



06 SEPTEMBER 2023

DRAFT ANALYSIS ON THE SUBMISSION FOR THE PUBLIC SERVICE AMENDMENT BILL [B13-2023]

1. Background

The purpose of the Public Service Amendment Bill is to:

- 1.1. Amend the Public Service Act, 1994 to provide for the devolution of administrative powers from executive authorities to heads of department and to augment the role of the Director-General in the Presidency to support the President.
- 1.2. Provide a mechanism to deal with the recovery of overpayments of remuneration and benefits to government employees and to clarify the role of the Public Service Commission in respect of grievances.
- 1.3. Clarify the role of the President and the Premier in respect of the appointment and career incidents of heads of departments.

2. Organisation submission

The following organisation and individuals have submitted written inputs to the Committee:

- 2.1 Local Government Advocacy Learning Network (LGALN)
- 2.2 Mr. Thulani Nzuzo
- 2.3 NEHAWU
- 2.4 Western Cape Province
- 2.5 Public Affair Research Institute
- 2.6 Helen Zusman Foundation
- 2.7 City of Cape Town
- 2.8 COSATU
- 2.9 South African Teachers Union (SAOU)

3. Submission and analysis

Name of the Person, Organisation or Institution	Original Clause	Proposal/outcome of new clause	Motivation	Analysis/Advice
Clause 1: Definitions				
SAOU	<p>Clause 1 of the Bill provides for amendments to the definitions of “executive authority” and “heads of department” contained in the principal Act, and the addition of a definition of “political office” for ease of interpretation.</p> <p>With regard to the definition of “executive authority”, the Bill provides for a new paragraph (b), which states that “‘executive authority’, in relation to a head of a national department or national government component, means the President and in relation to a head of the Office of a Premier, provincial department or provincial government component, means the Premier”. Section 85(1) and (2) of the Constitution provides that the executive authority of the Republic 12 is vested in the President and the President exercises the executive authority, together with the other members of the Cabinet. The proposed amendment is aligned to the policy objective, which seeks to clarify the role of the President as executive authority in respect of heads of department.</p>	<p>Section 1(a): Amendment of the definition of Executive Authority to include national departments or national government components without Cabinet Portfolios as well as a similar provision for provincial departments or components are mostly academic and is supported.</p> <p>Section 1(b): The amendment of the definition of Head of Department removes duplication between the definition and section 7(3) of the Act and is supported.</p> <p>Section 1(c): The insertion of “political office” for purposes of the newly proposed Section 36A is supported in principle.</p>	Supports the definitions as inserted in the Bill with regard to Executive Authority of both national and provincial government as well as definition of political office.	Revised definitions are well supported, and this will assist in the interpretation of the Bill.
NEHAWU		Section 85 of the Constitution of RSA defines Executive Authority and amendments should be in line with its definition.		
Public Affairs Research Institute		In Section 1, the definition of “executive authority” has been amended by the inclusion of a new paragraph (b), which reads, “‘executive authority’, in relation to a head of a national department or national government component, means the President and in relation to a head of the Office of a Premier, provincial department or provincial government component, means the Premier”.	Acknowledge the Bill’s aim of clarifying the role of the President as executive authority of Heads of Department (HODs) as per Section 85(1) and (2) of the Constitution. Propose that related clauses in the Bill are amended to address ambiguity and to further clarify the different roles of the Ministers/MEC and the President in relation to HOD’s.	Clarification of the role of the President/Premier as the Executive Authority will assist with the interpretation of the Bill for the advancement of the implementation of the clauses. Different roles of the Ministers/MECs are contained in section 3 (7) (a-f).

Clause 2: Powers and duties of the executive authority

<p>SAOU</p>	<p>Clause 2 of the Bill seeks to substitute section 3(7) of the principal Act, which regulates the powers and duties of the executive authority. Section 3(7) of the principal Act was redrafted to provide strategic powers to the executive authority and to remove administrative powers from the executive authority to enable the executive authority to focus on providing strategic and policy direction. The necessary checks and balances for the delineation of the powers between the executive authority and the head of department have been provided for to ensure accountability.</p> <p>Clause 2 further provides the executive authority with powers to intervene in the event that a head of department fails or refuses to fulfil a power or duty in terms of the Act. The provision is important as, currently, a head of department exercises administrative powers as delegated by an executive authority, who may withdraw the said delegation in the event that the head fails or refuses to perform certain powers or duties delegated to him or her. The devolution of administrative powers from the executive authority to the head of department means that the executive authority can no longer withdraw a delegation and therefore necessitates a process to allow the executive authority to intervene where justified.</p>	<p>Section 2(a) and (b): The amendment is semantic of nature and is supported.</p> <p>Section 2(c): The amendment of section 3(7) to confer strategic powers to the Executive Authorities and to make a clear distinction between the roles of Executive Authorities and Heads of Department is supported in principle. The SAOU is of the view that the Act should provide clear checks and balances to ensure that encroachment does not take place, and if possible, measures to report and address any form of political interference in the Heads of Department's administrative roles.</p> <p>Section 2(d): The deletion of section 3(8) is supported.</p> <p>Section 2(e): The insertion of section 3(9) after the deleted 3(8) is problematic in terms of numbering. If 3(8) is deleted, it should be replaced by the currently proposed 3(9). In as much as the content of the proposed subsection is supported, the SAOU is of the view that the subsection is misplaced and should follow the proposed section 7(3). It is therefore proposed that it be inserted as section 7(4).</p>	<p>Amendment is supported</p>	<p>Substituting original section in the principal Act provides for the uniformity with the Public Finance Management Act which has given financial powers to the heads of department. Previously there was a conflict or tension when both administrative and financial powers are divided between a head of department and Executive Authority. Current amended legislation envisaged providing both administrative and financial powers in the roles and responsibilities of the heads of department. Executive Authority will focus on strategic direction and oversight of the department.</p> <p>Reviewing roles and responsibilities of the Executive Authority to focus on strategic management will minimise political administrative tension used to exist in the public service due to the misalignment of Public Service Act and Public Finance Management Act.</p> <p>Subsection 3(9) is well placed as it guides the Executive Authority about the steps to follow in case head of department refuses or fails to fulfil a power or duty as required. However, this should be clearly stated that refuses or fails to fulfil the implementation of strategic direction in relation to the work of department in order to avoid encroachment on administrative issues.</p>
<p>Western Cape Government</p>		<p>The proposed section 3(7)(c) is administrative in nature and should be removed. The functional area must be defined to</p>	<p>The EA should be responsible for providing the strategic direction of the Department.</p>	<p>Subsection 3(7)(c) state that "an executive authority shall ensure that the head of department's role and responsibilities are</p>

