Annexure A

Comments on the Public Service Amendment Bill [B 13—2023] and the Public Administration Management Amendment Bill [B 10—2023]

Submitted by: The Western Cape Government

Clause	Comment	Suggestion / Recommendation
Public Service Amendment Bill **General: Amendment Bill in current form not supported**		
Amendment Bill in current form not supported	The Amendment Bill, in its current form, is not supported, for the reasons set out in this document.	Revise the Bill in line with the comments set out herein.
Public Service Amendment Bill **Part A: comments on specific provisions**		
Clause 2:	The proposed section 3(7)*(c)* is administrative in nature and should be removed. The functional area must be defined to avoid it being misinterpreted and that there is no risk of inappropriate political interference.	The EA should be responsible for providing the strategic direction of the Department.
Clause 3:	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.

Clause 4:	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.	It is recommended that the Head of the Office of a Premier should be responsible for the co-operative and intra-governmental relations between provincial departments in the event of disputes. Express provision to this effect should be made in the Amendment Bill.
Clause 5:	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.	Refer to general comment in the letter.
Clause 6:	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.	Refer to general comment in the letter.
Clause 7:	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	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.

	Administration Management Act, 2014, provides that an employee may only be transferred— "*(a) where reasonable grounds exist;* *(b) if the employee is suitably qualified, as envisaged in section 20 (3) to (5) of the Employment Equity Act, 1998 (Act No. 55 of 1998), for the intended position upon transfer;* *if the employee requests or consents in writing to the transfer; and* *(d) within that institution by the relevant authority, or to another institution with the concurrence of the relevant executive authorities of the transferring and recipient institutions*" (emphasis added). The Public Administration Management Amendment Bill in clause 2 removes the reference to the relevant authority, but retains the reference to concurrence of the relevant executive authorities. This results in inconsistency between the two statutes, despite the proposed inclusion of clause 14 in the Public Administration Management Amendment Bill.	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.
Clause 8:	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.	Amend as required.
Clause 9*(b)*:	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".

Clause 11:	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 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. Please see our general policy comment in this regard. 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.	If the proposed amendment of section 17(1)*(a)* and *(b)* is pursued (see our general policy comment in this regard), it is proposed that the clause is reconsidered and redrafted.
Clause 12:	The clause proposes the amendment of section 30 and devolves the power to authorise remunerative work outside of the employees work to a HOD, thereby removing it from an EA. See our general policy comment in this regard. 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.	Refer to the general comment in the letter. Further, it is suggested that the clause be amended to include an appeal measure.

	Clause 12 seeks to substitute section 30(3)*(b)* of the principal Act by creating a deeming provision to the effect that should the HOD fail to take a decision within 30 days regarding an application by an employee to undertake remunerated work outside the public service, the HOD will be deemed to have granted consent to that employee. 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. The time period allowed before the deeming provision applies, seems to be too short considering the effect of such a deeming provision, and that there may be various valid reasons why the HOD may not have been able to respond to the request within the stipulated time of 30 days. 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.
	The clause provides that no employee may perform remunerative work outside of his or 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.	Refer to the general comment in the letter.
Clause 13:	This clause gives a HOD the authority to approve allowances, bonuses etc., thereby removing this power from an EA. See our general policy comment in this regard.	Refer to the general comment in the letter.

Clause 14*(b)*:	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.
Clause 16:	Clause 16 inserts a new section 36A into the principal Act. The new proposed section 36A seeks to prohibit the HOD and employees reporting directly to the HOD from occupying certain 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. Section 19 of the Constitution reads as follows: "*(1) Every citizen is free to make political choices, which includes the right—* *(a) to form a political party;* *(b) to participate in the activities of, or recruit members for, a political party; and* *(c) to campaign for a political party or cause.* *(2) …* *(3) Every adult citizen has the right—* *(a) to vote in elections for any legislative body established in terms of the Constitution and to do so in secret; and* *(b) to stand for public office and, if elected, to hold office*".	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 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). Further, a copy of the SEIA is requested. If a SEIA has not been prepared, it is recommended that this be attended to.

