

THE PUBLIC SERVICE AMENDMENT BILL

Department of Public Service and Administration



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CLARIFICATION OF THE ROLE OF THE EXECUTIVE AUTHORITY IN RESPECT OF HODS

2

- ❑ Removal of ambiguity and further clarification on the roles of Ministers/MEC and the President in relation to heads of department.

The Public Service Amendment Bill amends the definition of executive authority to provide for a definition in relation to a head of department which provides that the appointment and other career incidents of heads of departments and government components shall be dealt with, in the case of-

- (a) A head of a national department or national government component, by the President; and
- (b) A head of the Office of a Premier, provincial department, or provincial government component, by the relevant Premier.



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DISTINCTION BETWEEN THE ROLE OF THE PRESIDENT/ PREMIER/ MINISTER/MEC (CLAUSE 2)

3

- ❑ The powers and functions of members of the executive must be clarified.

The Public Service Amendment Bill provides a definition of executive authority as follows-

“**executive authority**”, in relation to—

- (a) the Presidency or a national government component within the President's portfolio, means the President;
- (b) a head of—
 - (i) a national department or national government component, means the President; and
 - (ii) the Office of a Premier, provincial department or provincial government component, means the relevant Premier;
- (c) a national department or national government component within a Cabinet portfolio, means the Minister responsible for such portfolio;
- (d) the Office of a Premier or a provincial government component within a Premier's portfolio, means the Premier of that province;
- (e) a provincial department or a provincial government component within an Executive Council portfolio, means the member of the Executive Council responsible for such portfolio; and
- (f) the Office of the Commission, means the Chairperson of the Commission.



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CLAUSE 2- SECTION 9(a)

- ☐ The words “executive authority of a department” and “must” to be inserted.
The amendment is accepted.



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CLAUSE 3- SECTION 5

5

- ❑ It is proposed that the rationale for the three-year period be included in the memorandum of objects

The period of three years is contained in the principal Act. The three-year period is aligned to the Prescription Act and the memorandum will be clarified accordingly.



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CLAUSE 4- SECTION 7(3)

- ❑ It is proposed that a provision be inserted as section 7(3)(f) as follows-

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.”

A head of department aggrieved by the actions or undue interference may lodge a grievance in terms of section 35 of the Public Service Act to the Public Service Commission.



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CLAUSE 4- SECTION 7(3)(b)(ii)

- ❑ It is proposed 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.

The Bill currently provides that a head of the Office of the Premier is responsible for intra-governmental co-operation between the relevant Office of the Premier and various provincial departments.



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CLAUSE 4- SECTION 7(3)

- ❑ The Bill does not provide for the PSC to play a role in supporting these appointment processes

The processes for recruitment is prescribed through regulations. The role of the PSC in recruitment will be considered during the development of the regulations noting that the PSC has a constitutional oversight responsibility that must not be compromised.



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DEVOLUTION OF ADMINISTRATIVE POWERS FROM EXECUTIVE AUTHORITY TO HEAD OF DEPARTMENT

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- ❑ Concern that accountability by executive authorities will be diminished as oversight is reliant on flow of information

The Public Service Amendment Bill, 2023 provides strategic powers to the executive authority and removes administrative powers from the executive authority to enable the executive authority to focus on providing strategic and policy direction. The devolution of this power is to ensure the alignment of the financial responsibility with human resources administrative functions. 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. Clause 3(7) of the Bill gives the executive authority the power to intervene if a head of department refuses or fails to fulfil a power or duty as required in terms of the Act.



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CLAUSE 6

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❑ Concern that there is a conflict between the Bill and the SAPS Act

Section 2(2) of the principal Act provides that where there is a conflict between the Public Service Act and the laws governing the employment of the SAPS the SAPS Act will apply.



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CLAUSE 7

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- ❑ Concern that an amendment is being affected to section 14 when the PAMA repealed such section
Section 14 of the Public Service Act is being reenacted through the PAM Amendment Bill.



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CLAUSE 12

☐ Consideration of an appeal process for employee performing other remunerative work

Section 30 of the Public Service Act provides that where an employee performs other remunerative work, the employee must seek the permission of the head of department. The view is that no appeal process is necessary under these circumstances and that the initial decision should be binding unless reviewed in a competent forum.

