



Public Service Commission Bill (B 30B-2023):
Submission of Public Comment to the National Council of Provinces (NCOP)

Submitted by the Public Affairs Research Institute, Public Service Accountability Monitor, the Equality Collective and the Ethics Institute

12 September 2025

Broad comment on the Bill

1. The Public Affairs Research Institute (PARI), the Ethics Institute (TEI), the Equality Collective, and the Public Service Accountability Monitor (PSAM) welcome the Public Service Commission (PSC) Bill as a step towards ensuring the vision of public administration that is professional, effective, impartial and developmentally directed (Section 195 of the South African Constitution). The 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. We support this. The PSC's expanded role will need to be carefully paced to expanding capacity, adopting an incremental approach.
2. We note, however, a major omission in the Bill: it does not provide for the PSC to play a role in supporting selection processes for senior personnel (as proposed by the National Development Plan and the Professionalisation Framework adopted by Cabinet in 2022). 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 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. 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.¹

3. The NDP recognised the problem of inappropriate political interference in public administration and argued for the PSC to have a role in supporting appointment processes. It envisions that the head of the public service, among other matters, will convene selection processes in conjunction with the PSC. Government's Professionalisation Framework also envisions the PSC playing a role in supporting the appointment of senior administrative staff in the public administration towards the development of a stable, productive political-administrative interface, and towards supporting merit-based senior appointments. Following this, PARI has developed detailed proposals on the role the PSC (rendered suitably independent and empowered), could play in administering appointment processes.²
4. Neither this Bill, nor the Public Service Amendment Bill (currently also making its way through Parliament), address this reform imperative. In short, the legislation currently under deliberation in Parliament represents only a partial implementation of the promised reforms aimed at depoliticising the public administration. **In the detailed comment on the Bill below, we suggest there is room for Parliament to include an additional clause in this Bill that could support progressive movement in this direction (see proposals for Section 12).**
5. Regarding the Professionalisation Framework's implementation, the Auditor-General has emphasised as follows: "In 2023-24, we assessed government's state of readiness to implement the framework, as limited progress has been made since 2022. We identified several gaps, which we are sharing with those role-players that can influence the successful implementation of the framework, including the Department of Public Service and Administration, the National School of Government and the Public Service Commission. Successfully implementing the framework will require a coordinated and well-planned approach but will contribute to addressing the concerns we have raised over the administrative term and highlight throughout this report about the lack of skills and capacity in national and provincial government. The impact of this shortage is felt in several areas

¹ Brunette, R. 2021. "Appointment and Removal in the Public Service and in Municipalities" in *Reforming Public Administration in South Africa a path to professionalisation*. Cape Town: Siber Ink: <https://pari.org.za/reforming-the-public-administration-in-south-africa-a-path-to-professionalisation/>

² Brunette, R. 2021. "Appointment and Removal in the Public Service and in Municipalities" in *Reforming Public Administration in South Africa a path to professionalisation*. Cape Town: Siber Ink: <https://pari.org.za/reforming-the-public-administration-in-south-africa-a-path-to-professionalisation/>

that auditees are required to manage, including finances, performance, information technology systems, procurement and contracts, infrastructure and projects.”³

Specific comments on the PSC Bill

Sections 2, 9 and 10

Section	Comment / context	Suggested amendments or proposals
Sections 2, 9 and 10	The Bill defines the public administration as including the public service. It is therefore not clear why the application of the Act (Section 2) doesn't simply read as applicable to the public administration. Section 9 and 10 could likewise be amended.	<p>We suggest deleting public service in Sections 2, 9 and 10:</p> <p>“2. The provisions of this Act apply in relation to the administration of the [public service and] public administration.”</p> <p>And, “9(1) The Commission may inspect departments and other organisational components in the [public service or] public administration and has access...”.</p> <p>And, “10(1) The Commission may investigate departments and other organisational components in the [public service or] public administration and has access...”.</p>

Section 4: Appointment of Commissioners

Section	Context and rationale	Suggested amendments or proposals
Section 4	We welcome Section 4, which outlines the process and standards for appointing Commissioners.	No suggested amendments, though 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.

Section 6: Limitation on performing other work by commissioners, renewal of term of office of commissioners and vacation of office by commissioners

³ Consolidated General Report on National and Provincial Audit Outcomes 2023-24 at p.132: https://pfma-2023-24.agsareports.co.za/report/pfma_report_2023_24_final.pdf

Section	Context and rationale	Suggested amendment or proposals
Section 6(1)(b)	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).

Section 12: Access to reports of Commission

Section	Context and rationale	Suggested amendment
Section 12 – proposal for the insertion of a new sub-section	To support mandatory disclosure of Commission reports that are in the public interest, we propose the insertion of an additional paragraph under Section 12:	We propose an additional sub-section: “ <u>12(4) The Commission must promptly release on its website all finalised reports that reveal evidence of a substantial contravention of, or failure to comply with the law; or an imminent and serious public safety or environmental risk; and such reports should be included in its reporting to Parliament in terms of Section 196(6) of the Constitution.</u> ”

New Proposed Section: Empowering framework for the PSC to play a role in safeguarding senior appointments

Section	Context and rationale	Suggested amendment or proposals
Part B - proposal for the insertion of new section (e.g. 12A)	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.”	We thus propose that a new section is inserted into the Bill to the following effect: <u>“12A. The Commission:</u> <u>(a) may facilitate and administer recruitment and selection of candidates for the public administration after application by the authority responsible for appointment.</u> <u>(b) must facilitate and administer recruitment and selection of candidates for the public administration to the extent required by any other law.”</u>