		<p>avoid it being misinterpreted and that there is no risk of inappropriate political interference.</p>		<p>aligned to the strategic plan of the department”. During the performance contracting of the department, it become the Executive Authority prerogative to ensure alignment of the Head of Department performance agreement with the strategic plan of the department for purpose of measuring performance thereof.</p>
<p>Public Affairs Research Institute</p>		<p>The Bill proposes to amend Section 3 of the Public Service Act, adding a new subsection (9). The passage is ambiguous between the President/Premier as executive authority and the ministers/MECs as executive authority.</p>	<p>Propose that this be clarified by inserting executive authority “of the department” as follows: “If a head of department refuses or fails to fulfil a power or duty as required in terms of this Act, the executive authority of the department [our proposed insertion] may intervene by taking appropriate steps to ensure the fulfilment of that power or duty— (i) by issuing a written instruction to the head of department, describing the extent of the refusal or failure and stating any steps required to fulfil that power or duty; and (ii) in the event that the head of department fails to take such steps, the executive authority of the department [our proposed insertion] may report such failure to the President or the Premier, as the case may be.’’</p> <p>Suggest that it be made mandatory for the executive authority of a department to report such failures to the President/Premier. The proposed section should read: “[may] must report such failure to the President or the Premier.” Given the role of the President/Premier in appointing and disciplining HODs, the mandatory language would assist in ensuring that they are kept fully abreast of serious cases of breach of duty by HODs.</p> <p>Propose that the Bill move to unify the line of command running from the President/Premier, through the Cabinet/Executive Council and individual Minister/MEC, into the HOD and department. The first step</p>	<p>In terms of subsection 3(9)(a)(ii) the word “may” report be replaced with “must” report will minimise tension if any incidents get reported prematurely to the President or Premier. Therefore, the word “may” should be replaced with “must” report such failure.</p> <p>Section 3(7) and section 7 clearly clarifies the roles and responsibilities of the Executive Authority and Heads of Department.</p>

			to achieving this would be to clarify the powers and responsibilities of the President/Premier and the ministers/MECs respectively in the Bill. Proposed breaking section 3(7) into two parts dealing with the powers and responsibilities in relation to HODs and executive authorities.	
Clause 3: amend provision of section 5				
SAOU	Clause 3 of the Bill proposes to amend the provisions of section 5 of the principal Act by relocating section 3(8) of the principal Act to the new section 5(9). The provision is being amended to include the head of department and to provide for both the executive authority and the head of department to deal with any matter which relates to or arises from the employment or conditions of service of a person formerly employed in the public service.	The relocation and amendment of section 5 is supported.	Support the amendment of section 5	
NEHAWU		Proposed that amendment should include a sentence that “states that the function should be vested in one authority as it would limit tension between the executive authority and heads of department.		Since the administrative powers are bestowed to the heads of department, the function envisaged in section 5 should be under the accounting officers’ responsibilities to avoid any possibility of tension between the EA and HODs.
Western Cape Government		The proposed new section 5(9)(c) refers to a period of three (3) years after which the relevant EA or HOD shall not perform any act in respect of any person formerly employed in the public service. The Memorandum on the Objects of the Amendment Bill does not provide any explanation as to the determination of the period of three years.	The Memorandum on the Objects of the Amendment Bill should provide the rationale for the setting of the three-year period. This principle also applies to any other time periods referred to in the Amendment Bills discussed in this document.	Department would provide better clarification of three-year period.
Clause 4: devolution of administrative powers				
SAOU	Clause 4 of the Bill seeks to amend section 7(3) of the principal Act to provide for the devolution of administrative powers to heads of department in national departments, provincial departments and government components. The amendments to section 7(3) provide for the head of department to— (a) report to the executive authority as and when required; (b) assist the executive authority in fulfilling the executive authority’s accountability and responsibility obligations as contemplated in section 92 of the Constitution; and (c) implement the strategic plan. 3.4.2 In addition, clause 4	Section 7(3): The substitution of the subsection is supported. The insertion of section 3(f) to read as follows is proposed: “3(f) A head of department shall perform the powers entrusted or assigned to him or her free from interference by any political office. Any interference into the independent performance of powers in terms of this section or hindrance of the performance of such powers must be reported directly to the President.”	The insertion of section 3(f) to read as follows is proposed: “3(f) A head of department shall perform the powers entrusted or assigned to him or her free from interference by any political office. Any interference into the independent performance of powers in terms of this section or hindrance of the performance of such powers must be reported directly to the President.”	Insertion of 3(f) of allowing head of department to report to the President/or Premier any form of encroachment into the heads of department roles and responsibilities can be welcomed. Maybe the heads of department should report such to the head of the Presidency or head in the Office of the Premier, prior escalating the matters to the President/or Premier.