☐ Consideration of extending the period for deemed approvals for employee performing other remunerative work

The Bill does not seek to amend the period as contained in the principal Act. The period was regarded as reasonable taking into account that an employee may have to make a decision on the other remunerative work within 30 days.



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CLAUSE 14

13

- ❑ Concern that the provision for persons to act in posts will serve as a deterrent to filling the post

Acting arrangements are short term arrangements aimed at filling an interim gap where posts are being filled. The deletion of this provision will create a vacuum where certain functions will not be filled where posts are vacant and may compromise service delivery.

- ❑ Concern that section 32(2)(b)(ii) is impractical to require that the Premier must be consulted when appointing an acting HOD for a day or for a short leave period.

Section 32(2)(b)(ii) which requires the President/Premier to be consulted is only in the case of a vacant post and does not apply to periods of leave of the head of department.



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CLAUSE 15

14

- ❑ Concern that the time periods for grievances and managing disciplinary processes are not contained in the Act

The Grievance rules and the Disciplinary codes determine the relevant processes. The disciplinary codes are currently under review and fall outside the scope of the Amendment Bill.

- ❑ Proposal that the Commission's powers to determine grievance rules be subject to collective bargaining

The PSC derives its powers from the Constitution which provides at section 196(4)(f)(ii) that the Commission may, either of its own accord or on receipt of a complaint, investigate grievances of employees in the public service concerning official acts or omissions, and recommend appropriate remedies. The Bill is aligned accordingly.



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CLAUSE 16 LIMITATION ON HOLDING POLITICAL OFFICE

❑ Concern that the provision may not withstand scrutiny

The provision has been scrutinised for constitutionality. The proposed provision is different to the Municipal Systems Act in that the Bill seeks to limit only HODs and those reporting to HODs from holding political office ('Political Office' is defined as 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 any equivalent position irrespective of the title designated to the position).

The purpose of the prohibition on heads of department and employees reporting directly to a head of department from holding office in a political party is to ensure that there is a clear demarcation of politics from the administrative roles and responsibilities. This seeks to eliminate any potential conflict of interest that may arise in so far as it relates to heads of department and employees reporting directly to a head of department.



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CLAUSE 17

- ❑ Concern that there are no parameters on how the head of department will determine which employees may be eligible for higher salaries or what constitutes exceptional abilities or special qualifications

The exercise of powers by the head of department shall be subject to the Public Service Regulations which shall set the parameters.



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CLAUSE 18

❑ Concern that the Bill does not go far enough in aligning with the BCEA

- Section 38 provides for circumstances where an incorrect salary, salary level, salary scale or reward is awarded to an employee and is corrected. The correction may lead to an overpayment or an underpayment.
- In the case of an underpayment, the employee is compensated the shortfall paid.
- In the case of an overpayment, the employee is required to pay back the overpayment.
- The principal Act contains section 38(2)(b) which provides that the employer may deduct the overpayment from the employees salary and where the employee is no longer in the employ of the department, legal proceedings may be pursued.
- In 2018, the Constitutional Court ruled that the provision was unconstitutional as it afforded the employer unfettered discretion in respect of the deductions.
- The DPSA attempted to remedy the provision by inserting provisions that regulated the manner in which the deductions would be made. This provision was engaged with at NEDLAC and agreed.



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CLAUSE 18

Provision as agreed in NEDLAC- section 38(b)

(i) 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—

- (aa) the amount of the overpayment;
- (bb) 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;
- (cc) the amount to be deducted takes into account the nature of the employee's income and current financial obligations; and
- (dd) that the total deduction is not more than one-quarter of the employee's monthly salary;

(iA) 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;

(iB) an accounting officer shall, in the event that the 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).

(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;

(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.



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CLAUSE 18

- The Office of the Chief State Law Adviser opined that the provision was unconstitutional as the employer may not deduct moneys from an employee's salary without the consent of the employee.
- The provision was therefore redrafted to propose that the employee either consents to a deduction or the employer may commence court processes for recovery.
- Section 38 refers to instances where the overpayment is determined and corrected therefore there can be no dispute on the amount to be recovered.
- It is our view that the clear guidelines on how money can be deducted with or without consent will provide the employee and the employer to pay and recover the amounts respectively without deferring to litigious and costly processes.
- The recovery of the debt will not be arbitrary and will be done within the confines of predefined processes which include the employee's representations to be considered and appeal processes.



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We Belong



We Care



We Serve



thank you



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