

DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION'S RESPONSE TO PROVINCIAL SUBMISSIONS TO THE
NCOP ON THE PUBLIC ADMINISTRATION MANAGEMENT BILL 2013 [B55 – 2013]
12 FEBRUARY 2014

Clause	Proposal	Response	Amendment	New Provision
1	<p>LIMPOPO Bill must state sections of PSA that are affected and amended</p> <p>Definition of employees not broad enough</p> <p>EASTERN CAPE Family member is defined but not used</p> <p>Definition of employee excludes a person appointed in terms of section 12A of PSA and those acting in same capacity in municipalities. However under Clause 8 (1) it includes these categories of employees. This will cause interpretational problems as it appears to contradict the definition in clause 1.</p> <p>MPUMALANGA Insert the definition of organ of state with reference to clause 8 and 9. Organs of state means an organ of state as defined in section 239 of the Constitution</p> <p>Definition of head of institution to be inserted</p>	<p>This is provided in the schedule</p> <p>Definition of employee is comprehensive enough in that it refers to all employees appointed in public administration which is defined in the bill.</p> <p>Clause 9 – reference to the term family member</p> <p>Inclusion of section 12A PSA persons is only for purposes of clauses 8 and 9 and such distinction is allowed in terms of legislative drafting</p> <p>Inserting definition will limit the scope of clause 8 and 9. There are State institutions that are not organs of state.</p> <p>The word institution is defined in Bill therefore when reference is made to head of institution it means the head of that institution as defined in</p>	<p>No <i>Need for it</i></p> <p>No <i>Need for it</i></p> <p>No</p> <p>No</p> <p>No ✓</p> <p>No</p>	

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		Bill.		
2	<p>KZN, FREE STATE AND EASTERN CAPE</p> <p>Non-inclusion of public entities</p>	<p>The scope of Bill only applies to the administration of the 3 spheres of government. The Presidential Review on state owned enterprises is still under consideration and this will influence the decision whether to include state owned enterprises at a later stage. The Cabinet decision was to cover the public service and municipalities. Public entities are to be addressed at a later stage.</p>	No	
5	<p>LIMPOPO</p> <p>There must be an independent body in every department to deal with transfers</p> <p>There must be a dispute resolution mechanism and appeal process related to transfers and secondments.</p>	<p>Proposal not accepted as regulatory framework already in place and institutions such as Public Service Commission already exist to perform the oversight functions.</p> <p>We submit that there are mechanisms in place to address disputes with regards to secondments. Note that no disputes will flow from transfer as transfer can only be affected with the consent of the employee.</p>	<p>No</p> <p>No</p>	

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	<p>Conditions of service across 3 spheres not the same and Bill must take that into account</p> <p>The Bill must ensure that mechanism of transfer and secondment is not abused</p> <p>Employee so transferred must be suitably qualified</p>	<p>The Bill provides for the EA of transferring and recipient institutions to concur with transfer and to agree on the remuneration and conditions of service.</p> <p>Transfer can only be affected with consent of employee. For secondment, the employee must have the necessary skill and knowledge for the intended position and relevant EAs must agree. If the employee does not consent to the secondment, his/her representation must be considered before the secondment is implemented.</p> <p>This is already provided for in clause 5(2)(b).</p>	<p>No</p> <p>No</p> <p>No</p>	
6	<p>KZN & FREE STATE: Secondment to be effected with consent and justifiable circumstances under which a secondment can take place must be spelt out</p> <p>LIMPOPO The Bill must provide for incentives where employee is transferred or seconded</p>	<p>We submit that this clause has built in checks and balances in respect of secondments. For instance cl 6(3) and (4) provides that if an employee of an institution is seconded to another institution there must be consultation between the relevant EAs of the transferring and recipient institutions. If an</p>	<p>No</p>	

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		employee is seconded between a national or provincial institution and a municipal institution or from one provincial or municipal institution to another provincial or municipal institution, the remuneration and conditions of service of the employee upon the secondment are as agreed between the EAs of the transferring and recipient institutions. It is evident from clause 6(4)(a) of the Bill that a secondment will be as agreed between the relevant EAs and not imposed on the institutions.		
7	GAUTENG Clause 7 to be amended to include reference to sections 137 and 126 of the Constitution	We accept the proposal in line with constitutional provision which gives similar powers to the Premier and MEC with regards to transfer or assignment of functions.	Yes	Proposed amendment to be considered
8	KZN AND MPUMALANGA: 8(2)(b) an employee may not be a director of a public or private company <u>a) or have a controlling interest as a member, shareholder or otherwise in an entity</u> <u>b) or have any interest of ten percent or more as a member, shareholder or otherwise in an entity</u> <u>c) have, either directly or through a third party, a controlling interest in any</u>	The Department submit that the expansion of clause 8(2)(b) to include shareholding and the percentage of shares, will infringe the rights of citizens as provided for in section 22 of the Constitution which provides that every citizen has the right to choose their trade, occupation or profession	No	

