

**Comments on Science and Technology Laws Amendment Bill, 2018**

5 June 2020

**Compiled by:**

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**RECOMMENDATIONS**

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| **Clause** | **Ramola Naidoo Comment** | **Outcome** | **Motivation** |
| Clause 1 (b) | I recommend an addition to section 7 as (c): “on the recommendation or directive of the Auditor General in terms of the Public Audit Amendment Act.”  In sub-subsection (b), I recommend that the words “after a fair disciplinary hearing is held in terms of National Treasury Regulations by the executive authority”, be added. | Not supported | We could not find such provision in the Public Audit Amendment Act, be that as it may a recommendation/directive of the AG will fall under either the misconduct, incompetence or any other reasonable ground as provided for in section 7(8)(c) of the CSIR Act.  The Treasury Regulations does not provide for a disciplinary procedure for members of boards of public entities. |
| Clause 2 | With regard to the amendment addition of 2B and the above section 9 of the Scientific Research Council Act 1988, I recommend one committee per board member. From personal experience, I have seen board members not attend board meetings but several committee meetings which they chair. I came to a conclusion after a while, that one of the reasons is that the remuneration of board members is higher when they chair a committee meeting. At least two of them served on other boards and as a result they attended meetings mainly at committee level and not at the board level while shuttling between one board to another. Serving on boards of public entities have become a useful career.  With respect, I would go further and not have these committees. The accounting authority is given the power under the PFMA. But committees tend to be very influential and override the majority view of a Board. It is different in the case of the Companies Act where a specific committee is delegated to make decisions on behalf of the board and take full responsibility for those decisions. This becomes very important when there are audit findings of irregularity. In the private sector, Steinhoff is a good example. | Not Supported | In terms of section 8(7)(c) of the CSIR Act, a member of the Board ceases to hold office if he or she is absent from three consecutive meetings of the Board without permission of the Board.  Committees of the Board are at the discretion of the Board to ensure effectiveness of the Board. Further the Board remains accountable for the conduct of a committee of the Board in terms of section 9(5) of the CSIR Act. |
| Clause 3 | As stated above, I recommend that the select committee consider the applicable provisions of the PFMA that the executive authority and not the accounting authority appoints the chief executive. I recommend that subsection (1) should begin: “The Minister, as executive authority in terms of the Public Finance Management Act shall appoint the chief executive officer. | Not supported | We could not find such provision in the PFMA. The proposed appointment is line with the recommendations of the Presidential Review Committee on State Owned Enterprises and the King III report.  The bill proposes that the Board shall in consultation with the Minister appoint a suitably skilled and qualified person as the chief executive officer of the CSIR, after following a transparent and competitive selection process. |
| Clause 4(c) | I respectfully disagree with 3B as I do not think that board members should have any financial or other interest in any decision or contract. This is a perfect recipe for kleptocracy, fraud, or corruption. It is a real possibility that board members can influence a tender or other contract behind the scenes with key executive managers. Moreover, the words in (b) “present at the time”. When is this meeting held? I know of a few instances when a board meeting ends, and then an impromptu meeting takes place with no agenda and no minutes taken. This has very serious implications and disputes among board members. Are those decisions taken at an impromptu meeting valid if board members are not fully apprised of the objectives of this meeting? I recommend that 3B be revised to specify that it must be at a formal meeting of the board and clearly stated as an agenda item and minuted. | Not supported | That’s precisely what the proposed section 11(3B) intends to achieve. We are not sure what is meant by an impromptu meeting but all meetings of the Board are done in terms of the Act, any meetings falling outside the scope of the Act are therefore unlawful. |
| Clause 5 | I recommend that the committee discuss the implications of this amendment with the new President’s SOE Council. Remuneration is a big problem among the public entities. Executive managers give themselves inflated salaries (packages) and bonuses and an annual increase. There has to be strict oversight on such abuse of power by executives and some board members too.  With regard to benefits, many entities changed their pension contributions and this has had an adverse effect on the removal of the state guarantee of a pension. Further the FSCA authorises changes to pension rules without truly assessing the cost of the change in pension categories.  With regard to travel abroad and working abroad, this may have a significant impact on the entity’s funds. If it is self-funding, the current exchange rate may result in an unfair high cost to the entity. There has to be flexibility and space for use of virtual meetings, remote digital platform discussions with foreign counterparts. I watched three webinars last week, one hosted by the vice-chancellor of the University of Cambridge on Artificial Intelligence and the other hosted by New School of Public Health on Medicine Asset Pool, and the launch of the WHO COVID19 Digital Access Pool. Scientists were among the panelists. | Not Supported | The proposed section 12(1)(b) expressly states that remunerations, allowances and other benefits will be in terms of National Treasury Directives. |
