

**Draft Public Service Commission Bill (2023):**  
Submission of Public Comment

**Public Affairs Research Institute (PARI)**  
**and Public Service Accountability Monitor (PSAM)**

Endorsed by Accountability Lab South Africa and the  
Ahmed Kathrada Foundation

**Introduction**

1. PARI and PSAM welcome the Public Service Commission Bill as an important step in ensuring the vision of public administration that is professional, effective, impartial and developmentally directed (Section 195 of the South African Constitution).
2. It is important to note that states are never neutral: the South African state's policies should be strongly orientated towards addressing the apartheid legacy, proactively tackling poverty and social and economic inequality. Achieving the vision of an impartial public administration as outlined in the Constitution is about insulating the public administration from inappropriate political interference, whilst ensuring it is more responsive to democratic mandate and committed to the values of the Constitution.
3. This submission is made in the spirit of supporting the state's ongoing reform efforts to professionalise the public administration. We have previously welcomed Cabinet's adoption, in 2022, of the National Framework towards the Implementation of Professionalisation of the Public Sector (hereafter Professionalisation Framework). We share the government's commitments to ensuring greater integrity in appointment and dismissal processes, to the wider professionalisation agenda as signalled in the President's response to the State Capture Commission, and to integrity in personnel practices outlined in pillars 2 and 4 of the National Anti-Corruption Strategy (NACS). We note plans for the rationalisation of the wider legislative framework for personnel practices as they relate to the fight against corruption, and recent legislative amendments to de-link the administrative tenure of Directors-General from political term, with a view to stabilising the senior echelons of the public service.

**Political crisis: the case for reform and the vital role of the PSC**

4. Research by PARI has shown that large parts of the South African state are afflicted by patronage politics. This is destabilising and paralysing state organisations, and directing attention and resources away from public programmes.<sup>1</sup> The effect, in some parts of the state,

<sup>1</sup> <https://pari.org.za/reforming-the-public-administration-in-south-africa-a-path-to-professionalisation>

has been to crowd out concern with developing and implementing transformative policy aimed at building a more just and equal society. The fiscus is under strain, compromising the sustainability of social grants, and the sustainability of our state owned enterprises. Public infrastructure is rapidly decaying in many areas. There are major shortfalls in service delivery, with the poor and marginalised, who are more dependent on public services, particularly affected. Public confidence and trust in state institutions has been severely impacted. 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.

5. The State Capture Commission identified the primary mechanism of state capture to be the “the strategic positioning of particular individuals in positions of power”, which was then used to gain control of the public procurement and over law enforcement agencies. Corrupt politicians and officials used disciplinary processes, suspensions and dismissals to remove non-compliant employees and replace them with complicit – or at least more pliant – individuals.
6. PARI’s research highlights that ineffectively checked powers of appointment have allowed political office-bearers to place associates across administrative checks and balances, operating to circumvent the law. The National Development Plan recognised the problem of inappropriate political interference in public administration and argued for the PSC to regain a direct role in appointment processes. It envisions that the head of the public service, among other matters, will convene appointment processes in conjunction with the PSC.
7. We recognise the PSC’s important role in investigating and monitoring personnel practices in the public service, in evaluating the performance of the public service, and making recommendations in line with the vision of the Constitution. In addition we recognise the importance of appropriate certification, training, standards setting and so on in relation to professional conduct and related questions currently being explored under the professionalisation discussion. We emphasise, however, that establishing stronger checks and balances in appointment and dismissal processes must be a central strategic thrust of the professionalisation agenda, and that the PSC has a vital role to play in this regard. PARI has developed detailed proposals on the role the PSC, rendered suitably independent and empowered, could play in administering appointment processes.<sup>2</sup>
8. While the involvement of the PSC in appointment and other personnel processes may be stipulated in other legislation, such as the Public Service Act, the Public Service Commission Bill must ensure that the organisation is properly empowered to take on these functions.
9. PARI and PSAM have for many years championed a stronger and more prominent role for the PSC as a keystone to the non-partisan public administration envisaged in the Constitution.<sup>3</sup> The draft PSC Bill primarily seeks to enhance the conditions for the impartiality and independence of the PSC, and to strengthen the Commission in playing its constitutionally mandated role in relation to local government and public entities. PARI and PSAM strongly

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<sup>2</sup> <https://pari.org.za/position-paper-recruitment-in-the-public-service/>

<sup>3</sup> <https://pari.org.za/reforming-the-public-administration-in-south-africa-a-path-to-professionalisation/>



support this vision, but proposes that certain provisions in the draft Bill should be bolstered to institutionalise the PSC as a non-partisan bulwark against patronage-based corruption, and as an enabling institution for developing a stable, productive political-administrative interface.

