

## Financial and Fiscal Commission Submission on the Financial and Fiscal Commission Amendment Bill, 2015

The Financial and Fiscal Commission (Commission) was established in terms of Section 220 of the Constitution of the Republic of South Africa, 1996 (as amended) (Constitution). It is an independent, juristic entity subject only to the Constitution. The enabling legislation is the Financial and Fiscal Commission Act, 1997 (Act No 99 of 1997).

The mandate of the Commission in terms of the said Act is to act as a consultative body, make recommendations and give advice to Parliament, provincial legislatures, organised local government and other organs of State on the equitable division of revenue and on any other financial and fiscal matters. The Commission can perform its functions on request by organs of state and /or at its own initiative.

The purpose of this Submission is to present the Commission's views on the Financial and Fiscal Commission Amendment Bill (Amendment Bill), with particular reference to the proposed amendment that the appointment of all Commissioners should be part-time and not full-time. The Commission has always had two full time Commissioners whereby through internal arrangements roles were defined for the Chairperson and the Deputy Chairperson. The challenge arose in the year 2010 when the position of the Chairperson became vacant and was never filled. This led to the Deputy Chairperson having to take over in an acting capacity as Chairperson and Chief Executive, and it became clear that this was in conflict with good governance principles. The matter of a conflated position of Chairperson and Chief Executive was also identified as a challenge by the Ad Hoc Committee on Chapter 9 and associated bodies in 2007. This however was not to say that there was no role for one or the other of the two responsibilities.

### Amendments

#### General comments

The Commission is in agreement with the following amendments relating to the Bill:

- (a) **Clause 1 (Section 1: Definitions)** The definitions for chief executive officer, financial year, Independent Commission, and Public Finance Management Act and the deletion of the definition for state department;
- (b) **Clause 2 (Section 3: Functions)** The Commission welcomes the proposed amendments and additions, particularly the removal of the word "advice" and the retention of the word "recommendation", which is aligned to the Constitution and will not lead to other interpretations apart from its literal interpretation;
- (c) **Clause 3 (Section 4: Powers)** The Commission is in agreement with the additions;
- (d) **Clause 5 (Section 6: Chairpersons)** The Commission is in agreement with this section being repealed as the contents are covered in the Constitution, 1996;
- (e) **Clause 7 (Section 9: Remuneration, allowances and benefits)** The Commission is in agreement with the proposed amendments to this section;

- (f) **Clause 8 (Section 16: Rules of procedure)** The Commission is in agreement with the proposed amendments;
- (g) **Clause 9 (new insertion)** The Commission is in agreement with the proposed amendments;
- (h) **Clause 11 (Section 20: Terms and conditions of employment)** The Commission is in agreement with the proposed amendments;
- (i) **Clause 12 (Section 21 Pension benefits)** The Commission is in agreement with the proposed amendments;
- (j) **Clause 13 (Section 24: Accountability)** The Commission is in agreement with the proposed amendments;
- (k) **Clause 14 (Section 26 (2): Annual report)** The Commission is in agreement with the proposed amendments;
- (l) **Clause 15 (Section 27: Information required by the Commission)** The Commission is in agreement with the proposed amendments; and
- (m) **Clause 16 (Section 30: Regulations, Section 31: Definitions, Section 32: Members of previous Commission, Section: 33 Transfer of assets, liabilities, staff, etc; Section 34: Financial and Administrative Records)** The Commission is in agreement with the repeal of these sections.

### **Specific comments**

The Commission comments as follows to the undermentioned amendments:

- (i) **Clause 4 (Section 5(3): Composition)** The Commission is of the view that the period in which a vacancy to the Commission must be filled should be stipulated. The Commission considers the period six (6) months to be reasonable. The appointment of Commissioners has taken between two (2) and ten (10) years. Currently there is no Chairperson to the Commission even though the principle Act states that “An appointment to any vacancy on the Commission must be made not later than 90 days from the date when such vacancy occurs.” There are positions for the some Commissioners which took between 18months and three (3) years.
- (ii) **Clause 6 (Section 8: Term of office)** The Commission welcomes the separation of the functions of the Chief Executive Officer and the Chairperson of the Commission. There are clear distinct roles for the Chairperson and the CEO and the present fusion of the two has led to difficulties in the Commission’s accountability processes.

The Commission is not in agreement with the proposed amendment to section 8 (1) which states that: “*Members of the Commission are appointed for a term of office not exceeding five years on a part time basis*” as this impacts on the functioning of the Commission. The Commission holds the view that the Chairperson should be appointed full-time.



There is a distinctive role that is undertaken by a Chairperson and a CEO in terms of accountability and responsibility, in ensuring that the CEO is accountable to the Commission.