	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. Furthermore, the application of the provision to certain categories of employees seems arbitrary. It is not clear why it only applies to that category only and not to others. 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.	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. Further, the meaning of "*hold[ing] political office*" would need to be clarified.
Clause 18:	In the proposed section 38(2)*(b)*, it should not be assumed that there has been an 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 <u>institute</u> legal proceedings for the recovery of any overpayments.	Revise the clause accordingly.

Public Service Amendment Bill **Part B: General comments**		
General legal technical comments	The Amendment Bill contains numerous language and drafting errors. Some of the errors are as follows (this is not a closed list): • Certain spaces are underlined by mistake e.g. the space before the proposed section 32(2)*(b)*(iii) was underlined (this should be deleted). • The language style of the principal Act is that is uses the archaic term "shall". Being an Amendment Bill, the language style must be continued, albeit archaic, to ensure consistency. It is noted that in certain instances, the word "must" is used instead e.g. clause 2*(c)*. • Double inverted commas are used in definitions when it should be single inverted commas (e.g. refer to the definition of "head of department"). • The formatting of certain provisions is incorrect e.g. the proposed section 32(2)*(b)*.	To improve the text, it is recommended that the legislative drafter review the Amendment Bill using generally accepted Commonwealth legislative drafting practices, as well as enlist the support of a language practitioner familiar with these practices.
SEIA	It is unclear whether a SEIA was undertaken in respect of the Amendment Bill, which would have informed the rationale for the provisions and investigated all the potential consequences thereof (intended and unintended).	A copy of the SEIA is requested. Further, it is recommended that the SEIA be made available to the public for consideration. If a SEIA has not been undertaken, it is recommended that this be attended to, and that the SEIA be made available to the public for consideration.

Public Administration Management Amendment Bill **General: Amendment Bill in current form not supported**		
Amendment Bill in current form not supported	The Amendment Bill, in its current form, is not supported, for the reasons set out in this document.	Revise the Amendment Bill as set out herein.
Public Administration Management Amendment Bill **Part A: Comments on specific provisions**		
Clause 1:	No definition for "second" (i.e. secondment) is provided for. It is imperative that a definition for the term is provided for purposes of clarity.	It is proposed that a definition for the term "second" is included in the Amendment Bill.
Clause 2:	Clarity is required on who will be required to bear any resettlement costs.	Provide the necessary clarity.
	Clause 2 of the Bill permits individual transfers of staff between national, provincial and municipalities "*in a manner and on such conditions as prescribed*". Presumably this will be in the regulations to be issued in terms of the Act. It is recommended that such regulations address pertinent issues related to transfers, particularly transfers between national or provincial department and municipalities, as the salary and related benefits structures between these three spheres of government vary.	The regulations that will be issued in terms of the amended Act (i.e. as amended by the Amendment Bill) will need to be thoroughly considered and consulted on with all the various stakeholders as the financial implications are expected to be great, considering the salaries of people currently employed in the local government sphere vary greatly with those of people in the national or provincial government sphere.

Clause 3:	Whilst it has always been the position in section 6 of the principal Act that a secondment can be made in the absence of consent of an employee if the secondment is "justified", clarity is required on what is now meant by "operationally justified". There is no elaboration of what may be considered "operationally justified". The term is also not defined anywhere in the text of the Amendment Bill. This gap leaves too wide of a net for interpretation and may result in inconsistent and possibly unfair application. As stated above, the principal Act position is restricted to the secondment having to be "justified". Clause 3 now proposes to qualify the justification by requiring it to be operationally based. Inserting the word "operationally" has the effect of implying that secondment will only be permitted for no other reason but operational reasons, whatever that is intended to mean. It may therefore exclude secondment if it is for economic reasons or any other legitimate or justifiable reason. There are inconsistencies between the Amendment Bill and the provisions of the Public Service Amendment Bill and the Public Service Act, 1994, and it is important that there be alignment.	Provide the necessary clarity and alignment. It is suggested that instances which would constitute "operationally justified" are set out in more detail. Alternatively, a definition of "operationally justified" should be provided.
Clause 5:	The Department of Public Service and Administration presented its policy basis for the amendments proposed in clause 5 on 29 April 2021 to the WCG. Having had the benefit of the presentation, it is understood that the rationale for the proposed insertion for the definition of "director" and the exclusion of an employee appointed as an *ex officio* director of a public entity from the prohibition that employees may	It is therefore proposed that the term "*ex-officio*" director is clarified by including a definition for "*ex-officio*" to include employees who are nominated to serve on boards of state-owned companies by members of the executive acting under a power

