

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

NO. 3511

9 June 2023

**PUBLIC SERVICE COMMISSION  
PUBLIC SERVICE COMMISSION BILL 2023  
INVITATION FOR PUBLIC COMMENT**

1. Notice is hereby given that the draft Public Service Commission Bill 2023 and explanatory memorandum are available for public comments on the website of the Public Service Commission at [http:// www.psc.gov.za](http://www.psc.gov.za) under the heading of legislation.
2. The draft Public Service Commission Bill of 2023 seeks to regulate the Public Service Commission in accordance with the provisions of section 196 of the Constitution in relation to the functioning of the Public Service Commission:
  - 2.1. To repeal the Public Service Commission Act, 1997.
  - 2.2. The promulgation of a new Public Service Commission Bill 2023 into an Act.
  - 2.3. To enable the Public Service Commission to operate as an independent and impartial constitutional body with its own Secretariat with employees to support the PSC mandate administratively and technically.
  - 2.4. To improve the efficiency and impact of the PSC within the public service and public administration, as part of building a capable, ethical and developmental state.
  - 2.5. The extension / implementation of the application of the Public Service Commission mandate to Municipalities and Public Entities and to provide for matters connected therewith.
3. The PSC Bill 2023 was adopted and approved for publication for public comments by the Cabinet Cluster on 16 May 2023.
4. All interested parties and organisations are invited to submit written comments on the draft Bill by no later than 30 days from date of publication by:
  - (a) email to: [shukratm@opsc.gov.za](mailto:shukratm@opsc.gov.za) and [NontobekoN@opsc.gov.za](mailto:NontobekoN@opsc.gov.za)
  - (b) hand delivery to: Block B, Office Complex – Public Service Commission, 536 Francis Baard Street Arcadia, Pretoria. Room No: W509 or drop at the reception on the ground floor.
  - (c) post to: The Director-General: Public Service Commission Private Bag X 121 Pretoria, 0001.
5. Kindly provide the name, address, telephone and fax number and email address of the person or organisation submitting the comments.
6. For further information, please do not hesitate to contact Advocate Shukrat Makinde on 0722446453 / 012 -3521188, alternatively Ms Nontobeko Ngubane on 012 -3521032.

REPUBLIC OF SOUTH AFRICA

PUBLIC SERVICE COMMISSION BILL

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(As published for public comments and to be introduced in the National Assembly (as a proposed section 76); explanatory summary of Bill published in Government Gazette Notice No. 3511 of 2023)

(The English text is the official text of the Bill)

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**(MINISTER FOR THE PUBLIC SERVICE AND PUBLIC ADMINISTRATION)**

((B- 2023))

**BILL**

**To regulate the Public Service Commission in accordance with the provisions of section 196 of the Constitution; to regulate the process for the appointment of commissioners of the Commission; to provide for the establishment of the Secretariat of the Commission; to provide for the Commission to fulfil its constitutional mandate in respect of public entities and local government; to repeal the Public Service Commission Act, 1997; and to provide for matters connected therewith**

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**PREAMBLE**

**WHEREAS** section 196 of the Constitution, read with item 24(2) of Schedule 6 to, the Constitution of the Republic of South Africa, 1996, provides for the continued existence of the Public Service Commission as a single, independent and impartial Commission.

**AND WHEREAS** section 196 of the Constitution—

- provides for a mechanism for the appointment, including the renewal of appointment, and removal of commissioners;
- determines that the Commission, and the procedure for the appointment of commissioners, must further be regulated by national legislation.

**AND WHEREAS** section 196(4) of the Constitution provides that the powers and functions of the Commission are—

- to promote the values and principles set out in section 195 of the Constitution;

- to investigate, monitor and evaluate the organisation and administration, and the personnel practices, of the public service;
- to propose measures to ensure effective and efficient performance within the public service;
- to give directions aimed at ensuring that personnel procedures relating to recruitment, transfers, promotions and dismissals comply with the aforesaid values and principles;
- to report in respect of its activities and the performance of its functions including any finding it may make and directions and advice it may give, and to provide an evaluation of the extent to which the values and principles set out in section 195 are complied with;
- on own accord or receipt of a complaint—
  - to investigate and evaluate the application of personnel and public administration practices and to report to the relevant executive authority and legislature;
  - to investigate grievances of employees in the public service, and to recommend appropriate remedies;
  - to monitor and investigate adherence to applicable procedures in the public service; and
  - to advise national and provincial organs of state regarding personnel practices in the public service; and
- to exercise or perform the additional powers or functions prescribed by an Act of Parliament;

**AND WHEREAS** section 196 of the Constitution determines that the Commission has

such additional powers and functions as may be prescribed by national legislation;

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

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**PART I**

**DEFINITIONS AND APPLICATION OF ACT (SECTIONS 1 AND 2)**

**Definitions**

1. (1) In this Act, unless the context indicates otherwise:

**"Chairperson"** means the Chairperson of the Commission designated in terms of section 7;

**"Chief Executive Officer"** means the Chief Executive Officer appointed in terms of section 16(2)(a);

**"Commission"** means the Public Service Commission referred to in section 196(1) of the Constitution;

**"Commissioner"** means a commissioner appointed in accordance with section 196(7) of the Constitution;

**"Constitution"** means the Constitution of the Republic of South Africa, 1996;

**"employee"** means any employee appointed in terms of section 16(2)(b), or seconded to the Commission under section 16(6);

**"executive authority"** means—

(a) in relation to a department as defined in section 1 of the Public Service Act, the executive authority as defined in that Act;

(b) in relation to a public entity, its Chairperson of the board or other controlling



body;

(c) in relation to a municipality, the relevant Municipal Council and the Mayor;

**"Independent Commission"** means the Independent Commission for the Remuneration of Public Office Bearers established by section 2 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997);

**"local government"** means the local sphere of government referred to in section 151 of the Constitution;

**"municipality"** means a municipality contemplated in section 155 of the Constitution;

**"prescribed"** means prescribed by rule;

**"public entity"** means a national public entity or a provincial public entity as defined in section 1 of the Public Finance Management Act and listed in schedule 2, and 3A to 3D of the Public Finance Management Act and established in line with section 238 and 239 of the Constitution,

**"Public Finance Management Act"** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

**"public service"** means the public service as defined in section 1 of the Public Service Act, and includes a person employed in a post on the establishment of any municipality or any public entity and any person additional to any such establishment;

**"Public Service Act"** means the Public Service Act, 1994 (Proclamation No. 103 of 1994);

**"rule"** means a rule made under section 20;

**"Secretariat"** means the Secretariat of the Commission established by section 16;

**"this Act"** includes a rule;

### **Application of this Act**

2. (1) The provisions of this Act apply in relation to the administration of the public service.

