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ANALYSIS OF THE SUBMISSIONS ON THE PUBLIC ADMINISTRATION MANAGEMENT BILL [B10-2023]

1. Background

The purpose of the Public Administration Management Amendment Bill is to:

1.1 Amend the Public Administration Management Act, 2014, so as to further provide for the transfer and secondment of employees and to provide clarification regarding the prohibition against employees conducting business with an organ of the state;
1.2 Provide for the National School of government to be constituted as a national department and to provide for the removal of employment disparities across the public administration; and
1.3 Provide for the co-ordination of the mandating process for collective bargaining in the public administration and to amend the Schedule so as to affect certain consequential amendments.

2. Organisations and individuals that made submissions.

The following organisations and individual have submitted written inputs to the Committee:

2.1 Nomfondo Tefu
2.2 Local Government Advocacy Learning Network, Coordinator Avin Bhola
2.3 Western Cape Province
2.4 Public Affairs Research Institute (PARI), Public Service Accountability Monitor, The Ethics Institute (TEI) & Corruption Watch
2.5 NEHAWU
2.6 City of Cape Town
2.7 COSATU
2.8 City of Tshwane (letter without comments on specific clauses)
2.9 National House of Traditional & Khoi-San Leaders (Letter without comments on specific clauses)
2.10 South African Local Government Bargaining Council ("SALGBC").

3. Submissions and analysis

Name of the Person, Organisation or Institution	Original Clause	Proposal/outcome of new clause	Motivation	Analysis/Advice from Committee Staff
Clause 1				
1. Western Cape Government	Clause 1 provides for the insertion of new definitions in section 1 of the principal Act to provide for ease of interpretation. The definitions such as, ''head of institution'', ''Labour Relations Act'', ''Municipal Systems Act'' ''national government component'' ''organ of state'' ''organised local 10 government'' ''provincial department'' ''provincial government component''''public administration''''public entity''and ''public service''are dealt with.	There is no definition for "second" (i.e. secondment) is provided for. It is imperative that a definition for the term is provided for purposes of clarity	It is proposed that a definition for the term "second" in included in the Amendment Bill	The Department will have to provide better clarity regarding lack of definition on secondment in the Bill.
2. City of Cape Town		By insertion after the definition of "Office" of the following definitions: "'organ of state' means – (a) national government, a provincial department, a national government component or a provincial component; (b) a public school as contemplated in Chapter 3 of the South African School ACT, 1996 (Act No84 of1996): (c) a municipality, (d) a public entity; or any institution performing a function of the Constitution or a provincial constitution or performing a public function in terms of any legislation;	The Constitution offers the following definition: "organ of state" means (a) Any department of state or administration in the national, provincial or local sphere of government; or (b) Any other functionary or institution- (i) Exercising a power of performing a function in terms of the Constitution or provincial constitution; or (ii) Exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer; The System Act follows the constitution definition, and so the MFMA by implication- "' organ of state' means an organ of state as defined in section 239 of the Constitution;" The reason for using a more restrictive definition in this Bill is not explained. Consider using the definition in the Constitution, or including a reason for a more restrictive	The City of Cape Town has advised to "Consider using the definition in the Constitution or including a reason for a more restrictive definition in the Objects of the Bill. The department will provide reasons why restrictive definition in the Bill rather than using the constitution definition. Organ of state in terms of the PAM Amendment Bill definition exclude Legislature and Judiciary as they are independent bodies. Inclusion of the word "organ of state" is accepted.

			definition in the Objects of the Bill.	
Clause 2: Individual Transfer				
1. Nomfondo Tefu	Clause 2 seeks to amend section 5 of the principal Act to further provide for the transfer of employees between the public service and municipalities and between municipalities. transfer ensure mobility of employees across the spheres of Government to where human resource deficiencies exist or where operational requirements necessitate. This will enhance good governance and enable the transferability of skills and resources where required	The matter pertaining to individual transfers, there is an addition which clarifies that employees can be transferred between a National/Provincial Department and a Municipality. However, there is no system in place to ensure that the *"transfer does not interrupt the employee's continuity of employment"* as per clause 5(30). (The DPSA must ensure first that the systems in the national departments, provincial departments and municipalities are integrated to ensure continuity. Currently, if an employee transfers from a national/provincial department to a local or vise versa, the service is interrupted.	The DPSA must ensure first that the systems in the national departments, provincial departments and municipalities are integrated to ensure continuity.	Proposed the insertion/expansion that "transfer should not interrupt the employee's continuity of employment" System integration of all organs of state is crucial in an effort towards building an integrated/single public service and public administration. However, the proposals can as well be incorporated in the regulations of the Bill. Clause 2(3) of the Bill proposes the following in terms of continuity of service: If an employee is transferred in terms of subsection (1), the— (a) transfer does not interrupt the employee's continuity of employment; and (b) employee may not upon the transfer suffer any reduction in remuneration and conditions of service, unless the employee consents. PAMA will deal with transfers within the municipalities, whilst the Public Service Act (Amended) will deal with transfers within the public service.
2. Local Government Advocacy Learning Network, Coordinator Avin Bhola		Forsee problem of practicality of transfer of local government employees to national and provincial government due to its different mandates. Local government demands more efficiency and quicker turnaround times. Staff have to be competent and be able to work under immense pressure at local level. Are transfer to be used as stop gap measures	The state should have the onus of demonstrating that the representations made by the employee were taken into account and that the secondment is factually operationally justified.	Clause 2 amending Section 5 especially (2) provides for the remedy to avoid abuse of transfer such as "where reasonable ground exists" and consent by the employee". Prior to transferring employee from one sphere to another, the Bill provides for the criteria to be followed. The regulations would further provide more details in terms of criteria to be followed in order to curb any form of abuse. Transfer will not happen without the consent of the employee. Neither will it affect their continuity of service. Even with "operationally justified" Clause 3 says this about an "operationally justified" secondment without consent: ''(c) in the absence of consent, after due consideration of any representations by the