<p>Western Cape Government</p>	<p>seeks to amend section 7 of the principal Act to provide for additional functions of the Director-General in the Presidency to align with the NDP objective to create an administrative head of the public service to whom Directors-General would report on operational, organisational and administrative matters.</p>	<p>The Amendment Bill assigns responsibility to the Head of the Office of the Premier for intergovernmental relations on an administrative level between the various stakeholders referred to in the proposed section 7(3)(d)(ii). The proposed new section 7(3)(b)(i) requires a HOD to facilitate co-operation, co-ordination, and communication with all other relevant departments. There is a clear absence of a role-player in facilitating and mediating disputes between provincial departments.</p>	<p>It is recommended that the Head of the Office of a Premier should be responsible for the co-operative and intragovernmental relations between provincial departments in the event of disputes. Express provision to this effect should be made in the Amendment Bill.</p>	<p>As it was envisaged in the National Development Plan that the head of the Presidency/or head of the office of the Premier in both national and province would be responsible in managing career incidents which among includes facilitating and mediating disputes between national and provincial departments. Recommendation of Head of the Office of the Premier be responsible for the co-operative and intragovernmental relations between provincial departments in the event of disputes should be welcome.</p>
<p>Public Affairs Research Institute</p>	<p>Strongly support proposed amendments to Section 3(7) of the Act read with proposed amendments to Section 7(3)(b) of the Act to the extent that these clauses move authority and responsibility for administration, organisation, appointment, and wider human resource management of a national or provincial department from the executive authority of a department to the departmental head. Section 7(3)(c) stops short of outlining a role for the “Head of the Presidency” in supporting appointment processes of senior officials in the public service and managing their career incidents. Whilst we assume that the new proposed clause allows room for the President to assign such a responsibility to the Head of the Presidency, this would (as far as the legislation stands now) make this a discretionary decision on the part of the President.</p>	<p>Support proposed amendments to Section 3(7) of the Act read with proposed amendments to Section 7(3)(b) of the Bill.</p> <p>“The explanatory notes further state that the new clause seeks to, “provide for additional functions of the Director-General in the Presidency to align with the NDP objective to create an administrative head of the public service to whom Directors General would report on operational, organisational and administrative matters.”</p> <p>The new clause is welcomed to the extent that it defines in law a role for the Director-General in the Presidency to support coordination of government activity across the public service. However, argue that Section 7(3)(c) of the Bill should be strengthened to give better effect to the NDP and the Professionalisation Framework.</p> <p>The role of the head of the public service in supporting appointment processes and career progression of senior public servants is established</p>	<p>The institute support the alignment of the Public Service Act and the NDP in section 3(7) and section 7(3)(b).</p> <p>Section 7(3)(c) should have included some of the provision of the national framework on professionalising the public sector. However, at the later stage once the policy is fully implemented across the public sector, the department can amend the Act for the purposes of alignment with the framework on professionalising the public sector.</p> <p>Section 10 (b) of the principal Act title “qualifications and appointment” state that “No person shall be</p>	

		<p>The PSC, given its formal independence and mandate, and the public trust it has developed as a non-partisan body, has a potentially vital role to play in this regard. PARI has developed detailed proposals on the role that the PSC, with its independence suitably bolstered by the Public Service Commission Bill, could play in administering appointment processes.</p>	<p>in statute, this would make the head of the public service an important and powerful office. Additional protections will be needed to ensure that they perform their role with competence and integrity, which means that the Bill should consider elaborating a fit and proper standard and other requirements for potential appointees to the office.</p> <p>The Bill does not provide for the PSC to play a role in supporting these appointment processes</p>	<p>appointed permanently whether on probation or not, to the post establishment unless he or she (b) is a fit and proper person”. This standard has already been covered in the principal Act; however, the meritocratic appointment is not emphasised as requirement in the appointment as part of the amendments.</p> <p>However, it would have been prudent to amend the Public Service Amendments Bill in conjunction with the Public Service Commission Amendments Bill to ensure both bills are aligned and do not leave any administrative gaps/or loopholes. The PSC powers to administer the appointment processes should be the priority especially in senior and middle management levels.</p>
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Clause 5: Head of Department to appoint person

SAOU	Clause 5 of the Bill seeks to amend section 9 of the principal Act to provide the head of department with the authority to appoint persons in a department. The	The substitution of executive authority with head of department in this section is supported.		Support the substitution
Western Cape Government	The devolution of this power is to ensure the alignment of the financial responsibility with human resources administrative functions, which enables an executive authority to focus on providing strategic and policy direction.	This clause proposes the amendment of section 9 of the principal Act and provides that a HOD will prospectively have the power to appoint employees. The clause removes this power from an EA. “Please see our general policy comment in this regard”.	Removing executive authorities’ participation and decision-making powers will detract from their ability to account for delivery, via their departments, on their respective portfolios. The mechanism is fundamentally flawed and render oversight reliant on the flow of information.	Devolution of executive powers from administration in particular human resource management functions will minimise tension between political administration interfaces. In order to professionalise the public sector, powers should be given to the heads of department to manage human resource management. This will minimise appointments into senior position without prerequisite qualifications, skills and relevant experience which was experienced in the past years.