(2) The Commission may, after consultation with the relevant municipality or public entity, by notice in the *Gazette*, include any such municipality or public entity, as the case may be, in the implementation of this act, and may from time to time likewise withdraw a notice in relation to one or more municipalities or public entities specified in any notice.

## **PART II**

### **THE PUBLIC SERVICE COMMISSION**

#### **Constitution of Commission**

3. The Commission consists of 14 commissioners as prescribed by the Constitution, which commissioners must, subject to the provisions of this Act and the Constitution, be appointed by the President.

#### **Appointment of commissioners**

4. (1) Whenever necessary in terms of this Act—  
(a) in the case of a commissioner envisaged in section 196(7)(a) of the Constitution, the committee contemplated in section 196(8)(a)(i) of the Constitution must, as soon as possible, but not later than 30 days as from the

date of receipt of the notice of a vacancy referred to in subsection (1), be appointed in accordance with the rules and orders of the National Assembly;

(b) in the case of a commissioner envisaged in section 196(7)(b) of the Constitution, a committee contemplated in section 196(8)(b)(i) of the Constitution must as soon as possible, but, not later than 30 days as from the date of receipt of the request referred to in subsection (4), be appointed in accordance with the rules and orders of the provincial legislature concerned.

(2) Whenever a vacancy occurs in the Commission, a committee contemplated in section 196(8)(a)(i) or section 196(8)(b)(i) of the Constitution, as the case may be, must, within 30 days as from the date on which such vacancy occurred, by public notice in media circulating nationally, invite fit and proper persons to submit applications for appointment as commissioner, within a period determined in the notice, but not later than 30 days as from the date of that notice.

(3) Whenever the President is required to appoint to a vacancy of a commissioner as provided in terms of section 196(8)(a)(i) of the Constitution, the President must address a request in writing to the Speaker of the National Assembly that a fit and proper person contemplated in section 196(10) of the Constitution be approved of as soon as may be practicable by the National Assembly in accordance with section 196(8)(a)(ii) of the Constitution.

(4) Whenever the President is required to appoint a commissioner who has been recommended as provided in section 196(8)(b)(i) of the Constitution, the President must address a request in writing to the Premier of that province that a fit and proper person contemplated in section 196(10) of the Constitution be approved by the legislature as soon as may be practicable in accordance with section 196(8)(b)(ii) of the Constitution.

(5) In considering whether a person complies with the provisions of section 196(10) of the Constitution, the following considerations must serve as a recommendation:

(a) In relation to his or her qualifications, he or she has a South African Qualification Authority recognised bachelor's degree or equivalent qualification in at least one of the following fields:

- (i) Public administration;
- (ii) business administration;
- (iii) human resource management;
- (iv) human behavioural sciences; or
- (vi) the law; and

(b) in relation to his or her experience, he or she—

- (i) held office as a head of a department mentioned in Schedules 1 or 2 to the Public Service Act or held office as a Municipal Manager;
- (ii) has worked at a senior management level in the public administration for at least five years;
- (iii) has, for a cumulative period of at least five years, been a member of Parliament, a provincial legislature, a municipal council or the board or other controlling body of a public entity;
- (iv) has specialised knowledge of, or for a cumulative period of at least five years, experience in, administration, business administration, human resource management, human behavioural sciences, management or the provisioning of public services, and law;
- (v) has, for a cumulative period of at least five years lectured public administration or management at a recognised institution of higher

learning; or

(vi) has any combination of experience referred to in subparagraphs (i) to (v).

(6) A commissioner must before assuming his or her term of office make and subscribe an oath or solemn affirmation before a Judge President of the relevant division of the High Court or any other judge of the High Court designated by that Judge President in the terms set out in Schedule 1.

### **Disqualification from appointment as commissioner**

5. Notwithstanding the provisions of section 3, a person is not a fit and proper person, if he or she—

- (a) is not a South African citizen;
- (b) is an unrehabilitated insolvent;
- (c) has been declared to be of unsound mind by a court in the Republic;
- (d) has at any time been removed from a position of trust by reason of improper conduct involving a breach of such trust; or
- (e) is a person who was at any time convicted of theft, fraud, forgery and uttering a forged document, perjury, any offence under the Prevention of Corruption Act, 1958 (Act No 6 of 1958), the Corruption Act, 1992 (Act No 94 of 1992), or Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences), of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No 12 of 2004) or any other offence involving dishonesty.

**Limitation on other work by commissioners, renewal of terms of office of commissioners and vacation of offices by commissioners**

6. (1) A commissioner may not—

- (a) hold office in any political party or political organisation; or
- (b) without the written consent of the President perform or engage himself or herself to perform any remunerative work outside the duties of his or her office.

(2) The President may, as contemplated in section 196(10) of the Constitution and within 90 days before the expiry of the first term of office of a commissioner, renew the term of that commissioner for one additional term only—

- (a) in the case of a commissioner who had been approved by the National Assembly, on the recommendation of the National Assembly; and
- (b) in the case of a commissioner who was nominated by the Premier of a province, on the recommendation of the provincial legislature concerned.

(3) The renewal of term of a commissioner must be based on the commissioner—

- (a) remaining a fit and proper person as required by section 196(10) of the Constitution; and
- (b) having maintained a satisfactory level of performance in relation to his or her duties.

(4) The President may allow a commissioner to vacate his or her office—

- (a) on account of continued ill-health; or
- (b) at his or her request: Provided that such request must be addressed to the

President, as the case may be, at least three calendar months prior to the date on which he or she wishes to vacate such office, unless the President allows a shorter period in a specific case.

(5) If the President allows a commissioner to vacate office in terms of subsection (4), the President must give notice to the National Assembly or, in the case of a commissioner referred to in section 196(7)(b) of the Constitution, the relevant provincial legislature.

(6) The Commission may, at any time, approach the committee referred to in section 4(1) with regard to any matter pertaining to the office of a commissioner.

#### **Chairperson and Deputy Chairperson of Commission**

7. (1) The President must designate one commissioner as chairperson and another as deputy chairperson of the Commission.

(2) If the Chairperson is absent or for any reason unable to act as chairperson, the Deputy Chairperson must act as chairperson of the Commission.

(3) If both the Chairperson and the Deputy Chairperson are absent, or for any reason unable to act as chairperson, the President must designate one commissioner to act as the chairperson of the Commission for a period not exceeding 30 days.

**Remuneration and other conditions of appointment of commissioners**

8. (1) A commissioner is entitled to such remuneration and other conditions of appointment—

(a) as determined by the President, from time to time, by Proclamation, after taking into consideration the recommendations of the Independent Commission; and

(b) approved by the National Assembly in terms of subsection (2).

(2) (a) A notice issued under subsection (1)(a) must be submitted to the National Assembly for approval before publication thereof.