	not conduct business with the State, now organs of state, is to limit the prohibition and remedy what has transpired to be an unintended consequence of the broadness of the prohibition. The remedy proposed is to exclude employees, who by virtue of their employment must serve on boards of public entities from the prohibition. Whilst this is noted, it must be appreciated that the term "*ex- officio*" membership of a board is usually attached to a specific post, regardless of whether the incumbent is an employee or not. The remedy (exclusion of *ex-officio* directors from the prohibition) that is proposed may, therefore, be too blunt a mechanism to remedy the unintended consequences.	conferred in the member of the executive by legislation or under the memorandum of incorporation of that state-owned company. What constitutes a clear oversight, is the fact that employees are not prohibited from owning or co-owning companies that conduct business with organs of state. It is not clear why the prohibition is limited to management and control of companies as more benefit could be derived from ownership. It is further recommended that all potential consequences of this clause be investigated; intended and unintended, and that problematic unintended consequences are addressed.
	The new proposed section 8(4) provides that the Minister may prescribe that certain transactions between an employee and the organs of state that are "*remunerative but not for profit*" do not constitute conducting business with organs of state for the purposes of section 8. No guidance for the exercise of this power is provided for and the new proposed section is open-ended and potentially open to abuse. By its very definition, the word "remunerative" implies a financial / monetary transaction. Whether for a direct financial profit or not, there may still be "profit" which would come out of conducting business with organs of state. The insertion of this new section would not appear to meet the objects of the clause then, as it provides	It is suggested that the clause be reconsidered and deleted. Alternatively, it is suggested that clarity be provided in what is meant by the term "*remunerative but not for profit*" and that examples of instances which would be considered "*remunerative but not for profit*" is provided. A further alternative is for the clause to be redrafted to capture the true intention of the drafters. Clear guidance should be

	an extension which, from a reading of the section, goes against (what may be read to be) the intention of the drafters.	provided to the Minister in the proposed new section 8(4) when exercising the power to prescribe.
	Not for profit companies are permitted to pay out salaries to directors. If the purpose of the provision is to limit conflicts of interest the exception could serve as a loophole.	It is recommended that the provision, in addition to the guidance referred to above, includes wording that the envisaged regulations would provide limits or mechanisms to determine limits to avoid abuse.
	By amending section 8(1) to the extent that any employee is prohibited from being a director of a company incorporated in terms of the Companies Act, 2008, which conducts business with organs of state, the provision unduly limits and prohibits employees in the public sector to be directors on not-for-profit companies as part of their voluntary service towards the well-being of society at large.	The proposed amendment should be revised and redrafted to the extent that it still enables employees to be directors of not-for-profit companies but with limitations imposed.
Clause 6:	The proposed new section 8A provides for the conduct of an employee or former employee participating in an award of work to service providers. Contracts between organs of state / institutions and service providers may sometimes be for a once-off service, a period of three months and sometimes up to a period of five years, for example. An employee limited by this section for "12 months" where the contract between the institution and the service provider is for five years, may not have the same effect of limitation where the contract with the service provider is for only three months, for example. The above would apply in the instance described in the proposed section 8A(2) as well, where the prohibition is in respect of the service provider.	It is suggested that the limitation not be for a period of 12 months after the conclusion of the contract, given the different periods in which a contract may be valid. It is suggested that the limitation rather be for up until the actual termination of the contract and a further 12 months thereafter.