				employee, if the secondment is operationally justified.''. This is only applicable in the case of secondment, not transfer. With secondment, an employee works at a new workplace on seconded/borrowed basis.
3. Western Cape Government		Clarity is required on who will be required to bear any resettlement costs. The regulations to this Bill should address pertinent issues related to transfers, particularly transfer between national or provincial department and municipalities as the salary and related benefits structures between these three spheres of government vary.	The regulations that will be issued in terms of the amended Act (i.e. as amended by the Amendment Bill) will need to be thoroughly considered and consulted on with all the various stakeholders as the financial implications are expected to be great, considering the salaries of people currently employed in the local government sphere vary greatly with those of people in the national or provincial government sphere.	The Public Administration Management Bill does not contain changes to the salaries and benefits of employees. It also does not create or facilitate the creation of a single pension fund or medical aid for employees. It only talks about the harmonisation of systems, practices and conditions of service. The powers assigned to the municipalities by the Constitution on matters pertaining to Human Resource management are not tempered with. However, the bearing of resettlements costs of transferring employees within the three spheres of government remains critical issues to be clarified in the regulations of this Bill. Since transfer is consensus of parties as institutions as well as with the individual involved, it should not be an issue who would bear the costs of transfer. For further explicit directive on the bearer of costs of transfer can be clarified in regulations.
4. NEHAWU		Proposed amendment is prejudicial to employees within the public service and there may be compelling personal reasons as to why an employee may not be able to be transferred. Section 5(2)(c) posits the responsibility and onus on the employee in terms of transference, this is illogical, the onus must rest on the employer and not the employee. Rejects the proposed amendment based on the view that employee consent be required for any proposed transfer. Propose the amendment include provision for principles of fairness and equity.		It would be fair and legally correct to allow employee to consent in writing about their transfer. If the employer will be given powers without employee's consent, such can be open to abuse by the employer. For an example, instability of the heads of departments whenever there is a new executive authority appointed in the department. Section 5(2)c) says: (2) An employee may only be transferred— (c) if the employee requests or consents in writing to the transfer; Of course, the onus must be on the employee to consent or request transfer. When the employer initiates transfer, consent of the employee would still be required, and the conditions of service would not be detrimental to the employee. It is only the workplace that will change.
5. COSATU		The transfer of employees is a matter of great concern to workers. If handled	COSATU welcomes the provisions as fair and rational, since it will require the consent or request of the	Support the insertion of section 5(2)(c) in the Bill as proposed.