(b) The National Assembly must, by resolution—

(i) approve the notice, whether in whole or in part; or

(ii) disapprove the notice.

(3) A notice in terms of subsection (2)(a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of that notice.

(4) The Independent Commission must, when investigating or considering the remuneration and other conditions of appointment, consult with the Cabinet member responsible for finance.

(5) Different remunerations and other conditions of appointments may be determined in respect of the Chairperson, the Deputy Chairperson and other commissioners of the Commission.

(6) A commissioner's remuneration may not be reduced, and his or her other conditions of appointment may not be adversely altered during his or her term of office, including any renewal thereof.



**Inspections by Commission**

9. The Commission may inspect departments and other organisational components in the public service and has access to such official documents or may obtain such information from heads of those departments, organisational components or from other officers in the service of those departments, organisational components as may be necessary for the exercise of its powers or the performance of its functions under the Constitution, the Public Service Act or any other law relating to local government or any public entity.

**Investigations by Commission**

10. The Commission may investigate departments and other organisational components in the public service and has access to such official documents or may obtain such information from heads of those departments, organisational components or from other officers in the service of those departments, organisational components as may be necessary for the exercise of its powers or the performance of its functions under the Constitution, the Public Service Act or any other law relating to local government or any public entity.

**Inquiries by Commission**

11. (1) The Commission may conduct an inquiry into any matter in respect of which it is authorised by the Constitution, this Act, the Public Service Act or

any law relating to any local government and any public entity to exercise any of its power or to perform any of its functions.

(2) For purposes of any such inquiry, the Commission may—

- (a) call upon or, should the Commission for any reason determine otherwise, summons any person who may be able to give information of material importance concerning the subject of the inquiry or who has in his or her possession or custody or under his or her control any book, document or object which may have a bearing on the subject of the inquiry, to appear before the Commission;
- (b) call upon and administer an oath to, or accept an affirmation from, any person present at the inquiry who has or might have been called upon or summonsed in terms of paragraph (a); and
- (c) examine or require any person who has been called upon in terms of paragraph (a) to produce any book, document or object in his or her possession or custody or under his or her control which may have a bearing on the subject of the inquiry.

(3) A summons for a person to appear before the Commission must be—

- (a) in the prescribed form;
- (b) signed by the Chairperson or any other person designated by the Chairperson; and
- (c) served in the prescribed manner.

(4) Any person who—

- (a) has been duly summonsed under this section and who fails, without sufficient cause—

- (i) to attend at the time and place specified in the summons; or
  - (ii) to remain in attendance until excused by the Commission from further attendance;
- (b) has been called upon in terms of subsection (2) (b) and who refuses to be sworn or to affirm as a witness; or
- (c) fails, without sufficient cause—
- (i) to answer fully and satisfactorily any question lawfully put to him or her in terms of subsection (2)(c); or
  - (ii) to produce any book, document or object in his or her possession or custody or under his or her control which he or she was required to produce in terms of subsection (2)(c),

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

(5) In connection with the examination of any person by, or the production of any book, document or object before, the Commission in terms of this section, the law relating to privilege, as applicable to a witness summonsed to give evidence or to produce any book, document or object before a court of law, applies.

### **Access to reports of Commission**

12. (1) Subject to the provisions of subsection (2), no person is entitled to have access to any report prepared by the Commission consequent upon any of its powers and functions in terms of section 196(4) of the Constitution until such time as such report has been submitted to the relevant executive authority or any other person.

(2) The provisions of subsection (1) do not apply in respect of a report

dealing with matters in which any other person or persons have an interest unless—

- (a) the person referred to in subsection (1) obtained the permission of such other person or persons, as the case may be; or
- (b) the part of the report in which the person or persons referred to in subsection (1) has an interest can be severed from the part or parts relating to any such other person or persons.

### **Implementation of decisions of Commission**

**13.** (1) If the Commission has taken any decision—

- (a) proposing measures as provided in section 196(4)(c) of the Constitution;
- (b) giving directions as provided in section 196(4)(d) of the Constitution;
- (c) on a report as provided in section 196(4)(e) and (f)(i) of the Constitution;
- (d) recommending as provided in section 196(4)(f)(ii) of the Constitution; and
- (e) giving advice as provided in section 196(4)(f)(iv) of the Constitution,

the relevant executive authority or other person to whom such decision was directed must, with a view to the provisions of section 196(3) of the Constitution, report, not later than 60 days as from the date on which such decision was so directed or such shorter or longer period as the Commission may determine or allow, as the circumstances may require, to the Commission on the manner in which any such decision was implemented or otherwise dealt with.

(2) In the event of a refusal or failure by the executive authority or person referred to in subsection (1) to report as provided in that subsection, the Commission may report such refusal or failure—

- (a) in the case an executive authority referred to in paragraph (a) or (b) of the

definition of "executive authority", to Parliament or in the case of a provincial public entity, to the provincial legislature concerned;

- (b) in the case of an executive authority referred to paragraph (c) of that definition, to the member of the executive council in the province concerned charged with local government; and
- (c) In the case of a decision directed to a person responsible to any executive authority referred to in paragraph (a) or (b), to the relevant executive authority, for such action as Parliament, the provincial legislature concerned, the member of the executive council in the province concerned or the relevant executive authority, as the case may be, may deem fit.

#### **Independence and impartiality**

**14.** A Commissioner as well as a member of staff contemplated in section 16—

- (a) must serve impartially and independently and exercise or perform his or her powers and functions in good faith and without fear, favour or prejudice and subject only to the Constitution and the law; and
- (b) may not act in any manner that compromises the credibility, impartiality, independence or integrity of the Commission.

### **Obstruction of Commission**

**15.** Any person who hinders or obstructs the Commission in the exercise of its powers and the performance of its functions under the Constitution, this Act, the Public Service Act or any law relating to local government or any public entity, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

## **PART III**

### **SECRETARIAT OF COMMISSION**

#### **Secretariat of Commission**

**16.** (1) There is hereby established a secretariat to be known as the Secretariat of the Commission consisting of the persons appointed in terms of subsection (2).

(2) The Commission must, subject to its directions and control, in the exercise of its powers or the performance of its functions under the Constitution, this Act and any law relating to local government or any public entity, be assisted by—

(a) a suitably qualified and experienced person appointed as Chief Executive Officer for a renewable period not exceeding five years at a time, and any other person or persons appointed as Deputy Chief Executive Officer or Deputy Chief Executive Officers, under such designations as the Commission may deem fit, subject to terms and conditions of service under the laws governing the public

service; and

- (b) such employees appointed by the Chief Executive Officer, subject to the laws governing the public service, appoint employees, either full-time or part-time, to the Commission to assist the Chief Executive Officer to perform the functions or exercise the powers of the Commission, or both, as may be necessary.
- (c) the chairperson of the Commission as the Executive Authority of the Secretariat has all those powers and duties necessary for the internal organisation of the Secretariat concerned, including its organisational structure and establishment, the transfer of functions within that Secretariat, human resource planning, the creation and abolition of posts and the provision for the employment of persons additional to the fixed establishment.

