



13 February 2024

Portfolio Committee on Public Service and Administration
Parliament
c/o: Mr Masixole Zibeko pscb@parliament.gov.za

Re: Submission on the draft [Public Service Commission Bill \(B30 – 2023\)](#)

This submission is prepared on behalf of the Action for Accountability (A4A) project which is a partnership project between the Ahmed Kathrada Foundation (AKF), Accountability Lab South Africa (ALSA), and the Public Service Accountability Monitor (PSAM). The project is collaborating with four local communities in Lenasia, Finetown, Mondeor and Makhanda.

We welcome the opportunity to submit written comments and recommendations on the [Public Service Commission Bill \(B30 – 2023\)](#).

Background

South Africa's public administration is undergoing an accountability crisis as evidenced by inadequate consequence management; widespread ineffective and inefficient administration; the looting of state-owned entities; weakening of functioning government institutions, gross violations of procurement policies and the capture of state resources to enrich private interests. We therefore welcome legislative reforms that will strengthen adherence to s.195 of the Constitution and the effectiveness of the Public Service Commission's mandate.

Should the Portfolio Committee have any questions regarding this submission please contact the following person: Jay Kruise, Director, PSAM, Tel: 0466038358; Email: j.kruise@ru.ac.za.

Comments

Section of Bill	Proposed revised section or additional section of the Bill	Concern / Rationale
4(4(b)(i) through (v)	We suggest changing these sections to “at least 8 years.”	We agree with PARIs submission that to aid in efficiency and precision of language – “at least eight to 10 years” experience is slightly ambiguous – it should simply read, “at least eight years” or, “at least 10 years”, whichever the drafters intended.
“5(e) has at any time been removed from a position of trust by reason of improper conduct involving a breach of such trust;”	“5(e) has at any time been dismissed from employment for misconduct or removed from a position of trust by reason of improper conduct.”	The current proposed formulation is too narrowly framed, and should be extended to include misconduct in the workplace.
5	We propose an additional subsection: “5(g) is a person who was at any time convicted of a criminal offence, especially involving the public administration.”	Section 5(f) as currently worded is too restrictive and does not cater for various other serious offences such as assault, attempted murder, murder, robbery, intimidation etc.
5.	We propose an additional subsection: “5(h) held a senior management position in a public service, municipality or public entity that had 2 or more adverse or disclaimed audit opinions by the Auditor-General of South Africa during their tenure.”	We submit that such persons are not fit and proper persons to be appointed as a commissioner.
6(1)	<p>We propose amending section 6(1) so that it reads,</p> <p>“A commissioner may not—</p> <p>(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]</p> <p><u>nor</u></p> <p>(b) [without the written consent of the President] perform or engage himself or herself to perform any remunerative work.”</p>	<p>We propose that clause 6(1)(b) should be amended such that no remunerative work outside the duties of his or her office is allowed. It is not clear what circumstances the Bill is envisioning that might justify this clause, but remunerative work outside their official duties detracts from those duties, and it is potentially rife with conflicts. Furthermore, the fact that the President will be responsible for authorising this work creates inappropriate political leverage over what are constituted as politically independent positions.</p> <p>In addition, the use of “or” introduces some ambiguity – that a Commissioner</p>

		may not do either of these two things (i.e. not ruling out both). We suggest replacing with "nor".
12.	We propose an additional sub-section: "12(4) The Commission must on a quarterly basis provide Parliament with a written schedule of investigation and inquiry reports that have been completed, including a summary of each report; which schedule Parliament must make public within 30 days of having been submitted to it by the Commission."	We have witnessed how reports by the PSC are not acted upon and/or made public with negative consequences for accountability, parliamentary and citizen oversight and ultimately the taking of corrective action.
12	We propose an additional sub-section: "12(5) The Commission must promptly release on its website all finalised reports that reveal evidence of a substantial contravention of, or failure to comply with the law; or an imminent and serious public safety or environmental risk.	To support mandatory disclosure of Commission reports that are in the public interest.
"13(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—...."	We propose that the wording be revised to read as follows: "13(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 must report such refusal or failure—...."	We submit that the section should require (rather than permit) the Commission to report such refusal or failure, as it will support accountability and consequence management which have been far too inadequate in the public service and public administration of South Africa. Placing an obligation on the Commission to report such matters will also provide additional information to support citizen action and oversight of public duty bearers, and the whole of society approach to addressing, maladministration, misconduct and corruption that have increasingly threatened South Africa's democracy and development.