		well it can boost morale, support family stability and workplace productivity. If handled badly it can do the opposite and result in unnecessary litigation in the respective.	affected employee, that the transfer would not cause in a break in service.	
CLAUSE 3: Secondments				
6. NEHAWU	Clause 3 seeks to provide that secondments contemplated in section 6 of the principal Act should occur only where it is operationally justified. This ensures that secondments do not result in deficiencies being created which hamper service delivery within institutions.	Section 5, in its current form, is prejudicial to employees within the public service on the basis that it allows for the secondment of employees in the absence of consent where such secondment is justified. The proposed amendment merely seeks to insert the term "operationally" to ensure that any justification of a secondment is based on the State's operational requirements.	NEHAWU reject the proposed amendment and proposed mechanism be developed. There must be alignment of section 5 and 6 in terms of wording.	Secondment definition would clarify probability of misunderstanding and misinterpretation as envisaged in the Bill. Indeed, a definition of "operationally justified" should be provided. Unless the PAM Bill regulations provide for a detailed remedy. For example, section 100 and 139 implementation use secondment as a form of assigning competent and experienced employee to assist on assigned project. Secondment is slightly different to transfer. Transfer is permanent. Secondment is not. A secondment is an arrangement where the employer temporarily assigns an employee to a new position. The new position may be within the organization or with a separate one, such as a different clientele. Even if the position is at a different workplace, the original organization usually retains the employee and pays their salary. Employees, known as secondees, work on a project during their secondment and return to their original position once they complete their responsibilities. A suggestion is that the Department must have a definition of a "secondment". Such definition should also incorporate an element of "facilitation and impartation of skills through understudy", so that the purpose is clear that the employee is seconded to impart skills to the workplace of secondment and that someone or some employees would understudy such seconded official.
7. Western Cape Government		There is no elaboration of what may be considered "operationally justified". The term is also not defined anywhere in the text of the Amendment Bill. This gap leaves too wide of a net for interpretation and may result in inconsistent and possibly unfair application. Inserting the word "operationally" has the effect of implying that secondment will only be permitted for no other reason but operational reasons. There are inconsistencies between the Amendment Bill and the provision of the Public Service Amendment Bill.	Provide the necessary clarity and alignment. It is suggested that instances which would constitute "operationally justified" are set out in more detail. Alternatively, a definition of "operationally justified" should be provided.	
CLAUSE 4: transfer of functions within institutions				
	Clause 4 proposes the repeal of section 7 of the principal Act as the transfer of employees affected by the transfer of functions across institutions is adequately regulated in			Yes, Clause 4 repeals section 7 of the principal Act. The transfer of an employee is not necessarily a transfer of function, but of skill and competency to improve service delivery.

	terms of the Constitution of the Republic of South Africa, 1996, the Public Service Act, 1994 and the Local Government: Municipal Systems Act, 2000. Further the reference to section 197 of the Labour Relations Act, 1995, in section 7 is not applicable to transfers or assignments of legislation.			
CLAUSE 5: Conducting business with the state				
8. NEHAWU	Clause 5 seeks to amend section 8 of the principal Act to (a) clarify the definitions of words or expressions to ensure easier interpretation of the provisions of section 8 such as the references to 'organ of state' instead of State and the definition of a director of a company;	Nehawu welcomes the principle of restricting an employee's ability to conduct business with the state. Further rejects the notion merely amending the Act to prevent public servants from conducting business with state without addressing concern or elements that give rise to corruption and malfeasance.		NEHAWU welcomes the principle and strengthening of the clause from its initial conception. The principal Act used to say "an employee may not conduct business with the State" and new insertion to the Bill emphasis "not conduct any business with an organ of the state". Meaning all State employees are prohibited to conduct business with any organ of state. Proposal is clear.
9. Western Cape Government		Insertion for the definition of "director" and the exclusion of an employee appointed as an ex officio director of a public entity from the prohibition that employees may not conduct business with the State, now organs of state, is to limit the prohibition and remedy what has transpired to be an unintended consequence of the broadness of the prohibition. The remedy proposed is to exclude employees, who by virtue of their employment must serve on boards of public entities from the prohibition. The term: "ex-officio" membership of a board is usually attached to a specific post regardless of whether the incumbent is an employee or not	It is therefore proposed that the term "ex-officio" director is clarified by including a definition for "ex-officio" to include employees who are nominated to serve on boards of state-owned companies by members of the executive acting under a power conferred in the member of the executive by legislation or under the memorandum of that state-owned company. It is further recommended that all potential consequences of this clause be investigated; intended and unintended and that problematic unintended consequences are addressed	Insertion in definition for the word "ex-officio" be clarified for better interpretation of the Bill. Once the Bill is enacted into law, the Department must investigate unintended consequences of this clause. There are no established unintended consequences of the "ex officio" status in the board of directors of public entities as the official represents the Executive Authority as the sole shareholder of Government. The Financial Disclosure Framework safeguards corrupt activity by such official. The proposal is clear and welcomed. The unintended consequences can still be identified through scenario building even before the Bill is passed and also during implementation. The consequences identified can then be remedied through amending the Regulations. Definition of the "ex officio" is standard across all sectors, reference to the Companies Act 2008 and the King Code. Companies Act defines the "ex officio director" 'as a person who holds office as a director of a particular company solely as a

