

REPUBLIC OF SOUTH AFRICA

PUBLIC ADMINISTRATION MANAGEMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill published in Government Gazette No. 31113 of 2 June 2008)
(The English text is the official text of the Bill)*

(MINISTER FOR THE PUBLIC SERVICE AND ADMINISTRATION)

[B 47—2008]

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BILL

To provide for organisation, management, functioning and personnel-related matters in administration in the three spheres of government and for matters connected therewith.

PREAMBLE

RECOGNISING THAT—

- the Constitution provides that the Republic is one, sovereign, democratic state and that the government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated;
- the Constitution requires all spheres of government to provide effective, efficient, transparent, accountable and coherent government for the Republic to secure the well-being of the people and the progressive realisation of their constitutional rights;
- one of the most pervasive challenges facing our country as a developmental state is the need for government to redress poverty, underdevelopment, marginalisation of people and communities and other legacies of apartheid and discrimination; and
- this challenge is best addressed by providing for administrations in the three spheres of government to be organised and to function in ways that ensure efficient, quality, collaborative and accountable service delivery to alleviate poverty and promote social and economic development for the people of the Republic;

AND BEARING IN MIND THAT—

- administration in every sphere of government is governed by the values and principles governing public administration in section 195(1) of the Constitution;
- section 195(3) of the Constitution requires that national legislation ensures the promotion of those values and principles;
- section 195(5) and (6) of the Constitution permits legislation regulating public administration to differentiate between different sectors, administrations and institutions by taking into account their nature and functions;
- section 197(1) and (2) of the Constitution provides for a public service within the public administration, which must function and be structured, in terms of national legislation, and the terms and conditions of employment of which must be regulated by national legislation;
- section 197(4) of the Constitution provides that provincial governments are responsible for the recruitment, appointment, promotion, transfer and dismissal of members of the public service in their administrations within a framework of uniform norms and standards applying to the public service;
- sections 151(3) and 153 of the Constitution provide that a municipality has the right to govern, on its own initiative, the local government affairs

- of its community and to structure and manage its administration, subject to national and provincial legislation, as provided for in the Constitution;
- section 154(1) of the Constitution stipulates that the national government and provincial governments must, by legislative and other measures, support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions;
 - section 164 of the Constitution provides that any matter concerning local government not dealt with in the Constitution may be prescribed by national legislation or by provincial legislation within the framework of national legislation;
 - as required by section 163 of the Constitution, the Organised Local Government, Act 1997 (Act No. 52 of 1997), provides for the recognition of national and provincial organisations representing municipalities;
 - the Public Service Commission has—
 - * an oversight role with regard to the public service provided for in section 196(4) of the Constitution, read with the Public Service Commission Act, 1997 (Act No. 46 of 1997); and
 - * the additional powers or functions prescribed by an Act of Parliament as envisaged in section 196(4)(g) of the Constitution,

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

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CHAPTER 1

INTERPRETATION, SCOPE AND OBJECTS OF ACT

Definitions

1. In this Act, unless the context otherwise indicates—
- “**Academy**” means the Public Administration Leadership and Management Academy referred to in section 32(1); 5
- “**bargaining council**” means a bargaining council registered under the Labour Relations Act with jurisdiction in the Public Administration or any portion thereof;
- “**career incidents**”, in relation to an employee, means performance management, leave, training, temporary assignment of other functions, transfer, secondment, performance of outside remunerative work, disciplining employees for transgressing workplace policies and practices, including suspension from work, or any other human resource matter which relates to the employee in his or her individual capacity, but excludes appointment and dismissal; 10
- “**collective agreement**” means a collective agreement concluded by a bargaining council; 15
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**educator**” means an educator as defined in section 1 of the Employment of Educators Act, 1998 (Act No. 76 of 1998);
- “**electronic government**” means the use of information and communication technologies in and across institutions to— 20
- (a) improve access to services and information; and
- (b) promote the efficiency, effectiveness and accountability of institutions;
- “**electronic service**” means the provision of a service by means of information and communication technologies; 25
- “**employee**” means a person appointed in terms of this Act or regarded as having been appointed in terms of this Act, but excludes a person appointed as a special adviser in terms of section 20(3);
- “**Employment Equity Act**” means the Employment Equity Act, 1998 (Act No. 55 of 1998); 30
- “**executive authority**”, in relation to—
- (a) The Presidency or a national government component within the President’s portfolio, means the President;
- (b) a national department or national government component within a Cabinet portfolio, means the Minister responsible for that portfolio; 35
- (c) the Office of the Public Service Commission, means the Chairperson of the Public Service Commission;
- (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 that Council responsible for that portfolio; 40
- (f) a municipality or municipal government component of that municipality, means the municipal council of that municipality;
- “**functionary**” means any person upon whom a power is conferred or duty is imposed by this Act; 45
- “**further education and training institution**” means any public or private further education and training institution referred to in the definition of “college” in section 1 of the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006); 50
- “**government component**” means a national, provincial or municipal government component;
- “**gratification**” means gratification as defined in section 1 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);
- “**head**”, in relation to— 55
- (a) a national department, means the incumbent of a post mentioned in column 2 of Part A of Schedule 1;
- (b) the Office of a Premier, means the incumbent of a post mentioned in column 2 of Part B of Schedule 1;

- (c) a provincial department, means the incumbent of a post mentioned in column 2 of Part C of Schedule 1;
- (d) a national government component, means the incumbent of a post mentioned in column 2 of Part D of Schedule 1;
- (e) a provincial government component, means the incumbent of a post mentioned in column 2 of Part E of Schedule 1; 5
- (f) a municipality, means its municipal manager;
- (g) a municipal government component, means the incumbent of a post mentioned in column 2 of Part F of Schedule 1, appointed in terms of section 13, and includes an employee acting in such post; 10
- “head of institution”** means the head of a national department, the Office of a Premier, a provincial department or a municipality or a head of a national, provincial or municipal government component, and includes any employee acting in such post;
- “higher education institution”** means a higher education institution as defined in section 1 of the Higher Education Act, 1997 (Act No. 101 of 1997); 15
- “information and communication technologies”** means all aspects of technology which are used to manage and support the efficient gathering, processing, storing and dissemination of information;
- “institution”** means a national department, the Office of a Premier, a provincial department, a municipality or a national, provincial or municipal government component; 20
- “Intelligence Services”**, in relation to a member, means a member of the National Intelligence Agency, South African Secret Service or South African National Academy of Intelligence, appointed, or regarded as having been appointed, in terms of the Intelligence Services Act, 2002 (Act No. 65 of 2002); 25
- “Labour Relations Act”** means the Labour Relations Act, 1995 (Act No. 66 of 1995);
- “Minister”** means the Minister responsible for public administration;
- “month”** means a period extending from the first to the last day, both days inclusive, of any one of the 12 months of a year; 30
- “municipal council”** means a municipal council referred to in section 157(1) of the Constitution;
- “municipal government component”** means a government component established by the executive authority of a municipality in terms of section 8; 35
- “municipal institution”** means a municipality or a municipal government component;
- “Municipal Structures Act”** means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
- “Municipal Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); 40
- “municipality”** means a municipality established in terms of section 155 of the Constitution and the Municipal Structures Act;
- “national department”** means a national department established or regarded as having been established in terms of section 7; 45
- “national government component”** means a government component established by the executive authority of a national department in terms of section 8;
- “national institution”** means a national department or national government component;
- “national organised local government”** means the national organisation recognised in terms of section 2(1)(a) of the Organised Local Government Act, 1997 (Act No. 52 of 1997), to represent the majority of provincial organisations contemplated in section 2(1)(b) of that Act; 50
- “Office of a Premier”** means the Office of a Premier established or regarded as having been established by section 7(4); 55
- “organ of state”** means an organ of state as defined in section 239 of the Constitution;
- “person”** means a natural or juristic person;
- “permanently”** or **“permanent”**, in relation to the employee, means an employee to whom a retirement age in section 41 applies; 60
- “post”** means a post on the staff establishment for which financial provision exists;
- “prescribed”** means prescribed by regulation made in terms of section 44;

