

REPUBLIC OF SOUTH AFRICA

**PUBLIC SERVICE
COMMISSION BILL**

(Portfolio Committee on Public Service and Administration)

(MINISTER FOR THE PUBLIC SERVICE AND ADMINISTRATION)

[B 30B—2023]

ISBN 978-1-4850-xxxx-x

BILL

To regulate the Public Service Commission in accordance with the provisions of section 196 of the Constitution; to regulate the procedure for the appointment of commissioners of the Public Service Commission; to provide for the establishment of the Secretariat of the Commission to support the work of the Commission; to repeal the Public Service Commission Act, 1997; and to provide for matters connected therewith.

PREAMBLE

WHEREAS section 196 of the Constitution of the Republic of South Africa, 1996 provides for a single, independent and impartial Public Service Commission;

AND WHEREAS section 196 of the Constitution—

- provides for a mechanism for the appointment, including the renewal of appointment, and removal of commissioners;
- determines that the Commission, and the procedure for the appointment of commissioners, must further be regulated by national legislation;

AND WHEREAS section 196(4) of the Constitution provides that the powers and functions of the Commission are—

- to promote the values and principles set out in section 195 of the Constitution, throughout the public service;
- to investigate, monitor and evaluate the organisation and administration, and the personnel practices, of the public service;
- to propose measures to ensure effective and efficient performance within the public service;
- to give directions aimed at ensuring that personnel procedures relating to recruitment, transfers, promotions and dismissals comply with the values and principles set out in section 195 of the Constitution;
- to report in respect of its activities and the performance of its functions including any finding it may make and directions and advice it may give, and to provide an evaluation of the extent to which the values and principles set out in section 195 of the Constitution are complied with;
- either of its own accord or on receipt of a complaint—
 - o to investigate and evaluate the application of personnel and public administration practices and to report to the relevant executive authority and legislature;
 - o to investigate grievances of employees in the public service concerning official acts or omissions, and to recommend appropriate remedies;
 - o to monitor and investigate adherence to applicable procedures in the public service; and
 - o to advise national and provincial organs of state regarding personnel practices in the public service including those relating to the recruitment, appointment, transfer, discharge and other aspects of the careers of employees in the public service; and
- to exercise or perform the additional powers or functions prescribed by an Act of Parliament;

AND WHEREAS section 196 of the Constitution determines that the Commission has such additional powers and functions as may be prescribed by national legislation;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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PART A
DEFINITIONS AND APPLICATION OF ACT

Definitions

1. In this Act, unless the context indicates otherwise:
- “**Chairperson**” means the Chairperson of the Commission designated in terms of section 7; 5
- “**Chief Executive Officer**” means the Chief Executive Officer appointed in terms of section 16(3)(a);
- “**Commission**” means the Public Service Commission referred to in section 196(1) of the Constitution; 10
- “**commissioner**” means a commissioner appointed in accordance with section 196(7) of the Constitution;
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**Departmental Bargaining Forum**” means a majority trade union in the Secretariat that is recognised and registered in the bargaining council registered under the Labour Relations Act, 1995, with jurisdiction in the Public Administration or any portion thereof; 15
- “**employee**” means—
- (a) in relation to the Secretariat, any person appointed in terms of section 16(3)(c), or seconded to the Commission under section 16(7); and 20
 - (b) in relation to the public administration, any person appointed in a national department or its entities, a provincial department or its entities and a municipality or its entities,
- but excludes an independent contractor;
- “**executive authority**” means— 25
- (a) in relation to a national department, provincial department or public entity as defined in the Public Finance Management Act, the executive authority as defined in that Act; and
 - (b) in relation to a municipality or a municipal entity as defined in the Municipal Finance Management Act, the executive authority contemplated in section 7 30 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
- “**Independent Commission**” means the Independent Commission for the Remuneration of Public Office Bearers established by section 2 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997); 35
- “**local government**” means the local sphere of government referred to in section 151 of the Constitution;
- “**municipality**” means a municipality contemplated in section 155 of the Constitution; 40
- “**Municipal Finance Management Act**” means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);
- “**prescribed**” means prescribed by rule;
- “**public entity**” means—
- (a) a public entity as defined in section 1 of the Public Finance Management Act; 45 and
 - (b) a municipal entity as defined in the Municipal Finance Management Act;
- “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- “**public service**” means all— 50
- (a) national departments;
 - (b) national government components;
 - (c) provincial departments; and
 - (d) provincial government components;
- “**Public Service Act**” means the Public Service Act, 1994 (Proclamation No. 103 of 1994); 55
- “**Public Administration**” means the public service, municipalities and public entities;
- “**rule**” means a rule made under section 20;
- “**Secretariat**” means the Secretariat of the Commission established by section 16; 60
- “**this Act**” includes a rule.

Application of Act

2. The provisions of this Act apply in relation to the administration of the public service and public administration.

PART B
PUBLIC SERVICE COMMISSION

5

Constitution of Commission

3. The Commission consists of 14 commissioners as prescribed by the Constitution, which commissioners must, subject to the provisions of this Act and the Constitution, be appointed by the President.

Appointment of commissioners

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4. (1) Whenever the President is required to appoint a commissioner who has been recommended as provided in terms of—

- (a) section 196(8)(a)(i) of the Constitution, the President must address a request in writing to the Speaker of the National Assembly that a fit and proper person contemplated in section 196(10) of the Constitution and this Act be approved as soon as may be practicable by the National Assembly in accordance with section 196(8)(a)(ii) of the Constitution; or 15
- (b) section 196(8)(b)(i) of the Constitution, the President must address a request in writing to the Premier of the relevant province that a fit and proper person contemplated in section 196(10) of the Constitution and this Act be approved as soon as may be practicable by the relevant provincial legislature in accordance with section 196(8)(b)(ii) of the Constitution. 20

(2) Whenever necessary in terms of this Act—

- (a) to appoint a commissioner envisaged in section 196(7)(a) of the Constitution, the request contemplated in subsection (1)(a) must be referred to a committee contemplated in section 196(8)(a)(i) of the Constitution, as soon as possible, but not later than 30 days as from the date of receipt of the request; or 25
- (b) in the case of a commissioner envisaged in section 196(7)(b) of the Constitution, the request referred to in subsection (1)(b) must be referred to a committee contemplated in section 196(8)(b)(i) of the Constitution, as soon as possible, but not later than 30 days as from the date of receipt of the request. 30

(3) A committee contemplated in subsection (2), must within 30 days of the referral of the request referred to in that subsection, by public notice in media circulating nationally, invite fit and proper persons to submit applications for appointment as commissioner, within a period determined in the notice, but not later than 30 days as from the date of publication of that notice. 35

(4) In considering whether a person complies with the provisions of section 196(10) of the Constitution, the following considerations must serve as a recommendation:

- (a) In relation to his or her qualifications, he or she has a National Qualifications Framework (NQF) level 8 qualification or equivalent qualification as recognised by the South African Qualifications Authority in at least one of the following fields: 40
 - (i) Public administration;
 - (ii) business administration;
 - (iii) human resource management; 45
 - (iv) human behavioural sciences;
 - (v) finance;
 - (vi) social science;
 - (vii) science;
 - (viii) the law; or 50
 - (ix) other related fields; and
- (b) in relation to his or her experience, he or she—
 - (i) has held office as a head of a department mentioned in Schedule 1 or 2 to the Public Service Act or has held office as a Municipal Manager;
 - (ii) has worked at a senior management level in the public administration for at least eight years; 55

- (iii) has, for a cumulative period of at least eight years, been a member of Parliament, a provincial legislature, a municipal council or the board or other controlling body of a public entity: Provided that he or she has not served in such capacity for a period of two years immediately prior to the date of the notice referred to in section 4(3); 5
- (iv) has specialised knowledge of, or for a cumulative period of at least eight years experience in, a field referred to in paragraph (a);
- (v) has, for a cumulative period of at least eight years lectured public administration or management at a recognised institution of higher learning; or 10
- (vi) has any combination of experience referred to in subparagraphs (i) to (v), for a cumulative period of at least eight years.