Clause 7:	The duty to disclose is provided for in section 9 of the principal Act. The section requires "an employee" to disclose their financial interests **<u>and</u>** "*the financial interests of his or her spouse and a person living with that person as if they were married to each other*…" (emphasis added). It is submitted that this obligation for all employees to disclose is too administratively burdensome and may not prove practical to monitor. Further, the extension of the duty for spouses and "*a person living with that person as if they were married to each other*…" to also disclose, is an additional unnecessarily excessive measure. The duty to disclose should perhaps only be restricted to officials of a certain influence (those in supply chain management, and finance for example) and also those who are of a certain employment level (Level 9 upwards and OSD equivalents) for example. The addition of subsection 3 is supported.	It is suggested that the duty to disclose is limited to employees who may have certain influence and those who are of a certain employment level. It is further suggested that the extension of the duty for spouses and "*a person living with that person as if they were married to each other*…" is removed.
Clause 8:	The amendment requires making budget available for development needs – this is not subject to progressive realisation within available resources.	While in the context of fiscal constraints this is an additional fiscal requirement, it is acknowledged that it is essential to meet developmental needs to ensure human resources are effective and can provide necessary levels of service delivery.

Clause 9:	The new proposed section 11(2)*(a)* places a duty on the School to provide training and education courses or cause training and education courses to be provided in the public administration. Equally, the new proposed section 11(2)*(c)* should make it obligatory and not discretionary for the School to conduct tests, or cause tests to be conducted, in respect of training and education courses.	It is proposed that the word "may" in the new proposed section 11(2)*(c)* must be substituted with the word "must".
	The proposed section 11(2)*(f)* provides that the National School of Government ("NSG") **may**, subject to the National Qualifications Framework Act, 2008, "*issue qualifications, part-qualification or certificates on the successful completion of education and training programmes or courses or cause such qualifications, part-qualification or certificates to be issued.*'' (emphasis added). It is submitted that following successful completion of an education or training programme, the issuing of qualification or part-qualifications or certificates (even of successful attendance or completion) should be a mandatory provision for the NSG and not a discretionary one. In order to show completion of a course or competence in respect of a certain field, the submitting of a qualification or certificate in respect of same would be used in support. This would assist in ensuring, after having produced proof of successful completion through a certificate, qualification or part-qualification, that suitably trained, suitably qualified and suitably competent officials are directed to areas in the public service where they are best suited, aiding in service delivery and a competent government. In order to reduce the potentially administrative burden, the issuing of these certificates or qualifications may also be issued electronically.	It is recommended that the word "may" in the proposed section 11(2)*(f)* be changed to the word "must".

Clause 12:	Section 16 of the principal Act provides that when the Minister intends to prescribe norms and standards on a host of issues, for example, financial disclosures, to give effect to the implementation and administration of the Act, the Minister must do so in consultation with EAs. Following the presentation by the DPSA on 29 April 2021, it is understood that the motivation for the proposed change is practicality since it is impractical to consult all EAs. Paragraph 2.13 of the Memorandum on the Objects of the Amendment Bill states that what is envisaged is that the norms and standards will, going forward, be issued in terms of the process contemplated in section 18 of the principal Act. Section 18(1) of the principal Act is not proposed for amendment which means that section 18(1)*(c)* will have to be relied on to prescribe the norms and standards. Whether this will be permissible given the inherent constraints of relying on an omnibus provision, is uncertain.	It is therefore proposed that, should the proposed deletion of section 16(2) be pursued, section 18 is amended to expressly provide that the Minister may make regulations on norms and standards.
	Consultations with relevant EAs when prescribing norms and standards on the topics listed in section 16(1) of the principal Act enables the development of norms and standards which may be meaningful and relevant based on the acumen and experience of EAs and their departments or institutions.	It is proposed that section 16(2) of the principal Act is retained so that minimum norms and standards must be prescribed after consultation with relevant EAs.