				consequence of that person holding some other office, title, designation or similar status specified in the company's Memorandum of Incorporation'.
		The new proposed section 8(4) provides that the Minister may prescribe that certain transactions between an employee and the organs of state that are "remunerative but not for profit" do not constitute conducting business with organs of state for the purposes of section 8. Section is open-ended and potentially open to abuse. By amending section 8(1) to the extent that any employee is prohibited from being a director of a company incorporated in terms of the Companies Act, 2008, which conducts business with organs of state, the provision unduly limits and prohibits employees in the public sector to be directors on not-for-profit companies as part of their voluntary service towards the well-being of society at large	It is suggested that the clause be reconsidered and deleted. Alternatively, it is suggested that clarity be provided in what is meant by the term "remunerative but not for profit" and that examples of instances which would be considered "remunerative but not for profit" is provided. The proposed amendment should be revised and redrafted to the extent that it still enables employees to be directors of not-for-profit companies but with limitations imposed.	In this instance the Minister may prescribe certain transaction between employee and organ of state which are remunerative. For instance, there are officials who sell things like Tupperwares as a side hustle and teachers marking exam papers. This should not be construed within the category of doing business with the organ of the state. The Minister may prescribe such kind of business transaction and exonerate such government employees. Here, the technicalities are important and worth noting and addressing. Approved remunerative work is not a tender. It is not supply chain management category of work. Examples are where an employee, because of their knowledge and skill, may be a visiting professor or lecturer at an educational institution. They cannot engage in this activity without seeking approval from the Minister/Executive Authority. But they are not bidding and remuneration is merely only claimed hours of rendered service. There is no corruption involved. The proposal to regulate than prohibit work in not-for-profit companies as "director" is welcomed.
Public Affairs Research Institute (PARI), Public Service Accountability Monitor, The Ethics Institute (TEI) & Corruption Watch		Welcome the clarification of terms used in this section but suggest that the section should be strengthened to better safeguard the public administration from corruption.	Section 8 does not adequately address situations where employees might not be directors of companies but are nonetheless the ultimate beneficiaries of such contracts. To close such gaps, information regarding beneficial owners 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 are not allowed to do business with the state, and failure to comply with such provision constitutes a criminal offence and an act of misconduct.	PARI welcome the clarification of terms in this section. Further propose strengthening of section to close existing gaps such as "silent partner" being an employee of the state whom he/she do benefit indirectly from business although not registered as Director of a company doing business with an organ of state. As part of harmonising the legislations, propose insertion that section 8 be finalised with reference of Public Procurement Bill -which disallow person related or spouse to any employee working for such government entity from making bids in procurement in the institution in which such relatives serve. Once the Bill become an Act, the other legislations in the public

			Proposed that Section 8 is finalised with reference to the Public Procurement Bill. Clause 13 of the current Public Procurement Bill automatically excludes persons related (including spouses) to public office bearers, party leaders, public servants, municipal employees, etc. from making bids in procurement in the institution in which such relatives serve. Section 8 should also made applicable to employees of public entities. Further concerned that Section 8(4) (a new clause in the Act) could be abused as it reads. The Act should indicate under what circumstances this clause would be applied, in what form the Minister will prescribe this (suggest in regulations) and ensure this is open to public scrutiny. Propose government develop and manage a comprehensive database of all public administration employees (or a digital solution that would enable searching of all relevant databases).	entities will have to align with the provision of the PAMA. Regulation to the amended Bill will be explicit in terms of Minister prescribing the kind of business to be exempted. The proposals are welcomed. However, Section 9 of the principal Act addresses these concerns as it deals with disclosures of financial interests.
COSATU		The Federation supports the provisions in the Bill regulating and where relevant prohibiting public servants from doing business with the state. The amendment would ensure the state is cleansed of the cancers of corruption and state capture at all levels of state.		COSATU supports the amended provision in the Bill.
Clause 6: Cooling-off period				
10. Nomfondo Tefu	Clause 6 - seeks to address post-employment restrictions. Provision is made for the imposition of a 12 month 'cooling off' period for employees involved in the procurement of services of service providers. It provides for a prohibition from accepting employment or appointment to the	The period that has been suggested of 12 months at which an employee should not accept a contract of employment with an entity which has received an award that an employee played part in is too restrictive and should be given further consideration. I am not sure if it does not contradict with	Contradict with some of the already existing rights in the constitution and some of the labour legislations that exist in South Africa.	Cooling -off period is to prevent public office holders from making representations on behalf of the third parties to their former departments and other government entities with which they had direct and significant official dealings during their last year in public office. For example, in Canada there is a one year "cooling-off" period (two years for Ministers) on taking employment with any organisation with a public office