(5) The Speaker of the National Assembly or the Speaker of the relevant provincial legislature must notify the President of the approval as contemplated in section 196(8) of the Constitution, after which the President must effect the appoint of the commissioner within 45 days. 15

(6) A commissioner must, before assuming his or her term of office, take an oath or solemn affirmation before a Judge President of the relevant division of the High Court or any other judge of the High Court designated by that Judge President in the terms set out in Schedule 1. 20

Disqualification from appointment as commissioner

5. Notwithstanding the provisions of section 4, a person is not a fit and proper person, if he or she—

- (a) is not a South African citizen;
- (b) is an unrehabilitated insolvent; 25
- (c) has been declared to be of unsound mind by a court of law in the Republic;
- (d) has at any time been removed from a position of trust by reason of improper conduct;
- (e) has shown a lack of integrity, reliability or honesty;
- (f) is a member of Parliament, any provincial legislature or municipal council or an office bearer of any political party in the Republic; 30
- (g) is a person who was at any time convicted of theft, fraud, forgery and uttering a forged document, perjury, any offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), or the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any other offence involving dishonesty; or 35
- (h) has been convicted of any other offence and sentenced to more than 12 months imprisonment without the option of a fine.

Limitation on performing other work by commissioners, renewal of term of office of commissioners and vacation of office by commissioners 40

6. (1) A commissioner may not—
- (a) hold office in any political party or political organisation or be a member of a structure of any political party or political organisation; or
 - (b) without the prior written consent of the President perform or engage himself or herself to perform any remunerative work or other compensated work outside the duties of his or her office. 45

(2) For the purposes of subsection (1)(b), the President must consider whether the remunerative or compensated work could reasonably be expected to interfere with or impede the effective or efficient performance of the Commission's functions or be in breach of the prescribed ethical conduct of a commissioner. 50

(3) The President may, upon receipt of a report from the Commission recommending the renewal of a commissioner's term of office, which renewal is supported by that commissioner, in the prescribed manner and at least 120 days prior to the expiration of the commissioner's first term of office, renew the term of that commissioner, within 90 days before the expiry of the term, for one additional term only— 55

- (a) in the case of a commissioner who had been approved by the National Assembly, on the recommendation of the National Assembly; and
- (b) in the case of a commissioner approved by the relevant provincial legislature, on the recommendation of the provincial legislature concerned.

- (4) The President may renew the term of office of a commissioner if the commissioner—
- (a) remains a fit and proper person as required by section 196(10) of the Constitution and this Act; and
 - (b) has maintained a satisfactory level of performance in relation to his or her duties. 5
- (5) The President may allow a commissioner to vacate his or her office—
- (a) on account of continued ill-health; or
 - (b) at his or her request addressed to the President,
- as the case may be, at least three calendar months prior to the date on which he or she wishes to vacate such office, unless the President allows a shorter period in a specific case. 10
- (6) If the President allows a commissioner to vacate office in terms of subsection (5), the President must give written notice to the Speaker of the National Assembly or, in the case of a commissioner referred to in section 196(7)(b) of the Constitution, the Premier of the relevant province and the Speaker of the relevant provincial legislature. 15
- (7) The Commission may, at any time, approach the committee referred to in section 4(2) with regard to any matter pertaining to the office of a commissioner.
- (8) In accordance with section 196(11) of the Constitution, a commissioner may be removed from office only on— 20
- (a) the ground of misconduct, incapacity or incompetence;
 - (b) the allegation of misconduct, incapacity or incompetence having being lodged in writing by the complainant with the Speaker of the relevant provincial legislature in the case of a provincially based commissioner or with the Speaker of the National Assembly in the case of a national based commissioner, in accordance with the rules of the National Assembly or the provincial legislature concerned; 25
 - (c) the veracity of the allegations filed having first been tested in accordance with the rules of the National Assembly or the rules of the relevant provincial legislature concerned: Provided that the commissioner is given an opportunity to respond to the allegations in writing; 30
 - (d) a finding by the committee of the relevant provincial legislature in the case of a provincial based commissioner or the National Assembly in the case of a national based commissioner, that the commissioner has misconducted him or herself or is incapacitated or incompetent; 35
 - (e) the adoption by the relevant provincial legislature or the National Assembly calling for his or her removal from office; and
 - (f) a resolution of the relevant provincial legislature or the National Assembly concerning the removal from office of a commissioner having been adopted with a supporting vote of a majority of the members of the relevant provincial legislature or National Assembly. 40
- (9) The President may suspend a commissioner from office at any time after any complaint relating to the grounds referred to in subsection (8)(a) against the commissioner has been received by the relevant provincial legislature or National Assembly, if the President deems the complaint against the commissioner to be of such a serious nature as to make it inappropriate for him or her to perform his or her functions while the complaint is being considered. 45
- (10) The President may suspend a commissioner in terms of subsection (9) on such terms and conditions as the President may determine, including suspension on full pay.
- (11) The President must remove a commissioner from office upon receipt from the Speaker of the relevant provincial legislature or the Speaker of the National Assembly, of a notice of the resolution adopted by the relevant provincial legislature or the National Assembly, calling for that commissioner's removal. 50
- (12) If a vacancy occurs in the Commission, the President must appoint another person as a commissioner in terms of section 4. 55

Chairperson and Deputy Chairperson of Commission

7. (1) The President must designate one commissioner as chairperson and another as deputy chairperson of the Commission.
- (2) If the Chairperson is absent or for any reason unable to act as chairperson, the Deputy Chairperson must act as chairperson of the Commission. 60

(3) If both the Chairperson and the Deputy Chairperson are absent, or for any reason unable to act as chairperson, the President must designate one commissioner to act as the chairperson of the Commission for a period not exceeding 30 days.