The role of the Chairperson is substantial and cannot be undertaken on a part-time basis. It is a full-time job both on policy grounds and practice. The policy justification for a full time Chairperson is the need for a Head that is focused on external engagements with stakeholders, providing internal policy leadership that steers the Commission towards fulfilling its mandate, and providing technical expertise and guidance to the staff.

Engagements with its stakeholders, namely Parliament and its various committees, Provincial and Local Governments, and other organs of state and engagements with the political heads of these institutions, requires the Commission to be represented by the Chairperson, and not by an official of the FFC. Experience has shown that the political leadership of these institutions will not be satisfied with less. These engagements are numerous, and it would not be practical for the Chairperson if appointed on a part-time basis to meet these requirements. It is also not practical to delegate this responsibility to other members of the Commission, as they, too, will not be able to devote substantial time to these responsibilities. Annexed hereto is a sampling of the Chairperson's responsibilities that relates largely to the stakeholder engagements for the financial period 2013/2014. Further, the Chairperson must be able to give effective leadership decisions with regard to the number of statutory obligations which require a quick response (for example Comment on the Division of Revenue Bill within five (5) days after the national budget has been tabled). It is important to note in this regard that most of the constitutional bodies do have a full-time Chairperson and no justification has been offered as to why the FFC should be treated differently in the proposed amendment.

- (iii) **Clause 10 (Section 19: Administrative responsibilities of Chairperson)** The Commission is of the view that a member of the Commission should not be excluded from being appointed as a Chief Executive Officer as persons should be given equal opportunities and there is no justification for the amendment.

## Comparative analysis: Institutions supporting democracy: Appointment of Chairperson

The table below shows current practice with respect to Chairpersons and Accounting Officers of Constitutional bodies.

Entity	CP	Deputy CP	CE	Vacancy	Does Act Specify that CP is FT or PT	Comments
South African Human Rights Commission	FT				No	The NA has the final say about FT or PT appointment of CP
Public Service Commission	FT	FT		CP-no acting person	No	President shall designate one commissioner as chairperson and another as deputy chairperson
Public Protector	FT	FT	FT		Yes	
Commission for the Protection and Promotion of the Rights of Cultural, Religious and Linguistic Communities	FT				No	The Act does not state whether the appointment of the Chairperson is full or part time
Independent Communications Authority of South Africa	FT				No	The Act does not stipulate whether the Councillors should be full or part time
The Commission for gender equality	FT				Yes	The members of the Commission may be appointed as full-time or part-time. This is determined by President at time of appointment
Independent Electoral Commission	FT				Yes	The Act makes provision for a chief electoral officer
Pan South African Language Board	PT					The Act establishes a Board and refers to the appointment of a Chairperson
Public Audit	FT	FT	FT		Yes	Deputy CP is the CEO

## **Conclusion**

The Commission is of the firm view that without a full-time Chairperson, the ability of the FFC to discharge its important mandate would be seriously hampered. Further there would be no ready and effective voice to engage with the various stakeholders, who will not be content to deal with officials only. Given the importance of the position, and the practice in most of the Acts regulating other constitutional bodies, it would be highly advisable that the Bill stipulates that the position of the Chairperson should be full-time.



**For and on behalf of the Commission**

**Mr Bongani Khumalo**

**Acting Chairperson/CE**

**Date**



## ANNEXURE A

### Chairperson's responsibilities

The responsibilities of the Chairperson relates largely with stakeholder engagement which requires the Commission's political head's to interact with the other political heads of the organs of State. Each meeting requires adequate preparation and travelling time. A sampling of the responsibilities undertaken by the Chairperson for the period 2013/2014 indicates the following:-

- Number of Q2 to Q3 briefings on 2014/2015 Recommendations for the Division of Revenue : 2 Parliament, 9 Provincial Legislatures, 1 SALGA, 1 Government
- Number of Q3 briefings on 2013 Medium Term Budget Policy Statement: 1 Parliament
- Number of Q4 briefings on Commission Submission to 2014 Division of Revenue Bill: 2 Parliament
- Number of Q4 briefings to Fiscal Framework and Revenue Proposals: 2 Parliament
- Member and participating in the Forum for Institutions Supporting Democracy
- Number of Budget Council Meetings: 4
- Number of other (ad hoc) Legislature and Government briefings: 44 briefings
- Number of Public Hearings: 1
- Number of Media briefings: 4
- Human Resources Committee meetings (4)
- Research Committee meetings (4)
- Audit Committee meetings (4)
- Commission Reviews (3)
- Budget Council Meetings
- Commission Bosberaad (1)
- The Chairperson is also responsible to oversee and furnish guidance to the finalisation of key documents which includes but is not limited to the Annual Submission for the Division of Revenue, and the related Parliamentary Briefings emanating from that