(3) The Chief Executive Officer, and all or such employees as the Commission may determine, must enter into performance agreements with the Chairperson of the Commission / Commission on acceptance of appointment.

(4) In exercising its powers or performing its functions in terms of subsection (2), the Commission must consult with the Cabinet member responsible for finance and public service and administration.

(5) The Chief Executive Officer is responsible for—

- (a) the management of the affairs and operations of the Commission;
- (b) the formation and development of an efficient administration;
- (c) the organisation and management of, and administrative control over, all employees appointed in terms of subsection (2)(b) and all employees seconded to the Commission as envisaged in subsection (6);
- (d) the maintenance of discipline in respect of employees; and

(e) the carrying out of the decisions of the Commission, and is in respect thereof and for the purposes of paragraphs (a) to (d) accountable to the Commission and must report thereon to the Commission as often as may be required by the Commission.

(6) The Commission may, in the exercise of its powers or the performance of its functions, at its request, be assisted by employees in the public service, municipality or public entity seconded to the service of the Secretariat in terms of any law regulating such secondment.

(7) An employee employed in, or seconded to, the Secretariat must—

- (a) serve impartially and independently and perform his or her functions in good faith and without fear, favour, bias or prejudice;
- (b) serve in a full-time capacity to the exclusion of any other duty or obligation arising out of any other employment or occupation or the holding of any other office: Provided that the Commission may exempt such employee from the provisions of this paragraph.

(8) The Commission may in the exercise of its powers or the performance of its functions by or under the Constitution, this Act or any other law, for specific projects, enter into contracts for the services of persons having technical or specialised knowledge of any matter relating to the work of the Commission, and determine the remuneration, including reimbursement for travelling, subsistence and other expenses, of such persons subject to availability of resources.

#### **Delegation of Commission's powers or functions**

17. (1) The Commission may delegate to one or more commissioners, or



to any committee or committees any power conferred upon or function entrusted to the Commission by or under this Act, the Public Service Act or any law relating to local government or any public entity, excluding the power to delegate referred to in this subsection or a power referred to in section 18, on such conditions as the Commission may determine.

(2) Any delegation may at any time be amended or revoked by the Commission.

(3) The Commission must not be divested of any power or function delegated by it under subsection (1) and may amend or withdraw any decision made in the exercise of such delegated power or the performance such delegated function.

## **PART IV**

### **FINANCES AND ACCOUNTABILITY**

#### **Finances and accountability**

**18.** (1) The expenditure incidental to the exercise or performance of the powers and functions of the Commission must be defrayed from—

- (a) monies appropriated by Parliament for that purpose;
- (b) monies received, with the approval of the Parliament, granted in a particular case or generally, subject to such conditions as the Parliament may determine, as donations or grants;
- (c) management fees, as prescribed by regulation, for specific services rendered and in consultation with National Treasury.

(2) Subject to the Public Finance Management Act—

- (a) the Chief Executive Officer—
- (i) is charged with the responsibility of accounting for monies received or paid out for or on account of the Secretariat and the Commission; and
  - (ii) must cause the necessary accounting and other related records to be kept; and
- (b) may exercise such powers and perform such functions as the Commission may from time to time assign to him or her, and is in respect thereof accountable to the Commission.

(3) The Commission must budget for the necessary resources or additional resources to enable it to exercise its powers and perform its functions effectively.

(4) The Chairperson is, for purposes of the Public Finance Management Act, the executive authority of the Commission.

(5) The records referred to in subsection (2)(a)(ii) must be audited by the Auditor General.

## PART V

### GENERAL

#### Legal proceedings by or against Commission

19. (1) The Commission is a juristic person.

(2) The State Liability Act, 1957 (Act No 20 of 1957), applies with the necessary changes, in respect of the Commission, and in any such application a reference in that Act to "*the executive authority of the department concerned*" must be

construed as a reference to the Chairperson.

(3) A commissioner or an employee of the Commission or the Secretariat is not liable for anything done in good faith in the exercise or performance or purported exercise or performance of any power or function, or in respect of anything reflected in any report, finding, point of view or recommendation made or expressed in good faith and submitted to the National Assembly or a provincial legislature or made known in terms of this Act.

## Rules

20. The Commission may by notice in the *Gazette* make rules which are not inconsistent with this Act or the Constitution as to—

- (a) the manner in which and the circumstances under which—
  - (i) grievances by heads of departments, or employees, in the public service must be lodged with, or referred to, executive authorities or the Commission; and
  - (ii) any complaint by any person must be lodged with the Commission;
- (b) the procedure, including a process of mediation, to be followed by the Commission in investigating any grievances or complaints;
- (c) the form of summonses to be served on persons to appear at inquiries of the Commission as provided in section 11 and the manner in which such summonses must be served;
- (d) any matter referred to in section 16(2) ((a)(b) & (c)), including, but not limited to the duties, remuneration and other terms and conditions of service of

- employees;
- (e) any management fees payable in respect of specified services rendered by the Commission; and
  - (f) any matter required or permitted to be prescribed by rule under this Act.

### **Repeal and amendment of laws**

**21.** The laws mentioned in the first column of the Schedule are hereby repealed or amended to the extent set out in the third column thereof.

### **Transitional provisions**

- 22.** (1) Notwithstanding the repeal of any law by section 22—
- (a) the persons occupying the posts of Director-General or Deputy Directors-General, as the case may be, immediately prior to the commencement of section 16, must be deemed to have been appointed in terms of section 16(2)(a) as the Chief Executive Officer or Deputy Chief Executive Officers, as the case may be, of the Commission for the unexpired period, if any, of his or her term of service by virtue any performance agreement to which he or she is a party;
  - (b) any person who was, immediately prior to such commencement, employed in the service of the Public Service Commission by virtue of the provisions of section 14(2)(b) of the Public Service Commission Act, 1997 (Act No 46 of 1997), or appointed in terms of the Public Service Act must, subject to the provisions of subsection (3), be deemed to have been appointed, without any

- interruption of service, by the Commission in terms of section 16(2)(b);
- (c) the remuneration and other conditions of service determined in terms of the Public Service Act applicable to the persons referred to in paragraphs (a) and (b), must be deemed to have been determined by the Commission under section 16(4), until amended by the Commission, provided that any such amendment may not be less favourable than the remuneration and other conditions of service such person was entitled to immediately prior to the commencement of section 16;
  - (d) any collective agreement relating to employees referred to in paragraphs (a) and (b) concerning their conditions of employment or matters of mutual interest which is still of force and effect immediately prior to the commencement of section 14 remains of force and effect as if it were concluded between the relevant trade union and the Commission;
  - (e) any performance agreement concluded, prior to the commencement of section 14, by the Director-General, the Deputy-Director General or any other employee, must be deemed to have been concluded in terms of section 16(3);
  - (f) any rules made by the Commission before the commencement of section 23, must be deemed to have been made by the Commission under section 23 until amended or repealed by the Commission; and
  - (g) any bank account in the name of the Office of the Public Service Commission or any cash in hand held or administered by that Office must, as from the commencement of section 16, be deemed to be a bank account or cash held or administered by the Secretariat.