Clause 6: Head of Department and employee probation				
SAOU	Clause 6 of the Bill seeks to amend section 13 of the principal Act to provide that a head of department may appoint an employee on probation for such period as may be prescribed. The devolution of this power is to ensure the alignment of the financial responsibility with human resources administrative functions, which enables an executive authority to focus on providing strategic and policy direction.	The substitution of executive authority with head of department in this section is supported.		Support the substitution of executive authority with head of department
NEHAWU		The amendment bill is contradicting the current provisions contained in collective agreements and in the SAPS Act and will cause conflict (ref to submission pg 5).	The clause ensure alignment of the financial responsibility with human resource administrative functions, however contradict other existing provision.	Contradiction of other existing legislative prescripts should be clarified by the department as operations in certain departments differs.
Western Cape Government		Clause 6 proposes an amendment of section 13 of the principal Act to remove the power of an EA to appoint an employee on probation and rather confer the power on a HOD. "Please see our general policy comment in this regard"	Executive Authority who is accountable for the performance of a department, must be given or retain their participatory and decision-making powers that to human resource management, particularly the power to dismiss employees.	The Bill intends to devolve administrative powers from the executive authority as a means of curbing tension between the HODs and Executive Authority. Giving the Executive Authority certain administrative powers would not resolve the current crisis which the NDP and the Bill envisaged resolving.
Clause 7: Transfer of employees				
SAOU	Clause 7 of the Bill seeks to amend section 14 of the principal Act to provide the head of department with the authority to transfer employees within a department and to other departments.	In as much as the principle of the substitution of executive authority with head of department is supported, it must be noted that section 14 of the Public Service Act has been repealed by section 19 of the Public Administration Management Act 11 of 2014. This section is therefore no longer in existence for amendment and any amendment in this respect will have to be made in section 5 of the Public Administration Management Act 11 of 2014.		As much as section 5 of the the Public Administration Management Act provides for the mechanism for individual transfer, the Public Service Amendment Bill seeks to remove such powers of transfer from the executive authority to heads of department as this function fall within the purview of head of department as per the amendments.
NEHAWU		Section 14 of the PSA was repealed in its entirety in terms of section 19 of the Public Administration Management Act 11 of 2014 with effect from 1 April 2019.	The current circumstances in which transfers of employees within the public service may take place are regulated in terms of section 5 of the Public Administration Management Act. In terms of this section, an employee may only be transferred: (a) where reasonable grounds exist; (b) if the employee is suitably qualified; (c) if the employee requests or consents in writing to the transfer; and (d) within the institution by the relevant	

			<p>authority, or another institution with the concurrence of the relevant executive authorities.</p> <p>Propose the amendment should be deleted.</p>	
Western Cape Government		<p>Clause 7 proposes to amend section 14 of the principal Act, which deals with transfers of employees. At the same time, section 5 of the Public Administration Management Act, 2014 (Act 11 of 2014) (which is also the subject of amendment and discussed below) also deals with the transfers of employees within or between institutions. It is confusing why two statutes deal with the same subject matter and in an inconsistent manner. The inconsistency stems from, amongst others, the fact that in clause 7 of the Amendment Bill the EA is removed as the effective functionary who controls the transfer of employees and is replaced by the HOD. Section 5(2) of the Public</p>	<p>It is proposed that: (a) Only one statute deals with the subject of employee transfers, to avoid potential inconsistencies in interpretation thereof, and consequently, the application thereof. It is proposed that: (b) Only one statute deals with the subject of employee transfers, to avoid potential inconsistencies interpretation thereof, and consequently, the application there. It is proposed that: (c) Only one statute deals with the subject of employee transfers, to avoid potential inconsistencies in interpretation thereof, and consequently, the application thereof. (d) The statutes are rationalised. See our detailed comment on clause 2 of the Public Administration Management Amendment Bill. (e) All consequential amendments of the Amendment Bill must be considered, and express provision must be made to remedy and remove any inconsistencies.</p>	<p>Proposal of one statute to deal with the transfer of employee should be welcomed to avoid misinterpretation of both Acts and for consistency purposes.</p>
Clause 8: Continuation of employment				
SAOU	<p>Clause 8 of the Bill seeks to amend section 14A of the principal Act to provide for the continuation of employment when a person, who is already employed by an organ of state, is appointed in terms of section 9.</p>	<p>Section 14 of the Public Service Act has been repealed by section 19 of the Public Administration Management Act 11 of 2014. This section is therefore no longer in existence for amendment and any amendment in this respect will have to be made in section 5 of the Public Administration Management Act 11 of 2014.</p>		<p>The department will provide clarification in terms section 14 of the Public Service Act repealed by section 19 of the PAMAB.</p>
Western Cape Government		<p>It is recommended that the provisions of section 14A and the proposed amendments thereto be mirrored in section 15 of the principal Act, where applicable.</p>	<p>Proposed amend of the section.</p>	

Clause 9: Retirement and retention of services				
SAOU	Clause 9 of the Bill seeks to amend section 16 of the principal Act, which deals with retirement and the retention of services. It is proposed that the term “officer” be substituted with the defined term “employee”.	The substitution of officer with employee, executive authority with head of department, office with post and the deletion of an officer who occupies the office of are supported.		The devolution of this power is to ensure the alignment of the financial responsibility with human resources administrative functions, which enables an executive authority to focus on providing strategic and policy direction.
Western Cape Government	Furthermore, the proposed amendment seeks to provide the power to a head of department to authorise an employee to retire from the public service before reaching the age of 60. The devolution of this power is to ensure the alignment of the financial responsibility with human resources administrative functions, which enables an executive authority to focus on providing strategic and policy direction.	The proposed new section 16(2)(c)(i) contains the term “mutatis mutandis”. The expression is legalese, archaic and not understood by everyone. This section is the only instance in which the expression occurs in the principal Act.	It is proposed that the expression is substituted with the words “with the necessary changes required by the context”.	The word “mutatis mutandis” be rephrased with understandable words for every employee in the public service to easily understand unless it can be defined in the definitions.
Clause 10: prohibition of shorter notice of resignation				
SAOU	Clause 10 of the Bill seeks to amend section 16B of the principal Act to prohibit a head of department from agreeing to a shorter notice period for resignation, in instances where an employee wishes to resign after notice of disciplinary hearing was given against the employee. The devolution of this power is to ensure the alignment of the financial responsibility with human resources administrative functions, which enables an executive authority to focus on providing strategic and policy direction.	The substitution of executive authority with head of department in this section is supported		Substitution of head of department is for the alignment and devolution of administrative powers from EA to HODs.
Clause 11: Power to dismiss an employee				
SAOU	Clause 11 of the Bill seeks to amend section 17 of the principal Act to provide a head of department with the power to dismiss an employee. The devolution of this power is to ensure the alignment of the financial responsibility with human resources administrative functions, which enables an executive authority to focus on providing strategic and policy direction.	The substitution of executive authority with head of department in this section is supported.		Support the deletion of executive authority with head of department
Western Cape Government		It is understood that the clause confers on a HOD the power to dismiss an employee. In both the scenarios envisaged in the new proposed section 17(1)(a) and (b), the HOD is conferred the power to dismiss an employee. The proposed change means that in the case	In the absence of a delegation by the President or a Premier, as the case may be, an executive authority would not have any power to take disciplinary action against his or her head of department. If the proposed amendment of section 17(1)(a) and (b) is pursued, it is proposed that the clause is reconsidered and redrafted.	In case of the absence of the delegation by the President or a Premier, section 3(9)(a) of the amendment of the Act provides the remedy or procedure to deal with the HOD by stating that Executive Authority may report such failure to the President or the Premier. Section 3 further empower the executive