- “principal institution”**, in relation to a national, provincial or municipal government component, means the body listed in column 3 in Part D, E or F of Schedule 1;
- “provincial department”** means a provincial department established or regarded as having been established in terms of section 7; 5
- “provincial government component”** means a provincial government component established by the executive authority of the Office of a Premier or a provincial department in terms of section 8;
- “provincial institution”** means the Office of a Premier, a provincial department or a provincial government component; 10
- “provincial organised local government”** means a provincial organisation recognised in terms of section 2(1)(b) of the Organised Local Government Act, 1997, to represent the majority of municipalities in the province in question;
- “public service”** means all national and provincial departments and national and provincial government components and their employees; 15
- “Public Administration”** means the public service, municipalities and municipal government components and their employees;
- “Public Service Commission”** means the Public Service Commission established by section 196(1) of the Constitution;
- “regulation”** means a regulation made under section 44; 20
- “relevant authority”**, in relation to an employee, means the person responsible for the career incidents of the employee in terms of section 13 or 21;
- “second”** means the secondment of an employee in terms of section 25;
- “Security Services”**, in relation to a member, means a member of—
- (a) the Regular Force of the South African National Defence Force, appointed, or regarded as having been appointed, in terms of the Defence Act, 2002 (Act No. 42 of 2002); 25
 - (b) the South African Police Service, appointed, or regarded as having been appointed, in terms of the South African Police Service Act, 1995 (Act No. 68 of 1995); or 30
 - (c) the Department of Correctional Services, appointed, or regarded as having been appointed, in terms of the Correctional Services Act, 1998 (Act No. 111 of 1998);
- “Senior Management Service”** means the senior management service envisaged in section 12; 35
- “service charter”** means the service charter referred to in section 4;
- “staff establishment”** means the posts which have been created for the normal and regular requirements of an institution;
- “temporarily”** or **“temporary”**, in relation to an employee, means an employee not permanently employed; 40
- “this Act”** includes the regulations, determinations and directives made in terms of this Act;
- “training institution”** means—
- (a) the Academy; or
 - (b) any training institution under the authority of— 45
 - (i) the national or a provincial government;
 - (ii) the national or a provincial organised local government; or
 - (iii) an institution;
- “transfer”**, in relation to an employee, means the transfer of an employee in terms of section 24; 50
- “working days”** means any day other than Saturdays, Sundays or public holidays as defined in section 1 of the Public Holidays Act, 1994 (Act No. 36 of 1994).

Application of Act

2. (1) The provisions of this Act apply to—
- (a) the public service consisting of— 55
 - (i) national departments and national government components;
 - (ii) provincial administrations consisting of Offices of the Premier, provincial departments and provincial government components; and
 - (b) municipalities and municipal government components, 60

and their employees, except where provided otherwise in this Act.

- (2) Except as provided for in subsections (3) and (4), the provisions of this Act apply to members of the Security and Intelligence Services and educators and their institutions only in so far as they are not contrary to the laws governing their employment.
- (3) The following provisions apply to members of the South African Police Service and the Department of Correctional Services, referred to in paragraphs (b) and (c) of the definition of “Security Services” in section 1, and educators and their institutions: 5
- (a) Sections 15, 29, 30, 37 and 54;
 - (b) norms and standards set in regulations made in terms of—
 - (i) section 44(1)(a)(i) in respect of personnel and public administration systems; and 10
 - (ii) section 44(1)(a)(iv) to (vi) and (ix).
- (4) The following provisions apply to members of the Regular Force of the South African National Defence Force, referred to in paragraph (a) of the definition of “Security Services” in section 1, and Intelligence Services and their institutions:
- (a) Section 37; 15
 - (b) norms and standards set in regulations made in terms of—
 - (i) section 44(1)(a)(i) in respect of personnel and public administration systems; and
 - (ii) section 44(1)(a)(iv) to (vi) and (ix).
- (5) The provisions of this Act only apply to a head of a national department appointed 20 in terms of section 207(1) or 209(2) of the Constitution to the extent that the subject matter of those provisions are not provided for in any other law governing their employment.

Object of Act

3. The object of this Act is, with due regard to the values and principles in section 25 195(1) of the Constitution, to ensure efficient, quality, collaborative and accountable service delivery by institutions to alleviate poverty and promote social and economic development of the people of the Republic by—
- (a) providing for the use and development of institutions, systems, practices, procedures, human and other resources, including information and communication technologies, in a manner which maximises— 30
 - (i) human potential and addresses staff shortages and barriers to staff mobility; and
 - (ii) efficiency in institutions and service delivery;
 - (b) providing for frameworks for personnel and public administration systems, practices and procedures in institutions; 35
 - (c) providing for the setting of standards for services to be delivered by institutions and facilitating a culture of service delivery across institutions;
 - (d) removing and preventing unjustifiable disparities in conditions of service of employees in institutions across three spheres of government; 40
 - (e) providing for the transfer of functions within and between the national and provincial spheres of government other than functions conferred by the Constitution or any other law;
 - (f) providing for the transfer of employees necessary in terms of this Act or any other law; 45
 - (g) providing for a Senior Management Service across all institutions;
 - (h) providing for standards of conduct and anti-corruption measures to promote service delivery, ethical conduct and professionalism of employees;
 - (i) providing for electronic government as a key mechanism to improve internal efficiency of institutions and service delivery; and 50
 - (j) promoting innovation for the purpose of enhanced effectiveness, efficiency and economy of service delivery.

CHAPTER 2

SERVICE DELIVERY AND ELECTRONIC GOVERNMENT

Service charter 55

4. (1) The head of a national or provincial institution must establish and maintain the prescribed service charter setting out measures to—

- (a) improve the efficiency and quality of, and accountability for, services to best meet the needs of the recipients of such services; and
- (b) foster a culture of service delivery, professionalism and ethical conduct among employees.

(2) The municipal manager of a municipality must include in its integrated development plan, contemplated in section 25, read with section 6, of the Municipal Systems Act, the service charter, referred to in subsection (1), for the municipality and all its municipal government components. 5

Service centres

5. (1) The Minister must, after consultation with the Ministers responsible for local government and finance and national organised local government, determine a framework for service centres across the Republic as sites for delivery of services across the spheres of government to enhance accessibility, convenience and effectiveness of services in addition to other means of service delivery. 10

(2) The framework must provide for— 15

- (a) the recognition of service centres in existence immediately before this section takes effect and the establishment of service centres;
- (b) the minimum services to be delivered at service centres and service standards for those services;
- (c) the management, governance and financial arrangements for the centres and the respective functions of the participating institutions; 20
- (d) the staffing arrangements for the centres, including the utilisation of employees of participating institutions;
- (e) the conclusion of an implementation protocol, envisaged in section 35 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), for each centre; 25
- (f) the functionary responsible for initiating the conclusion of an implementation protocol, after consultation with the affected institutions and other organs of state;
- (g) any other matter necessary for the effective and efficient functioning of the centres. 30

(3) The framework may enable organs of state other than institutions, on their request, to be participating institutions at centres to provide specified services.

(4) For each service centre and within the framework referred to in subsection (2), the relevant institutions and other organs of state, if any, must conclude an implementation protocol referred to in subsection (2)(e). 35

(5) The Minister responsible for local government must co-ordinate the implementation of implementation protocols for service centres.

Use of information and communication technologies in service delivery improvement 40

6. (1) The Minister must—

- (a) promote the use of information and communication technologies in institutions to enhance the efficiency of their internal and administrative operations;
- (b) establish a framework applicable to all institutions to— 45
 - (i) facilitate and co-ordinate the development and enhancement of electronic services and the access of people, who do not have access to electronic services, to those services;
 - (ii) facilitate the alignment of the use of staff, information and communication technologies, other resources and internal processes to achieve optimal service delivery; and 50
- (c) create a conducive environment for the implementation of electronic government.

(2) (a) Insofar as the framework referred to in subsection (1)(b) applies to municipal institutions, the Minister must act with the concurrence of national organised local government. 55

(b) If national organised local government does not so concur within 60 days after receipt of the proposed framework, the Minister may establish the framework without such concurrence.

(3) The head of an institution must, with due regard to the framework referred to in subsection (1)(b)— 60

- (a) acquire and use information and communication technologies in a manner which—
 - (i) leverages economies of scale to provide for cost-effective service;
 - (ii) ensures the interoperability of its information systems with information systems of other institutions if necessary to enhance internal efficiency or service delivery; 5
 - (iii) eliminates unnecessary duplication of information and communication technologies in the Public Administration;
 - (iv) ensures security of its information systems;
- (b) use information and communication technologies to develop and enhance the delivery of its services; 10
- (c) improve the access of people, who do not have access to electronic services, to those services;
- (d) align the use of its staff, information and communication technologies and other resources and internal processes to achieve optimal service delivery. 15

CHAPTER 3

ORGANISATION AND ADMINISTRATION

Establishment and abolition of national and provincial departments and municipalities

- 7. (1) The Minister may— 20
 - (a) at the request of the relevant national executive authority and with the concurrence of the national Cabinet—
 - (i) establish a national department;
 - (ii) designate that department and its head or amend that designation;
 - (iii) abolish a national department; 25
 - (b) at the request of the Premier and with the concurrence of the Executive Council of the relevant province—
 - (i) establish a provincial department;
 - (ii) designate that department and its head or amend that designation;
 - (iii) abolish a provincial department. 30
- (2) The Minister must give effect to the establishment, designation or abolition envisaged in subsection (1) by amending Part A or C of Schedule 1 by notice in the *Gazette*.
- (3) The Minister must give effect to a request referred to in subsection (1)(b), within one month after its receipt if satisfied that it is consistent with the Constitution, this Act 35 and any other law.
- (4) In each provincial administration, an Office of the Premier is hereby established.
- (5) Municipalities are established and abolished in accordance with the Constitution and the Municipal Structures Act.