(2) Any person referred to in subsection (1) (a) or (b) is entitled to the same remuneration and other conditions of service he or she was entitled to

immediately prior to the commencement of section 16.

(3) (a) A person referred to in subsection (1)(a) or (b) has the right to exercise in writing, within a period of 30 days as from the commencement of section 16 or such longer period as the Commission may allow, a choice indicating that he or she wishes not to be deemed to be an employee appointed in terms section 16(2)(b) and he or she must inform the Minister for Public Service and Administration accordingly.

(b) The Commission must, in the case of an employee referred to in paragraph (a), retain such employee in its employ on the same remuneration and other conditions of service he or she was entitled to immediately prior to the commencement of section 22 until such time he or she can be accommodated elsewhere in terms of the Public Service Act in a similar or higher post or he or she is in terms of the Public Service Act seconded to the Commission.

### **Short title and commencement**

23. (1) This Act is called the Public Service Commission Act, 2022, and comes into operation on a date fixed by the President by proclamation in the Gazette.

(2) Different dates may in terms of subsection (1) be fixed in respect of different provisions or different parts of particular provisions of this Act.

(3) A reference in this Act to its commencement must be construed as a reference to the applicable date so determined.

**SCHEDULE 1****OATH AND SOLEMN AFFIRMATION OF COMMISSIONER**

*I, A.B., do hereby swear/solemnly affirm, as a commissioner of the Public Service Commission, to be faithful to the Republic of South Africa and to hold my office as commissioner with honour and dignity, to respect and uphold the Constitution and the law; to be a true and faithful commissioner, not to divulge directly or indirectly any matter entrusted to me under secrecy; and to perform the powers and functions of my office without fear, favour or prejudice in accordance with the Constitution and the law to the best of my ability.*

**SCHEDULE 2****LAWS REPEALED OR AMENDED**

| <b>No and year of law</b> | <b>Short title</b>   | <b>Extent of amendment or repeal</b>   |
|---------------------------|--|--|
| Proclamation 103 of 1994  | Public Service Act, 1994   | The deletion in section 1 of paragraph (c) of the definition of "executive authority".<br><br>The deletion of Office of the Public Service Commission from Schedule 1.   |
| Act 46 of 1997            | Public Service Commission Act, 1997  | Repeal of the whole  |
| Act 92 of 1997            | Independent Commission for the Remuneration of Public Office-bearers Act, 1997 | The substitution in section 1 for the definition of " <i>constitutional institution</i> " of the following definition:<br><br><i>"constitutional institution" means the Public Protector, the Auditor General and any commission established by Chapter 9 or 10 of the Constitution, including the Independent Communications Authority of South Africa contemplated in section 192 of</i> |

| No and year of law | Short title                                      | Extent of amendment or repeal   |
|--------------------|--|---|
|                    |  | <i>the Constitution and the Financial and Fiscal Commission referred to in section 220 of the Constitution;"</i>  |
| Act 1 of 1999      | Finance Management Act, 1999                     | The amendment of Schedule 1 by the addition of the expression "Public Service Commission".  |
| Act 32 of 2000     | The Local Government Municipal Systems Act, 2000 | <p>The insertion of the following section after section 68:</p> <p><b><u>"Investigation and directions of the Public Service Commission"</u></b></p> <p><b><u>68A. (1) In this section "Commission" means the Public Service Commission referred to in section 196 (1) of the Constitution.</u></b></p> |



**MEMORANDUM ON THE OBJECT**

**SIXTH DRAFT OF THE PUBLIC SERVICE COMMISSION BILL, 2023**

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## 1. INTRODUCTION

- 1.1. The Public Service Commission (PSC) is established in terms of Chapter 10 of the Constitution of the Republic of South Africa, 1996, as an independent and impartial institution. The PSC must exercise its powers and perform its function without fear, favour or prejudice in the interest and maintenance of an effective and efficient public administration and the promotion of a high standard of professional ethics in the public service.
- 1.2. The Constitution further provides that no organ of state may interfere with the functioning of the Public Service Commission (PSC).
- 1.3. The need for the new PSC Bill 2023 was based on a business case and a socio-economic assessment which support the view expressed in the National Development Plan (page 412) which indicates the following in respect of the Office of the Public Service Commission (OPSC):

*“The Office of the Public Service Commission, which is the administrative arm of the PSC, is partially dependent on the executive for the appointment of its Director-General and the allocation of its budget. This provides some important benefits including the scope to participate in the Governance and Administration Cluster, but there is also the potential for these links to compromise the PSC’s independence. These are issues that may need to be reflected on going forward.”*
- 1.4. The National Development Plan (NDP) also stated that there is potential for the OPSC’s status as a Public Service Department to compromise the PSC’s independence and employees of the PSC tend to have vested interest on issues that they should be having an oversight on.
- 1.5. Parliament took a Resolution on 15 November 2011, that the PSC must report on the implementation of section 195(1) of the Constitution by the administration of all spheres of government, organs of state and the public enterprises in South Africa, every year. The report of the PSC should be contained in the annual report of the entity that the PSC is reporting on every year. The PSC is hereby giving effect to the Parliamentary Resolution in the promulgation of this Bill into an Act.
- 1.6. The PSC Bill 2023 gives effect to section 196 of the Constitution in the establishment of the PSC Secretariat through a function shift of the OPSC from a National Department to the PSC Secretariat in terms of the PSC Bill 2023. This is to strengthen the independence of the PSC as a constitutional institution.

- 1.7. The mandate of the PSC will be expanded to go beyond the Public Service to address Public Administration inclusive of Local Government and Public Entities as there is a public service within local government and public entities.
- 1.8. The extension / implementation of the PSC mandate to local government and public entities will broadly promote the mandate of the PSC as an oversight body with respect to the proper implementation of people management practices within the Public Service and Public Administration and the professionalization of the public service to achieve a capable and ethical public service.
- 1.9. The PSC client and stakeholders will be better coordinated within a framework that removes possible perception of conflict of interest, possible compromise of the Commission and promotion of its service delivery offering with clear identification of clients and better stakeholder management.