	board of the service provider, the performance of remunerated work or the receipt of any other gratification. Service providers or employees who contravene this provision are guilty of an offence and on conviction liable to a fine of R1 million.	some of the already existing rights in the constitution and some of the labour legislations that exist in South Africa.		holder had direct or significant dealings during his/her last year in public office. Cooling off period will assist in minimising possible corruption and state capture.
		Clause 8A(4) - The proposed clause 8A (4) will create inequality and inconsistency within the public service due to the fact that it gives "The executive authority" powers to *"approve a period shorter than the 12-month period contemplated in subsection (1) or (2)"* . This because of the definition that is given to an "executive authority" in Act No. 11 of 2014. Executive authorities will alter this to suit their own agenda or to suppress public servants. I would prefer it if the powers could be given to the "Minister" who would be defined as the Minister of DPSA.	Because of the definition that is given to the " executive authority" in Act No. 11 of 2014. Executive authorities will alter this to suit their own agenda or to suppress public servants. I would prefer it if the powers could be given to the "Minister" who would be defined as the Minister of DPSA. Furthermore, powers to fix the threshold amount for bid award that is stipulated in 8A(1) should also be prescribed by the "Minister" to guard against inconsistencies	Regulations to this Bill should provide guidance in order to minimise possible inconsistencies within the public service. The Bill is all-rounded in this section to protect the State and to regulate the course of an employee to the private sector where their interests will be dealing with the State or the department they left. The centralisation of human resource powers to the MPSA is appropriate because s/he sets the norms and standards for the public service.
Western Cape Government		Contracts between organs of state / institutions and service providers may sometimes be for a once-off service, a period of three months and sometimes up to a period of five years, for example. An employee limited by this section for "12 months" where the contract between the institution and the service provider is for five years, may not have the same effect of limitation where the contract with the service provider is for only three months, for example. The above would apply in the instance described in the proposed section 8A(2) as well, where the prohibition is in respect of the service provider.	It is suggested that the limitation not be for a period of 12 months after the conclusion of the contract, given the different periods in which a contract may be valid. It is suggested that the limitation rather be for up until the actual termination of the contract and a further 12 months thereafter.	The imposition of a 12-month period should not go further than 12 months. Further imposition of the cooling-off period beyond 12 months as a result of the service provider contract being up to five years – makes it no different to parole or suspended sentence. It treats the exiting employee as having been criminal already. It infringes on the right of participation and freedom of association.
Public Affairs Research Institute (PARI), Public Service		Strongly support the inclusion of a new clause, Section 8A,		Supports the insertion of "cooling-off period" in the bill

Accountability Monitor, The Ethics Institute (TEI) & Corruption Watch		which deals with the issue of a "cooling off period" for public sector employees.		
City of Cape Town		8A. (1) if a contract is concluded with a person (the "service provider" to provide services or goods (the "work) to an institution against remuneration exceeding a prescribed amount, an employee who- (a) set criteria for the award of the work to the service provider; or (b) evaluated or adjudicated the providers for the award of the work; or (c) recommend or approved the awarding of the work, may not within 12 months after the conclusion of the contract (the "12-month period")- (i) accept employment with that provider or appointment to a board of the provider or provide any to the provider for payment in money or in kind or (ii) receive any other gratification from the provider.	The Supply Chain Management Regulations provide committees of officials i.e. a bid specification committee, a bid evaluation committee; and a bid adjudication committee. Singular employees do not 'set criteria', or "evaluate or adjudicate'.	It is suggested that this clause is amended to refer to "an employee who is a member of, or provides administrative support to, a committee that-'
COSATU		COSATU welcomes the provisions that seek to prevent a culture of throwing javelins in the state where senior management and other officials will award lucrative contracts to private sector companies and then promptly resign to join such companies.		COSATU welcomes the provision of cooling -off period.
Clause 7: Definition of "employee" in Disclosure framework				
11. Western Cape Government	The amendment in clause 7 seeks to clarify the current provisions in respect of the definition of ''employee'' for purposes of the disclosure of financial interests contemplated in section 9 of the principal Act.	It is submitted that this obligation for all employees to disclose is too administratively burdensome and may not prove practical to monitor. Further, the extension of the duty for spouses and "a person living with that person as if they were married to each other…" to also disclose, is an additional unnecessarily excessive	It is suggested that the duty to disclose is limited to employees who may have certain influence and those who are of a certain employment level. It is further suggested that the extension of the duty for spouses and "a person living with that person as if they were married to each other…" is removed.	Propose that disclosure should be applicable to all SMS and certain categories of job family in non-SMS positions. The management of the disclosure framework for all employees disclosure might defeat the purpose of the exercise for those bestowed with powers to scrutinise the process and report potential conflicts. The question in mind to ask "is whether Public Service Commission would have capacity to scrutinise all the forms from all organs of state and provide report timeously?