Establishment and abolition of government components 40

- 8. (1) (a) An executive authority may only establish or abolish a government component if a feasibility study into its establishment or abolition is conducted in the prescribed manner.
- (b) If the executive authority deviates from a recommendation in the feasibility study, the authority must record the reasons for the deviation. 45
- (2) An executive authority of—
 - (a) a national department may only establish or abolish a government component in consultation with the Minister and the Minister of Finance;
 - (b) an Office of a Premier may only establish or abolish a government component after consultation with the Minister and the Minister of Finance; 50
 - (c) a provincial department may only establish or abolish a government component in consultation with the Premier and after consultation with the Minister and the Minister of Finance;
 - (d) a municipality may only establish or abolish a government component, after consultation with the Members of the Executive Council responsible for local government and finance of the relevant province. 55
- (3) The Minister must give effect to—

- (a) the establishment of a government component, its designation and the designation of its head and its principal institution; or
- (b) the abolition of a government component,
by amending Part D, E or F of Schedule 1 by notice in the *Gazette*.
- (4) Powers and duties may be assigned and delegated to the head of a government component as provided for in Parts A and B of Schedule 2. 5
- (5) For each government component, the relevant executive authority must, after consultation with the Minister, issue a directive that—
- (a) must list—
- (i) the relevant provisions of legislation that confer powers and impose duties on the head of the government component other than those conferred or imposed on a category or all heads of institutions; and
- (ii) the reference to each notice in terms of which powers and duties are assigned to the head of the government component as provided for in Part A of Schedule 2; 10 15
- (b) may list powers and duties delegated to the head of the government component as provided for in Part B of Schedule 2;
- (c) must, subject to any legislation, determine the head's reporting requirements to the head of the principal institution to ensure effective oversight by the executive authority of the government component over policy implementation, performance, integrated planning, budgeting and service delivery; 20
- (d) may include any administrative matter relating to the government component, including the sharing of internal services with the principal institution;
- (e) may establish an advisory board without executive functions for the government component and determine the board's composition, appointment procedure and remuneration and all matters required for its effective and efficient functioning; and 25
- (f) may include any other matter necessary for the effective and efficient functioning of the government component.
- (6) (a) Subject to paragraph (b), for purposes of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003), a municipal government component must comply with the Municipal Finance Management Act as if it is a municipality. 30
- (b) For purposes of ensuring the appropriate management of financial affairs of municipal government components, regulations may be made under section 168 of Municipal Finance Management Act to provide for— 35
- (i) arrangements for municipal government components different to those applicable to municipalities; and
- (ii) the functions of the principal institutions in relations to such components.

Transfer of functions in respect of national and provincial institutions

9. (1) For purposes of this section— 40
- (a) “function” excludes any function conferred, including any power conferred, or any duty imposed, by the Constitution, this Act or any other law; and
- (b) “organ of state” excludes an institution.
- (2) The Minister may, after consultation with the affected executive authorities—
- (a) allocate any function to, or abolish any function of, any national institution; or 45
- (b) transfer any function of a national institution to another national institution; or
- (c) subject to the approval of the relevant functionary of the affected organ of state, transfer any function of—
- (i) a national institution to an organ of state; or
- (ii) an organ of state to a national institution. 50
- (3) The Minister may, in consultation with the Premier or Premiers of the province or provinces concerned and after consultation with the relevant Minister responsible for the function in question—
- (a) allocate any function to, or abolish any function of, a provincial institution of the province in question; or 55
- (b) transfer any function of—
- (i) a provincial institution of one province to a provincial institution of another province;
- (ii) a provincial institution to a national institution or any organ of state established by or under any law, other than a provincial law, subject to 60

- the approval of the relevant functionary of that institution or organ of state; or
- (iii) national institution or organ of state to a provincial institution, subject to the approval of the relevant functionary of that institution or organ of state. 5
- (4) The Premier of a province may—
- (a) allocate any function to or abolish any function of a provincial institution of that province; or
- (b) transfer any function of a provincial institution of that province to another provincial institution of that province or of such a provincial institution to any organ of state established by or under any law of the provincial legislature or from any such body to a provincial institution, with the approval of the relevant functionary of that organ of state. 10
- (5) When a function is allocated, abolished or transferred in terms of this section, the human and other resources must be arranged in accordance with this Act and the Public Finance Management Act, 1999 (Act No. 1 of 1999), and a directive issued, in the case of— 15
- (a) subsection (2), by the Minister after consultation with the affected executive authorities;
- (b) subsection (3), by the Minister in consultation with the affected Premier; 20
- (c) subsection (4), by the relevant Premier after consultation with the Minister and the affected executive authorities.
- (6) If a function is transferred to or from an organ of state in terms of subsection (2), (3) or (4), the relevant functionary of that organ of state must agree with the directive referred to in subsection (5). 25

Functions of executive authorities of institutions

- 10.** An executive authority—
- (a) is politically accountable for every institution within its functional area;
- (b) must establish clear relationships and facilitate co-operation, co-ordination and communication, with the head and other employees of the institution; 30
- (c) must facilitate co-operation, co-ordination and communication with other executive authorities in the same and other spheres of government;
- (d) makes the appointments as provided for in section 13;
- (e) must hold the head accountable for the administration of the institution;
- (f) must ensure that the heads of institutions within its functional area establish and maintain a service charter; 35
- (g) must evaluate the performance of the head annually;
- (h) must ensure that the head's role and responsibilities are aligned with the core objectives of the institution;
- (i) may exercise other powers and must perform other duties conferred or imposed on the executive authority by this Act. 40

Functions of heads of institutions

- 11.** (1) The head of an institution—
- (a) must establish and maintain the institution's service charter, referred to in section 4, and ensure compliance with that charter by its employees; 45
- (b) must ensure a culture of efficient, quality, collaborative and accountable service delivery amongst the employees of the institution;
- (c) must facilitate co-operation, co-ordination and communication with all other relevant heads of institutions in the same and other spheres of government;
- (d) must ensure that the institution performs all functions imposed on the institution by this Act and other applicable legislation; 50
- (e) must advise the executive authority on matters regarding the institution;
- (f) must assist the executive authority to fulfil the executive authority's accountability obligations in relation to the institution;
- (g) must manage the institution's administration efficiently and effectively in accordance with this Act and other applicable legislation, including, but not limited to— 55
- (i) creating appropriate management structures and assigning clear responsibilities to such structures;

- (ii) ensuring efficient decision-making within the institution and co-ordination of functions of different units;
 - (iii) delegating responsibility to the most effective level within the administration;
 - (iv) managing, effectively utilising and training staff; 5
 - (v) maintaining discipline of staff;
 - (vi) promoting sound labour relations;
 - (h) may make the appointments provided for in section 21;
 - (i) in accordance with this Act, may exercise the powers and must perform the duties that are necessary for— 10
 - (i) the internal organisation of the institution, including the organisational structure and the transfer of functions within the institution;
 - (ii) the staff establishment of the institution, including the creation and abolition of posts;
 - (iii) the remuneration and other conditions of service attached to those posts determined in accordance with sections 15, 29 and 30 of this Act; 15
 - (iv) an equitable, fair, open and non-discriminatory working environment; and
 - (j) may exercise other powers and must perform other duties conferred or imposed on the head by this Act or any other law. 20
- (2) In addition to any function conferred by or under this Act or any other law, the head of the Office of a Premier is, subject to sections 125(2)(e) of the Constitution, responsible for—
- (a) intergovernmental relations on an administrative level between the relevant province and other provinces, national institutions and municipal institutions; 25
 - and
 - (b) the intragovernmental co-operation between the Office of the Premier and the provincial departments and provincial government components in the province, including the co-ordination of their actions and legislation.
- (3) (a) The functions of the head of a municipality include, but are not limited to, the functions referred to in section 55 of the Municipal Systems Act. 30
- (b) The head of a municipality must perform the functions referred to in subsection (1) in accordance with the policy directions of the municipality.

CHAPTER 4

SENIOR MANAGEMENT SERVICE 35

Object and composition of Senior Management Service

- 12.** (1) The object of the Senior Management Service is to create a service of senior managers and senior professionals across institutions for the purpose of—
- (a) promoting a public management culture of excellence based on the values and principles in section 195(1) of the Constitution and the provisions of this Act; 40
 - (b) facilitating co-operation amongst management structures of institutions;
 - (c) transfer organisational, managerial, professional and strategic expertise across institutions; and
 - (d) providing an organised network for the dissemination of policy, strategy and expertise. 45
- (2) The Senior Management Service consists of—
- (a) all heads of institutions and senior managers and senior professionals reporting directly to them; and
 - (b) other prescribed senior managers and senior professionals of institutions.

Appointment, career incidents and dismissal of heads and those reporting to them 50

- 13.** (1) The power to appoint the head of an institution and members of the Senior Management Service reporting directly to that head vests, in the case of—
- (a) a national institution, in the President, acting with the concurrence of the national Cabinet;
 - (b) a provincial institution, in the relevant Premier, acting with the concurrence of the Executive Council of the province; 55
 - (c) a municipal institution, in the relevant municipal council.