#### **Service Delivery Improvement Focus Areas**

- 1.10. The mandate of the PSC will continue to focus on effective governance, promotion of ethical values within the public service and public administration.
- 1.11. The PSC will improve its services as it continues to deal with investigations with regard to human resource practices and implementation of the professionalization of the Public Service Framework at Senior Management Services level and across all levels of employees within the public service.
- 1.12. Improved management of employee grievances and complaints within public service and public administration. This will be achieved with the delivery of high quality research reports with regard to leadership and human resource management practices. Management of the grievances processes and procedures of public servants.
- 1.13. Conduct full scale monitoring and evaluation across the public service through institutional assessment and the implementation of the assessment instrument designed to assess the implementation of the Constitutional Values and Principles (CVPs).
- 1.14. The management of issues related to corruption and integrity. The PSC runs a dedicated National Anti-Corruption Hotline (NACH) and undertakes full-scale investigations and own initiated complaint management across the public service and public administration.

- 1.15. The benefit of the PSC Bill 2023 is that the Commission will be a PSC that is actually independent, has an agreed public administration mandate and is fully positioned as a Constitutional Institution reporting to Parliament.

## **2. OBJECT OF THE PSC BILL 2023**

- 2.1. The Priority areas of the Bill are as follows:
  - 2.1.1. The PSC Bill 2023 seeks to repeal the Public Service Commission Act, 1997, and promulgate a new Public Service Commission Act that will regulate the Public Service Commission in accordance with the provisions of section 196 of the Constitution;
  - 2.1.2. to regulate the process for the appointment of commissioners of the Commission;
  - 2.1.3. to provide for the establishment of the Secretariat of the Commission;
  - 2.1.4. to provide for the commission to fulfil its constitutional mandate in respect of public entities and local government; and to provide for matters incidental thereto.
- 2.2. The sixth administration announced seven (7) government priority areas. Priority number one, relates to building an ethical, value driven capable, competent and developmental state. This Bill seek to achieve the government objective in building a capable and ethical public service and public administration with promotion of efficiency and certainty in the implementation of the powers and mandates of the PSC as stated in section 195 and 196 of the Constitution.
- 2.3. The PSC Bill 2023 will assist in giving effect to the PSC's mandate and oversight as an independent institution as guaranteed in the Constitution, determine the enforcement mechanisms for some of its powers and improve the PSC powers to make Rules, Guidelines, issue Summons, Recommendation, Advice and issues Direction.
- 2.4. The President also announced that service delivery would be focused and placed at the district level in the municipalities. The PSC, therefore, intends developing a monitoring and evaluation tool for the district service delivery model as part the response to the needs of government and environmental needs and to professionalise the public service.
- 2.5. The PSC budget is currently on a separate vote 12 appropriated through the Department of Public Service and Administration. The PSC need its budget baseline to be reviewed progressively upward to enable it to have the required resources to implement its extended mandate to local government and public entities. The PSC's budget will continue to be determined by National Treasury and approved by the National Assembly.

- 2.6. The Office of the Public Service Commission, which supports the Public Service Commission, is defined as a department in schedule 1 of the Public Service Act. The administrative support of the PSC will be established in terms of the Public Service Commission Bill of 2023 as a Secretariat led by a Chief Executive Officer that reports directly to the Public Service Commission.
3. The PSC as a fully independent chapter 10 Constitutional Institution will have the following benefits:
- 3.1. The clarity on tenure for Commissioners;
  - 3.2. structural and administrative separation from any government department;
  - 3.3. promote PSC's financial independence and or ability to gazette management fees on specific aspects of the PSC function as and when requested;
  - 3.4. promote PSC's ability to balance its priorities and independence with the need to be responsive to the developmental state;
  - 3.5. promote PSC's ability to exercise its independence in a confident and responsive manner;
  - 3.6. improved interaction with all relevant stakeholders;
  - 3.7. improved proactive and reactive investigations in public administration and better monitoring and evaluation of the state performance in service delivery and the social economic realization of the better life and poverty alleviation for the citizens in the provision of service delivery by government department and organs of state; and
  - 3.8. An activation of the Honourable President's directive to the PSC as stated in the State of the Nation Address of 2023, as follows:

*"Government is implementing a number of interventions to address failures at local government level and improve basic service delivery.*

*These include enhancing the capacity of public representatives and officials, maintaining and upgrading local infrastructure, and invoking the powers of national government to intervene where municipalities fail to meet their responsibilities.*

*A professional public service, staffed by skilled, committed and ethical people, is critical to an effective state and ending corruption, patronage and wastage.*

*In response to the State Capture Commission and in line with the framework for the*

*professionalisation of the public service, integrity assessments will become a mandatory requirement for recruitment to the public service and entry exams will be introduced.*

*We are amending legislation and strengthening the role of the Public Service Commission to ensure that qualified people are appointed to senior management positions and to move towards creating a single, harmonised public service”.*

- 3.9. The PSC Bill 2023 will ensure that the PSC is able to execute its mandate without fear, bias or interference, as the custodian of good governance and the promotion of ethical governance in line with government objectives.

## **4. CONTENT OF THE BILL**

### **4.1. Preamble**

The preamble reiterates the powers and functions of the Public Service Commission as defined in section 195 and 196 read with item 24(2) of Schedule 6 of the Constitution of 1996. The PSC may also perform such additional power and functions as may be prescribed by national legislation. The PSC must be regulated by national legislation as stated in the Constitution.

## **5. PART I**

### **5.1. Definitions and Application of Act**

#### **Clause 1 – Definitions**

The definition section seeks to provide clarity on the local government as defined in section 151 of the Constitution; Public Entity as defined in terms of the PFMA, Schedule 2 and 3A to 3D; Public Service as defined in terms of Public Service Act No, 103 of 1994; Secretariat of the Commission established in terms of Public Service Commission Bill of 2023; and other critical matters that require a definition.

### **5.2. Clause 2 - Application of the Act**

This section deals with application of the Public Service Commission Bill 2023, and it states that the PSC may after consultation with the relevant municipality or public entity, by notice in the gazette, include any such municipality.

As part of PSC's response, it will develop a tool to monitor service delivery at the level of local

government.

Public entities may also be monitored through their mother department at both the National and Provincial level of government or directly.

## **PART II – The Public Service Commission**

### **5.3. Clause 3 - Constitution of the Commission**

This clause deals with the Constitution of the Commission which is made up of 14 Commissioners appointed by the President for the PSC.

### **5.4. Clause 4 – Appointment of Commissioners**

This clause deals with appointment of Commissioners who must be a fit and proper person, aligned to the Constitutional provisions. There are Five (5) national level and one (1) commissioner for each province. The President appoints the PSC Commissioners based on the recommendation of Parliament or the provincial legislature and the Premier.