Remuneration and other conditions of appointment of commissioners

8. (1) A commissioner is entitled to such remuneration and other conditions of appointment— 5
- (a) as determined by the President, from time to time, by notice in the *Gazette*, after taking into consideration the recommendations of the Independent Commission; and
 - (b) approved by the National Assembly in terms of subsection (2). 10
- (2)(a) A notice issued in terms of subsection (1)(a) must be submitted to the National Assembly for approval before publication thereof.
- (b) The National Assembly must, by resolution—
 - (i) approve the notice, whether in whole or in part; or
 - (ii) disapprove the notice. 15
- (3) A notice in terms of subsection (1)(a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of that notice.
- (4) The Independent Commission must, when investigating or considering the remuneration and other conditions of appointment, consult with the Cabinet member responsible for finance. 20
- (5) The President may determine different remuneration scales and conditions of appointment in respect of the Chairperson, the Deputy Chairperson and other commissioners of the Commission.
- (6) A commissioner’s remuneration may not be reduced, and his or her other conditions of appointment may not be adversely altered during his or her term of office, including any renewal thereof. 25

Inspections and inquiries by Commission

9. (1) The Commission may inspect departments and other organisational components in the public service or public administration and may access such records or may obtain such information from heads of those departments, organisational components or from other officers in the service of those departments, organisational components as may be necessary for the exercise of its powers or the performance of its functions under the Constitution, the Public Service Act, this Act, or any other law. 30
- (2) The Commission may conduct an inquiry into any matter in respect of which it is authorised by the Constitution, this Act or any other law to exercise any of its powers or to perform any of its functions. 35

Investigations by Commission

10. (1) The Commission may investigate departments and other organisational components in the public service or public administration and has access to such records or may obtain such information from heads of those departments, organisational components or from other employees in the service of those departments, organisational components as may be necessary for the exercise of its powers or the performance of its functions under the Constitution, the Public Service Act, this Act, or any other law. 40
- (2) The Commission may, in the case of any public entity or municipality and subject to the provisions of subsection (4) investigate any grievance of employees in the service of a public entity or a municipality and may issue directions contemplated in section 196(4)(d) of the Constitution in order to ensure compliance with the values and principles set out in section 195 of the Constitution. 45
- (3) If the Commission issues a direction contemplated in subsection (2), the executive authority, accounting officer or the chief executive officer of the public entity concerned or the Mayor and Municipal Council of a municipality, as the case may be, must implement the direction as soon as possible after receipt of the direction but, in any event, within 60 days after the date of such receipt, or such other date as may be determined in the direction. 50
- (4) For purposes of asserting the right to have a grievance investigated and considered by the Commission— 55

- (a) an employee may lodge that grievance with the relevant executive authority or chief executive officer or the municipal manager under the circumstances, on the conditions and in the manner provided, if any, in any law relating to the relevant public entity or municipality; and
 - (b) if that grievance is not resolved to the satisfaction of the employee, that executive authority must submit the grievance to the Commission in the prescribed manner and within the prescribed period. 5
- (5) After the Commission has investigated and considered any such grievance, the Commission may recommend that the relevant executive authority, accounting officer, or chief executive officer, municipal manager, mayor or the municipal council, as the case may be, must act in terms of a particular provision or provisions of this Act or any other law if, having regard to the circumstances of the case, the Commission considers it appropriate to make such a recommendation. 10
- (6) A chief executive officer of a public entity, a municipal manager in a municipality or any other person holding a similar post may lodge any such grievance with— 15
- (a) the relevant executive authority in terms of subsection (4)(a); or
 - (b) directly with the Commission under the prescribed circumstances, on the prescribed conditions and in the prescribed manner.

Summoning of witnesses

- 11.** (1) The Commission may call upon or, summons any person to appear before it to give evidence on oath or affirmation, or to produce any record or object as may be necessary for the exercise of its powers or the performance of its functions under the Constitution, the Public Service Act, this Act or any other law. 20
- (2) A summons must be—
- (a) in the prescribed form; 25
 - (b) signed by the Chairperson, a commissioner designated by the Chairperson or any other person designated by the Chairperson; and
 - (c) served in the prescribed manner.
- (3) Any person who—
- (a) has been duly summoned under this section and who fails, without sufficient cause— 30
 - (i) to attend at the time and place specified in the summons; or
 - (ii) to remain in attendance until excused by the Commission from further attendance;
 - (b) has been called upon in terms of subsection (1) and who refuses to be sworn in or to affirm as a witness; or 35
 - (c) fails, without sufficient cause—
 - (i) to answer fully and satisfactorily any question lawfully put to them; or
 - (ii) to produce any record or object in their possession or custody or under their control which they were required to produce in terms of subsection (1), 40
- is guilty of an offence and liable on conviction to a fine not exceeding R50 000.00 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.
- (4) Disciplinary action must be taken against an employee guilty of conduct contemplated in subsection (3) once such conduct is formally reported by the Commission to the relevant institution. 45
- (5) The law relating to privilege, as applicable to a witness summonsed to give evidence or to produce any record or object before a court of law, applies in connection with the examination of any person by, or the production of any record or object before, the Commission in terms of this section. 50

Access to reports of Commission

- 12.** (1) Subject to the provisions of subsection (2), no person is entitled to have access to any report prepared by the Commission consequent upon any of its powers and functions in terms of section 196(4) of the Constitution until such time as such report has been submitted to the relevant executive authority or any other person. 55
- (2) An investigation report of the Commission dealing with complaints or grievances may be provided to the complainant, aggrieved or affected party, once the investigation report is finalised.

- (3) The Commission must, subject to section 34(2) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), refuse access to a report referred to in subsection (1) or (2) if providing access would involve unreasonable disclosure of personal information of a third party, unless —
- (a) the interested person has obtained permission of the third party, or 5
 - (b) the part of the report which the interested person wishes to access can reasonably be severed from any part that contains the personal information of the third party.

Implementation of decisions of Commission

13. (1) If the Commission has taken any decision consequent upon any of its powers or functions in terms of section 196(4) of the Constitution, the relevant executive authority or other person to whom such decision was directed must report, not later than 60 days as from the date on which such decision was so directed or such other period as the Commission may determine or allow, as the circumstances may require, to the Commission on the manner in which any such decision was implemented or otherwise dealt with. 10 15
- (2) In the event of a refusal or failure by the executive authority or person referred to in subsection (1) to report as provided in that subsection, the Commission may report such refusal or failure—
- (a) in the case of an executive authority referred to in paragraph (a) of the definition of “executive authority”, to Parliament or to the provincial legislature concerned; 20
 - (b) in the case of an executive authority referred to in paragraph (b) of the definition of executive authority, to the member of the executive council in the province concerned charged with local government or to the Mayor of the relevant municipality or the Municipal Council, as the case may be; and 25
 - (c) in the case of a decision directed to a person responsible to any executive authority referred to in paragraph (a) or (b), to the relevant executive authority,
- for such action as Parliament, the provincial legislature concerned, the member of the executive council in the province concerned or the relevant executive authority, as the case may be, may deem fit. 30
- (3) A person to whom a direction is issued must implement such direction within a period determined in terms of the relevant law or such period as may be determined by the Commission in the direction. 35
- (4) If a person to whom a direction has been issued, believes that he or she has a valid reason not to implement the direction, the matter must be taken on review in a court of law.