	<p>The Professionalisation Framework 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 to play a role in this respect for Municipal Managers in local government. The NDP proposed that, the "PSC should play a direct role in supporting the recruitment of the most senior posts," and, "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."</p> <p>Whatever precise role policy makers determine for the PSC in supporting selection and recruitment for senior officials in the future, the PSC 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.</p> <p>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.</p>	<p>Our proposal in this regard creates an enabling space for the PSC to support recruitment and selection processes at a future date. It facilitates the vision of the NDP and Professionalisation Framework (and the MTDP strategic intervention) <i>but it does not specify or determine the precise process.</i></p> <p>In other words, it does not determine whether the PSC plays a role in setting up the selection committees working with the HoPA and the EA of a department (as per the NDP proposals) or whether the PSC provides subject matter experts to selection committees (as per the Professionalisation Framework proposals), or some other formulation.</p> <p>The proposed clause (a) above allows for an appointing authority to approach the PSC to support him/her with setting up a robust recruitment and selection process. An example is the case of the President who might want to approach the PSC in this regard, for setting up a selection committee of relevant experts for recommending candidates for the position of NDPP. And the proposed clause (b) allows for the DPSA or other regulatory authority to determine enhanced processes for recruitment and selection as per the NDP/ Professionalisation Framework and for the PSC to play an appropriate role as check and balance in that regard – for example, in the case of the selection of HoDs/DGs.</p>
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Section 13: Implementation of decisions of Commission

Section	Context and rationale	Suggested amendment
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Section 13(2)	<p>Section 13(2) reads, “13(2) In the event of a refusal or failure by the executive authority or person referred to in subsection (1) to report as provided in that subsection, the Commission may report such refusal or failure—....”.</p> <p>We strongly propose that Section 13(2) should require (rather than permit) the Commission to report such refusal or failure to Parliament/legislatures/ Council etc, as it will support accountability and consequence management. Placing an obligation on the Commission to report such matters will also provide additional information to support citizen action and oversight of public duty bearers.</p>	<p>We propose that the wording be revised to read as follows: “13(2) In the event of a refusal or failure by the executive authority or person referred to in subsection (1) to report as provided in that subsection, the Commission must [may] report such refusal or failure—...”.</p>
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Section 16: Secretariat of the Commission

Section	Context and rationale	Suggested amendment
Section 16 and Schedule 2 (Laws Repealed or Amended)	<p>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).</p> <p>We also welcome changes to the Bill i.e. contained in this B30B version, <i>which we interpret as making the Commission responsible for the appointment of the CEO of the Secretariat</i>. In the previous version of the Bill, the PSC’s independence was attenuated by provision for political involvement in appointments to the Office/Secretariat of the PSC, as regulated by Section 67(2) of the Public Service Regulations. We commend Parliament in taking seriously previous comment on the Bill and making these changes.</p>	<p>In order to align with (a) the amendment of Section 16 and (b) the deletion of text from Schedule 2 in the Bill (B30B), Section 67(2)(c) of the Public Service Regulations must be consequentially amended. We understand Section 67(2)(c) of the Regulations to be ultra vires the Act in terms of B30B.</p> <p>The consequential amendment to the Regulations may be done by deleting Section 67(2)(c) from the Regulations. Section 67(2)(c) of these Regulations currently reads, “(2) A selection committee constituted for the appointment of... (c) the head of the Office of the Commission, shall be chaired by the chairperson of the Commission and include at least the Minister and one other executive authority of a national department and the head of a national department.”</p>

Section 16 – insertion of a new subsection 16(4B)	A proper selection process should be elaborated, in regulation, for the positions of CEO, Deputy CEO and CFO.	<p>We ask Parliament to monitor that the above is addressed (amendment of the regulations under the Public Service Act), and to monitor that a robust selection process for the CEO, deputy, and CFO is outlined in regulations.</p> <p>We would like to see a selection process along these lines: <u>“When the Chairperson appoints a Chief Executive Officer, Deputy Chief Executive Officer, or Chief Financial Officer as contemplated in section 16(2) of the PSC Act, the Deputy Chairperson shall appoint a selection committee to make a recommendation on the appointment to a post and a selection committee constituted for the appointment of the Chief Executive Officer or Deputy Chief Executive Officer or the Chief Financial Officer shall be chaired by the Deputy Chairperson and shall include an equal number each of additional national commissioners and provincial commissioners.”</u></p>
Section 16 – insertion of new subsection 16(3)(d)	We propose that the CEO, Deputy CEO and CFO should not hold office in a political party or political organisation for the duration of their tenure.	We proposed the insertion of a new subsection in Section 16 – 16(3)(d), <u>“(d) The Chief Executive Officer, Deputy Chief Executive Officer and Chief Financial Officer contemplated in this subsection (3) may not hold office in any political party or political organisation or be a member of a structure of any political party or political organisation”.</u>

Section 20: Rules

Section	Context and rationale	Suggested amendment
Section 20	It is not clear why Section 20 only provides for the Commission to make rules regarding the lodging of grievances by employees in the public service i.e. why it does not state that the Commission may make these rules regarding the lodging of grievances by employees in the public administration more widely (noting that these would be subject to Section 10(4) of the Bill regarding the lodging	<p>We propose amending Section 20 as follows:</p> <p>“20. The Commission may by notice in the Gazette make rules which are not inconsistent with this Act or the Constitution as to—</p> <p>(a) the manner in which and the circumstances under which—</p> <p>(i) grievances by heads of departments, chief executive officers of a public entity, or municipal managers in a municipality, as the case may be, or</p>

	of grievances for those in municipalities and public entities; and noting the amendments to the Local Government Municipal Systems Act by the Bill – i.e. in Schedule 2 of the Bill).	employees in the [public service] public administration must be lodged with, or referred to, executive authorities or the Commission;..”.
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