| Clause 9 | I recommend that section 18 (a) add a condition precedent that the regulations must be approved by Parliament. | Not Supported | The regulations are made in terms of the Act and are a prerogative of the Minister. |
| Clause 10 | I recommend that the delegation of powers from the Board be limited to an annual review and must form part of a signed board resolution. This can lead to disputes especially when one board exits and a new board finds that a chief executive has taken decisions in pursuant of a delegation of power by a previous board (and worse still the resolution is unsigned). I know this from personal experience. A dispute arose between some board members and the CEO. It ended up in a unnecessary (in my view) forensic audit of allegedly missing money of about R50 million. It turned out that the CEO had simply reinvested an investment and that there was no missing money or theft of money. The dispute about an unsigned resolution of the board went on for two years. Sometimes common sense too has to prevail. There has to be provision for communication between a past board and a new board to verify delegations of power and previous board resolutions. | Not Supported | Section 19(3) specifically provides that delegations must be in writing. An unsigned resolution has no legal force and effect.  The delegations are subject to such conditions as the Board may determine including the review of the delegations, and such cannot be codified in the Act but on the delegations. |
| Clause 11 | My comments are the same as above in respect of the CEO appointment. I do not recommend that this entity is registered with the Treasury as a public entity. It is not necessary to appoint an executive officer. This entity can be a juristic entity under the control of the Department of Science and Technology. An official from the department can be the board secretary. The DG can be the chair of the Board/Council. | Not Supported | We also reiterate what we said above regarding the CEO appointment. ASSAf is not listed as public entity in terms of the PFMA. The Academy is gorvened by the council. The members of the Council are nominated by the Members of the Academy from their numbers and appointed by the Minister. |
| Clause 25 | As stated above, the PFMA prevails and only the executive authority shall appoint a chief executive. See attached relevant provisions of the PFMA. | Not Supported | Same argument as in clause 1(c) above. |
| Clause 27 | I recommend that the word “seconded” not be included in this amendment as it can be a financial burden on the entity if the employee is paid by the entity while being seconded elsewhere and then a different employee is appointed acting in the same seconded position and this means that the entity is paying for two employees instead of one. Secondments are common. | Not Supported | The Bill provide for secondment as an option to the entities. The specifics of each secondment will be in terms of the institution’s secondment policy and the contract with the other institution to the secondment. |
| Clause 332 | I remain concerned that there are so many entities which appear to duplicate their roles and objectives. The Treasury lists a PFMA Schedule 3 entity, the South African Agency for Science and Technology Advancement. Is the Technology Innovation Agency the same as this one? What are the implications for innovation in respect of COVID19 and other innovation invented under the WHO Digital Access Pool? Who will be the proprietary licensor of the intellectual property? There must be a merger of these entities to save costs. | Not Supported. | The South African Agency for Science and Technology Advancement is a business unit of the National Research Foundation and is not listed in the PFMA. |
| Clause 34 | I am not sure of the reference to “permanent resident”. South African skills and knowledge is enriched by international co-operation. But there must also be exercise of due diligence and care to avoid foreign companies stealing intellectual property by planting foreign researchers in research and scientific entities. What kind of contract does a permanent resident sign with the entity in respect of intellectual property and restraint of trade? | Not Supported | Clause 34 of the Bill deals with board members and not researchers, be that as it may board members with permanent residency status sign the same contract of service as the other board members and are also subjected to the same security checks as all board members. |
| Clause 38 | My comments above are the same for the CEO appointment which must be done by the executive authority. | Not Supported | Same argument as in clause 1(c) above. |
| Clause 50 | My comments above relating to the CEO appointment, delegations, regulations of the SA National Space Agency are the same as for the other entities | Not Supported | Same argument as in clauses 1(c), 9 and 10 above, |