		<p>where the HOD is the employee concerned, the relevant Premier would, as EA, have to deal with the matter in terms of section 12 of the principal Act.</p> <p>It is submitted that the devolution of the power to dismiss, in particular in the absence of a delegation by the Premier, means that an EA whom a HOD must support and assist in fulfilling his or her accountability responsibilities (the new proposed section 7) in respect of the department concerned, would not have any power to take disciplinary action against that HOD. The effect of the devolution of these administrative powers, as pointed out in the general policy comments, is to limit an executive authority in exercising oversight and being accountable.</p>		<p>authority to exercise oversight and hold the head of department accountable.</p>
<p>Public Affairs Research Institute</p>		<p>The institute is concerned about the construction in the Bill will open a lacuna regarding dismissal of HODs. Specifically, the proposed section 17(1)(a) will allocate general powers of dismissal of departmental employees to HODs. The following section 17(1)(b) read with section 16B(1)(a) will assign powers of dismissal of HODs to the President/Premier, but only in cases of misconduct. The section 17(2) grounds for dismissal include not only misconduct, but also incapacity due to ill health or injury, operational requirements as per the Labour Relations Act, and incapacity due to poor work performance, but the Bill appears to provide for no concomitant</p>	<p>The Bill should clearly assign these powers to dismiss HODs on grounds not only of misconduct but also of ill health, poor performance, and operational requirements to the President/Premier.</p>	<p>Proposal seeks to provide HODs powers to dismiss an employee. Dismissal of HODs remain the power of the President or the Premier therefore it would not be subjected to any form of abuse. In addition, the head of the Presidency or Premier would also be responsible in managing career incidents of the HODs whilst the Executive Authority provide an oversight on the implementation of strategic direction of the department. Proposal to dismiss HODs on grounds of incapacity in relation to ill health, poor performance and operational requirements are already included in the Principal Act, Section 17 (2).</p>

		assignment of power to dismiss HODs on these grounds to the President/Premier		
Clause 12: remunerative work outside employment				
SAOU	Clause 12 of the Bill seeks to amend section 30 of the principal Act to provide that no employee shall perform or engage himself or herself to perform remunerative work outside his or her employment in the relevant department, except with the permission of the head of department. The devolution of this power is to ensure the alignment of the financial responsibility with human resources administrative functions, which enables an executive authority to focus on providing strategic and policy direction.	The substitution of executive authority with head of department and the correction of the reference to section 41(1)(b)(v) in this section are supported.		
Western Government	Cape	The proposed amendment to section 30 by the substitution of “executive authority” to “head of department” essentially now devolves the power of determining whether approval for an employee to perform or engage himself or herself to perform remunerative work outside his employment to only the head of the department. The concern here is that no appeal measure is offered. The implication therefore is that if a head of a department were to make the decision to not grant approval, an employee would have no form of recourse.	It is suggested that the clause be amended to include an appeal measure.	The Bill should provide appeal measures in case the head of department disapproved request of an employee to perform remunerative work outside his or her employment. Unless cover this aspect in the regulations.
		The period of 30 days seems insufficient considering the effect of the deeming provision, especially where the nature of the work being applied to be undertaken by the applicant employee could or may have an apparent conflict of interest or cause interference or impede with the efficient or effective performance of the applicant employee’s functions. This new substituted subclause may be subject to abuse by employees considering the functioning and the heavy load of the office of the HOD.	The period of time provided for before the deeming provision is applied must be changed to give more time to the HOD before the deeming provision is effective. Such an application is subject to a consideration process and thus a longer period is justified.	Propose longer period of deeming provision instead of 30 days. For sure there are reasons behind 30 days, the department would provide justification for the period.
		The clause provides that no employee may perform remunerative work outside of his or		It should be noted that not all HODs would be presumed to have remunerative work