The PSC Bill 2023 seeks to assist with the synergizing of the process of appointment of PSC Commissioners by introducing recommended skills, qualification and experience of at least five years in the relevant fields. The Rule of Parliament or Relevant Legislature will consider this requirement in the appointment of commissioners and the selection process of the committee in Parliament or the Provincial Legislature. Parliament in the process, may have to indicate if this clause will assist it and they can build it into the parliamentary rules and processes when it comes to making recommendations on the appointment of commissioners.

An Oath of Office or solemn affirmation before a Judge President of the relevant division of the High Court or any other judge is introduced and is included in the schedule 1 of the PSC Bill 2023.

### **5.5. Clause 5 – Disqualification from appointment as commissioner**

This clause deals with disqualification from appointment as Commissioners in line with the Constitutional provisions, resignation and vacation of Office of Commissioners.

### **5.6. Clause 6 - Limitation on other work by commissioners, renewal of terms of office of commissioners and vacation of offices by commissioners**

The provision relating to renewal of the PSC Commissioners Term of Office and the designation of an acting chairperson or deputy chairperson is aligned to the PSC Amendment Act of 2019. It is intended that the renewal of the term of office of a commissioner can be considered 90 days

before the actual termination of the Term of Office. The Term of office is five year's renewable for a further five years. A PSC commissioner must remain a fit and proper person and having maintained a satisfactory level of performance in relation to his or her duties in other for the contract to be renewable for a second term of office of five years.

Clause 6 of the PSC Bill 2023 states:

*“The President may, as contemplated in section 196(10) of the Constitution and within 90 days before the expiry of the first term of office of a commissioner, renew the term of that commissioner for one additional term only-*

- (a) In the case of a commissioner who had been approved by the National Assembly; on the recommendation of the National Assembly and*
- (b) In the case of a commissioner who was nominated by the Premier of a province, on the recommendation of the provincial legislature concerned.*
- (c) The renewal of the term of a commissioner must be based on the commissioner-*
  - (i) Remaining a fit and proper person as required by section 196(10) of the Constitution; and*
  - (ii) Having maintained a satisfactory level of performance in relation to his or her duties”.*

#### 5.7. **Clause 7 - Chairperson and Deputy Chairperson of Commission**

Clause 7(3)(b) deals with designation of an acting chairperson, should the chairperson and the deputy chairperson be out of the office and are unable to act.

This clause is in line with clause 7(3) of the PSC Amendment Act, 2019, which stated that, “if both the chairperson and the deputy chairperson are absent, or for any reason unable to act as chairperson, the President shall designate one commissioner to act as the chairperson of the Commission for a period not exceeding 30 days”.

This is to ensure that there is a designation of a commissioner when both the chairperson and deputy chairperson are out of the office, and to ensure that the process is monitored after every 30 days to determine an appropriate measure.

#### 5.8. **Clause 8 – Remuneration and other conditions of appointment of Commissioners**

This clause provides that the remuneration of the PSC commissioners shall be determined by the President, from time to time, by notice in the Gazette, after taking into account the recommendations of the Independent Commission for Public Office Bearers. It is important to move away from aligning the salaries of commissioners to what a Director-General in the Public Service earns as this tend to confuse the PSC Commissioners to be officials.

The Independent Commission for Remuneration of the Public Office Bearers must, when



considering the remuneration of commissioners consult with the Cabinet member responsible for Finance.

A different salary level may be recommended for the Chairperson and the Deputy Chairperson. The proposed Bill states in clause 8(6) that the PSC Commissioners remuneration may not be reduced and the conditions of appointment may not be adversely altered during a Commissioner's term of office, including any renewal thereof.

**5.9. Clause 9 - Inspection by Commission**

The Commission may conduct inspection either by physical inspection in loco or inspection of documents; and may request to be provided with information which the departments and public institutions within public administration are obliged to submit.

**5.10. Clause 10- Investigation by Commission**

The Commission is empowered to conduct investigation within department, other organizational components in the public service. The Commission must have access to relevant documents that will assist the PSC in the performance of its functions, including at the local government and public entity.

**5.11. Clause 11- Inquiries by Commission**

The Commission may conduct an inquiry as part of its information gathering processes, issue summons and subpoena witnesses and ask for documents to be presented before it in relation to a department, public entity and local government; taking into account the applicable laws and in terms of the PSC rules for issuance of summons.

The Commission may administer an oath or affirmation to witness during its inquiry and may issue a subpoena/summons for any person to appear before it. Should anyone fail to cooperate with the Commission, such a person would commit an offence and on conviction, he or she will be liable to a fine or imprisonment not exceeding 12 months. The commission will have to activate this part with the support of the South African Police Service and the Magistrate Court for approving a scale of fines for operationalization of this section, once the PSC Bill is passed into law.

This section also deals with grievance of employees in the public entities and the local government and how employees can lodge their grievances and complaints with the PSC and seeks to align the section with the provision of section 5(8) of the Public Service Act and section 67 of the Local Government Municipal Systems Act of 2000.

#### 5.12. **Clause 12- Access to Reports of Commission**

The report of the PSC investigation or grievance can be made available to affected parties once the report is finalized and submitted to the relevant executive authority.

This clause recognized that the PSC report will be provided to a complainant or a grievant only upon completion of the report and after it has been submitted to the Executive Authority.

The report may also be provided with the permission of such other person or persons as the case may be and certain information may be severed in line with Promotion of Access to Information Act and the Protection of Personal Information Act requirements. The report deals with matters in respect of which any other person has an interest, subject to permission obtained from the affected parties in the report or where the information requested by the interested party can be severed from part of the report or part relating to any other person.

#### 5.13. **Clause 13- Implementation of decisions of the Commission**

A department, public entity or a municipality that receives a report of the PSC directing it to act in a particular way under a particular law, must respond by providing the PSC with the plan of action in implementing the advice, directions or recommendations of the PSC within 60 days or within such shorter period or longer as may be stated by the PSC in the relevant report.

Should the Executive Authority not be able to implement the decision, he or she must revert back to the PSC with reasons or take the report on review in court. This provision is applicable to the Mayor in the Executive Council at local government and Executive Authorities, or Chairpersons of the public entity.

#### 5.14. **Clause 14 - Independence and Impartiality**

A commissioner as well as a member of staff contemplated in Clause 16 of the PSC Bill 2023 must act independently and without fair or favour in the implementation of the PSC's mandate.

#### 5.15. **Section 15 - Obstruction of the Commission**

Any person found guilty of obstructing the PSC in the performance of its functions shall be guilty of an offence and liable on conviction to imprisonment of up to 12 months or option of a fine.

The PSC Bill 2023 may further propose that disciplinary hearing and misconduct charges be made in relation to an employee or official that fails to cooperate or assist the PSC in its investigations, grievance management or monitoring and evaluation.

