



19 April 2023

Director-General
Department of Public Service and Administration
Attention: Legal Services
c/o: Amukelani.baloyi@dpsa.gov.za and lentheng.phenya@dpsa.gov.za

Re: Submission on the draft Public Service Regulations (GG No. 48104 dated 24 February 2023)

This submission is prepared on behalf of the Action for Accountability (A4A) project which is a partnership between the Public Service Accountability Monitor (PSAM, the Ahmed Kathrada Foundation (AKF), and Accountability Lab South Africa (ALSA). The Public Affairs Research Institute (PARI) have also contributed substantively to this submission. A range of persons and entities have endorsed the submission and are listed below.

We welcome the opportunity to submit written comments and recommendations on the [Draft Public Service Regulations](#) that seek to amend the [2016 Public Service Regulations](#).

Background

South Africa is undergoing an accountability crisis as evidenced by the looting of state-owned entities, the weakening of functioning government institutions, gross violations of procurement policies and the capture of state resources to enrich private interests. And although these may be flighted as issues prevalent at a national level, the impact is most felt by those that are meant to receive the most basic of services from government institutions: those that cannot afford to pay R1 for a litre of clean water, those that still use the bucket system when nature calls, those that have to use candle lights in order to prepare for examinations, those that have to walk far to fill a 10L bucket of water; adult dependents that can neither find jobs nor move out of home and those that sleep in hospital passages to hopefully get a bed in time to deliver their unborn babies.

In light of this governance crisis, we welcome Cabinet’s adoption, in 2022, of the National Framework towards the Implementation of Professionalisation of the Public Sector (hereafter Professionalisation Framework), the government’s commitments to ensuring greater integrity in appointment and dismissal processes and to the wider professionalisation agenda as signalled in the President’s response to the State Capture Commission, and commitments to integrity in personnel practices outlined in pillars 2 and 4 of the National Anti-Corruption Strategy (NACS). Some of the proposed amendments to Public Service Regulations seem in line with the direction set by these various government strategies and frameworks, others, however, seem at odds with the approach they set – or at least introduce ambiguity. This suggests the need for clearer communication from the DPSA with regards to the precise intentions of the various amendments, including as they relate to amendments to sister legislation such as the Public Administration Management Act (PAMA), and plans for rationalisation of the wider legislative framework for personnel practices as they relate to the fight against corruption.

Should the Department have any questions regarding this submission please contact the following person: Jay Kruuse, Director, PSAM, Tel: 0466038358; Email: j.kruuse@ru.ac.za

This submission is also endorsed by the entities and persons: Section27¹; Sibongiseni Phila, Ntombentsha Yamiso, Kelebogile Agel Mazibuko, Gilbert Mphahlelele, Mbanjwa Mbanjwa, Nolwazi Mpembe, Nyasha Mukuane, Tamela Mgulwa, Sbongile Mthethwa, Lindiwe Mlungwana, Manini Selemo, Bheki Ntshali, Nokhaya Tibe, Beauty Moletsane, Isaac Mahlangu, Masoka Shushu, Nhlanhla Marineland, Kabelo Kemp, John Mokoena, Linda Skhosana, Mantombi Ndaba, Winnie Mabaso, Deekay Ndoni Sibanda, Funeka Manzi

Comments

- 1) The draft Public Service Regulations propose to withdraw clause 13(c) of the [current 2016 Regulations](#)² that reads as follows, without providing any justification for its withdrawal:

“not conduct business with any organ of state or be a director of a public or private company conducting business with an organ of state, unless such employee is in an official capacity a director of a company listed in schedule 2 and 3 of the Public Finance Management Act”

We are opposed to the withdrawal of clause 13(c). We note that some progress was being made in taking corrective action in accordance with this clause according to the DPSA: <https://www.dpsa.gov.za/thepublicservant/2021/11/18/govt-takes-action-against-public-servants-doing-business-with-the-state/>

The proposed withdrawal stands in stark contrast to [comments](#) attributed to the Deputy Minister of the DPSA when appearing before Parliament on 17 February 2021:

“many of the public servants are honest, committed, accountable and responsible. Unfortunately, some have been seduced by greed and succumbed to corruption, becoming unresponsive and unaccountable. To address these challenges of corruption and lack of accountability, government has implemented a number of interventions to monitor and

¹ <https://section27.org.za/>

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<https://www.dpsa.gov.za/dpsa2g/documents/acts®ulations/regulations2016/PUBLIC%20service%20regulations%2016%20April%202019.pdf>

enforce compliance of public servants. For instance, the public service regulations of 2016 are one of the legislative frameworks that provide for the prohibition of public servants conducting business with organs of state.”³

We also note that section 8 of the Public Administration Management Act (PAMA) criminalizes public servants doing business with the state. The proposed withdrawal of clause 13(c) appears unusual unless it is intended to rationalize the legal framework. Please could the DPSA provide clarity to the public if their plans for possible rationalization of legislation pertaining to personnel practices, especially as these relate to the fight against corruption and the professionalization agenda?