Clause 14:	The stated purpose of the insertion is to eliminate unjustifiable disparities in public administration. The term "unjustifiable disparities" must be clarified. Further, it is noted that the committee of ministers must establish an inter-governmental forum, which will include representation by Premiers and Deputy Ministers. It is unclear why provincial Ministers have been omitted.	It is recommended that clarity for the term "*unjustifiable disparities*" be expressly provided for. Further, it is recommended that provincial Ministers be included on the inter-governmental forum.
	Clause 14 inserts two new proposed sections i.e. sections 17A and 17B, respectively. The proposed section 17A addresses the "*[r]emoval of disparities in the public administration*" and provides that the Minister responsible for public administration may, subject to applicable labour legislation, collective agreements and legislation applicable to public administration, and after consultation with the relevant Minister, prescribe certain norms and standards and steps to remove unjustifiable disparities. The steps to remove unjustifiable disparities, according to the proposed clause may not reduce the salary of an employee except in terms of an Act of Parliament or a collective agreement. The group of employees who are affected by such disparity removals which will result in a reduction of salaries and benefits despite the provisions of the proposed section 17A*(b)*, will resist such change, and if they are part of a majority trade union, may bring about a stall to such a process. The proposed section 17B provides that no employer in the public administration may enter into a collective agreement pertaining to conditions of service with financial implications or determine them for their employees without a mandate from a Committee of Ministers, as provided for in the Amendment Bill. This, therefore, limits the bargaining power of that employer as provided for in legislation. Some	It is recommended that further consultation be facilitated with all affected parties before the proposed sections 17A and 17B are brought into operation.

	employers who wish to and can afford to enter into such negotiations and conclude collective agreements on conditions of service, may nonetheless be denied from doing so if the Committee of Ministers do not give them the mandate. This may lead to work instability and may negatively affect service delivery in that particular employer due to this.	
Public Administration Management Amendment Bill **Part B: General comments**		
SEIA:	It is unclear whether a SEIA was undertaken in respect of the Amendment Bill, which would have informed the rationale for the provisions and investigated all the potential consequences thereof (intended and unintended).	A copy of the SEIA is requested. Further, it is recommended that a copy of the SEIA be made available to the public for consideration. If a SEIA has not been undertaken, it is recommended that this be attended to, and that the SEIA be made available to the public for consideration.
Local government	The principal Act already contains various provisions relating to municipalities. It is noted that the principal Act includes municipalities under the definition of "*public administration*". The Amendment Bill contains detailed and explicit provisions relating to municipalities, including further references to legislation that apply thereto. The Amendment Bill seeks to create a single, professional public administration governed by one piece of legislation across all the three spheres of government. It, therefore, aims to regulate all spheres of government. In the circumstances, the Amendment Bill will invariably have a big impact on the local government sphere.	N/A

General legal technical comments	The Amendment Bill contains numerous language and drafting errors. Some of the errors are as follows (this is not a closed list): • Certain inverted commas do not face the right direction e.g. refer to the definition of "public service". • Certain inverted commas are not in bold e.g. the definition of "organ of state" and the closing inverted comma in "12-month period" in the proposed section 8A*(c)*. • Spaces were omitted in certain instances e.g. refer to the citation of the Public Finance Management Act, 1999 (Act 1 of 1999) in the definition of "public entity". • Certain proposed sections define words in brackets. A separate subsection should be used to define terms that are only used in a section and not the Act as a whole. • Certain parts of a proposed section are not underlined e.g. the full stop at the end of the proposed section 11(2).	To improve the text, it is recommended that the legislative drafter review the Amendment Bill using generally accepted Commonwealth legislative drafting practices, as well as enlist the support of a language practitioner familiar with these practices.

Additional Comments **Public Administration Management Act, 2014: comments on the Principal Act**
The Western Cape Government submitted comments on the principal Act prior to its enactment. Whilst some comments were addressed, a number of comments were not. Given the proposed amendment of the principal Act, this is an apt opportunity to raise these remaining shortcomings in the principal Act. It would therefore be remiss of us not to point out the remaining shortcomings in the principal Act.