Independence and impartiality

14. (1) A commissioner and any person employed in the Secretariat in terms of section 16(3)— 40
- (a) must serve impartially and independently and exercise or perform their powers and functions in good faith and without fear, favour or prejudice and subject only to the Constitution and the law; and
 - (b) may not act in any manner that compromises the credibility, impartiality, independence or integrity of the Commission. 45
- (2) A commissioner or any person employed in the Secretariat in terms of section 16(3) must recuse themselves with regard to any matter in which they have any pecuniary interest or any other interest, which might preclude them from performing their functions in a fair, unbiased or proper manner. 50
- (3) If any person fails to disclose an interest contemplated in subsection (2) and acts in contravention of that subsection, the Commission may take such steps as it deems necessary to ensure a fair, unbiased and proper investigation or inquiry.

Obstruction of Commission

15. (1) No person may hinder or obstruct the Commission in the exercise of its powers and the performance of its functions under the Constitution, this Act, the Public Service Act or any law relating to local government or any public entity. 55

- (2) Any person who hinders or obstructs the Commission in the exercise of its powers and the performance of its functions under the Constitution, this Act, the Public Service Act or any law relating to local government or any public entity, is guilty of an offence and liable on conviction to a fine not exceeding R50 000.00 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment. 5
- (3) The Commission may open a criminal case at a police station against any person who hinders or obstructs the Commission in the exercise of its powers.

PART C
SECRETARIAT OF COMMISSION

Secretariat of Commission 10

16. (1) There is hereby established the Secretariat of the Commission consisting of persons appointed in terms of subsection (3).
- (2) The Chairperson as the executive authority of the Secretariat has all those powers and duties necessary for the internal organisation of the Secretariat, including its organisational structure and establishment, the transfer of functions within the Secretariat, human resource planning, the creation and abolition of posts and the employment of persons additional to the fixed establishment. 15
- (3) Subject to subsection (2), the Commission must, in the exercise of its powers or the performance of its functions in terms of the Constitution, this Act or any law relating to local government or any public entity, be assisted by— 20
- (a) a suitably qualified and experienced person appointed by the Commission as Chief Executive Officer for a term not exceeding five years which term may be renewed for one additional term not exceeding five years;
 - (b) any other person or persons appointed by the Commission as Deputy Chief Executive Officer or as Chief Financial Officer or other title as determined by the Chairperson; and 25
 - (c) such employees appointed by the Chief Executive Officer, subject to the laws governing the public service, either full-time or part-time, to the Commission to assist the Chief Executive Officer in the performance of his or her functions in terms of subsection (6). 30
- (4) A person who has served as Chief Executive Officer in terms of subsection (3)(a) is not precluded from applying for the position of Chief Executive Officer after expiry of the renewal period.
- (5) The persons appointed in terms of this section—
- (a) are entitled to such remuneration as determined by the Commission, and subject to such terms and conditions of service applicable in terms of the laws governing the public service; and 35
 - (b) must enter into performance agreements with the Chairperson and the Chief Executive Officer, as the case may be, on acceptance of appointment and on such regular intervals as determined by the Commission. 40
- (6) The Commission must consult with the Cabinet member responsible for finance on issues relating to the remuneration of persons appointed in terms of subsection (3) prior to submitting its budget and adjustment budget to the National Treasury.
- (7) The Chief Executive Officer is responsible for—
- (a) the management of the affairs and operations of the Commission; 45
 - (b) the formation and development of an efficient administration;
 - (c) the organisation and management of, and administrative control over, all employees appointed in terms of subsection (3)(c) and all employees seconded to the Commission as envisaged in subsection (7);
 - (d) the maintenance of discipline in respect of employees; and 50
 - (e) the carrying out of the decisions of the Commission, and is in respect thereof and for the purposes of paragraphs (a) to (d) accountable to the Commission and must report thereon to the Commission as often as may be required by the Commission.
- (8) The Commission may, in the exercise of its powers or the performance of its functions, at its request, be assisted by employees in the public service, municipality or public entity seconded to the service of the Secretariat in terms of any law regulating such secondment. 55

- (9) An employee employed in, or seconded to, the Secretariat must—
- (a) serve impartially and independently and perform their functions in good faith and without fear, favour or prejudice;
 - (b) serve in a full-time capacity to the exclusion of any other duty or obligation arising out of any other employment or occupation or the holding of any other office: Provided that the Commission may exempt such employee from the provisions of this paragraph. 5

(10) The Commission may in the exercise of its powers or the performance of its functions by or under the Constitution, this Act or any other law, for specific projects, enter into contracts for the procurement of the services of persons having technical or specialised knowledge of any matter relating to the work of the Commission, and determine the remuneration, including reimbursement for travelling, subsistence and other expenses, of such persons. 10

Delegation of Commission’s powers or functions

17. (1) The Commission may delegate to one or more commissioners, or to any committee of the Commission any power conferred upon or function entrusted to the Commission by or under this Act, the Public Service Act, or any other law, excluding the power to delegate referred to in this subsection or a power referred to in section 20, on such conditions as the Commission may determine. 15
- (2) The Chairperson may delegate any power referred to in section 16(2) to the Chief Executive Officer on such conditions as the Chairperson may determine. 20
- (3) Any delegation under subsection (1) or (2) may at any time be amended or revoked by the Commission or the Chairperson, as the case may be, subject to any rights that may have become vested as a consequence of a decision made in terms of such delegation.
- (4) The Commission or Chairperson is not divested of any power or function delegated under subsection (1) or (2) and the Commission or Chairperson, as the case may be, may amend or withdraw any decision made in the exercise of such delegated power or the performance of such delegated function. 25

PART D

FINANCES AND ACCOUNTABILITY 30

Finances and accountability

18. (1) The expenditure incidental to the exercise or performance of the powers and functions of the Commission must be defrayed from—
- (a) monies appropriated by Parliament for that purpose;
 - (b) monies received, with the approval of Parliament, granted in a particular case or generally, subject to such conditions as Parliament may determine, as donations or grants; 35
 - (c) the Commission may at a management fee, and without compromising the independence and role of the Commission, provide advice, conduct investigations into personnel and public administration management practices in municipalities and public entities or any department or render specific services as prescribed. 40
- (2) Subject to the Public Finance Management Act—
- (a) the Chief Executive Officer—
 - (i) is charged with the responsibility of accounting for monies received or paid out for or on account of the Secretariat and the Commission; and 45
 - (ii) must cause the necessary accounting and other related records to be kept; and
 - (b) may exercise such powers and perform such functions as the Commission may from time to time assign to the Chief Executive Officer, and is in respect thereof accountable to the Commission. 50
- (3) The Commission must budget for the necessary resources or additional resources to enable it to exercise its powers and perform its functions effectively.
- (4) The Chairperson is, for purposes of the Public Finance Management Act, the executive authority of the Commission. 55
- (5) The records referred to in subsection (2)(a)(ii) must be audited by the Auditor General.

