



Comment on the Public Service Commission Bill

Parliament: Portfolio Committee on Public Service and Administration

November 2024



Joint submission

- Public Affairs Research Institute (PARI) (University of Johannesburg)
- The Ethics Institute (TEI)



About our organisations

- **PARI:** A research institute attached to the University of Johannesburg: PARI's State Reform Programme undertakes research and provides evidence-based recommendations for reforms in key institutions with the aim of enhancing state capacity and supporting development goals.
- **The Ethics Institute:** An independent institute producing original thought leadership and offering a range of services and products related to organisational ethics.

Background

- We welcome the Public Service Commission Bill: an important step in ensuring the vision of a public administration that is professional, effective, impartial, and developmentally directed (Section 195 of the South African Constitution).
- The Bill aims to strengthen the PSC's independence, give stronger effect to the PSC constitutionally defined role, and enable stronger remedial authority re its recommendations. This is strongly supported.
- **However, the Bill should do more to give effect to vision outlined in the NDP and Professionalisation Framework especially regarding the regulation of the political-administrative interface.**
- We recognise existing policy, and recent legislative reform efforts:
 - National Development Plan Ch13 (2012)
 - Professionalisation Framework (2022)
 - Commitments to integrity in personnel practices in the President's response to the State Capture Commission (2022)
 - Proposed amendments to PSA (Bill)
 - Proposed amendments to PAMA (Bill)
 - Amendments to Municipal Systems Act 2022
 - And other initiatives.

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1. Appointment of Commissioners

- We welcome Section 4, which outlines the process and standards for appointing Commissioners.
- We enjoin Parliament to ensure the development of an appropriate process for recommendation of fit and proper persons to these positions. Parliament can assist in enhancing the prominence, standing, and trust of the Commission in the eyes of the public – a vital task given the important role the PSC will play in the professionalisation agenda.



2. Remunerative work by Commissioners

PROPOSAL:

- Regarding clause 6 (limitations on remunerative work by Commissioners): we are concerned that making the President responsible for authorizing such work creates inappropriate political leverage (i.e. of the President) over what are constituted as politically independent positions (the Commissioners). Commissioners should ideally not feel beholden to the President in this way.
- Where there are instances that meet the criteria outlined in 6(2), we suggest that the decision to allow such work rests with a standing sub-committee of the PSC, and which committee is guided by a clear and transparent policy (this is the approach proposed for corporate board members under conventions of good corporate governance).



3. Creation of a PSC Secretariat

- 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).

PROPOSALS:

- 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.
- Specifically, 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, supported by a robust selection process in the case of appointment.
- 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(6)).
- We propose that a clause is inserted to the effect that no employee of the PSC Secretariat should hold office in a political party or political organisation.

4. PSC's future role in supporting selection processes for senior managers in the public service

THE CASE FOR REFORM

- Findings of the State Capture Commission: appointment processes (especially for senior posts) were a key mechanism of state capture.
- Currently in law: broad executive powers of appointment and removal, without effective checks and balances: space for patronage considerations to pervade public administrative personnel practices, blurring lines in the political-administrative interface.
- The PSC has been given a role to support the integrity of these processes (NDP, Professionalisation Framework, Medium Term Development Plan).
- Neither this Bill, nor amendments proposed to the Public Service Act (currently before the NCOP), provide for the PSC to play a role in supporting recruitment and selection processes.

4. PSC's future role in supporting selection processes for senior managers in the public service

CONSTITUTION AND POLICY VISION

- Section 196(4d) of the Constitution states: “S196(4) The powers and functions of the Commission are — ...(d) to give directions aimed at ensuring that personnel procedures relating to recruitment, transfers, promotions and dismissals comply with the values and principles set out in section 195; ...[and] (g) to exercise or perform the additional powers or functions prescribed by an Act of Parliament.”
- The Professionalisation Framework, adopted by Cabinet in 2022, outlines a role for the PSC in supporting recruitment and selection processes for senior managers in the public service and moots the possibility for the PSC in this respect for Municipal Managers in local government: “PSC will develop a database of a pool of experts that the Executive Authority should consult during the recruitment and selection process, AND the PSC should support the President to plan the recruitment and selection of the (future) HoPA.”
- The NDP (Ch 13) went further: “PSC should play a direct role in supporting the recruitment of the most senior posts: “The chair of the PSC, together with the proposed administrative head of the public service, should convene the selection panel for heads of department and their deputies. This would allow for a transparent process that could reinforce confidence in the way heads of department are appointed.”
- Precedent: Appointing authorities have, in other sectors, sought an independent body to determine selection e.g. NDPP in which a panel of individuals from the legal fraternity and Chapter 9 institutions recommended suitable candidates to the President, from which he made an appointment.

4. PSC's future role in supporting selection processes for senior managers in the public service

- Whatever precise role policy makers determine for the PSC in supporting selection and recruitment for senior officials in the future, the Public Service Commission Bill must ensure that the PSC is properly empowered to take on these functions.
- This Bill is the appropriate place to empower the PSC accordingly.

PROPOSAL:

- We thus propose that a clause is inserted into the Bill to the following effect: “The Public Service Commission must facilitate recruitment and selection of candidates to the extent required by any law or as requested by the relevant appointing authority”.

5. Appointment reform at local government level

- We note that some of the most pressing problems of clientelism and political overreach are currently experienced at the local government level. We note that discussion is urgently needed on precisely how to reform the processes for recruitment and selection at local government level (especially for MMs) (within the Framework of the Constitution).
- Whatever the modalities of such processes, they should follow the reform principles outlined in the NDP and Professionalisation i.e. a focus on independent checks and balances in recruitment and selection processes.

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