

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

NOTICE 172 OF 2021

DR. LEON SCHREIBER, MP**NOTICE OF INTENTION TO INTRODUCE A PRIVATE MEMBER'S BILL
AND INVITATION FOR COMMENT ON THE DRAFT, NAMELY THE
PUBLIC ADMINISTRATION LAWS GENERAL AMENDMENT BILL, 2021**

Dr. Leon Schreiber, MP, acting in accordance with section 73(2) of the Constitution of the Republic of South Africa, 1996, intends to introduce the Public Administration Laws General Amendment Bill, 2021, in Parliament. An explanatory summary of the Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly (9th Edition).

The testimony delivered in front of the Commission of Inquiry into Allegations of State Capture since 21 August 2018 has revealed that political interference in the public administration, which has effectively erased the line of separation between party and state, is the foundation of state capture and systemic corruption in South Africa. As a result of this political interference, which results in the appointment of public servants and other officials on the basis of political loyalty rather than on the basis of demonstrated merit, South Africa's public service is collapsing under the weight of corruption and a lack of skills. Governance failures and widespread corruption, including in the form of systemic state capture, also occupy a central place in our country's public discourse.

The type of destructive political interference exposed by the Commission of Inquiry into Allegations of State Capture is possible because the Public Service Act, 1994 (Proclamation 103 of 1994) provides for the President, Ministers, Premiers and Members of the Executive Council to be closely involved in the career incidents of public service servants, including appointment, promotion and dismissal, without enforcing the need for appointments to be based on demonstrated merit. Most developed countries and many of South Africa's developing country peers have long since made it impossible and unlawful for politicians to interfere with appointments to an independent bureaucracy. This is the only way to ensure that merit trumps political patronage in the appointment of public servants.

The Draft Framework towards the Professionalisation of the Public Service ("Framework"), published by the National School of Government on 8 December 2020, agrees. It states that "Professionalising the Public Service requires a non-partisan approach. For this to be realised, the Public Service must be depoliticised and government departments must be insulated from the politics

or political parties...[This] would require a few decisive reforms.” Although the Framework correctly identifies the problem, the reforms it proposes are ironically not decisive enough. The amendments contained in this Bill addresses the shortcoming of the Framework by introducing the appropriately decisive reforms called for in the Framework.

While the Constitution of the Republic of South Africa, 1996 (“Constitution”), created a Public Service Commission (“Commission”) for a democratic South Africa, the powers expressly granted to the Commission are mainly advisory in nature. Although the Constitution allows for further powers and functions to be granted to the Commission, none of the Acts governing the public administration does so. In order to further ensure that South Africa’s public service is a capable body consisting of professionals with the necessary and appropriate experience and skills, it is necessary that the Commission is given the powers and human resources that will enable it to ensure merit-based recruitment throughout the public service. It is after all this Commission that is tasked by the Constitution with the maintenance of an effective and efficient public administration, and a high standard of professional ethics in the public service. It is also necessary to review the powers and functions given to the Commission by the other Acts governing the public administration. The Commission is established in Chapter 10 of the Constitution, and is independent and impartial. However, it is not listed as a Constitutional Institution in Schedule 1 to the PFMA and therefore the provisions of the PFMA are not directly applicable to it.

The Public Administration Laws General Amendment Bill, 2021 (“draft Bill”) therefore seeks to provide for amendments to the Public Service Act, 1994 (Proclamation No. 103 of 1994), Public Service Commission Act, 1997 (Act No. 46 of 1997), Public Administration Management Act, 2014 (Act No. 11 of 2014), Labour Relations Act, 1995 (Act No. 66 of 1995) and Public Finance Management Act, 1999 (Act No. 1 of 1999).