		measure. The duty to disclose should perhaps only be restricted to officials of a certain influence (those in supply chain management, and finance for example) and also those who are of a certain employment level (Level 9 upwards and OSD equivalents) for example. The addition of subsection 3 is supported.		Maybe to cover all policy gaps it is prudent for only categories in administrative work to disclose (all employees, except cleaners, general assistants, etc. who are not involved in paperwork). Access to information is not only through dealing directly with an issue or process, but also through exposure to files, records and conversation. In this manner, inside information can be gleaned into and be shared with interested parties. Disclosures can be managed by immediate supervisor or manager and be capped at certain level to remain with a department and not to be filed with the PSC for lower categories of employees who are not in supply chain. Disclosure by all is supported to prevent any eventuality of corruption.
Public Affairs Research Institute (PARI), Public Service Accountability Monitor, The Ethics Institute (TEI) & Corruption Watch		Propose that the clause is amended to also include employees of public entities.		Clause be amended to include employees of public entities. The definition of employee in the principal Act says: ''employee'' means a person appointed in the public administration, but excludes a person appointed as a special adviser in terms of section 12A of the Public Service Act and a person performing similar functions in a municipality. The proposal is accepted. Perhaps the definition may insert "and state-owned entities" after public administration.
Clause 8: Compulsory Training				
12. NEHAWU	Clause 8 seeks to amend section 10(2)(a) of the principal Act to provide that departments must, within their available budget, provide for compulsory training that is directed by the Minister to address developmental needs of categories of employees.	The outcome of the compulsory training should not be a prerequisite for appointment or transfers. Nehawu rejects the amendment	Nehawu rejects compulsory training as prerequisite for appointment	Compulsory training for all appointed employees is necessary for imparting skill set to prevent skills gaps, reduce risk and empower officials. It is also assigned to promote and preserve a safe working environment, best practices, and efficiency. Currently, it is the obligation of the employer to provide training and development of the employees. Compulsory training serves three purposes: 1) Induction to the public service for everyone who joins the public service from Levels 1-16 so they fully understand what the public service is about. 2) Entry to senior management service, which is an upward social mobility. It puts

				an employee in a better position for promotion having been assessed to be fit for it. 3) Secondment or transfer is for operational requirements to improve service delivery. Therefore, transfer or secondment may not be done except the employee has proper skills to be seconded or transferred. Compulsory training is appropriate as the level in/of employment rises. KPAs for upper levels require certain skills and proficiency. Therefore, compulsory training cannot be separated from either promotion, transfer or appointment to a certain level of employment.
13. Western Cape Government		The amendment requires making budget available for development needs.	While in the context of fiscal constraints this is an additional fiscal requirement, it is acknowledged that it is essential to meet developmental needs to ensure human resources are effective and can provide necessary levels of service delivery.	Currently departments have budgets for training and development meant for enhancing knowledge and skills of government employees, however these monies get returned to the National Treasury. The insertion of the clause will make the National School of Government to be self-sustainable in future if budgets are set aside for compulsory training. By regulation, each department is allocated 1% of the overall budget for training needs. This is not contingency budget. It is mandatory to spend it on training. Training needs shall always be there given the staff complement of each government department. With change management and capital projects being the focus of government, there is always a need for training. Perhaps training budget spending should be made a KPA of middle and senior management so that they can determine and identify or facilitate training needs of employees under their charge.
Clause 9: National School of Government as Department				
14. NEHAWU	Clause 9 seeks to amend section 11 of the principal Act to establish the National School of Government as a national department to provide education and training to employees in all spheres	There is no need to create another department and propose this function be allocated under Higher Education and Training. Nehawu rejects the amendment	NEHAWU rejects the amendment on the basis of creating additional departments.	Establishing the National School of Government as a department does not change anything concerning financial implications. It had such financial implications even when it was an entity. Establishing it as a department is solely to make it more focused on the public service, unlike other

	of government, including municipalities and public entities.			educational institutions under DHET, which are generic and public-wide in approach. The NSG targets a specialised service to only public servants and representatives with training tailor-made only for them and not everybody like other educational institutions. The MPSA, under which the NSG falls has a legislated function to set norms and standards for the public service, including training. The Ministry for Higher Education and Training does not have that mandate regarding the public service.
Western Cape Government		The new proposed section 11(2)(a) places a duty on the School to provide training and education courses or cause training and education courses to be provided in the public administration. Equally, the new proposed section 11(2)(c) should make it obligatory and not discretionary for the School to conduct tests, or cause tests to be conducted, in respect of training and education courses. The proposed section 11(2)(f) provides that the National School of Government ("NSG") may, subject to the National Qualifications Framework Act, 2008, "issue qualifications, part-qualification or certificates on the successful completion of education and training programmes or courses or cause such qualifications, part-qualification or certificates to be issued.'' (emphasis added).	It is proposed that the word "may" in the new proposed section 11(2)(c) must be substituted with the word "must" It is recommended that the word "may" in the proposed section 11(2)(f) be changed to the word "must".	It is proposed that the word "may" in the new proposed section 11(2)(c) must be substituted with the word "must" The proposal is accepted in order to entrench the mandate of the School. It is recommended that the word "may" in the proposed section 11(2)(f) be changed to the word "must". The proposal is accepted. The word "may" shall cause the dropping down or dereliction of the legislated mandate.
Clause 10: Repeal of Section 12				
NEHAWU	Clause 10 seeks to repeal section 12 of the principal Act as it has become redundant following the proposed amendment to section 11 of the principal Act	NEHAWU rejects the amendment to sections 9, 11 and 12 in its entirety without providing reasons.		Repeal of sections 9, 11 and 12 in its entirety was based on the new clause of establishing the NSG as a national department. The explanation given under section 14 of this document suffices here as well.