### **Specific comments on the draft PSC Bill**

10. We recommend reconsidering clause 4(5)(b) which establishes qualifications in favour of appointment as public service commissioners. Specifically, clause 4(5)(b)(iii) declares that being a member of Parliament, a provincial legislature, or a municipal council counts in favour of appointment. Whilst we do not think this experience should preclude persons from being considered for position as a Commissioner, it should not be a pre-requisite and would not be sufficient in isolation. We suggest that favouring individuals with specifically political qualifications moves against the spirit of developing the PSC as a non-partisan institution regulating the public administration. Clause 4(5)(b)(vi) appears to indicate that candidates for appointment as Commissioners must possess at least some of the experience or characteristics outlined in clauses (i) through (v) and need not fulfil each of these – if this is the case, we suggest that the language here is clarified. We do not see justification for outlining (b)(iii) as one of a number of distinguishing characteristics for consideration as a Commissioner.
11. Clause 6(1)(a) holds that no commissioner should hold office in a political party or political organisation. We propose that this clause should be strengthened by asserting that commissioners may not be members of any political party or political organisation for the period of their appointment as commissioners. This is to communicate and underscore the principal of impartiality and political non-partisanship instantiated in the position of commissioners. It is also to protect against the possibility that commissioners who are members of political parties and political organisations may be subject to conflicting imperatives, such as those produced by party discipline and partisan commitments.
12. We propose that clause 6(1)(b) should be amended such that no remunerative work outside the duties of his or her office is allowed. It is not clear what circumstances the Bill is envisioning that might justify this clause, but remunerative work outside their official duties detracts from those duties, it is potentially rife with conflicts, and the fact that the President will be responsible for authorizing this work creates inappropriate political leverage over what are constituted as politically independent positions.
13. Regarding clause 12(1), “Subject to the provisions of subsection (2), no person is entitled to have access to any report prepared by the Commission consequent upon any of its powers and functions in terms of section 196(4) of the Constitution until such time as such report has been submitted to the relevant executive authority or any other person”, we propose that the Bill clarifies precisely which reports are being referred to. In the case of those reports related to grievance procedures, we propose that these are made public where disclosure would satisfy



the requirements of public interest override. All other PSC reports should be made automatically available to the public.<sup>4</sup>

14. We propose considering stronger remedial consequences in the case of an executive authority or relevant person that refuses or fails to implement a PSC decision contemplated in Section 196(4) of the Constitution. The Commission is able to set rules and investigate, but it otherwise lacks powers of direction and enforcement.
15. We welcome the creation of a dedicated PSC Secretariat which will sit under the authority of the Commission, in contrast to the (current) Office of the PSC which sits as a unit under a national department (DPSA).
16. However, we strongly propose that the Bill inserts further detail under Clause 16 to provide for the principles and processes for recruiting and appointing the CEO and Deputy CEO of the PSC Secretariat. Currently, the PSC's independence is attenuated by provision for political involvement in appointments to the Office of the PSC. The Bill should place the power of appointment to and removal from the offices of the CEO and Deputy CEO squarely with the Chair of the PSC. Further, the power of appointment for posts below the CEO and Deputy, should in turn be placed with the CEO him/herself (thus see also Clause 16(5)).
17. Further, we propose that employees of the PSC Secretariat should not be members of political parties for the duration of their employment – at the very least, no employee of the PSC Secretariat should hold office in a political party or political organisation.
18. The funding of the PSC must be made clearer in the Bill. It currently appears that the PSC will be a separate vote on the National Budget, which would be a positive change and would guarantee financial independence for the institution. However, the explanatory note at the end of the Bill states, "The budget for the PSC is to be appropriated through the appropriation budget vote as a Constitutional Institution through a government department until such time when the Parliament is able to take on the role." This is ambiguous. If this note refers to a transitional process, this should be made clear in that section of the bill.

7 Jul 2023

**Public Affairs Research Institute**  
**Public Service Accountability Monitor**

**Endorsed by:**  
**Accountability Lab South Africa**  
**Ahmed Kathrada Foundation**

**Contact:**  
Dr Sarah Meny-Gibert  
Head: State Reform Programme, PARI  
[sarahmg@pari.org.za](mailto:sarahmg@pari.org.za), 084 478 0112

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<sup>4</sup> We note the PSC's strong track record of making its reports easily accessible on the PSC website.