(2) For the appointment of members of the Senior Management Service reporting directly to a head of any institution, the executive authority must consult that head.

(3) (a) A person must be appointed as head of an institution in accordance with this Act and for such term not exceeding five years as the relevant executive authority may approve. 5

(b) A person appointed for the first time in the post of head of a particular institution must be appointed for a term of five years, except if a shorter term is determined by the executive authority in accordance with prescribed criteria.

(c) The relevant executive authority may, at the expiry of the term of office or, at the expiry of an extended term of office, extend the term for a period of not more than five years at a time. 10

(d) In the case of the head of a municipal institution, the term referred to in paragraph (b) or (c) may not exceed a period ending six months after the election of the next municipal council of the municipality.

(4) The power to decide, in accordance with this Act, the career incidents of a head of an institution and members of the Senior Management Service reporting directly to that head, vests, in the case of— 15

(a) subject to subsection (5), a national or provincial institution, in the executive authority of that institution;

(b) a municipal institution, in the relevant municipal council. 20

(5) The power to determine, in accordance with this Act, the remuneration level on appointment and to assess the performance for the purpose of remuneration increments and performance bonuses of a head of an institution and members of the Senior Management Service reporting directly to that head vests, in the case of—

(a) the head of— 25

(i) a national institution of which the Minister is the executive authority, in the Minister acting with the concurrence of the President;

(ii) any other national institution, in the Minister after consultation with the executive authority of that institution;

(b) the head of— 30

(i) a provincial institution of which the Premier is the executive authority, the Premier acting with the concurrence of the Executive Council of the province;

(ii) any other provincial institution, in the Premier after consultation with the executive authority of that institution. 35

(6) The power to dismiss, in accordance with section 38, the head of an institution and members of the Senior Management Service reporting directly to that head vests, in the case of—

(a) a national institution, in the executive authority of that institution acting in consultation with the Minister; 40

(b) a provincial institution, in the executive authority of that institution acting in consultation with the relevant Premier;

(c) a municipal institution, in the relevant municipal council.

Deployment of heads of institutions at end of term

14. (1) At the expiry of the term of the head of an institution and without following the applicable appointment procedures— 45

(a) the President may appoint the head of a national institution to perform functions in any capacity in a national institution or, with the agreement of the affected Premier, in a provincial institution;

(b) the Premier of a province may appoint the head of a provincial institution to perform functions in any capacity in a provincial institution of that province; 50

(c) the President may appoint the head of a national or provincial institution to perform functions in any capacity in a provincial institution of another province with the agreement of the Premier of that other province;

(d) the President may appoint the head of a municipal institution to perform functions in any capacity in— 55

(i) a national institution;

(ii) a provincial institution with the agreement of the affected Premier;

(iii) another municipal institution, with the agreement of the municipal council of that other municipal institution. 60

(2) An appointment in terms of subsection (1) may only occur if—

- (a) the head of the institution has the necessary skills and knowledge for the intended capacity upon appointment; and
 - (b) that head consents to the appointment.
- (3) The remuneration and other conditions of service attached to the capacity in which a person is appointed in terms of subsection (1) apply to that person. 5

Terms and conditions of service of members of Senior Management Service

15. (1) (a) The Minister may, after consultation with the Minister responsible for finance, determine for all members or any category of members of the Senior Management Service—

- (i) a framework of minimum and maximum remuneration and benefits; 10
- (ii) norms and standards for terms and conditions of service.

(b) Insofar as that framework or those norms and standards affects municipal institutions, the Minister must determine and act after consultation with the Minister responsible for local government and with the concurrence of national organised local government. 15

(c) If the national organised local government does not so concur within 60 days after receipt of the proposed framework or norms and standards, the Minister may determine the framework or norms and standards without such concurrence.

(2) Despite any other law to the contrary, the Minister may, after consultation with the relevant executive authority, determine any specific term or condition of service for all members or categories of members of the Senior Management Service who are— 20

- (a) employees appointed under this Act in a national or provincial institution;
- (b) educators;
- (c) members of the South African Police Service, appointed, or regarded as having been appointed, in terms of the South African Police Service Act, 1995 (Act No. 68 of 1995); or 25
- (d) members of the Department of Correctional Services, appointed, or regarded as having been appointed, in terms of the Correctional Services Act, 1998 (Act No. 111 of 1998).

(3) (a) The Minister must publish a proposed framework, norms and standards or term or condition of service in terms of subsection (1)(a) or (2) for public comment for a period not less than 30 days in the *Gazette*. 30

(b) The Minister must make the comments received available to the public in the prescribed manner.

(c) After consideration of the comments received, the Minister may determine the framework, norms and standards or term or condition of service with or without amendments. 35

(4) (a) If it is reasonable and justifiable in the circumstances, the Minister may depart from the requirements referred to in subsection (3).

(b) In determining whether a departure is reasonable and justifiable, the Minister must take into account the factors mentioned in section 4(4)(b) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000). 40

(5) If in the Minister's opinion good cause is shown, the Minister may grant exemptions from a framework determined in terms of subsection (1)(a)(i).

(6) Unless an exemption is granted in terms of subsection (5), if remuneration or a benefit for a member of the Senior Management Service of an institution is approved which is less than the minimum or exceeding the maximum permitted by a framework determined in terms of subsection (1)(a)(i), the member— 45

- (a) if it is less, is entitled to the permitted minimum; or
- (b) if it is more, is entitled to no more than the permitted maximum. 50

(7) A person appointed as the head of an institution and any other member of the Senior Management Service must conclude the prescribed contract of employment within the prescribed period and the prescribed performance agreement for every financial year.

Capacity development by Senior Management Service 55

16. The Minister may, in accordance with a prescribed framework, provide for members of the Senior Management Service to teach as subject matter experts at—

- (a) any higher education institution;
- (b) any further education and training institution;

- (c) the Academy; or
- (d) any other training institution.

Organisational rights of members of Senior Management Service

17. Nothing in this Chapter precludes members of the Senior Management Service from joining or forming trade unions to engage in collective bargaining. 5

CHAPTER 5

APPOINTMENTS, TRANSFERS AND SECONDMENTS

Employment capacities

18. Individuals, other than individuals appointed as heads of institutions, may, subject to the prescribed norms and standards, be employed in a permanent or temporary capacity, either full-time or part-time in posts on, or additional to, the staff establishment of institutions. 10

Appointments in institutions

19. (1) All appointments of individuals in institutions must be made in terms of this Act. 15

(2) An individual who is not a South African citizen may only be appointed in an institution in terms of this Act, if that individual holds a permanent resident permit or work permit issued in terms of the Immigration Act, 2002 (Act No. 13 of 2002).

(3) An individual may only be appointed permanently to any post on the staff establishment in an institution if that person— 20

- (a) is a South African citizen or holds a permanent resident permit issued in terms of the Immigration Act, 2002; and
- (b) meets the applicable job requirements.

(4) In the making of appointments in an institution—

- (a) due regard must be had to the need to redress the imbalances of the past, in accordance with sections 9(2) and 195(1)(i) of the Constitution and the employment equity plan of that institution, referred to in section 20(1) of the Employment Equity Act, 1998 (Act No. 55 of 1998), to achieve a public administration broadly representative of the South African people, including representation according to race, gender and disability; 25 30
- (b) all persons who applied and qualify for the appointment concerned must be considered; and
- (c) the suitability of persons must be determined in accordance with section 20(3) to (5) of the Employment Equity Act. 30

Staffing of offices of executive authorities of national and provincial departments and mayors of municipalities 35

20. (1) An executive authority of a national or provincial department may, as prescribed, appoint in the office of that authority one or more persons for a fixed period not exceeding the term of the office of that authority.