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<p><u>entity</u> <u>d) have either directly or</u> <u>through a third party, any</u> <u>interest of ten percent or more</u> <u>in any entity</u> conducting business with the state</p>	<p>freely. The reason why this clause is limited to directorship is to allow public servants to own shares in the private businesses as long as they are not involved in the management and decision-making processes of the company.</p>		
<p><u>Proposal to insert new 8(4)</u> <u>which reads as follows:</u> <u>"A contract concluded in</u> <u>contravention of subsection</u> <u>(2) may be cancelled, at the</u> <u>option of the State".</u></p>		Yes	8(4) "A contract concluded in contravention of subsection (2) may be cancelled, at the option of the State".
<p>Section 30 and 31 of PSA to be deleted</p>	<p>Section 30 of PSA is dealing with outside remunerative work and 31 deals with the recovery of monies received for services rendered where no prior approval of EA was obtained to perform outside remunerative work. We are of the view that these sections remain relevant and should be retained.</p>	No	
<p>LIMPOPO Prohibition of doing business with state should not apply to lower income employees</p>	<p>It is submitted that the exclusion of lower paid employees will defeat the purpose of the clause which is aimed at preventing and curbing corruption. It is not only senior managers and highly paid employees</p>	No	

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	<p>Prohibition to do business with state to be limited to the department of relevant of the employee</p> <p>Extend the prohibition to political office bearers (also raised by Free State)</p> <p>Proposal that the word fines as stated in 8(30)(a) must be explicit.</p> <p>EASTERN CAPE Amend cl8(3) and replace the word "guilty" with the word "liable"</p>	<p>who are doing business with the state.</p> <p>Same as above</p> <p>Bill only applies to employees in the public administration consisting of national, provincial and local government. It is submitted that political office bearers fall outside as they are regulated by their own legislation.</p> <p>This aspect is covered under the Adjustments of Fines Act</p> <p>Disagree as the wording used is "<u>found guilty</u>" and not guilty. It is submitted that the word found pre-supposes that due process must be followed.</p>	<p>No</p> <p>No</p> <p>No</p> <p>No</p>	
9	<p>KZN An employee must, in the prescribed manner, <u>at least annually and within 30 days of discovering or acquiring a</u></p>	<p>Matters regulating when and how financial interest must be disclosed will be</p>	No	

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	<p><u>financial interest</u>, disclose to the relevant head of institution all his or her financial interest ...</p> <p>Inclusion of dependent child or any other person who is either wholly or partially dependant on the employee for financial support including all</p> <ul style="list-style-type: none"> a) Shareholding, company directorship, partnership b) – (e) <p>Proposal that 9(2) to be amended to include the word <u>serious</u> misconduct</p> <p>Clause 9 – to be extended to state owned entities</p>	<p>provided for in the Regulations</p> <p>Department submit that the inclusion is too broad</p> <p>Note that all other information to be disclosed will be outlined in the Regulations. KZN's input to be considered when Regulations are drafted</p> <p>Sanction will be pronounced by chairperson of the hearing. It is submitted that the seriousness of failure to comply is not the same as that under 8(3)</p> <p>Bill only applies to the administration in the 3 spheres of government. It is submitted that government is not ready to extend application of Bill to state owned entities however the scope will be extended later through an amendment or new legislation</p>	<p>No</p> <p>No</p> <p>No</p>	
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	<p>LIMPOPO Proposal that disclosure of financial interest be made every five years</p>	The period will be prescribed in the regulations however the five years proposal will defeat purpose of the clause as the state must detect conflict of interest as and when it arises.	No	
	Proposal to delete the disclosure of financial interest of spouse	It defeats the purpose of the Bill which is aimed at preventing and curbing corruption	No	
	Will there be a requirement to disclose any stipend received?	Yes, benefit will include a stipend.	No	
	Will disclosures stop corruption?	Our view is that it should or at least curb it.	No	
	<p>FREE STATE Financial disclosures to be limited to senior managers only</p>	Suggested limitation will defeat the purpose of the clause as it is not only senior managers that do business with the state but all employees.	No	
10	<p>KZN: Salga requested that directives issued with regards to training at local government level must be done in consultation with them.</p>	The Bill provides that the Minister must consult organized local government. Consultation generally refers to the act or discussion of seeking opinion or advice. The consultation will ensure that all parties to the	No	