PART E
GENERAL

Legal proceedings by or against Commission

19. (1) The Commission is a juristic person.
- (2) The State Liability Act, 1957 (Act No. 20 of 1957), applies with the necessary changes in respect of the Commission, and in relation thereto a reference in that Act to “the executive authority of the department concerned” must be construed as a reference to the Chairperson. 5
- (3) A commissioner or an employee of the Secretariat is not liable for anything done in good faith in the exercise or performance or purported exercise or performance of any power or function, or in respect of anything reflected in any report, finding, point of view or recommendation made or expressed in good faith and submitted to the National Assembly or a provincial legislature or made known in terms of this Act. 10

Rules

20. (1) The Commission may by notice in the Gazette make rules which are not inconsistent with this Act or the Constitution as to— 15
- (a) the manner in which and the circumstances under which—
 - (i) grievances by heads of departments, or employees, in the public service must be lodged with, or referred to, executive authorities or the Commission; and 20
 - (ii) the manner in which any complaint by any person must be lodged with the Commission;
 - (b) the procedure, including a process of mediation, to be followed by the Commission in investigating any grievances or complaints;
 - (c) the form and manner in which a summons must be served on persons in terms of section 11; 25
 - (d) the code of conduct for commissioners and employees;
 - (e) any matter relating to the terms and conditions of service of employees appointed in terms of section 16(3) (a) to (c), including matters relating to remuneration, grievances and complaints and duties; 30
 - (f) the manner in which it will carry out services, including any management fees payable in respect of such services rendered by the Commission in terms of section 18(1)(c);
 - (g) the conduct of its business including the appointment of caretaker commissioners, the manner in which the meetings of the Commission will be convened, the procedure to be followed at these meetings, the quorum at those meetings, and the manner in which minutes of those meetings will be kept; and 35
 - (h) any matter required or permitted to be prescribed by rule under this Act or which is necessary or expedient for the effective carrying out or furtherance of the provisions and objects of this Act. 40
- (2) The Commission must, within a period of 12 months of the date of commencement of this Act, ensure that the rules referred in subsection (1) (a) to (d) are prescribed.

Repeal and amendment of laws 45

21. The laws mentioned in the first column of Schedule 2 are hereby repealed or amended to the extent set out in the third column thereof.

Transitional provisions

22. (1) Notwithstanding the repeal of any law by section 21—
- (a) the persons occupying the posts of Director-General or Deputy Directors-General, as the case may be, immediately prior to the commencement of section 16, must be deemed to have been appointed in terms of section 16(3)(a) as the Chief Executive Officer or Deputy Chief Executive Officers or other title determined by the Chairperson, as the case may be, of the 50

- Commission for the unexpired period, if any, of his or her term of service by virtue of any performance agreement to which he or she is a party;
- (b) any person who was, immediately prior to such commencement, employed in the service of the Public Service Commission by virtue of the provisions of section 14(2)(b) of the Public Service Commission Act, 1997 (Act No 46 of 1997), or appointed in terms of the Public Service Act must, subject to the provisions of subsection (3), be deemed to have been appointed, without any interruption of service, by the Commission in terms of section 16(3)(b);
- (c) the remuneration and other conditions of service determined in terms of the Public Service Act applicable to the persons referred to in paragraphs (a) and (b), must be deemed to have been determined by the Commission under section 16(4), until amended by the Commission, provided that any such amendment may not be less favourable than the remuneration and other conditions of service such person was entitled to immediately prior to the commencement of section 16;
- (d) any collective agreement relating to employees referred to in paragraphs (a) and (b) concerning their conditions of employment or matters of mutual interest which is still of force and effect immediately prior to the commencement of section 16 remains of force and effect as if it were concluded between the relevant trade union and the Commission;
- (e) any performance agreement concluded, prior to the commencement of section 16, by the Director-General, the Deputy-Director General or any other employee, must be deemed to have been concluded in terms of section 16(4);
- (f) any rules made by the Commission before the commencement of section 23, must be deemed to have been made by the Commission under section 20 until amended or repealed by the Commission; and
- (g) any bank account in the name of the Office of the Public Service Commission or any cash in hand held or administered by that Office must, as from the commencement of section 16, be deemed to be a bank account or cash held or administered by the Secretariat.
- (2) Any person referred to in subsection (1)(a) or (b) is entitled to the same remuneration and other conditions of service he or she was entitled to immediately prior to the commencement of section 16.
- (3) (a) A person referred to in subsection (1)(a) or (b) has the right to exercise in writing, within a period of 30 days as from the commencement of section 16 or such longer period as the Commission may allow, a choice indicating that he or she wishes not to be deemed to be an employee appointed in terms section 16(3)(b).
- (b) A person contemplated in paragraph (a) must inform the Minister for Public Service and Administration accordingly.
- (c) The Commission must, in the case of an employee referred to in paragraph (a), retain such employee in its employ on the same remuneration and other conditions of service he or she was entitled to immediately prior to the commencement of this section, until such time he or she can be accommodated elsewhere in terms of the Public Service Act in a similar or higher post or he or she is in terms of the Public Service Act seconded to the Commission.
- (d) In facilitating the transitional arrangement contemplated in subsection (1) and (2), the Executive Authority of the Commission must establish a joint task team comprising two representatives from each of the members of the recognised trade unions in the Office of the Public Service Commission Bargaining Forum and five members from the employer party to form a joint task team to drive the smooth migration and function shift process of employees of the Commission into the Secretariat and to deal with matters related thereto.
- (e) The Bargaining Forum of the Office of the Public Service Commission shall continue to function as Bargaining Forum of the Secretariat in the role of social partner on collective bargaining issues in the Secretariat and shall retain its recognition and rights in line with applicable legislation and policies governing the public service.
- (f) The implementation of the Commission mandate in relation to municipalities and public entities is suspended for a period of 12 calendar months from the date of coming into effect of this Act.
- (g) The implementation of the Commission mandate in relation to municipalities and public entities must be executed on a progressive scale, which period may not exceed three years from the period contemplated in paragraph (f), subject to availability of resources.

Short title and commencement

23. (1) This Act is called the Public Service Commission Act, 2023, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Different dates may be so determined—

- (a) in respect of different provisions of this Act; and
- (b) subject to section 22(3)(f) and (g), to ensure a progressive phasing in of implementation of the mandate of the Commission in relation to—
 - (i) municipalities or categories of municipalities; and
 - (ii) public entities or categories of public entities.

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SCHEDULE 1

OATH AND SOLEMN AFFIRMATION OF COMMISSIONER

I, A.B., do hereby swear/solemnly affirm, as a commissioner of the Public Service Commission, to be faithful to the Republic of South Africa and to hold my office as commissioner with honour and dignity, to respect and uphold the Constitution and the law; to be a true and faithful commissioner, not to divulge directly or indirectly any matter entrusted to me under secrecy; and to perform the powers and functions of my office without fear, favour or prejudice in accordance with the Constitution and the law to the best of my ability. 5