(2) A mayor of a municipality may, subject to the policy directions of its municipal council, appoint in the office of the mayor one or more persons for a fixed period not exceeding the term of the office of that mayor. 40

(3) Subject to subsection (4), the President, a Deputy President, Minister or Premier (“the office-bearer”) may appoint one or more persons as special advisers under a contract for a fixed period on a full-time or part-time basis to— 45

- (a) advise on the performance of the office-bearer’s functions; or
- (b) advise the office-bearer on the development of policy that will promote the relevant institution’s objectives;
- (c) perform such other tasks as may be appropriate in respect of the office-bearer’s functions. 50

- (4) The national Cabinet must determine—
- (a) the maximum number of special advisers that may be appointed in terms of subsection (3); and
 - (b) the upper limits of the remuneration and other conditions of service of special advisers. 5
- (5) The contract referred to in subsection (3) must include—
- (a) the period of the appointment not exceeding the term of the office of the relevant office-bearer;
 - (b) the particular duties of the person; and
 - (c) the remuneration and other conditions of service of the person. 10

Appointment, career incidents and dismissal of employees

- 21.** (1) The power to appoint, decide on the career incidents and, in accordance with section 38, dismiss employees, other than employees referred to in section 13, vests, in the case of—
- (a) a national or provincial institution, in the head of the institution; and 15
 - (b) a municipal institution, in the head of the institution, subject to the policy directions of the municipal council.
- (2) The municipal institution is for the purpose of all labour-related legislation, the employer of all its employees, and such employees are accountable to the applicable persons and executive authority of that institution. 20

Employees appointed in another capacity

- 22.** If a person immediately before being appointed in—
- (a) any national or provincial institution was an employee in the same or another national or provincial institution, the appointment does not interrupt the person's continuity of employment; 25
 - (b) any national or provincial institution was an employee in a municipal institution, that person is regarded as having been transferred to that national or provincial institution on such conditions of service as the executive authority of the national or provincial institution may approve;
 - (c) any municipal institution was an employee in another municipal institution, that person is regarded as having been transferred to that other municipal institution on such conditions of service as the executive authority of the other municipal institution may approve; or 30
 - (d) any municipal institution was an employee of a national or provincial institution, that person is regarded as having been transferred to that municipal institution on such conditions of service as the executive authority of the municipal institution may approve. 35

Employees of other organs of state appointed in institution

- 23.** A person who immediately before being appointed in terms of this Act was employed by an organ of state other than an institution, is regarded as having been transferred to an institution on such conditions of service as the executive authority of that institution may approve. 40

Individual transfers

- 24.** (1) Any employee of an institution (the "transferring institution") may, subject to this section and section 27, be transferred within an institution or transferred to another institution (the "recipient institution") in a manner and on such conditions as may be prescribed. 45
- (2) An employee may only be transferred if the employee is suitably qualified, as envisaged in section 20(3) to (5) of the Employment Equity Act, for the intended position upon transfer. 50
- (3) An employee may only be transferred—
- (a) if the employee requests or consents to the transfer; or
 - (b) in the absence of consent, if the transfer is fair taking into account—

- (i) the operational requirements of the affected institutions, including whether the secondment of the employee would address such requirements; and
 - (ii) the representations of the employee.
- (4) If an employee is transferred within an institution, or from one national or provincial institution to another national or provincial institution— 5
- (a) the transfer does not interrupt the employee’s continuity of employment; and
 - (b) the employee may not upon the transfer suffer any reduction in remuneration, unless the employee consents.
- (5) (a) If an employee is transferred between a national or provincial institution and a municipal institution or from one municipal institution to another municipal institution, the conditions of service of the employee upon the transfer are as agreed between the executive authorities of transferring and recipient institutions. 10
- (b) Unless the employee consents, those conditions of service may not be less favourable than those on which the employee was employed immediately before the transfer. 15
- (6) An employee may only be transferred to a position—
- (a) at a level which is prescribed to be equivalent to the employee’s level before the transfer;
 - (b) if the employee consents to a level lower than the level which is prescribed to be equivalent to the employee’s level before the transfer, but subject to subsection (4)(b) or (5)(b). 20
- (7) Any employee of an institution may be transferred—
- (a) within that institution, by the relevant authority;
 - (b) to another institution by the relevant authorities of the transferring and recipient institutions; 25
 - (c) to another institution, by the Minister, after consultation with the executive authorities of the affected institutions.
- (8) An employee may only be transferred by the Minister in terms of subsection (7)(c) from or to a provincial or municipal institution with the concurrence of the executive authority of that institution. 30
- (9) If any investigation or procedure is pending or incomplete against an employee on grounds of misconduct, ill-health or poor performance, the employee may not be transferred.
- (10) When the transfer of an employee is contemplated, the transferring institution must disclose in writing to the recipient institution the details contemplated in section 39(1). 35

Secondments

- 25.** (1) Any employee of an institution (the “seconding institution”) may, subject to this section and section 27, be seconded to another institution (the “recipient institution”) or to any other organ of state in such manner and on such conditions as may be prescribed. 40
- (2) An employee may only be seconded in terms of subsection (1) if the employee has the necessary skills and knowledge for the intended position upon secondment.
- (3) An employee may only be seconded in terms of subsection (1)— 45
- (a) if the employee requests or consents to the secondment; or
 - (b) in the absence of consent, after due consideration of any representations by the employee, if the secondment is justified.
- (4) An employee may only be seconded in terms of subsection (1) for a period in excess of six months if the— 50
- (a) recipient institution or organ of state has taken all reasonable steps to replace the seconded employee; and
 - (b) interests of the seconded employee have been fairly accommodated.
- (5) Any employee of an institution may only be seconded in terms of subsection (1) to— 55
- (a) another institution—
 - (i) with the approval of the relevant authorities of the seconding and recipient institutions; or
 - (ii) by the Minister, after consultation with the executive authorities of the affected institutions; 60

(b) an organ of state other than an institution, on request of the functionary of the organ of state having the authority to approve the secondment and with the approval of the relevant authority of the seconding institution.

(6) An employee may only be seconded by the Minister in terms of subsection (5)(a)(ii) from or to a provincial or municipal institution with the concurrence of the executive authority of that institution. 5

(7) Any employee who has been seconded in terms of subsection (1) remains subject to the conditions of service of the seconding institution, except to the extent provided otherwise in the conditions envisaged in subsection (1).

(8) (a) On the request of the executive authority of an institution, the functionary having authority to second an employee of an organ of state, other than an institution or another government, may second that employee to that institution. 10

(b) The secondment is for such period and on such conditions as agreed between the functionary of the seconding institution and the executive authority of the institution.

(9) The recipient institution bears the costs of secondment, unless the institutions in question agree otherwise. 15

Transfer of employees upon function transfer

26. (1) If a function is transferred in terms of this Act or any other law from one institution (“the old institution”) to another institution (“the new institution”)—

(a) the transfer does not interrupt the employee’s continuity of employment; 20

(b) the new institution is automatically substituted in the place of the old institution in respect of all contracts of employment in existence immediately before the date of transfer;

(c) the terms and conditions of service of the affected employees upon the transfer are as agreed between the executive authorities of old and new institutions; 25
and

(d) all collective agreements, other than those in respect of terms and conditions of service, remain effective in respect of the affected employees for a period of 18 months after the transfer, unless otherwise agreed by the affected trade union, registered under the Labour Relations Act, whose members are affected. 30

(2) Unless the employee consents, the terms and conditions of service, referred to in subsection (1)(c) may not be less favourable than those on which the employee was employed immediately before the transfer.

(3) Despite section 210 of the Labour Relations Act, section 197 of that Act does not apply to a transfer of a function in terms of this Act or any other law from one institution to another institution. 35

(4) Subsection (1) does not prevent the affected employee from being transferred to a pension, provident, retirement or similar fund other than the fund to which the employee belonged before the transfer, if the criteria in section 14(1)(c) of the Pension Fund Act, 1956 (Act No. 24 of 1956), are satisfied. 40

Disputes about individual transfers and secondments

27.(1) Any employee may refer a dispute concerning the fairness of a transfer or secondment in terms of section 24 or 25 for conciliation to the relevant bargaining council within 15 days after the employee has been informed in writing of the decision to transfer or second the employee. 45

(2) The relevant bargaining council must set a dispute down for conciliation within 15 days of the referral thereof and, if the dispute remains unresolved, the affected employee may on an expedited basis refer the dispute to the Labour Court for decision in accordance with rules made in terms of section 159(3) of the Labour Relations Act. 50

(3) An employee may not be transferred for the 15-day period, envisaged in subsection (1), and, if the employee refers a dispute within that period, the employee may not be transferred pending the outcome of the conciliation and, if referred to the Labour Court in terms of subsection (3), pending its outcome.

(4) An appeal against the Labour Court’s decision does not, pending the outcome of the appeal, suspend its decision. 55

Assignment of other functions to employees

28. (1) The relevant authority of an employee of an institution may, in accordance with the prescribed conditions, direct in writing the employee temporarily to perform any functions other than those ordinarily assigned to the employee or appropriate to the employee's position, including acting in another post. 5

(2) The performance evaluation of the relevant employee shall take place with due regard to a direction in terms of subsection (1).

CHAPTER 6**TERMS AND CONDITIONS OF EMPLOYMENT****Collective bargaining on matters of mutual interest** 10

29. (1) Negotiations on terms and conditions of employment for employees and other matters of mutual interest in the Public Administration must be dealt with in accordance with the constitutions of bargaining councils and the Labour Relations Act.

(2) (a) A collective agreement concluded in a bargaining council must be for a fixed period specified in the agreement or an indefinite period. 15

(b) If a collective agreement for an indefinite period does not provide for a notice period, the notice period is three months.

(c) For the purposes of this subsection, a collective agreement excludes settlement agreements in terms of section 158(1)(c), read with section 158(1A), of the Labour Relations Act. 20

(3) The Minister may make a determination to give effect to a collective agreement resulting from negotiations envisaged in subsection (1) without derogating from that agreement.

(4) If a collective agreement is not concluded in a bargaining council following negotiations envisaged in subsection (1), the Minister may make a determination on the subject-matter of the negotiations provided that— 25

(a) the negotiating procedure on matters of mutual interest in the relevant bargaining council has been exhausted by the parties and parties have become entitled to exercise their rights under the Labour Relations Act;

(b) insofar as it applies to— 30

(i) municipal institutions, national organised local government consents; and

(ii) members of the Security Services or educators, the relevant executive authority or authorities concur.