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		consultation put forward their views and engage each other in order to reach agreement, whereas "in concurrence" with the organized local government will require an agreement and not an engagement on the issues. This is a less cumbersome process because the parties that are required to concur do not necessarily have to engage on the issues and together reach an agreement. We are therefore of the view that after consult are the proper words in this regard.		
11	LIMPOPO Whether NSG renders other institutions of higher learning useless? Define National School of Government	NSG will focuses on job training/ practical aspects as opposed to academic training that one receives at institutions of higher learning. Section 11(1) already state what it is.	No	
13	KZN: Salga requested that compulsory educational requirements must be determined in consultation with them. No provision is made for professional bodies	See response under 10. When dealing with Regulations, reference must be made to the National Treasury Minimum Competency Regulations. Professional bodies are regulated in terms of their own regulatory	No No	

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		framework.		
15	KZN Proposal that the organizational form of the Unit must be dealt with in Act and not Regulations.	Establishment of unit and corporate form it is to take will be regulated by the relevant legislations e.g. PFMA, PSA or Companies Act. However the mandate will be as contained in 15(4) of the Bill.	No	
	Proposals that cl 15(7)(c) must state that unit must obtain concurrence of relevant EAs.	Clause 15(7)(c) already states that unit must perform its function in respect of municipality with the concurrence of Municipal Council. It is submitted that the words "must obtain concurrence" and "with concurrence" carry the same meaning.	No	
	It appears that the Unit will develop norms and standards additional to those prescribed by Minister.	It is only MPSA that can prescribe norms and standards. The unit will develop norms and standards and make recommendations for Minister to prescribe.	No	
	GAUTENG Clause 15(4)(d) gives the Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit the power to intervene where systemic weaknesses in the management of ethics, integrity and discipline management are experienced.	The intervention referred to in clause 15(4)(d) is not what is envisaged in sections 100 and 139 of the Constitution.	No	

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16	<p>KZN Norms and standards for local government should be prescribed in concurrence with Minister responsible for local government</p> <p>LIMPOPO A concern was raised that Intergovernmental Relations are a contested area.</p>	<p>Clause 16(2) provides that the Minister must prescribe minimum norms and standards in terms of subsection (1)(a) in consultation with the Minister responsible for local government and after consultation of organized local government. We submit that this proposal is already covered in clause 16(2).</p> <p>Issue of intergovernmental relations and the overstepping of mandates are well addressed in the Bill as the MPSA must exercise her powers in consultation with the relevant EA.</p>	<p>No</p> <p>No</p>	
17	<p>KZN Proposal that the organizational form of OSC must be spelt out in Bill.</p> <p>GAUTENG Establishment of OSC might have financial implications for</p>	<p>Establishment of ^{OSC} unit and corporate form thereof will be regulated by the relevant applicable legislation e.g. PFMA, PSA or Companies Act. However, the mandate will be as set out in 17(4) of the Bill.</p> <p>Our view is that the establishment of the OSC will not have any</p>	<p>No</p> <p>No</p>	

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	<p>the provinces.</p> <p>Proposal that the directives issued in accordance with cl 17(6)(b) must respect the authority, role and status of institutions at the different spheres of government</p>	<p>financial implications for provinces. The OSC is established at the National sphere.</p> <p>The OSC has no authority to issue directives. Only the MPSA has the authority to do. The directing referred to in clause 17(6)(b) is providing steps to be taken by the Head of the Institution.</p>	No	
18	<p>KZN Regulations affecting local government must be done in concurrence with the Minister responsible for local government and organized local government</p> <p>GAUTENG Consultation under 18(2) should include MEC responsible for MEC</p>	<p>Comment covered under 18(2)</p> <p>MPSA compelled to consult Minister responsible for local government where local government is affected. The Minister responsible for local government must, in terms of IGR Framework Act get inputs from relevant MECs.</p>	<p>No</p> <p>No</p>	