SCHEDULE 2
LAWS REPEALED OR AMENDED

No. and year of law	Short title	Extent of amendments or repeal	
Proclamation 103 of 1994	Public Service Act, 1994	The deletion in section 1 of paragraph (c) of the definition of “executive authority”. The deletion from Schedule 1 in Column 1 of “Office of the Public Service Commission” and deletion in Column 2 of “Office of the Director-General: Office of the Public Finance Service Commission”.	5 10
Act 46 of 1997	Public Service Commission Act, 1997	Repeal of the whole	
Act 92 of 1997	Independent Commission for the Remuneration of Public Office-bearers Act, 1997	The substitution in section 1 for the definition of “constitutional institution” of the following definition: ““constitutional institution” means the Public Protector, the Auditor General and any commission established by Chapter 9 or 10 of the Constitution, including the Independent Communications Authority of South Africa contemplated in section 192 of the Constitution and the Financial and Fiscal Commission referred to in section 220 of the Constitution;”	15 20 25
Act 1 of 1999	Finance Management Act, 1999	The amendment of Schedule 1 by the addition of the expression “Public Service Commission”.	30
Act 32 of 2000	The Local Government: Municipal Systems Act, 2000	The insertion of the following section after section 68: “Investigation and directions of Public Service Commission 68A. (1) In this section “Commission” means the Public Service Commission referred to in section 196(1) of the Constitution. (2)(a) The Commission may investigate whether the organisation and administration, and the personnel practices, of a municipality are in compliance with the Constitution and this Act, and may— (i) issue directions contemplated in section 196(4)(d) of the Constitution in order to ensure compliance with the Constitution or this Act; or (ii) provide advice in order to promote sound public administration. (b) If the Commission issues a direction contemplated in paragraph (a), the municipal council or municipal manager, as the case may be, must implement the direction as soon as possible after receipt of the written communication conveying the direction but, in any event, within 60 days after the date of such receipt. (3)(a) For the purposes of asserting the right to have a grievance investigated and considered by the Commission— (i) an employee may lodge that grievance with the municipal council or municipal manager under the prescribed circumstances, prescribed conditions and in the prescribed manner; and (ii) if that grievance is not resolved to the satisfaction of the employee, the municipal council must submit the grievance to the Public Service Commission in the manner and within the period prescribed by the Commission. (b) After the Commission has investigated and considered any such grievance, the Commission may recommend that the relevant municipal council or municipal manager, as the case may be, acts in terms of a particular provision or particular provisions of this Act or any other law if, having regard to the circumstances of the case, the Commission considers it appropriate to make such a recommendation. (c) A municipal manager may lodge any such grievance with— (i) the municipal council in terms of paragraph (a)(i); or (ii) directly with the Commission under the circumstances, on the conditions and in the manner prescribed by the Commission.”	35 40 45 50 55 60 65 70 75 80 85

MEMORANDUM ON THE OBJECTS OF THE PUBLIC SERVICE COMMISSION BILL, 2023

1. INTRODUCTION

- 1.1. The Public Service Commission (Commission) is an independent body established in terms of Chapter 10 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”). The Constitution links the Commission’s independence firmly with its impartiality and provides that no organ of state may interfere with the functioning of the Commission.
- 1.2. The Commission derives its mandate from sections 195 and 196 of the Constitution, which vest it with the custodian oversight responsibilities in the interest of the maintenance of effective and efficient public administration and a high standard of professional ethics in the public service.
- 1.3. Section 196(2) of the Constitution provides that the Commission must be regulated by national legislation. Section 196(9) of the Constitution provides that an Act of Parliament must regulate the procedure for the appointment of commissioners.
- 1.4. A business case and a socio-economic impact assessment was prepared in light of the view expressed in the National Development Plan (page 412) which indicates the following in respect of the Commission:
“The Office of the Public Service Commission, which is the administrative arm of the PSC, is partially dependent on the executive for the appointment of its Director-General and the allocation of its budget. This provides some important benefits including the scope to participate in the Governance and Administration Cluster; but there is also the potential for these links to compromise the PSC’s independence. These are issues that may need to be reflected on going forward.”
- 1.5. The National Development Plan (NDP) further noted that there is potential for the Commission’s status as a Public Service Department to compromise its independence as the employees of the Commission tend to have vested interest on some of the issues that they should be having an oversight on.
- 1.6. Parliament took a resolution, on 15 November 2011, that the Commission must report on the implementation of section 195(1) of the Constitution by the administration of all spheres of government, organs of state and the public enterprises in South Africa, every year. The report of the Commission should be contained in the annual report of the entity that the Commission is reporting on every year. The Commission seeks to give effect to the Parliamentary Resolution in piloting the enactment of the Public Service Commission Bill, 2023 (“Bill”).
- 1.7. The Bill gives effect to section 196 of the Constitution in the establishment of the Commission Secretariat, through a function shift from a National Department to the Secretariat. The removal of Commission from the Public Service Act, 1994, seeks to strengthen the independence of the Commission as a constitutional institution. This will assist the Commission with better client and stakeholder management, as it removes the possible perception of conflict of interest with its administration staff in the Secretariat.
- 1.8. The mandate of the Commission will be implemented within the public service and public administration to include municipalities, their entities, national and provincial departments and public entities.
- 1.9. The extension of the implementation of the Commission mandate to local government and public entities accords with the Constitution and enhances the oversight role of the Commission with respect to—
 - the proper implementation of people management practices within the public service and public administration; and

- the professionalisation of the public service in the achievement of a capable and ethical public service.

2. OBJECTS OF BILL

2.1. The objects of the Bill are the following:

- To repeal the Public Service Commission Act, 1997, and to promulgate a new Public Service Commission Act that will regulate the Public Service Commission in accordance with the provisions of section 196 of the Constitution;
- to regulate the process for the appointment of commissioners of the Commission;
- to provide for the establishment of the Secretariat of the Commission. The Office of the Public Service Commission, which supports the Commission, is defined as a department in schedule 1 to the Public Service Act, 1994. The Bill seeks to establish the administrative support of the Commission as a Secretariat led by a Chief Executive Officer that reports directly to the Commission;
- to provide for the Commission to fulfil its constitutional mandate in respect of local government and public entities; and
- to provide for matters incidental thereto.

2.2. The first priority of the sixth administration relates to building an ethical, value-driven capable, competent and developmental state. The Bill seeks to achieve the Government's objective of building a capable and ethical public service and public administration with the achievement of certainty in the full implementation of the powers and mandates of the Commission as stated in section 195 and 196 of the Constitution.

2.3. The Honourable President announced that service delivery would be focused at the district level of the municipalities. The Commission will focus on the district service delivery model as part of the response to the needs of Government in promoting the professionalisation of the public service and public administration. In doing so, the Commission will be responding to the needs of a developmental state.

2.4. The Commission will support the municipalities in line with section 154(1) of the Constitution of 1996, in the achievement of the President's directive as stated in the State of the Nation Address of 2023, as follows:

"Government is implementing a number of interventions to address failures at local government level and improve basic service delivery.

These include enhancing the capacity of public representatives and officials, maintaining and upgrading local infrastructure, and invoking the powers of national government to intervene where municipalities fail to meet their responsibilities.

{A professional public service, staffed by skilled, committed and ethical people, is critical to an effective state and ending corruption, patronage and wastage.

In response to the State Capture Commission and in line with the framework for the professionalisation of the public service, integrity assessments will become a mandatory requirement for recruitment to the public service and entry exams will be introduced.

We are amending legislation and strengthening the role of the Public Service Commission to ensure that qualified people are appointed to senior management positions and to move towards creating a single, harmonized public service".

2.5. The Bill will ensure that the Commission is able to execute its mandate without fear, favour, bias or interference, as the custodian of good governance and the promotion of ethical governance in line with the government priority objectives.

