



Public Administration and Management Amendment Bill 2023

Submission of Public Comment

Public Affairs Research Institute (PARI)
Public Service Accountability Monitor (PSAM)
The Ethics Institute (TEI)
Corruption Watch

July 2023

Introduction

1. PARI, PSAM, TEI and Corruption Watch welcome the Public Administration and Management Amendment Bill (2023) as a step in ensuring the vision of a public administration that is professional, effective, impartial, and developmentally directed (Section 195 of the South African Constitution). More generally, we welcome Cabinet's adoption, in 2022, of the National Framework Towards the Professionalisation of the Public Sector (hereafter Professionalisation Framework). We support commitments to ensuring integrity in personnel practices as outlined, for example, in the President's response to the State Capture Commission and in pillars 2 and 4 of the National Anti-Corruption Strategy (NACS).
2. We welcome in particular the Bill's intention to provide clarity on important definitions in the Act, including the provisions regarding prohibitions against public sector employees conducting business with organs of state. Regarding this last issue, we argue that the relevant clauses should be strengthened, and we provide specific proposals in this regard.
3. The original intention of the Public Administration Management Act (PAMA) was to provide for a single public service in South Africa. As the memo to the Bill explains, this vision was not fully realised in PAMA, and the ambitions of the Act were scaled back. The concept of a single public service, and its limits and opportunities within the framework of the Constitution, is a topic of importance in relation to developing an effective public administration in South Africa. We would strongly support a national conversation on this theme – in which this concept is actively debated, refined, and proposals made for how this might be operationalised.

Specific Comments on the Public

4. We note that Section 5(2)(d) should be amended to bring it in line with possible amendments to the Public Service Act: the Public Service Amendment Bill currently in parliament makes the Head of Department (HOD) fully responsible for human resource management in their department.
5. Regarding amendments to **Section 8 of the Act which provides for prohibitions against public sector employees conducting business with organs of state**, we welcome the clarification of terms used in this section but suggest that the section should be strengthened to better safeguard the public administration from corruption.
6. First, Section 8 does not adequately address situations where employees might not be directors of companies but are nonetheless the ultimate beneficiaries of such contracts. To close such gaps, information regarding beneficial owners of companies that do business with the state should also be taken into consideration. The amendment should be expanded to state that employees who are not only directors, but also beneficial owners are not allowed to do business with the state, and failure to comply with such provision constitutes a criminal offence and an act of misconduct.
7. Second, we propose that Section 8 is finalised with reference to the Public Procurement Bill. Clause 13 of the current Public Procurement Bill automatically excludes persons related (including spouses) to public office bearers, party leaders, public servants, municipal employees, etc. from making bids in procurement in the institution in which such relatives serve. It is important that such a provision is enacted either through the finalisation and proclamation of the Public Procurement Act, or some other legislation.
8. Third, we propose that Section 8 is also made applicable to employees of public entities.
9. Fourth, we are concerned that Section 8(4) (a new clause in the Act) could be abused. It reads, "The Minister may prescribe that certain transactions between an employee and an organ of state, which are remunerative but not for profit, do not constitute conducting business with an organ of state for the purposes of this section." The Act should indicate under what circumstances this clause would be applied, in what form the Minister will prescribe this (we suggest in regulations) and ensure this is open to public scrutiny.
10. Fifth, we further propose that the Act should create an obligation for government to develop and manage a comprehensive database of all public administration employees (or a digital solution that would enable searching of all relevant databases) so that employees can be checked against information relevant to integrity, including information on company directorships, beneficial ownership lists, declarations of interest data, and so forth.
11. We strongly support the inclusion of a new clause, Section 8A, which deals with the issue of a "cooling off period" for public sector employees.
12. Re the disclosure of financial interests (Section 9) which is now amended to clarify that this includes public service employees and those in municipalities, we propose that the clause is amended to also include employees of public entities.

13. Last, we welcome amendments to the Act (Section 17A) which seek to address major disparities in the public administration regarding remuneration and conditions of service, and we welcome the move to develop norms and standards to establish the upper limits of remuneration in the public sector. We caution, though, that this should not be applied in such a way that it leads to limitations on the state's ability to attract very high level and scarce skills, especially in public entities.

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