(5) If in the Minister's opinion good cause is shown, the Minister may grant an exemption from a determination made in terms of subsection (4). 35

(6) Nothing in subsection (4) precludes a trade union calling a strike in respect of a matter determined in terms of that subsection provided the strike is in accordance with the constitution of the relevant bargaining council and the Labour Relations Act.

Removal and prevention of unjustifiable disparities in Public Administration 40

30. (1) A representative trade union and an employer may, subject to subsection (2), conclude a collective agreement in a bargaining council only if—

(a) the provisions of that agreement fall within a framework determined by the Minister in consultation with the Minister responsible for finance; or

(b) in respect of national or provincial institutions, a mandate is obtained from the Minister in consultation with the Minister responsible for finance; or 45

(c) in respect of municipal institutions concerning any prescribed subject-matter, authorisation is obtained from the Minister in the prescribed manner.

(2) The Minister may only refuse to give authorisation, referred to in subsection (1)(c), if the Minister is of the opinion that the agreement maintains or introduces unjustifiable disparities within the Public Administration. 50

(3) (a) The Minister may, in respect of national or provincial institutions and after consultation with the relevant executive authority for the employer party in a bargaining council, submit proposed terms and conditions of employment in the bargaining council to remove or prevent unjustifiable disparities. 55

(b) National organised local government must, in respect of municipal institutions and on request of the Minister, submit proposed terms and conditions of employment in the relevant bargaining council to remove or prevent unjustifiable disparities.

(c) Any such proposal must be dealt with in accordance with section 29.

(4) If a determination is made in accordance with section 29(4) in respect of a submission under subsection (3), the determination overrides any conflicting provision of a collective agreement of a bargaining council. 5

CHAPTER 7

OTHER EMPLOYMENT RELATED MATTERS

Capacity development functions of institutions 10

31. (1) The head of an institution must—

(a) through the education and training of its employees develop its human resource capacity to a level that enables it to perform its functions in an efficient, quality, collaborative and accountable manner; and

(b) for the purpose referred to in paragraph (a) comply with the relevant provisions of the Skills Development Act, 1998 (Act No. 81 of 1998), and the Skills Development Levies Act, 1999 (Act No. 28 of 1999). 15

(2) In addition to the education and training budget requirements in terms of the Skills Development Act or provision for a training levy in terms of the Skills Development Levies Act, an institution— 20

(a) must make appropriate provision in its budget for the education and training of its employees; and

(b) may apply to any applicable sector education and training authority established in terms of the Skills Development Act, 1998, for additional funds for training. 25

Academy for capacity development and training

32. (1) A Public Administration Leadership and Management Academy listed as a national department in Schedule 1, is hereby established under the authority of the Minister.

(2) The Academy must enhance the quality, extent and impact of the development of human resource capacity in institutions through education and training. 30

(3) The Academy must give effect to subsection (2) by—

(a) providing such training or causing such education and training to be provided or conducting or cause to be conducted such examinations or tests as the Director-General of the Academy determines; 35

(b) issuing or causing to be issued diplomas or certificates to persons who have passed such examinations or tests; and

(c) interacting with and fostering collaboration among training institutions, higher education institutions, further education and training institutions and private sector training providers in furtherance of such education and training. 40

Compulsory training

33. (1) The Minister may, after consultation with or on the recommendation of the Director-General of the Academy, direct that the successful completion of specified education and training, examinations or tests are—

(a) prerequisites for specified appointments or transfers; and 45

(b) compulsory in order to meet development needs of any category of employees.

(2) Insofar as a directive under subsection (1) applies to municipal institutions, the Minister must act in consultation with national organised local government.

Registration of training standards and accreditation as training providers 50

34. (1) If so directed by the Minister and after consultation with or on the recommendation of the Director-General of the Academy, the head of a training institution must—

- (a) ensure that such education and training it provides, as identified by the Minister, complies with the standards registered on the National Qualifications Framework, as provided for in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), or, in the absence of such standards, apply for the registration thereof; 5
 - (b) obtain accreditation as provided for in terms of the South African Qualifications Authority Act for the education and training it provides;
 - (c) if other providers are used by the training institution to provide such education and training, only use providers accredited as providers in terms of the South African Qualifications Authority Act. 10
- (2) Insofar as a directive under subsection (1) applies to municipal institutions, the Minister must act in consultation with national organised local government and after consultation with the head of the training institution in question.

Outside remunerative work by employees

- 35.** (1) An employee may only with the written approval of the relevant authority perform or engage to perform remunerative work outside the institution concerned. 15
- (2) When considering whether to grant approval, the relevant authority must at least take into account whether the outside work is likely to interfere with or impede the efficient performance of the employee's functions or constitute a contravention of any prescribed code of conduct. 20
- (3) The relevant authority must decide whether to grant approval within 30 days after the receipt of the request for approval.
- (4) On the written request of the employee, the relevant authority must furnish written reasons to the employee for a refusal to approve the outside work within 30 days after the receipt of the request for reasons. 25
- (5) Approval for an employee to perform remunerative work prohibited by section 37 may not be granted in terms of this section.

Employees as candidates for, and becoming members of, legislatures

- 36.** (1) An employee may be a candidate for election as a member of the National Assembly, a provincial legislature or a municipal council, subject to any prescribed code of conduct and any other prescribed limits and conditions. 30
- (2) The contract of employment of an employee who is elected as a member of the National Assembly, a provincial legislature or a municipal council, automatically terminates with effect from the date of assuming office as a member.
- (3) If an employee is appointed as a permanent delegate of the National Council of Provinces that employee's contract of employment automatically terminates with effect from the date of assuming office as a delegate. 35

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

- 37.** (1) If a contract is concluded with a person (the "service provider") to provide services or goods (the "work") to an institution against remuneration exceeding the prescribed amount, an employee who— 40
- (a) set criteria for the award of the work to service providers; or
 - (b) evaluated or adjudicated the providers for the award of the work; or
 - (c) recommended or approved the awarding of the work, may not within 12 months after the conclusion of the contract (the "12-month period")— 45
 - (i) accept employment with that provider or appointment to a board of the provider or provide any service to the provider for payment in money or in kind; or
 - (ii) receive any other gratification from the provider. 50
- (2) A service provider, referred to in subsection (1), may not within the 12-month period—
- (a) employ an employee, referred to in subsection (1), or appoint that employee to a board of the provider or engage the employee to provide any service to the provider for payment in money or in kind; 55
 - (b) grant any other gratification to the employee.

(3) Subsections (1) and (2) apply irrespective of whether the employee's employment in the relevant institution terminates any time during the 12-month period.

(4) The relevant authority may, in accordance with the prescribed criteria, approve a period shorter than the 12-month period.

(5) If the remuneration for an extension of a contract with a service provider together with the remuneration for the original contract and any other extensions, if any, exceeds the amount determined by the Minister in terms of subsection (1), subsections (1) and (2) apply, with the necessary changes, to the first-mentioned extension. 5

(6) Any person who contravenes subsection (1) or (2) is guilty of an offence and on conviction liable to a fine not exceeding R1 million or such amount as the Minister responsible for the administration of justice may determine. 10

(7) When a person is convicted of an offence in terms of subsection (6) in respect of a contravention of subsection (1), the court in passing sentence may, in addition to the fine which the court may impose in respect of the offence, impose on the person a fine not exceeding the monetary value of any proceeds derived from the commission of the offence. 15

(8) For purposes of imposing a fine under subsection (7) including the monetary value of such proceeds, the court may refer to the evidence and proceedings at the trial or hear such further evidence, either orally or by affidavit, as it considers fit.

(9) (a) A contravention of subsection (2) constitutes good cause for the cancellation of a contract envisaged in subsection (1). 20

(b) If the contract is cancelled, a court may, on application by the head of the affected institution, order that the service provider forfeits the monetary value of such proceeds derived from the contract as the court considers just and equitable.

Termination of employment 25

38. (1) An employee may only be dismissed in accordance with the Labour Relations Act.

(2) Any employee may resign from employment by giving the prescribed period of notice.

(3) (a) If an employee is absent from duty without notice to, or permission of, the relevant authority for 10 consecutive working days, the employee's employment terminates automatically with effect from the day immediately following the last day of attendance. 30

(b) If after the expiry of that period the employee reports for duty, the relevant authority may, on good cause shown by the employee, reinstate or re-employ the employee. 35

(c) If the relevant authority does not reinstate or re-employ the employee, the refusal is regarded as a dismissal for purposes of section 186(1) of the Labour Relations Act and, for this purpose, the date of dismissal is the date of the automatic termination.

