constitutes a criminal offence and an act of misconduct.

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<sup>7</sup> Page 39 of the Draft National Implementation Framework affirms that in order to give effect to a non-partisan approach, consideration should be given to the extension of the tenure of HODs as one of the decisive reforms required.



## V. Conclusion

23. We reiterate our support for the steps undertaken to effect important reforms to the legal framework governing the public administration. We also remain firm in our commitment to ensure that amendments are implemented to stabilise the political administrative divide and to safeguard processes of recruitment, appointment and dismissal through a system of checks and balances from undue political interference.
24. We appreciate the opportunity to make these comments and recognize the time and effort of members of Parliament and other public servants in soliciting and carefully considering them.

