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GENERAL NOTICE

NOTICE 611 OF 2013

1. Notice is hereby given that the draft Public Service Commission Amendment Bill and an explanatory memorandum are available on www.psc.gov.za for public comment.

The draft Bill amends among others, the Public Service Commission Act, 1997 so as to align it with the Constitution of the Republic of South Africa, 1996 and empower the Public Service Commission to give directions relating to the values and principles that govern public administration.

Electronic copies of the draft Bill and memorandum may be requested by/at:

Tel: (012) 352 1188

Email: bernadettet@opsc.gov.za

Hard copies may be collected at:

Legal Services
3rd Floor
Commission House
Cnr Hamilton and Ziervogel Streets
Arcadia
0007

2. All interested persons and organisations are invited to submit written comments on the draft Bill by no later than 17 July 2013.

(a) Emailing: bernadettet@opsc.gov.za

(b) Faxing comments to:

Legal Services
Office of the Public Service Commission
086 758 2239

(c) posting comments to:

Director-General
Office of the Public Service Commission
Attention: Legal Services
Private Bag X 121
Pretoria
0001

3. Kindly provide the name, address, telephone and fax number, and email address of the person or organisation submitting the comments.

REPUBLIC OF SOUTH AFRICA

PUBLIC SERVICE COMMISSION AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill published in Government Gazette No. 36563 of 14 July 2013) (The English text is the official
text of the Bill)*

(MINISTER OF PUBLIC SERVICE AND ADMINISTRATION)

[B - 2013]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

B I L L

To amend the Public Service Commission Act, 1997, so as to align it with the Constitution of the Republic of South Africa, 1996; to empower the Public Service Commission to give directions relating to the values and principles that govern public administration, and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 46 of 1997

1. Section 1 of the Public Service Commission Act, 1997 (hereinafter referred to as the principal Act) is hereby amended by—

(a) the substitution for the definition of "**Constitution**" of the following definition:

 " '**Constitution**' means the Constitution of the Republic of South Africa, 1996 **[(Act No. 108 of 1996)]**;" and

(b) the insertion after the definition of "officer" of the following definition:

"organ of state" means an organ of state as defined in section 239 of the Constitution."

Insertion of section 8A in Act 46 of 1997

2. The following section is hereby inserted in the principal Act, after section 8:

"Directions relating to values and principles that govern public administration

8A. (1) The Commission may give directions which are consistent with this Act and the Constitution to ensure that, within the State's available resources—

(a) the values and principles set out in section 195 of the Constitution are promoted and complied with;

(b) people's needs are responded to; or

(c) the public service is development-oriented.

(2) The Commission shall, before giving the directions as contemplated in subsection (1), afford the relevant organ of state affected by any obligation flowing from the Commission's directions an opportunity to make representations in relation to—

(a) the manner and timeframes in which the directions may be complied with;

and

(b) the availability of resources to achieve the desired result.

(3) If the Commission gives a direction as contemplated in subsection (1) the relevant executive authority or head of department shall implement the direction—

(a) as soon as possible after receipt of the direction but, in any event, not later than 60 days after the date of such receipt; or

(b) such longer period as the Commission may determine.

(4) The Commission's directions are binding on the State and must be given effect to."

Short title

3. This Act is called the Public Service Commission Amendment Act, 2013.

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EXPLANATORY MEMORANDUM
ON THE DRAFT
PUBLIC SERVICE COMMISSION AMENDMENT BILL

BACKGROUND

1. The Public Service Commission (the Commission) derives its mandate from sections 195 and 196 of the Constitution, which vests it with the custodial oversight responsibilities for the performance of the Public Service. The Commission must promote and uphold the democratic values and principles enshrined in section 195 of the Constitution. Its vision and mission is derived from the values and principles of public administration laid down in the Constitution.
2. The Constitution provides for the Commission 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 of the Constitution. In addition, the Public Service Act determines that if the Commission issues a direction, the relevant executive authority or head of department, as the case may be, shall implement the direction as soon as possible after receipt of the written communication conveying the direction but, in any event, within 60 days after the date of such receipt.
3. Due to the enforceability of directions and in order to strengthen the role and functions of the Commission, its powers to issue directions should be extended to apply to all the Constitutional values and principles. Such an amendment is in line with the strengthened role envisaged by the National Development Plan for the Commission.

SCOPE OF THE DRAFT BILL

4. The draft Bill strengthens the role and functions of the Commission to issue directions to all constitutional values and principles in order to give effect to the Commission's constitutional mandate to promote, uphold and evaluate the extent of compliance by public administration to constitutional principles and values.
5. The draft Bill makes it mandatory for the Commission to afford affected relevant organs of state an opportunity to make representations, before giving direction with regard to the manner and timeframes of compliance and the availability of resources to achieve the desired result.
6. It also makes the Commission's directions binding on the State and provides a time period of not more than sixty days for implementation of directions by the

relevant executive authority or head of department.

CONCLUDING REMARKS

7. The draft Bill empowers the Commission to give directions that are consistent with the Constitution to organs of state to ensure that the values and principles referred to in section 195 of the Constitution are complied with, that people's needs are responded to and that the public service is development-oriented. In this respect the issuing of directions by the Commission will ensure compliance with its constitutional mandate to address maladministration and inefficiency in the public administration.