(d) If so reinstated, the period of absence from official duty must be dealt with in terms of the applicable leave provisions for that employee and the period of absence not covered by those leave provisions must be regarded as leave without pay. 40

(4) (a) When a chairperson of a disciplinary hearing pronounces a sanction in respect of an employee of a national or provincial institution found guilty of misconduct, the person vested by section 13(6) or 21(1) with the power to dismiss the employee must give effect to the sanction. 45

(b) Where an employee of a national or provincial institution may lodge an internal appeal provided for in a collective agreement or in a determination in terms of section 15(2), a sanction referred to in paragraph (a) may only be given effect to—

- (i) if an internal appeal is lodged, after the appeal authority has confirmed the sanction pronounced by the chairperson of a disciplinary hearing; or 50
- (ii) if no internal appeal is lodged, after the expiry of the period within which the appeal must have been lodged.

Disclosure of previous actions against employee and continuation of actions

39. (1) If an employee or former employee of an institution (the "former institution") applies for a position in another institution (the "new institution"), that employee must disclose to the new institution in writing the details of— 55

- (a) any prior action taken against the employee by the former institution on the grounds of misconduct, ill health or poor performance within the prescribed period when applying for the position;
 - (b) any pending or incomplete investigation or procedure undertaken in respect of the employee of which he or she is aware, by the former employee, on the grounds of misconduct, ill health or poor performance when applying for the position. 5
- (2) If requested to do so by the new institution, a former institution must forward the information envisaged in subsection (1) to the new institution.
- (3) If an employee of the new institution is alleged to have committed misconduct in a former institution, the executive authority or head of the new institution— 10
- (a) must institute or continue such steps if so requested by the former institution;
 - (b) may institute or continue disciplinary proceedings against that employee.
- (4) The affected institutions must co-operate with each other in any proceedings contemplated in subsection (3) by furnishing evidence, exchanging documents and assisting in the effective and expeditious finalisation of the proceedings. 15
- (5) If an employee, referred to in subsection (3), is found guilty of misconduct which would have constituted a ground for dismissal by the former institution, it constitutes a ground for dismissal by the new institution.
- (6) If any investigation or disciplinary hearing regarding misconduct is pending against an employee of an institution, that institution may not agree to a period of notice which is less than the prescribed period of notice of resignation applicable to that employee. 20

Prohibition on re-employment if dismissed for misconduct

- 40.** (1) A person dismissed for misconduct by an institution may only be re-employed by the same or any other institution after the expiry of a prescribed period. 25
- (2) Different periods may be so prescribed for different categories of misconduct.
- (3) If the prescribed period has expired or no period has been prescribed, any decision whether or not to employ a person dismissed for misconduct must be taken with due regard to the nature of the misconduct concerned. 30

Retirement

- 41.** An employee employed permanently—
- (a) must retire at the age of 65 years;
 - (b) may retire at any time after reaching the age of 60 years;
 - (c) who has reached the age of 50 years may retire at any time before reaching the age of 60 years under such circumstances as may be prescribed; and 35
 - (d) may be retained after the employee has reached the age of 65 years under such circumstances as may be prescribed.

CHAPTER 8

INTERNAL REMEDIES AND GRIEVANCES 40

Exhausting internal remedies

- 42.** (1) An employee may only refer a dispute to a bargaining council or the Commission for Conciliation, Mediation and Arbitration in respect of a matter outside the jurisdiction of the bargaining council, or institute proceedings in the Labour Court, in respect of any employment or labour relations matter pertaining to that employee and arising from— 45
- (a) section 23 of the Constitution in so far as it applies to employees in the Public Administration;
 - (b) any contract of employment entered into by the employee in the Public Administration; 50
 - (c) the interpretation and application of this Act or any other Act that applies to employees in the Public Administration,
- if the employee has exhausted internal procedures applicable to the institution for resolving the dispute.
- (2) For purposes of subsection (1)— 55

- (a) internal procedures includes the grievance procedures of the Public Service Commission referred to in section 43, but only insofar as those procedures set out steps for resolving a dispute by functionaries of the relevant institution;
- (b) the employee may refer a dispute or institute proceedings contemplated in subsection (1) if—
 - (i) the dispute is not resolved in the institution within the period stipulated in the internal procedure or the period for referring that dispute or instituting those court proceedings, whichever period is the shorter; or
 - (ii) no such period is stipulated in the internal procedure, if the dispute is not resolved in the institution before the day immediately before the expiry of the period for referring that dispute or instituting those court proceedings.

Grievance procedure of Public Service Commission

43. (1) An employee may lodge a grievance concerning an official act or omission (“grievance”) with the relevant executive authority under the prescribed circumstances, on the prescribed conditions and in the prescribed manner. 15

(2) If the grievance is not resolved to the satisfaction of the employee, the executive authority must submit the grievance to the Public Service Commission in the prescribed manner and within the prescribed period.

(3) After the Commission has investigated and considered a grievance, the Commission may recommend— 20

- (a) that the relevant executive authority acts in terms of this Act or any other law; or
- (b) any other appropriate remedy.

(4) A head of institution may lodge any grievance with— 25

- (a) the relevant executive authority in terms of subsection (1); or
- (b) directly with the Commission under the prescribed circumstances, on the prescribed conditions and in the prescribed manner.

(5) For the purposes of this section—

- (a) the powers conferred upon the Commission by section 11 of the Public Service Commission Act, 1997 (Act No. 46 of 1997), include the power to make rules which are not inconsistent with this section as to the investigation of grievances concerning official acts or omissions; and
- (b) “prescribed” means prescribed by the Commission by rule under that Act.

CHAPTER 8 35

GENERAL

44. (1) The Minister may make regulations—

- (a) setting norms and standards regarding—
 - (i) personnel and public administration practices, systems, procedures and planning, including, but not limited to human resource management and career development practices; 40
 - (ii) organisational structures and staff establishments of institutions;
 - (iii) capacity development and training;
 - (iv) health and wellness of employees and working environment;
 - (v) electronic government, information and communication technologies, information management and work facilities; 45
 - (vi) integrity, ethics, conduct and anti-corruption measures, including, but not limited to, the disclosure of financial interests;
 - (vii) employment additional to the staff establishment;
 - (viii) the appointment of unpaid voluntary workers who are not employees and their functions; 50
 - (ix) the co-ordination of work involving two or more institutions in the same sphere or two or more spheres of government;
 - (x) transformation measures and measures to improve the effectiveness and efficiency of institutions; and 55
 - (xi) any other matter necessary to give effect to the objects of this Act, referred to in section 3;

- (b) regarding unauthorised or erroneously granted remuneration and other benefits granted to employees;
 - (c) regarding the establishment of a body to advise the Minister on any matter referred to in paragraph (a), its composition, functions and procedures, the remuneration of its members and any other matter necessary for its proper functioning; 5
 - (d) regarding a power for chairpersons of disciplinary hearings to summon employees and other persons as witnesses, to cause an oath or affirmation to be administered by them, to examine them, and to call for the production of books, documents and other objects, and travel, subsistence and other costs and other fees for witnesses; 10
 - (e) regarding minimum reporting requirements and the format thereof;
 - (f) reporting on the implementation of this Act and the review for appropriateness and effectiveness of this Act;
 - (g) regarding any matter required or permitted by this Act to be prescribed; 15
 - (h) in general, regarding any matter necessary to prescribe for the proper implementation or administration of this Act.
- (2) (a) The Minister must make regulations insofar as they apply to municipal institutions after consultation with the Minister responsible for local government and with the concurrence of national organised local government. 20
- (b) If the national organised local government does not so concur within 60 days after receipt of the proposed regulations, the Minister may make the regulations without such concurrence.
- (3) (a) Different regulations may be made to suit the varying requirements of particular categories of institutions, or of particular categories of employees, or of particular kinds of employment in institutions. 25
- (b) When making regulations, the Minister must take into account—
- (i) the nature and functions of different institutions or categories of institutions, as envisaged in section 195(6) of the Constitution; and
 - (ii) any applicable directions given by the Public Service Commission in terms of section 196(4)(d) of the Constitution, read with section 8B of the Public Service Commission Act, 1997 (Act No. 46 of 1997). 30
- (4) If in the Minister's opinion good cause is shown, the Minister may grant an exemption from any regulation, including with retrospective effect.

Notice and comment procedure for regulations 35

45. (1) (a) The Minister must publish a proposed regulation in terms of section 43(1) for public comment for a period not less than 30 days in the *Gazette*.
- (b) The Minister must make the comments received available to the public in the prescribed manner.
- (c) After consideration of the comments, the Minister may make the regulation with or without amendments. 40
- (2) If it is reasonable and justifiable in the circumstances, the Minister may depart from the requirements referred to in subsection (1).
- (3) In determining whether a departure is reasonable and justifiable, the Minister must take into account the factors mentioned in section 4(4)(b) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000). 45

Draft regulations and matters of mutual interest

46. (1) (a) If the subject-matter of a proposed regulation in terms of section 44(1) concerns a matter of mutual interest as contemplated in the Labour Relations Act, the Minister, subject to paragraph (b), or a party to a bargaining council with jurisdiction may table the matter for negotiation in the council. 50
- (b) Insofar as it relates to municipal institutions, national organised local government must, on request of the Minister, table a matter referred to in paragraph (a) in the relevant bargaining council.
- (2) (a) If there is a dispute about whether the subject-matter of a proposed regulation constitutes a matter of mutual interest, the Minister or any party to the relevant bargaining council may on an expedited basis refer the dispute to the Labour Court for decision in accordance with rules made in terms of section 159(3) of the Labour Relations Act for this purpose. 55

(b) An appeal against the Labour Court's decision does not, pending the outcome of the appeal, suspend its decision.