		her department except with the written permission of the HOD. Per our general policy comment in this regard, the relevant Premier would be burdened with the task of approving these permissions in respect of HODs unless the Premier delegates the power.		outside his or her department. Therefore, the Premier would not be burdened by the task of approving these kinds of permissions in respect of the HODs. However, the Premier can delegate such responsibility to the Head of the Office of the Premier for scrutiny prior the approval.
Clause 13: Paying out of revenue				
SAOU	Clause 13 of the Bill seeks to amend section 31 of the principal Act to allow the head of department, in exceptional circumstances, to approve the paying out of revenue an amount equal to that salary, allowance, fee, bonus or honorarium, or a portion thereof, to an employee. The devolution of this power is to ensure the alignment of the financial responsibility with human resources administrative functions, which enables an executive authority to focus on providing strategic and policy direction.	Section 31: The substitution of officer with employee, executive authority with head of department, office with post, the clarity on the Public Service Commission, and the correction to the reference of section 30(b) are supported.		Removal of the word executive authority with the head of department is supported.
Western Cape Government	Clause 13 further seeks to make technical amendments to section 31(3) to take into account concepts already defined and to correct the reference to “section 30(b)”.	This clause gives a HOD the authority to approve allowances, bonuses etc., thereby removing this power from an EA.		
Clause 14: temporarily perform other functions				
SAOU	Clause 14 of the Bill seeks to amend section 32 of the principal Act to provide that— (a) a head of department may direct employees to temporarily perform other functions within the department; and (b) an executive authority may direct a head of department to temporarily perform other functions within the department; (c) an employee may be appointed to act in a post in the relevant department by the head of department or the employee occupying the post; and (d) an executive authority may appoint an employee to act as a head of department, after consultation with the President.	The amendments clarifying the roles of the executive authority in respect of the head of department and the head of department in respect of other employees are supported.		Although the amendment is supported in terms of the roles and responsibilities of HODs appointing any employees to perform other functions in the department and Executive Authority appointing any employee to act as HOD, the provision might be subjected to abuse if an acting period is not limited. For example, there are departments with acting DGs/or HODs who were appointed for acting capacity for the entire duration of over three to five years. Therefore, the Bill should regulate the acting period, especially for the Heads of Department, position of
NEHAWU		Rejects the amendment due to fact that number of posts remained and will remain unfilled.	The provision needs to be amended to ensure that posts are filled as soon as possible within the shortest time frame.	
Western Cape Government		It is submitted that the proposed arrangement in clause 14(b) that provides for a new section 32(2)(b)(ii) is problematic. It is impractical to require that the Premier must be consulted when appointing an acting HOD for a day or for a short leave period.	It is proposed that clause 14(b) provides that an EA may direct an employee to act in the HOD’s position for short periods, where the post is not vacant, the point being that flexibility must be provided for in the clause. The position where a post is not vacant should be clarified in the Amendment Bill	

				heads of department remains as long as the President/or Premier does not restructure national or provincial departments. Therefore, the limitation in terms of period for acting capacity should be clearly specified in the regulations of the Act with the consequences specified.
Clause 15: Procedure for grievances				
Coordinator Government Advocacy Network: Avin Bhola	Local and Learning	Clause 15 of the Bill seeks to amend section 35(5) of the principal Act to provide that the Minister for the Public Service and Administration shall be responsible to determine the procedure to be utilised when employees refer grievances within the department (i.e. the internal process).	Section 35 is being amended to clarify the role of the Public Service Commission in determining the internal grievance procedures. Our concern is that there is no mention of time periods to lodge grievances. Is this contained in another document detailing the grievance procedure? Does the same principle of time periods apply to disciplinary measures? We have noticed that disciplinary processes lay pending for years in the public service with the incumbent suspended on full pay and benefits. Strict time periods will eradicate this problem. The rest of the Bill is okay from the Networks assessment.	The Minister through the guidelines developed shall provide procedures detailing the time periods of grievances. However, the Bill does not emphasis consequence management in case grievances are not held within legislative timeframes. Grievance Procedure Policy is always subjected to consultation with organised unions in the Bargaining Council.
SAOU			Section 35(5): In as much as the amendment to the subsection is supported it is not clear how the amendment confers powers to the Minister as indicated in the Memorandum on the Objects of the Bill.	
NEHAWU			Proposed that the Commission's powers be subjected to any applicable collective agreement which seeks to regulate the procedure relating to grievances. Consider whether section 2 of the PSA sufficiently covers	

		situation where there is conflict between the Act and all other Acts governing employment in the public service.		
Mr T Nzuza		The specific concern is, the prescribed prohibition of re-employment periods does not provide for a minimum time that must be served before outside employment before something like "parole" kind of an administrative action may be considered as it is the case for sentenced offenders. The prohibition serves like one is in jail for the full period prescribed without option to be considered for parole i.e. if we look at the cases of Unfair Discrimination, Sexual Harassment, etc. the period of prohibition is 4 years.	Reconsider the prohibition periods applicable to various misconducts to an extent that one must have served at least half the prohibition period and then be eligible for re-employment. Then have the remaining period hanging over their head for the duration of the "supposed" prohibition period that would have been suspended, that if the same misconduct is committed before expiry of that period, then, the suspended prohibition is activated over and above what the employee would have been found guilty of.	
Clause 16: prohibit HODs and Employee from holding political office				
SAOU	Clause 16 of the Bill seeks to insert section 36A into the principal Act to prohibit a head of department and an employee directly reporting to the head of department from holding political office. The term "political office" has been defined to reflect the decision making echelon of political parties. Other political rights of heads of department and employees directly reporting to the head of department are unaffected by the amendment and they remain entitled to enjoy and exercise these rights freely. The purpose of the prohibition in respect of a head of department and an employee directly reporting to the head of department from holding office in a political party is to ensure that there is a clear delineation between the political and administrative roles and responsibilities for heads of department and the influence employees reporting to a head of department may have in the department. The provision is limited to heads of department and employees	Section 36A: In as much as the SAOU supports the principle to limit political interference, it is the view of the SAOU that the insertion does not go far enough to realise this objective. The prohibition should be extended to all incumbents in the Senior Management Service and the Middle Management Service and should be further extended to all managers of workplaces in the public service that functions independently. Political interference does not always start at the top management level and, in opinion has a greater impact at the inception of processes at lower levels in organisations.		Insertion of the clause was to align the Public Service Act with already enacted Municipal Systems Amendment Act, 2022 (Act 3 of 2022) as part of building a single/integrated public service in terms of norms and standards. The clause was to align with the proposal of the Public Administration Laws General Amendment Bill section 35 (a) on the "Limitation of political rights". The term "political office" has explicitly defined in the Bill. The HODs and employees reporting directing to are prohibited for holding political office would ensure they serves the interest of all citizens in an impartial and inclusive manner without being influenced by politics. Prohibitions of holding political office will minimise unethical conducts such as
Western Cape Government		The new proposed section 36A seeks to prohibit the HOD and employees reporting directly to the HOD from occupying certain	It is recommended that the National Parliament requests its legal team to consider the constitutionality of the proposed section 36A. Should the Bill be provided to the	