The draft Bill intends to amend the—

1. Public Service Act, 1994 (Proclamation No. 103 of 1994), (‘Public Service Act’) to—
 - 1.1. provide for the duty to report to the Commission when an executive authority or head of department acts on a direction of the Commission so as to align this Act with the new remedial action powers of the Commission created by the draft Bill (see below);
 - 1.2. remove the possibility of providing special service benefits to heads of departments who are dismissed;
 - 1.3. provide clarity in respect of directions and recommendations made by the Commission;
 - 1.4. include the limitation of political rights under certain circumstances; and
 - 1.5. remove the Commission from the ambit of the Public Service Act;
2. Public Service Commission Act, 1997 (Act No. 46 of 1997), to—
 - 2.1. elucidate the powers of the Commission to give directions related to recruitment, transfers, promotions and dismissals, including that these decisions must be aligned with values and principles set out in section 195(1) of the Constitution: Recruitments, transfers or promotions must be based on ability and skill, as well as objectivity and fairness. The

directions must specifically prohibit any recruitment, transfer, promotion or dismissal being effected based on a person's support of, or opposition to, a particular political party or cause. Every sector, administration and institution of the public administration is required to annually report on compliance in this regard. Failure to comply with a direction is made an offence;

- 2.2. grant the Commission the power to take remedial action: The Commission must require that a relevant authority (executive authority or the head of department as contemplated in the Public Service Act, or such other affected authority) within a maximum of 60 days, reports to Commission in writing on what it did or planned to do in respect of any measure, direction, recommendation in a report, recommendation of a remedy, advice or other deliverable provided by the Commission. The draft Bill requires the Commission to investigate actions taken or planned by the relevant authority, as well as any disagreements in this regard, and to report failures to the relevant authority, the relevant legislature and where there were irregularities, to report same to the Auditor General, Special Investigations Unit or other appropriate body. The Commission must twice a year table reports on its actions in this regard to the National Assembly and relevant provincial legislatures. Failure by a relevant authority to submit the required report is made an offence; and
- 2.3. provide for the human resources necessary to ensure the effective and efficient functioning of the Commission and to provide for regulations and transitional provisions in this regard. The chairperson of the Commission is designated as the executive authority of the Commission. A chief executive officer, indicated as head of the Office of the Commission and accounting officer, performs the financial, administrative and clerical functions of the Commission. Provision is made for the appointment and functions of the chief executive officer and for terms and conditions related to appointment and functioning of staff of the Office of the Commission. Provision is also made for conflicts of interests, which includes a limitation of political rights under certain circumstances, for limitation of liability and for a clarification in respect of delegations of the powers, functions and duties of the Commission. The draft Bill makes the Public Service Act, read with necessary changes, applicable to the Office of the Commission in respect of any matter not specifically dealt with by the draft Bill;
3. Public Administration Management Act, 2014 (Act No. 11 of 2014), so as to require the Minister to obtain the concurrence of the executive authority of the Public Service Commission in respect of a directive to be applicable to the Office of the Public Service Commission;
4. Labour Relations Act, 1995 (Act No. 66 of 1995), to require that the Commission for Conciliation, Mediation and Arbitration includes information on disputes submitted by employees of the Public Service Commission in its annual report; and
5. Public Finance Management Act, 1999 (Act No. 1 of 1999), to provide for the Commission to be added to Schedule 1 of to the PFMA as a Constitutional Institution to which the PFMA applies. In order to effect this addition, it was necessary to validate previous amendments that had been made to Schedule 1 to the PFMA, which amendments were incorrectly effected through a notice

in the Government Gazette. Such validation is made retrospective from the date when the Minister intended the amendments to be effective.

Interested parties and institutions are invited to submit written representations on the proposed content of the draft Bill to the Speaker of the National Assembly within 30 days of the publication of this notice. Representations can be delivered to the Speaker, New Assembly Building, Parliament Street, Cape Town; mailed to the Speaker, P O Box 15 Cape Town 8000, or emailed to speaker@parliament.gov.za and copied to leon.schreiberei@gmail.com.

Copies of the Public Administration Laws General Amendment Bill, 2021 may, after introduction, be obtained from:

The Democratic Alliance

<https://campaigns.voteda.org/wp-content/uploads/2021/03/Public-Administration-Laws-General-Amendment-Bill-and-Compliance-Certificate.pdf>

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