The concept of "financial interest" and "benefit":	It is not clear what constitutes a "financial interest" or a "benefit". It is unclear whether "financial interests" would, for example, include interest on capital assets or shares as part of annuities. This uncertainty may lead to issues of interpretation and unintended consequences as well as being extremely administratively burdensome, for example, would annuities, maintenance or pension benefits be considered a financial interest? It is proposed that a "financial interest" must be defined narrowly. Given the administrative impact on institutions in having to implement section 9 when it commences, it is further proposed that a threshold for nominal financial interest is set in the principal Act in respect of which an employee would not be required to disclose his or her interest.
The duty to disclose:	It could be extremely administratively burdensome to require disclosure of all financial interests, even nominal interests in public companies by all levels of employees and their spouses or partners. We propose that only employees of a certain level of seniority or who have influence over tender processes and awards should be compelled to disclose financial interests. Currently only members of the senior management service are required to disclose their financial interests and not necessarily those of their spouses or life partners. It is further proposed that an entity that conducts business with the organ of state should also be compelled to disclose the financial interests held by employees of the State in that entity or held by family members of such employees. The principal Act requires an employee to disclose gifts above the prescribed value other than gifts from a family member. This requirement is overly broad and may have unintended consequences, for example, an employee who receives a gift from a colleague on their birthday. Can it be the intention of the principal Act that such gifts should also be disclosed? Presumably, the intention of section 9(1)*(c)* of the principal Act is to prevent employees of the organ of state from being influenced in decision making or in how they provide a public service. The ambit of section 9 conceivably includes all the gifts that an employee of the State may receive from persons other than family members, and which has no influence on the employee's decision making or the manner in which an employee performs his or her job. It is proposed that section 9(1)*(c)* is amended to restrict the nature of the gifts to be disclosed to instances in which it may be construed to have been given to influence an employee's decision making in respect of tender processes or the manner in which an employee performs his or her job. Section 9 of the principal Act is also problematic in that it does not place a duty of disclosure on the entity that conducts business with the State to disclose financial interests held by employees of the State or held by family members of such employees in that entity. It is submitted that such a duty will assist with the process of verification of financial interest. It is proposed that section 9 is amended to provide for such a duty of disclosure.

The disclosure of the financial interests of spouses and partners of employees:	Section 9 requires the disclosure of personal information of persons not employed by the State. The nexus with the employee is marriage or a long-term relationship. It is submitted that the ambit of section 9 is too broad and that the limitation of the right to privacy in respect of the financial interests of the spouses and partners of employees of the State may arguably not be justifiable. It is proposed that: • employees who are required to make such a disclosure should be narrowly defined to include those that have an influence over tender processes or of a certain level of seniority; and • employees should be required to disclose the interests of their spouses or partners insofar as employees are aware of such interests held by their spouses or partners and where a spouse or partner does in fact have a financial interest in an entity that does do business with the organ of state.	
Section 3 of the principal Act:	Since the Public Service Administration Amendment Bill extends the purpose of the principal Act, it is submitted that section 3 should accordingly be amended to provide for the additional purposes of the principal Act. The following are the additional objectives of the principal Act: • removal of employment disparities across the public administration; and • the co-ordination of the mandating process for collective bargaining in the public administration.	It is proposed that section 3 of the principal Act should be amended to provide for the additional purposes of the principal Act.
Section 15(4)*(c)* of the principal Act:	Paragraph (c) provides: "*(c) to build capacity within institutions to initiate and institute disciplinary proceedings into misconduct;*" The word "into" should be replaced by "relating to". As it stands, it has the effect and can be interpreted to prejudging matters.	It is proposed that the word "into" in section 15(4)*(c)* is substituted with the words "relating to".

Section 15(5)(a) of the principal Act:	Section 15(5)*(a)* provides as follows: "*When an institution discovers an act of corruption, such corruption must immediately be reported to the police for investigation in terms of any applicable law, including the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004)*.". It causes uncertainty to place this responsibility on "an institution" rather than placing it on the head of institution or its employees. Even the Public Finance Management Act, 1 of 1999 does not place financial management responsibility on an institution but it places it specifically on the accounting officer.	
Section 17(6)*(d)* of the principal Act:	Section 17(6)*(d)* makes provision for reporting to the Minister at least "once" a year. It is recommended that it should be at least "twice" a year to align the provision with section 15(8) of the principal Act dealing with the Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit. Section 15(8) provides that the unit must report bi-annually to the Minister as he or she must report to Parliament. The Minister may be required to report on the Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit and the Office of Standards and Compliance, therefore it follows that both units should report bi-annually.	It is proposed that section 17(6) is amended to align with section 15(8) of the principal Act.

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