Clause 11: Mandatory training				
NEHAWU	Clause 11 seeks to amend section 13 of the principal Act to remove the unnecessary burden placed on the Cabinet in relation to the determination of prerequisite and/or mandatory education and training	NEHAWU rejects the amendment		Mandatory training represents a good opportunity for employees to grow their knowledge base and improve their job skills. The issue has been addressed in previous sections.
Clause 12: deletion of section 16(2) norms and standards				
15. NEHAWU	Clause 12 provides for the deletion of section 16(2) of the principal Act. Therefore the process to issue norms and standards in respect of the promotion of values and principles contemplated in section 195 of the Constitution will be in terms of the processes contemplated in section 18 of the principal Act.	The proposed amendment seeks to remove the obligation on the Minister to consult with the relevant executive authority when prescribing minimum norms and standards regarding the promotion of values and principles referred to in section 195(1) of the Constitution. This will afford the Minister with extensive powers that will not be subject to scrutiny by the relevant executive authority.	NEHAWU rejects the proposed amendment and require that the Minister be required to at least still consult with the relevant executive authority.	Propose that clause 16(2) be amended further to provide that the prescription of minimum norms and standards by the Minister be subject to any collective bargaining process or that consultation takes place with both the executive authority and labour. Consultation with affected stakeholders and with the Executive Authority in charge of education and training is necessary. The challenge is only when unnecessary stand-off stifles progress and transformation. Section 16(2) created a process which is different to process in section 18, is basically a different process all together. Hence repealing of section 16(2).
Western Cape Government		Paragraph 2.13 of the Memorandum on the Objects of the Amendment Bill states that what is envisaged is that the norms and standards will, going forward, be issued in terms of the process contemplated in section 18 of the principal Act. Section 18(1) of the principal Act is not proposed for amendment which means that section 18(1)(c) will have to be relied on to prescribe the norms and standards. Whether this will be permissible given the inherent constraints of relying on an omnibus provision, is uncertain.	It is therefore proposed that, should the proposed deletion of section 16(2) be pursued, section 18 is amended to expressly provide that the Minister may make regulations on norms and standards. It is proposed that section 16(2) of the principal Act is retained so that minimum norms and standards must be prescribed after consultation with relevant EAs.	Propose development of norms and standards be subjected to consultation with relevant Executive Authority. The proposal is accepted.
Clause 13: amending Section 17(7)				
	Clause 13 seeks to amend section 17(7) of the principal Act to remove reference to ‘‘and its members’’.			

	Section 17(7) of the principal Act requires the Minister responsible for the Public Service and Administration to prescribe the powers of the Office and its members. The principal Act does not provide for functions of individual members and therefore it is proposed that it is not required or necessary for powers of members to be prescribed.			
Clause 14: Removing unjustifiable disparities				
16. NEHAWU	Clause 14 provides for the insertion of sections 17A and 17B in the principal Act. Section 17A provides for a process to remove unjustifiable disparities across institutions, including public entities. To this end the Bill provides for the Minister, after consultation with the relevant Minister, and subject to the processing of regulations, to prescribe— (a) upper limits of remuneration and conditions of service for certain categories of employees who do not fall within the scope of the relevant bargaining council; and (b) steps to remove unjustifiable disparities among employees in the public administration provided that such steps must not reduce the salary of an employee unless provided for in an Act of Parliament or a collective agreement. Section 17B provides for the coordination of mandating processes for collective bargaining in the public administration, including public entities. The amendment establishes a Committee of Ministers which must, in determining a mandate, take into account affordability and any other factor prescribed by the	NEHAWU rejects the insertion of section 17A in its entirety. If this is not feasible, the following alternative is proposed: The collective bargaining process should be sufficiently carved out under section 17A. In this regard, the section should be amended to not only provide that it is subject to any collective bargaining process but that the factors will be prescribed after due consultation with labour and should there be a conflict between the factors so determined and any collective bargaining process or agreement, the collective bargaining process or agreement will prevail. • The reference to consultation with the committee of Ministers should be removed. This is unworkable and undermines the power of the employer and recognised trade unions to determine and negotiate terms and conditions of service. • It should be made clear that whilst the Minister may seek to prescribe the factors that are to be taken into account to determine remuneration and conditions of service, the Minister is not granted the power to prescribe employees'	NEHAWU rejects the insertion of section 17A in its entirety.	The process to remove unjustifiable disparities across institutions, including public entities is not unilateral. If these institutions have to be managed under one legislation (as a unified/single public service), there has to be a bargaining process with relevant structures (organised labour, NEDLAC and Public Service Coordinating Bargaining Council and the National Treasury). Otherwise it would cause those in the upper limit of the pay structure to be pulled down to close the gap with those on the lower or middle limit. It may also mean that the gap will never be closed between same level positions in the public entities and those in the present form public service.