	<p>directly reporting to heads and employees of department as these heads are responsible for administrative decisions.</p>	<p>political positions, nationally, provincially and regionally, and grants such categories of people a period of one year to comply with this clause. This clause limits section 19 of the Constitution of the Republic of South Africa, 1996 (the Constitution), which deals with political rights.</p> <p>A limitation of a right in the Bill of Rights can only be justified by way of section 36 of the Constitution. The Memorandum on the Objects of the Amendment Bill does not contain an explanation on how the proposed limitation of the rights in section 19 has met the threshold requirements of section 36 of the Constitution. There is also no Socio-Economic Impact Assessment (SEIA) to elaborate thereon.</p> <p>It is, therefore, unclear on what basis the provision is constitutionally justified. This would need to be considered and explained. This clause is similar to section 71B of the Municipal Systems Amendment Act, 2022 (Act 3 of 2022). That section is currently the subject of debate in the local government sphere and may soon be challenged in court, if not already.</p>	<p>President in due course, and the constitutionality of the provision has not been confirmed, it is recommended that the President of the Republic of South Africa refers the Bill back to the National Assembly for consideration of the constitutionality of this provision (refer to section 79(1) of the Constitution).</p> <p>Further, a copy of the SEIA is requested. If a SEIA has not been prepared, it is recommended that this be attended to.</p> <p>Further, it is recommended that the Memorandum on the Objects of the Bill be amended to provided clarity on how the proposed section 36A meets the requirements of section 36 of the Constitution.</p> <p>Further, the meaning of “hold[ing] political office” would need to be clarified.</p>	<p>patronage. Therefore, HODs and employees reporting directly to HODs remain key strategic positions. Therefore, these positions should ensure their duties serves the collective rather than being partisan. This would limit political involvement or interface in the administration. Principle of apolitical public service should prevail at all costs in an effort to professionalise the public sector.</p> <p>Proposal on the definition of “political office be extended to include membership of a party’s executive committee” can be welcome.</p>
<p>Public Affairs Research Institute</p>		<p>Strongly support the amendment of Section 36 by the insertion of a new clause (36A) which prohibits an HOD or an employee directly reporting to the HOD from holding political office in a political party, whether in a permanent, temporary, or acting capacity.</p>	<p>Propose that the definition of political office is extended to include membership of a party’s executive committee.</p> <p>Propose that section 36A be extended to prohibit all public servants from holding office within political parties.</p>	

		Political office is defined in the Bill as: ”(a) the position of chairperson, deputy chairperson, secretary, deputy secretary or treasurer of the party nationally or in a province, region or other area in which the party operates; or (b) any position in the party equivalent to a position referred to in paragraph (a), irrespective of the title designated to the position”		
COSATU		The limitation of political rights is a sensitive and a constitutional matter. It needs to be handled delicately and with the necessary sobriety. The initial drafting of the Bill sought to ban all 1.2 million public servants from holding office in a political party. This was clearly constitutional overreach and would have moved from a mere constitutional limitation to an outright ban of a large number of people’s constitutional rights.	Pleased with the provisions in the Bill that restricts these limitations to heads of departments and those officials reporting directly to them. This is rational and fair and can pass constitutional muster and thus COSATU supports the clauses providing for this in the Bill	
Clause 17: granting an employee salary higher than minimum amounts				
SAOU	Clause 17 of the Bill seeks to amend section 37 of the principal Act to permit the head of department, if it is allowed by a regulation and to the extent prescribed, to grant an employee salaries higher than the minimum amounts of 15 the appropriate salary levels of the applicable salary scale, grant them special advancement in salaries within the salary scale applicable to them and grant them a salary in accordance with a higher salary level or any other reward, if they have an exceptional ability or special qualification. The devolution of this power is to ensure the alignment of the financial responsibility with human resources administrative functions, which enables an executive	The substitution of executive authority with head of department in this section is supported.		Support the amendment however the regulations can safeguard the process by outlining the procedure.
NEHAWU		Proposed that the head of department be granted the power to determine higher salaries and special advancements, it is not clear how this will be monitored. How will the head of department determine which employees may be eligible for higher salaries? And what constitutes exceptional abilities or special qualifications?	Proposed that consideration be given to the insertion of sufficient safeguards to ensure consistent and fair implementation of this provision and to prevent an abuse of power.	

