

Comments by the Public Service Accountability Monitor (PSAM) to the Department of Public Service and Administration on the draft Public Administration Management Bill**30 July 2013****Submitted via email to:** DanieM@dpsa.gov.za and renishan@dpsa.gov.za**Legal Services****Department of Public Service and Administration**

The Public Service Accountability Monitor (PSAM) is a research, monitoring and training unit based at the School of Journalism and Media Studies of Rhodes University. The PSAM is dedicated to strengthening democracy and transparent and accountable governance and has been active in this area since its establishment in 1999. The PSAM aims to improve public service delivery and the progressive realisation of constitutional rights using various social accountability monitoring tools (which relate to resource allocation, strategic planning, performance monitoring, expenditure management, integrity and oversight processes). These tools have been developed in order to systematically monitor the public resource management cycle so as to better enable citizens to hold government officials and the executive to account for the delivery of services and the performance of their duties.

We welcome most of the Bill's provisions and in fact feel that certain of them are long overdue. In the paragraphs that follow we take the opportunity to comment on a selection of provisions and terms used within the Public Administration Management Bill (hereinafter "the Bill").

Definitions – "Employee"

We do not agree that "special advisors" should be excluded from the definition of "employee" within the Bill. We note that such persons would correctly be interpreted as amounting to public officer's when consideration is given to the definition thereof as contained in the Prevention and Combating of Corrupt Activities Act. In order to improve accountability such advisors must be subject to the Bill's conditions in ways that will improve governance. We also note that if special advisors are excluded from the definition of "employee" they will not be subject to clause 35(2) which seeks to correctly prohibit such persons and their immediate family and spouses from doing business with the state.

Clause 4 – Service charter

We have assumed that the service charter proposed is comparable to the current *Service Delivery Improvement Programme* required by the Public Service Regulations of 2001 as amended. Should our assumption be correct and mindful that the Bill proposes repealing the Public Service Act (and thereby the Regulations referred to above), we propose the addition of a further clause requiring that "*the head of a national or provincial institution must include in its annual performance plan, the service charter, referred to in subsection (1), for the institution and all its government components*".

Clause 5 – Service centres

Our primary concern here is the absence of a definitive timeframe for the establishment of the framework envisaged in Clause 5(1). Whilst we appreciate that considerable consultation is required to ensure that the framework accords with implementation objectives of the Intergovernmental Relations Framework Act realised, we would urge the Department to specify a date at which such framework must be concluded between the relevant role players.

Clause 6 - Use of electronic service in service delivery improvement

We note that within this clause there is no explicit reference to the Promotion of Access to Information Act or use of the words “transparency”. Under the circumstances we propose the following clauses:

A further provision within clause 6(1)(b) numbered (iii) which reads as:

“to promote transparency, responsiveness and adherence to the provisions of the Promotion of Access to Information Act”

Clause 10 - Functions of executive authorities of institutions

We are of the informed view that clause 10(a) does not sufficiently articulate and make explicit the vital and often weak adherence to the accountability responsibilities that executive authorities owe to either provincial legislatures or Parliament. We would want to see the inclusion of provisions within the Bill that give far greater effect to sections 92 and 133 of the Constitution in order to bolster accountability mechanisms and oversight.

We are of the informed view that clause 10(e) does not sufficiently address instances where an executive authority fails to take corrective action where the head of an institution is implicated in breaches of the PFMA, especially where such contraventions meet the requirements of financial misconduct and are reported as such by the Auditor-General. We accordingly propose the following additional sub clause:

“must where the Auditor-General identifies contraventions of the PFMA implicating the head of an institution and/or members of the senior management service, institute disciplinary action against those implicated. Furthermore where prima facie evidence exists of criminal acts or omissions, the executive authority must lay criminal charges and comply with the Prevention of Organised Crime Act and Prevention and Combating of Corrupt Activities Act, where applicable”

Clause 13 - Appointment, career incidents and dismissal of heads and those Senior Management Service members reporting to them

Whilst clause 10(g) requires that an executive authority “evaluate the performance of the head of the institution annually” there appears to be no similar provision requiring the annual evaluation of other senior management service employees below that of the head of an institution. We would therefore recommend that clause 13(6) be revised to require annual performance appraisals which will then serve as the basis for any possible remuneration increments and performance bonuses that may be due to members of the senior management service.

Clause 15 - Terms and conditions of service of members of Senior Management Service

In view of the current trends especially within certain local governments and parastatals where remuneration packages are under regulated and subject to abuse, PSAM proposes that the word “may” in Clause 15 (1)(a) be replaced with “must”. We would also therefore wish to replace the word “may” with “must” where it appears at clause 15(3)(c).

Clause 35 - Prohibitions on conducting business with State

This general prohibition clause is to be welcomed given the extent to which such conduct has and continues to impact negatively on service delivery, particularly the efficient and effective use of scarce public resources.

PSAM proposes that the word “may” in Clause 35(6) be replaced with “must” given the widespread and acknowledged weaknesses in state procurement systems.

We do not agree with the proposed penalty/sanction limitation prescribed in clause 35(8) which we regard as too lenient, especially in circumstances where employees circumvent or compromise state procurement systems in order to secure a benefit that they otherwise would not be entitled to had the procurement system been operated efficiently and effectively.

We also note that clause 35 only requires disclosure by employees where they or their family members have financial interests in an entity that is conducting business with the State. PSAM recommends that clause 35 be amended to require that all employees declare annually all financial interests that both they and their family members have, regardless of whether such interests are connected to business with the State. We would also request that such declarations be made routinely accessible to the public in much the same way as the register of declaration relating to members of Parliament is.

Clause 38 - Conduct of employee or former employee participating in award of work to service providers

We regard the 12 month period as being insufficient a deterrent against the practice of ‘javelin throwing’ and would recommend that it be extended to 24 months.

Clause 47 – Conduct of investigations

Should there be support for our proposal that the Bureau be empowered to investigate financial misconduct without the need for concurrence, then clause 47(3) will require considerable revision.

We have assumed that reference in clause 47(1) to “section 54(3)” is in fact a typographical error and should in fact read as “section 45(3)”.

Clause 57 – Failure to comply with the Act

We would propose that clause 57(1) and 57(2) also include reference to the PFMA and MFMA where applicable.

We would also propose that a further clause be added as clause 57(4) and which would require as follows:

“For inspection by the Public Service Commission, any other constitutional institution, the Minister and any other person, the executive authority of an institution must keep record in the prescribed manner—

(a) all non-compliances with this Act by the head of an institution; and

(b) the disciplinary steps taken and if steps are not taken, the reasons justifying why no steps were taken.

In conclusion, we look forward to considering the various submissions made and the Department’s responses in the shared hope that a statute will be adopted in due course that will enhance the State’s ability to provide effective, transparent, accountable and coherent government.

Yours faithfully,

Jay Kruuse

Director

Public Service Accountability Monitor (www.psam.org.za)

School of Journalism and Media Studies

Rhodes University

Email: j.kruuse@ru.ac.za

Tel: 046 603 8358

Fax: 046 603 7578