- 2.6. The Bill will improve the Commission's ability in responding to the problems of corruption which seems to be one of the challenges identified in the Report of the Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including organs of State, headed Justice Zondo. The Commission's focus on issues related to corruption and integrity will be done across the public administration and not just for the public service. The Commission will continue to manage the dedicated National Anti-Corruption Hotline (NACH) and undertake full-scale investigations and own initiated complaint management across the public administration, inclusive of the public service.
- 2.7. The Commission independence will be enhanced with a clear public administration mandate and well-positioned as a Constitutional Institution reporting to Parliament. This will result in the improvement of the Legislative arm of Government's oversight on the Executive arm, with the assistance of the Commission's reports.

3. CONTENT OF THE BILL

- 3.1. Clause 1 seeks to provide clarity on the terminology used in the Bill. The definitions of "local government", "municipality", "public entity", "public administration", "Secretariat", and "Commission bargaining forum" are provided.
- 3.2. Clause 2 deals with application of the Act, and states that it applies to administration of the public service and public administration.
- 3.3. Clause 3 deals with the constitution of the Commission which is made up of 14 commissioners appointed by the President.
- 3.4. Clause 4 deals with the appointment of commissioners who must be fit and proper persons in line with section 196(10) of the Constitution, aligned to the constitutional provisions in section 196(7) and 196(8). There are five commissioners at the national level and one (1) commissioner for each province. The President appoints the commissioners based on the recommendation of Parliament or the relevant provincial legislature and Premier.
- 3.5. The clause seeks to assist with synergising the process of appointment of Commissioners by introducing recommended NQF level 8 qualifications and experience of at least eight to ten years in the relevant fields. This is to ensure that the commissioners are professional and appropriately skilled to deliver on the mandate of the Commission, within the professionalisation of the public service framework.
- 3.6. An oath of office or solemn affirmation before a Judge President of the relevant division of the High Court, or other judge, is introduced in schedule 1 to the Bill to ensure that commissioners commit to and understand their role in defending the Constitution, and promote high ethical values.
- 3.7. Clause 5 clause deals with disqualification from appointment as Commissioners in line with the Constitutional provisions, resignation and vacation of Office of Commissioners.
- 3.8. Clause 6 deals with the provision relating to renewal of the commissioners' term of office and the designation of an acting chairperson or deputy chairperson in line with the PSC Amendment Act of 2019. The term of office is five years renewable for a further five years. A commissioner must remain a fit and proper person and having maintained a satisfactory level of performance in relation to his or her duties for the term to be renewable for an additional term of office of five years.
- 3.9. In terms of the clause a commissioner must not be a member of a structure of any political party or political organization. A commissioner must not take

on additional work while they are appointed as commissioners except if they have obtained the permission from the Honourable President. A commissioner may be removed from office on account of misconduct, incapacity or incompetence.

- 3.10. Clause 7 provides for the President to designate a chairperson and deputy chairperson for the Commission. The clause also deals with designation of an acting chairperson or deputy chairperson should the chairperson and the deputy chairperson be out of the office or are unable to act.
- 3.11. This clause is in line with clause 7(3) of the PSC Amendment Act, 2019, which stated that, “if both the chairperson and the deputy chairperson are absent, or for any reason unable to act as chairperson, the President shall designate one commissioner to act as the chairperson of the Commission for a period not exceeding 30 days”.
- 3.12. This is to ensure that there is a designation of a commissioner when both the chairperson and deputy chairperson are out of the office, and to ensure that the process is monitored after every 30 days to determine an appropriate measure.
- 3.13. Clause 8 provides that the remuneration of the commissioners shall be determined by the President, from time to time, by notice in the *Gazette*, after taking into account the recommendations of the Independent Commission for Public Office Bearers. It is important to move away from aligning the salaries of commissioners to what a Director-General in the public service earns, as this tends to confuse the commissioners to be officials.
- 3.14. The Independent Commission for Remuneration of the Public Office Bearers must, when considering the remuneration of commissioners consult with the Cabinet member responsible for Finance.
- 3.15. A different salary level may be recommended for the Chairperson and the Deputy Chairperson. Clause 8(6) states of the Commission, that the Commissioners remuneration may not be reduced and the conditions of appointment may not be adversely altered during a Commissioner’s term of office, including any renewal thereof.
- 3.16. Clause 9 provides that the Commission may conduct inspections either physically or through inspection of documents and may request to be provided with information which the departments and public institutions within public administration are obliged to submit.
- 3.17. Clause 10 provides that the Commission is empowered to conduct investigations within departments, other organisational components in the public service and public administration. The Commission must have access to relevant documents that will assist it in the performance of its functions, including at the local government and public entity.
- 3.18. This clause also deals with grievances of employees in public entities and municipalities.
- 3.19. Clause 11 provides for the Commission to conduct inquiries as part of its information gathering processes, summons witnesses and request for documents to be presented before it in relation to a department, public entity or local government, taking into account the applicable laws and its Rules for issuance of summons.
- 3.20. Clause 12 provides for the report of the Commission in relation to an investigation or grievance to be made available to affected parties once the report is finalised and submitted to the relevant executive authority. An investigation report may also be provided with the permission of such other

person or persons as the case may be and certain information may be severed from part of the report or part relating to any other person.

- 3.21. Clause 13 provides that a department, public entity or a municipality that receives a report of the Commission directing it to act in a particular way under a particular law, must respond by providing the Commission with the plan of action in implementing the advice, directions or recommendations of the Commission within 60 days or within such shorter period or longer as may be stated by the Commission in the relevant report.
- 3.22. Should the executive authority not be able to implement the decision due to good reasons, he or she must revert back to the Commission with reasons or take the Commission's report on review in court where there is a good reason to do so. This provision is applicable to the Mayor and the Executive Council of a Municipality and the Executive Authorities, Chairpersons, boards or Chief Executive Officer of the public entity.
- 3.23. Clause 14 provides that a commissioner as well as a member of staff as contemplated in clause 16 must act independently and without fair or favour in the implementation of the Commission's mandate. This clause further prohibits an employee of the Commission's Secretariat or a commissioner from rendering assistance in any matter in which the employee or a commissioner might have a vested interest.
- 3.24. Clause 15 deals with the obstruction of the Commission in the exercise of its powers or the performance of its functions. Any person found guilty of obstructing the Commission is guilty of an offence and liable on conviction to imprisonment of up to 12 months or a fine of up to R50 000.00.
- 3.25. Clause 16 deals with the establishment of the Secretariat of the Commission to provide the administrative and technical support to the Commission. The employees of the Office of the Public Service Commission are deemed to be appointed into the Commission's Secretariat. Their service conditions are transferred to the Secretariat through a function shift. The Secretariat is headed by a Chief Executive Officer responsible for the management of the affairs of the Commission and appointed by the Commission. The Chief Executive Officer is accountable to the Chairperson of the Commission and the Commission.
- 3.26. Clause 17 provides for the Commission to delegate its powers to any committee or committees of one or more commissioners on such conditions and terms as the Commission may determine. The Commission may not delegate its powers to make Rules. The Commission is further not divested of any power by virtue of any delegation.
- 3.27. Clause 18 deals with the finances and accountability of the Commission. In terms of the clause, the Chairperson is the executing authority of the Commission. The budget for the Commission is to be appropriated through monies appropriated by Parliament in respect of the Commission as a constitutional institution.
- 3.28. The Chief Executive Officer is the accounting officer for the Commission in accordance with section 36 of the Public Finance Management Act, 1999 ("PFMA"). The functions of the accounting officer are in line with the responsibilities in terms of section 38 of the PFMA.
- 3.29. The accounting officer in term of Section 40 of the PFMA is responsible for the submission of all reports, financial statements, notices and other information which he or she must compile and bring to the executive authority's attention for approval before submitting the report to National Treasury, Auditor-General, Parliament or any other external body or institution.