### **PART III**

#### **5.16. Clause 16 - Secretariat of the Commission**

This clause deals with the establishment of the Secretariat of the Commission to provide the administrative and technical support to the Public Service Commission. The employees of the PSC will be deemed to be appointed into the Secretariat. Their service conditions will be transferred to the PSC Secretariat through a function shift. The secretariat will be headed by the Chief Executive Officer who shall be appointed by the PSC. The Chief Executive Officer must report to the Chairperson of the PSC and to the PSC. The Chief Executive Officer is responsible for the management of the affairs of the Commission.

Employees in the Public Service may assist the Commission in the performance of its functions and can be transferred or seconded to the PSC. Salaries scale utilized in the public Service will be aligned to the employees in the PSC Secretariat. No employee will be given less favourable conditions of service as a result of the migration into the PSC Secretariat.

The employees will have a choice to choose to go into the Secretariat of the PSC or to explore other options of being transferred or seconded to other departments within the public service. Current employees will retain their condition of service under the Public Service Act of 1994.

All employees of the PSC are automatically deemed to be employed by the PSC Secretariat, once the Bill is signed into law and it has commenced. The PSC Business Case indicates that, the process of function shift will be administered by migration of the employees and resources from the Office of the Public Service Commission (OPSC) into the PSC Secretariat.

#### **5.17. Clause 17 – Delegation of Commission’s powers or functions**

The Public Service Commission may delegate its power to any committee or committees, one or more commissioners on such conditions and terms as the Commission may determine, in respect of functions entrusted to the Commission by or under this Bill or any other law relating to the Public Service Act and Regulations, PFMA and Treasury Regulations, local government or public entities, subject to such terms and conditions, as the Public Service Commission or its Chairperson may determine.

The Commission may not delegate its powers to make Rules by publication in the Gazette to anyone and the Commission may not delegate its power as Commissioners to an employee. The Commission is not divested of any power by virtue of any delegation.

## **PART IV - Finances and Accountability**

### **5.18. Clause 18 - Finances and Accountability**

The Chairperson is designated as the Executing Authority of the Public Service Commission.

The budget for the PSC is to be appropriated through the appropriation budget vote as a Constitutional Institution through a government department until such time when the Parliament is able to take on the role.

The Chief Executive Officer is the Accounting Officer for the PSC. This is to align the responsibility of the Chief Executive Officer in terms of section 38 of the PFMA of 1999.

Section 40 of the PFMA also provides that the Accounting Officer (Chief Executive Officer) is responsible for the submission of all reports, financial statements, notices and other information which he or she must compile and bring to the EA's attention for approval before submitting the report to National Treasury, Auditor-General, Parliament or any other external body or institution.

The PSC will operate its own bank account and its annual budget will comprise of monies appropriated by Parliament for its purpose and monies received as donations or grants, or management fees charges on an actual cost recovery basis on specific projects which may be conducted on the request of a state institution and fees that may be published and approved by National Treasury.

This is required as, the PSC will need to extend its mandate to the public entities listed in schedule 3A to 3D of the Public Finance Management Act of 1999 and local government on an incremental scale based on availability of resources. The Office of the Public Service Commission will be migrating into the Public Service Commission secretariat with its current budget and this provision will be utilized to establish the PSC Secretariat.

Additional budget on an incremental basis will be required for the implementation of the extended mandate to public entities and local government. The PSC may charge management fees that are gazetted and in consultation with National Treasury, for specific project.

## **PART V – General**

### **5.19. Clause 19 – Legal Proceedings by or against Commission.**

The PSC is a legal entity that can sue and be sued. The State Liability Act, No. 20 of 1957, applies to the PSC and reference in this act to the Executive Authority is construed as reference to the Chairperson of the PSC. The PSC Commissioners and employees are required to work in the best

interest of the Commission and must act in good faith to avoid liability in the exercise of their duties.

#### 5.20. **Clause 20 - Rules**

The PSC is empowered to make rules by Notice in the Gazette in relation to Grievance Rules, Complaints Rules, Rules on the Issuance of Summons, Rules to gazette fees payable for services that the PSC may render, any other matter permitted to be regulated under a rule, such as the PSC Governance Rules.

#### 5.21. **Clause 21- Repeal and amendment of laws**

The following law set out in first column of schedule 2 are repealed or amended or to the extent stated in column 3 of the schedule.

The commission notes that the different legislation will be amended to the extent stated in the schedule to align with this Act once the PSC Act is passed into law.

The PSC will need to be listed under schedule 1 of the Public Finance Management Act as a Constitutional Institution.

The Office of the Public Service Commission will be removed from Schedule 1 of the Public Service Act.

The Public Service Commission Act No. 46 of 1997 is repealed in its entirety.

#### 5.22. **Clause 22 - Transitional provisions**

The PSC shall maintain a bank account in the name of the PSC Secretariat and all current bank account of the OPSC will be deemed to be a bank account or cash held by the PSC Secretariat.

Rules made by the PSC before the enactment of this Act are deemed to have been enacted under this Act until amended or repealed.

The conditions of employment are considered as matters of mutual interest and shall remain in force and effect, as it was promulgated in terms of this Act.

#### 5.23. **Clause 23 - Short Title and Commencement**

The Act is called the Public Service Commission Act, 2023 and will come into effect on a date to be fixed by the President by Proclamation in the Gazette.

Different part of the Bill can come into operation at different dates.

The implementation of the PSC mandate to public entity and local government will happen on an incremental basis, depending on availability of resources.

**5.24. Schedule 1 - Oath and Solemn Affirmation of Commissioner**

The wordings of the Oath of Office to be administered by the relevant Judge President of the relevant division of the High Court or any other judge of the High Court designated by that Judge President in the terms set out in Schedule 1 is introduced. This oath must be taken by a commissioner upon an appointment. Each Commissioner must swear or solemnly affirm to be faithful to the Republic of South Africa and to hold his or her office with honour and dignity, to respect and uphold the Constitution and any other law of the Republic.

**5.25. Schedule 2 – Laws Repealed or Amended**

The following laws were repealed or amended to the extent shown on the third column of the table:

- Public Service Act, 1994;
- Public Service Commission Act, 1997;
- Independent Commission for the Remuneration of Public Office-bearers Act, 1997;
- Public Service Laws Amendment, 1998;
- The Local Government Municipal Systems Act, 2000.

**6. DEPARTMENTS / BODIES/ PERSONS TO BE CONSULTED**

National and provincial departments, local government, public entities and all stakeholders of the Public Service Commission and the public.

**7. PARLIAMENTARY PROCESS**

The Bill will be processed in terms of section 76 of the Constitution as the Bill affects the provinces.

**END**