



For attention: Mr Masixole Zibeko

28 July 2023

Submission on the Public Administration Management Amendment Bill [B10-2023].

We attach our written submission in response to the invitation for comments on the Public Administration Management Amendment Bill [B10-2023].

We would like to confirm our interest in making oral representations at a later convenient date.

Should you have any queries, it would be appreciated if you could contact me at the following email address: nicole@hsf.org.za.

Yours sincerely

A handwritten signature in black ink that reads 'Nicole Fritz'.

Nicole Fritz

Executive Director

Executive Director: Nicole Fritz
Trustees: Max du Plessis • Cora Hoexter • Nick Jonsson • Daniel Jowell • Palesa Morudu • Kalim Rajab • Gary Ratfe • Phila Zulu
Patrons: Prof. Thuli Madonsela • Lord Robin Renwick



1. Introduction

1.1. In this submission, the Helen Suzman Foundation (“HSF”) proposes that parliament amend the Public Administration Management Amendment Bill [B10-2023] (“Bill”) to better insulate the public service from corruption.

1.2. In summary, HSF submits that:

1.2.1. heads of department should be placed under a positive obligation to report public servants who do business with the state in breach of section 8(2) of the Public Administration and Management Act No. 11 of 2014 (“PAMA”);

1.2.2. PAMA’s ‘Ethical, Integrity and Disciplinary Technical Assistance Unit’s’ (“Unit”) mandate should be expanded to include monitoring for, and reporting on, public servants doing business with the state;

1.2.3. PAMA’s prohibition on public servants doing business with the state be extended to their family members, when business is sought from the department in which the public servant is employed; and

1.2.4. section 9 of PAMA should be brought into effect, which would oblige senior public servants to disclose their financial interests.

2. Expanding, Monitoring and Enforcing PAMA’s Prohibition on Public Servants Doing Business with the State in Section 8(2) of PAMA.

2.1. Section 8(3) of PAMA makes it an offense for public servants to do business with the state or to be the director of a company that does so.

2.2. However, the prohibition is narrowly tailored to public servants alone and does not extend to their family members, even when the business is sought from the department in which the public servant is employed.

- 2.3. Moreover, there is no duty on heads of department to report breaches of section 8(2) to the authorities or to initiate disciplinary proceedings, nor is the Unit tasked with providing heads of department support in detecting breaches of section 8(2).
- 2.4. This all weakens section 8's efficacy in preventing corruption and the Bill should be amended in three ways as a result:
 - 2.4.1. to oblige heads of department to report breaches of section 8(2) of PAMA to the authorities and to immediately initiate disciplinary proceedings;¹
 - 2.4.2. to expand the Unit's mandate so that it can support heads of department in monitoring for breaches of section 8(2); and
 - 2.4.3. expand section 8(2)'s prohibition on doing business with the state to include PAMA's ready-made definition of "family member", when the business is sought from the department in which the public servant is employed.

3. Ensure That Senior Public Servants Disclose their Financial Interests

- 3.1. Despite section 9 of PAMA laudably requiring senior public servants to disclose their financial interests, it has not yet been proclaimed into law.
- 3.2. Simply, section 9 should be proclaimed into law as an effective measure to prevent corruption in the public service.

4. Conclusion

- 4.1. HSF has submitted that the Bill as it stands could go further to insulate the public service from corruption by expanding section 8 of PAMA to prevent family members

¹ HSF recognises PAMA's requirement to report acts that count as one of the Prevention and Combatting of Corrupt Activities Act, 12 of 2004 general crimes of corruption. However, doing business with the state need not itself be an act of corruption in terms of PRECCA to breach section 8.



of public servants from doing business with the state and by providing for its effective monitoring and enforcement.

- 4.2. Moreover, government could increase PAMA's effectiveness by proclaiming into effect its section 9 requirement that senior public servants disclose their financial interests.