- 2) We are opposed to the proposed deletion of regulation 21(2)(d) that currently requires the following level of annual reporting by Heads of Department:

A head of department shall no later than 31 August of each year report to the Minister on -

- (i) the number of cases identified in terms of sub-regulation (2) (b);
- (ii) whether any steps were taken;
- (iii) if steps were taken, a description of those steps; and
- (iv) if no steps were taken, reasons thereof.

Over and above supporting retention of the existing regulation 21(2)(d) we propose the addition of a further clause numbered (e) that would require the Minister to produce an annual report for submission and consideration by Parliament on the extent to which all heads of department have complied with regulation 21 (1) and 21(2)(d).

3. While we welcome the proposed regulation 21(3) we would also recommend that it contain an additional sub-paragraph (d) that reads as follows:

“Provide the Auditor-General of South Africa with a copy of the referral made to law enforcement in accordance with the preceding sub-paragraph 21(3)(c).”

4. We support the proposed reforms to Regulation 22 and would also recommend an additional sub-paragraph (g) that reads as follows:

“be subject to an investigation by the executive authority if he/she fails to implement and adequately maintain the anti-corruption and ethics function as required by Regulation 22. The outcome of this investigation must be contained in a report which must be submitted to the Auditor-General within a month of its completion.”

5. We propose an additional sub-paragraph (e) to Regulation 25 that would require the executive authority to publicise on the relevant department’s website, the organisational structure and approved establishment within 30 days of its approval.

Such a clause would support enhanced oversight and accountability advocacy by parliament, legislatures and civic actors while advancing the objectives of the National Anti-Corruption Strategy and NDP 2030.

6. We propose an additional sub-paragraph titled (g) to appear within Regulation 26(2) and that would require the Human Resource Plan to be publicized on the relevant department or entities website, within 30 days of its approval.
7. We do not support the proposed amendments to Regulation 29 and Regulation 35 that would remove executive authorities' obligations to report to the Minister. Over and above supporting the retention of these reporting requirements, we recommend that additional sub-paragraphs be introduced requiring that reports be sent to the relevant Parliamentary Committees in order to support enhanced oversight by Provincial Legislatures and National Parliament.
8. We are concerned that the proposed amendments to Regulation 49, relating to overtime beyond 30% of monthly salary, may be subject to abuse. The circumstances in which this is allowed are very broadly framed and we suggest circumscribing them more tightly in legislative language. We would also recommend the introduction of an annual reporting obligation to the Public Service Commission by the executive authority, and which reporting provides a summary of overtime data listed within the proposed regulation 49(3).
9. We welcome the proposed Regulation 56(A) that seeks to respond to the needs of employees with disabilities.
10. We do not support the proposed revised Regulation 61 relating to periods of prohibition from being re-employed where a person has been dismissed for misconduct. While we note that certain prohibition periods are proposed to be extended, we submit that this will not provide sufficient deterrent effect. We submit that the period of prohibition should be 10 years for acts of misconduct listed under items 1 to 9 of the table, and 5 years for all other acts of misconduct provided under item 10.
11. We do not support the proposed substituted regulation 72(12). We submit that an employee who is absent with permission for such an extended period of time cannot be objectively and reasonably assessed as either "satisfactory" or "fully effective". If they are absent due to approved sick leave or study leave, they have not performed in their post but their absence can be explained and should not result in corrective action. Their absence has in such circumstances impacted negatively on their contracted performance, and should not attract a conclusion that inaccurately misrepresents their performance.
12. We note the proposed insertion of clause 87A that seeks to provide for the extension of an HOD's contract. We would recommend that the proposed clause 87A(1)(b) be revised to better define what is meant by "obtained satisfactory audit outcomes".
13. Having noted the proposed reforms to regulation 93, we recommend that the proposed new regulation 93(2) include a sub-regulation titled (e) that reads as follows:
 - (e) promotes public access to information and public participation.