- 3.30. The Commission will operate its own bank account and its annual budget will comprise of monies appropriated by Parliament for its purpose and monies received as donations or grants, or management fees charges on an actual cost recovery basis on specific projects which may be conducted on the request of a state institution. Applicable rates in this regard will be published in the Gazette.
- 3.31. This is required as the Commission will implement its mandate in respect of public entities and local government on an incremental scale, based on availability of resources. The Office of the Public Service Commission will be migrating into the Commission's Secretariat with its current budget and this provision will be utilised by the Secretariat. An additional budget on an incremental basis will be required for the implementation of the extended mandate to public entities and local government.
- 3.32. Clause 19 provides for legal proceedings by or against the Commission. It provides that the Commission is a legal entity that can sue and be sued. The State Liability Act, 1957 (Act No. 20 of 1957), applies to the Commission.
- 3.33. Clause 20 provides for the Commission's power to make rules by notice in the *Gazette* in relation to grievances, complaints, the issuance of summons, fees payable for services that the Commission may render, and other matter permitted to be regulated under a rule.
- 3.34. Clause 21 provides for the repeal and amendment of laws.
- 3.35. Clause 22 provides for transitional arrangements applying to the Commission.
- 3.36. Clause 23 provides for the short title and commencement of the Act. The clause provides for the President to fix the date of commencement of the Act by Proclamation in the *Gazette*. The President is further empowered to determine different dates to ensure a progressive phasing in of implementation of the mandate of the Commission in relation to—
- municipalities or categories of municipalities; and
 - public entities or categories of public entities.

4. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

- 4.1. It is anticipated that there will be no additional organisational and personnel implications for the Commission with the current organisational structure migrating into the newly established Secretariat of the Commission. This will be done through a function shift of the existing Office to the Secretariat, inclusive of existing resources and budget with no change to the organisational design or staffing number.
- 4.2. When the mandate of the Commission is implemented to include the grievance management, complaint management, monitoring and evaluation of municipalities and public entities at the local government level and national and provincial government level, the Commission will require additional human resources. During the early phases, new work in relation to municipalities and public entities may be managed through reprioritisation of existing resources. A progressive implementation plan will be put in place.
- 4.3. Additional financial and human resources may be required where relevant for the anticipated growth of the post establishment of the Commission Secretariat and will be dependent on approval of additional budgets. The extended mandate may be implemented by utilising temporary staff or resources on a project basis, until the Secretariat is sufficiently well-resourced to implement its full mandate in the municipalities and public entities.

5. FINANCIAL IMPLICATIONS FOR THE STATE

- 5.1. The business case argues for a function shift of the existing Office to the Secretariat, inclusive of existing resources and budget. There will be preparatory actions and systems development needed to cater for the move away from the public service and use of associated transversal systems where available. The projected capital budget increase in the first year of the establishment of the Secretariat is costed at R15 780 960 and financial resources will be sourced internally.
- 5.2. Once the Bill is enacted into law, the mandate of the Commission will be reinforced and extended in terms of local government and public entities. An additional Branch has been added on the budget structure, namely, Programme 5: Provincial Operations to ensure effective coordination of operations for the execution of the Commission mandate at provincial level.

The baseline costing of the PSC Bill in the MTEF is as follows:

Economic classification	2024/25 Baseline R'000	2025/26 Baseline R'000	2026/27 Baseline R'000
Compensation of employees	84 194	89 245	94 600
Goods and services	40 930	29 749	30 525
Machinery and equipment	2 916		1 009
Total economic classification	128 040	118 994	126 134

Outcomes: the specific changes in participants (i.e. beneficiaries) behaviour, knowledge, skills, status and capacity:

- 5.3. The anticipated cost for the implementation of the Commission mandate at the municipalities and public entities will be relevant to the anticipated growth of the Commission post establishment as a Constitutional Institution and will be dependent on approval of additional budgets.
- 5.4. The implementation of the mandate of the Commission to municipalities and public entities is planned to happen in phases, based on availability of resources and the possibility to have a cost recovery / management fees on specific projects implemented on request.

6. DEPARTMENTAL BODIES OR PERSONS CONSULTED

- 6.1. A business case and the socio-economic impact assessment was completed to provide a basis for the justification of the Bill and the establishment of the Secretariat to improve the Commission’s autonomy and independence.
- 6.2. The consultation on the draft Bill took place in the various Commission strategic plan sessions between 2018 and 2023. The Bill was presented to the Commission’s Bargaining Forum, staff of Commission, and many other stakeholders were consulted. All institutions supporting democracy, DPSA, National Treasury, Government Employee Pension Fund (GEPF), Office of Institutions Supporting Democracy, Office of the Public Protector, Office of the Auditor-General were consulted. The Bill was gazetted for public comments on the 9 of June 2023 and was published in a manner that allowed organised local government such as SALGA, municipalities and other interested persons an opportunity to make representations with regard to the draft legislation. Their representations were considered and included in the Bill. Inputs received at workshops held were incorporated into the Bill, and out of the 16 written inputs received only three did not fully support the Bill.
- 6.3. The Governance and Inter-Governmental Relations Working Group was consulted. The Bill in line with section 154(2) of the Constitution, was

further consulted with SALGA North West Province, SALGA Western Cape Province and SALGA Limpopo Province.

7. CONSTITUTIONAL IMPLICATIONS

- 7.1. The Bill seeks to effect a legislative and institutional framework that aligns and promotes the independence, impartiality and fair implementation of the Public Service Commission's mandate in terms of section 195 and 196 of the Constitution.
- 7.2. The promotion of an ethical, professional and developmental state will be achieved across the public service and public administration. This will reduce ineffectiveness in the public service and promote synergy and professionalisation of public administration.

8. PARLIAMENTARY PROCEDURE

- 8.1. The determination of whether a Bill is a section 76 Bill is determined in accordance with the explicit list of legislative matters in section 76(3)(a) to (f) of the Constitution, and whether the provisions of the Bill in substantial measure fall within a concurrent provincial legislative framework.
- 8.2. Section 76(3)(e) of the Constitution provides that any legislation contemplated in section 196 of the Constitution must be passed in accordance with the procedure in section 76. In view of this, the Bill has to be dealt with in terms of section 76 of the Constitution, which means the Bill will have to be discussed at the National Assembly and the NCOP as it is a national legislation that affects the functions and competencies of the provinces.
- 8.3. The Bill may need to be referred to the National House of Traditional and Khoi-San Leaders in line with section 39(1)(b) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it pertains to matters referred to in section 154(2) of the Constitution.