	Minister in consultation with the Minister of Finance.	levels of remuneration and/or conditions of service.		
Western Cape Government		The stated purpose of the insertion is to eliminate unjustifiable disparities in public administration. The term "unjustifiable disparities" must be clarified. Further, it is noted that the committee of ministers must establish an inter-governmental forum, which will include representation by Premiers and Deputy Ministers. It is unclear why provincial Ministers have been omitted.	It is recommended that clarity for the term "unjustifiable disparities" be expressly provided for. Further, it is recommended that provincial Ministers be included on the intergovernmental forum.	Propose that the term "unjustifiable disparities" be clarified and inclusion of provincial Ministers. As much as the term "unjustifiable disparities" is clear to mean that the pay structure between public entities and the public service is differentiated for equivalent levels of rank, it does not cause any harm to provide further relevant details.
		Clause 14 inserts two new proposed sections i.e. sections 17A and 17B, respectively. The proposed section 17A addresses the "[r]emoval of disparities in the public administration" and provides that the Minister responsible for public administration may, subject to applicable labour legislation, collective agreements and legislation applicable to public administration, and after consultation with the relevant Minister, prescribe certain norms and standards and steps to remove unjustifiable disparities. The steps to remove unjustifiable disparities, according to the proposed clause may not reduce the salary of an employee except in terms of an Act of Parliament or a collective agreement. The group of employees who are affected by such disparity removals which will result in a reduction of salaries and benefits despite the provisions of the proposed section 17A(b), will resist such change, and if they are part of a majority trade	It is recommended that further consultation be facilitated with all affected parties before the proposed sections 17A and 17B are brought into operation.	Implementation of section 17A and 17B be subjected to further consultation during development of regulations of this Bill. The public service is not known to have reduced the salary structure unless it is a justified demotion for an individual employee. It has never been done *en masse*. Removing disparities is known to mean closing the gap between those who are paid higher and those who are paid lower salaries. As to however government will remove the disparities, it is believed it will not reduce present salaries of those in the upper limit, but it may stall increment in the upper limit in order to remove disparities. However, it is still prudent to unpack the process.

		union, may bring about a stall to such a process.		
Public Affairs Research Institute (PARI), Public Service Accountability Monitor, The Ethics Institute (TEI) & Corruption Watch		Welcomes the move to develop norms and standards to establish the upper limits of remuneration in the public sector. We caution, though, that this should not be applied in such a way that it leads to limitations on the state's ability to attract very high level and scarce skills, especially in public entities.	Supports introduction of developing norms and standards to establish upper limits of remuneration in the public sector	Supports the insertion of new clauses however cautions that this should not be applicable to instances where government aspires to attract scarce skills. The proposal is reasonable
COSATU		COSATU has been raising the crises of unjustifiable disparities within the public administration for many years. Whilst nurses, teachers, police officers and countless other public servants have had to work under very trying conditions, they have seen senior management in the public service, entities and municipalities being paid exorbitant salaries.	The Federation thus welcomes the provisions that will empower the state to place limits on what senior management who fall outside of the collective bargaining processes can earn as well as to enable the state to remove unjustifiable disparities.	Welcomes the provisions that will empower the state to place limits on what senior management who fall outside of the collective bargaining processes can earn as well as to enable the state to remove unjustifiable disparities. Proposal is reasonable and accepted.
SALGBC		The SALGBC has taken issue with Section 17A and 17B of the PAMA Bill. These clauses in the Bill impact adversely on the collective bargaining structures and systems as well as the municipal election outcomes and executive powers of municipalities. It also undermines the constitutional authority of SALGA in the sector.	Section 17A an 17B of the Bill also seeks to regulate local government matters which infringes on the mandate, scope and jurisdiction of the Minister of Cooperate Governance and Traditional Affairs.	
Clause 15: Alignment of Municipal System Act				
NEHAWU	Clause 15 seeks to amend section 18(2) of the principal Act to align with the Local Government: Municipal System Act, 2000, regarding the issuing of regulations pertaining to local government after consultation with organised local government.	The scope of the Act is contradicting the Constitution of South Africa, including other Acts in the Public Service which regulate employment. The PAMB cannot supersede all existing employment Acts and has no authority to amend them.	Nehawu rejects the amendment	NEHAWU must be requested to spell out the contradictions that they have identified concerning the PAMAB in relation to other employment legislation.
COSATU	Additionally, a further amendment is proposed to allow for the making of any regulation	COSATU supports the provisions outlining Ministerial coordination and	COSATU supports the provisions outlining Ministerial coordination and consent for the government	COSATU supports the provision as outlined

	affecting public entities to be made after consultation with the Minister responsible for public entities.	consent for the government representatives involved in collective bargaining engagements in the public service and local government.	representatives involved in collective bargaining engagements in the public service and local government.	

4. Conclusion

Submissions have been received and analysed. The next step is for the Committee to deliberate within itself. After hearing multi-party perspectives, it would be prudent to call in the stakeholders and those who made submissions to present their cases on the Bill for further clarity and deliberations.