	authority to focus on providing strategic and policy direction.			
Clause 18: Remuneration wrongly granted				
SAOU	Clause 18 of the Bill seeks to amend section 38(2)(b)(i) of the principal Act, which deals with the recovery of remuneration that was wrongly granted to an employee. The provision was declared unconstitutional by the Constitutional Court in the matter of Public Servants Association obo Ubogu v Head of the Department of Health, Gauteng and Others 2018 (2) BCLR 184 (CC). The amendment seeks to align with the provisions of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), and sets in place mechanisms to ensure that the rights of employees are not undermined.	The principle of legal proceedings contained in the amendment of section 38 is supported as it complies with the requirement of the BCEA that no monies will be deducted without the employee's consent. The Act should however also provide for a procedure that precedes legal proceedings, or such procedure may be contained in Regulations. The fact that the Act complies with the BCEA does not mean that public servants will not be subjected to unnecessary and unaffordable legal action. The following is proposed to be inserted into the Act or be contained in Regulations issued in terms of the Act:- i The head of department must confirm the amount of the alleged overpayment. ii The employee should be allowed to make representations before legal action is instituted. iii The amount deducted must take into account the nature of the employee's income and current financial obligations and may not exceed 25% of the employee's salary.		In agreement with the proposal to insert into the Act or be contained in Regulations the following:- (i) The head of department must confirm the amount of the alleged overpayment. (ii) The employee should be allowed to make representations before legal action is instituted. (iii) The amount deducted must take into account the nature of the employee's income and current financial obligations and may not exceed 25% of the employee's salary. A consensus between employer and employee should be reached in terms of repayment of the monies in various instalments. Proposed section 38(2)(b)(i) that the employer may institute legal proceedings for the recovery of any overpayments.
NEHAWU		Proposed amendment to section 38(2)(b) does not go far enough. If the purpose of the amendment is to align the provision with section 34 of the BCEA, the State will require the agreement of the employee concerned.	NEHAWU oppose the amendment as it stands and require that agreement be obtained from the employee concerned in respect of the repayment of any overpayment. Further proposed the amendment be revised taking into account the views expressed by the Constitutional Court (reference to submission).	
Western Cape Government		In the proposed section 38(2)(b), it should not be assumed that there has been an	Proposed revision of the clause	

		<p>overpayment. This would first have to be determined. It should rather be stated in the proposed section 38(2)(b)(i) that the employer may institute legal proceedings for the recovery of any overpayments.</p>		
<p>COSATU</p>		<p>The recovery of overpayments to officials whilst legally acceptable needs to be handled with care to avoid inadvertently plunging workers and their families into financial hardship.</p>	<p>Propose that the Bill reinsert agreed provisions in the Bill as signed at NEDLAC by government, labour and business. The agreed insertion are as follows:</p> <p><i>“(b) by the substitution in subsection (2) for paragraph (b)(i) of the following paragraph:</i></p> <p><i>“(i) <u>an accounting officer may recover such overpayment by way of deduction from the employee’s salary with the consent of the employee and, where no consent is provided, if the accounting officer confirms—</u></i></p> <p><i>aa) <u>the amount of the overpayment;</u></i></p> <p><i>(bb) <u>that the employee was afforded an opportunity to make representations regarding the employee’s affordability to repay the amount in monthly instalments and such representation was duly considered;</u></i></p> <p><i>(cc) <u>the amount to be deducted takes into account the nature of the employee’s income and current financial obligations;</u></i></p> <p><i>and</i></p> <p><i>(cc) <u>that the total deduction is not more than one-quarter of the employee’s monthly salary;</u></i></p> <p><i>(b) by the insertion in paragraph (b) of subsection (2) of subparagraphs (iA), (iB), (iC) and (iD) after subparagraph (i):</i></p> <p><i>“(iA) <u>an accounting officer shall, in the event that the person is no longer in the employ of a department, recover such amount by way of a deduction from any monies owing to such person by the State or by way of legal proceedings;</u></i></p> <p><i>(iB) <u>an accounting officer shall, in the event that the</u></i></p>	

			<p><u>employee is in the employ of another department, request the accounting officer of that other department to recover the overpayment made as contemplated in paragraph (b)(i).</u></p> <p><u>(iC) an employee affected by a deduction made in terms of paragraph (b)(i) may appeal against the decision of the accounting officer to the relevant executive authority;</u></p> <p><u>(iD) where an employee lodges an appeal contemplated in paragraph (b)(iC), the deduction as referred to in paragraph (b)(i) may only be given effect to after the relevant executive authority confirms the deduction;”</u></p>	
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Clause 19: President’s power to delegate

SAOU	Clause 19 of the Bill seeks to clarify the interpretational challenges in section 42A(3)(a) of the principal Act in so far as they relate to the President’s power to delegate matters relating to the appointment and career incidents of heads of department. This section is proposed to be amended to substitute the current references to “Deputy President” and “Minister” in the principal Act with a reference to “a member of Cabinet”.	Section 42A: The amendment is supported.		Substitution of the references from principal Act of “Deputy President” and “Minister” to a “Member of Cabinet” conferred in terms of section 12 is progressive. The amendment provides the President to delegate his/her powers in line with section 12 of the principal Act to any member of Cabinet to exercise them on his/her behalf.
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Clause 20: short title of the Bill

	Clause 20 of the Bill provides for the short title of the Bill, once enacted, which is the Public Service Amendment Act, 2023.			
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GENERAL COMMENTS

Helen Suzman Foundation	Role of the PSC in appointment process is silent in the Bill	The Bill laudably devolves operational functions to administrative heads of department, away from their political executive authorities, the absence of a role for the Public Service Commission (“PSC”) in appointing administrative heads of department in the first place means the Bill stops short of meaningfully insulating them from		The PSC role in overseeing all appointments of the SMS members in the public service was not incorporated in the Public Service Amendment Bill. This might be factor in the Public Service Commission Amendments Bill.
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		<p>undue political influence;</p> <p>The absence of the PSC's role in appointments is most concerning in relation to the Bill's proposed national head of the public service ("HOPS") in the Presidency; and</p> <p>The Bill should give the PSC a real role in settling grievances lodged thereto by placing an obligation on executive authorities to provide reasons to the PSC if they do not implement its recommendations.</p>		
City of Cape Town		Submissions was for PAMAB not PSAB.		

4. Conclusion

Submissions have been received and analysed. The next step is for the Committee to deliberate within itself. After hearing multi-party perspectives, it would be prudent to call in the stakeholders and those who made submissions to present their cases on the Bill for further clarity and deliberations.