(3) If no consensus is reached in the bargaining council on a matter of mutual interest in the proposed regulation, the Minister may only make the regulation if the negotiating procedure on matters of mutual interest in the relevant bargaining council has been exhausted by the parties and parties have become entitled to exercise their rights in terms of the Labour Relations Act. 5

(4) Nothing in this section precludes a trade union calling a strike in compliance with the constitution of the relevant bargaining council and the Labour Relations Act in respect of a matter of mutual interest contemplated in this section. 10

Other functions of the Minister

47. In addition to other functions conferred by this Act or any other law, the Minister may—

- (a) on the request of an executive authority, advise or assist in such manner and on such conditions as the Minister and that authority agree, as to any matter relating to— 15
 - (i) one or more institutions;
 - (ii) employees or office-bearers, personnel practice or procedures of any organ of state other than an institution;
- (b) in accordance with section 231 of the Constitution, enter into international agreements with the governments of other states or international organisations to enhance the objects of this Act, or regional, African or international co-operation or development regarding any public administration matter; and 20
- (c) issue guidelines or codes regarding any matter pertaining to this Act to assist with the proper implementation or administration of this Act. 25

Binding effect of determinations

48. (1) A determination made by the Minister in terms of this Act—

- (a) is binding on those institutions or employees specified in the determination;
- (b) takes effect on the date stated in the determination.

(2) Any determination by the Minister in terms of this Act which relates to all employees, a category of employees or a particular employee may be effected retrospectively if circumstances exist which justify the retrospective effect. 30

Failures to comply with Act

49. (1) The executive authority of an institution must take appropriate disciplinary steps against the head of the institution if the head does not comply with this Act. 35

(2) The head of an institution must take appropriate disciplinary steps against employees of the institutions who do not comply with this Act.

(3) For inspection by the Public Service Commission, any other constitutional institution, the Minister and any other person, the head of an institution must keep record in the prescribed manner of— 40

- (a) all non-compliances with this Act by employees of that institution; and
- (b) the disciplinary steps taken and if steps are not taken, the reasons justifying why no steps were taken.

Correction of actions

50. (1) A functionary must correct any action or omission in terms of this Act or purportedly in terms of this Act by that functionary, if the action or omission— 45

- (a) was based on an error of fact or law or fraud; and
- (b) it is in the opinion of the functionary in the public interest to correct the action or omission.

(2) The head of an institution must keep record for inspection by the Public Service Commission and the Minister, and report on such corrections in the institution, as directed by the Minister. 50

Access to information

51. The executive authority or head or any other employee of an institution must afford any functionary, or any person authorised in writing by that functionary, such assistance, including access to information or documents, as may be reasonably required for the effective performance of the functions of the functionary in terms of this Act. 5

Public Administration Handbooks

52. To enhance ease of use and understanding, the Minister may according to the subject-matter make available in any form compilations of provisions of this Act and regulations and other instruments contemplated in this Act.

Delegation 10

53. (1) The Minister, the Minister responsible for local government or the Minister responsible for finance may delegate to the head of a department in that Minister's portfolio any power or duty assigned to that Minister by this Act, except the powers conferred by sections 30 and 44(1).

(2) The Premier of a province may delegate to the head of the Office of the Premier in the province any power or duty assigned to the Premier by this Act, except any power or duty assigned by section 13. 15

(3) The executive authority referred to in section 13 may, in the case of—

(a) the President, delegate to the Deputy President or a Minister any power or duty assigned to the President by section 13; or 20

(b) the Premier of a province, delegate a Member of the relevant Executive Council any power or duty assigned to the Premier by section 13.

(4) (a) An appropriate system of delegation that will both maximise administrative and operational efficiency and provide adequate checks and balances in an institution's administration must be developed by— 25

(i) the executive authority of that institution in respect of the powers and duties assigned to that authority by this Act;

(ii) the head of that institution in respect of the powers and duties assigned to that head by this Act.

(b) Subject to subsection (3), an executive authority of an institution may, in accordance with that system— 30

(i) in the case of a national or provincial institution, delegate any power or duty assigned to that authority, to the head of that institution by this Act;

(ii) in the case of a municipal institution, delegate any power or duty assigned to that authority by this Act, to— 35

(aa) any of the relevant municipality's other political structures, political officer bearers or councillors as defined in section 1 of the Municipal Systems Act; or

(bb) employees of the municipality or municipal government component.

(c) The head of an institution may, in accordance with that system, delegate to any employee of the institution any power or duty assigned to that head by this Act. 40

(d) The delegations in terms of paragraph (b) or (c) must be regularly reviewed and, if necessary, be amended or withdrawn.

(e) Sections 59 to 65 of the Municipal Systems Act, 2000 (Act No. 32 of 2000), apply with the changes required by the context, and to the extent not contrary to this Act, to delegations contemplated in paragraph (b)(ii) and (c). 45

(5) Any delegation in terms of this section—

(a) must be in writing;

(b) is subject to such limitations and conditions as the person that made the delegation may impose in a specific case; 50

(c) may either be specific to the individual or to the holder of a specific post;

(d) may authorise that individual or post holder to sub-delegate the power or duty to an individual or holder of a specific post in the area of responsibility of the first-mentioned individual or post holder;

(e) does not divest the person who made the delegation of the responsibility concerning the exercise of the delegated power and the performance of the delegated duty. 55

(6) The person that delegated a power or duty in terms of this section may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation, but no such variation or revocation of a decision may detract from any rights that may have been accrued as a result of a decision.

Jurisdiction of Labour Court 5

54. (1) Subject to the Constitution and the Labour Relations Act, the Labour Court has exclusive jurisdiction in respect of any employment and labour relations matter in respect of institutions and employees in the Public Administration arising from—

- (a) the interpretation or application of the Constitution, this Act or any other Act that applies to employees in the Public Administration; 10
- (b) an executive or administrative decision in terms of this Act or any other Act that applies to employees in the Public Administration;
- (c) a contract of employment.

(2) Despite section 210 of the Labour Relations Act, section 157(2) of that Act does not apply to any employment and labour relations matter contemplated in subsection (1). 15

Repeal and amendment of laws and transitional arrangements

55. (1) The laws mentioned in Part A of Schedule 3 are hereby repealed or amended to the extent indicated in the third column thereof.

(2) The saving and transitional arrangements for any provision so repealed or amended are as set out in Part B of Schedule 3. 20

Short title and commencement

56. (1) This Act is called the Public Administration Management Act, 2008, and takes effect on a date determined by the President by proclamation in the *Gazette*.

- (2) Different dates may be so determined in respect of— 25
- (a) different provisions of this Act;
 - (b) different categories of employees; and
 - (c) different categories of institutions.

SCHEDULE 1*Part A**National departments and heads thereof**(Section 7)*

Column 1	Column 2	
Department of Agriculture	Director-General: Agriculture	5
Department of Arts and Culture	Director-General: Arts and Culture	
Department of Communications	Director-General: Communications	
Department of Correctional Services	Commissioner: Correctional Services	10
Department of Defence	Secretary for Defence	
Department of Education	Director-General: Education	
Department of Environmental Affairs and Tourism	Director-General: Environmental Affairs and Tourism	15
Department of Foreign Affairs	Director-General: Foreign Affairs	
Department of Government Communication and Information System	Director-General: Government Communication and Information System	
Department of Health	Director-General: Health	20
Department of Home Affairs	Director-General: Home Affairs	
Department of Housing	Director-General: Housing	
Department of Justice and Constitutional Development	Director-General: Justice and Constitutional Development	25
Department of Labour	Director-General: Labour	
Department of Land Affairs	Director-General: Land Affairs	
Department of Minerals and Energy	Director-General: Minerals and Energy	
Department of Provincial and Local Government	Director-General: Provincial and Local Government	30
Department of Public Enterprises	Director-General: Public Enterprises	
Department of Public Service and Administration	Director-General: Public Service and Administration	35
Department of Public Works	Director-General: Public Works	
Department of Safety and Security	National Commissioner: South African Police Service	
Department of Science and Technology	Director-General: Science and Technology	
Department of Social Development	Director-General: Social Development	40
Department of Trade and Industry	Director-General: Trade and Industry	
Department of Transport	Director-General: Transport	
Department of Water Affairs and Forestry	Director-General: Water Affairs and Forestry	
Independent Complaints Directorate	Executive Director: Independent Complaints Directorate	45
Inspectorate for Social Assistance	Executive Director: Inspectorate for Social Assistance	
National Intelligence Agency	Director-General: National Intelligence Agency	50
National Treasury	Director-General: National Treasury	
Office of the Public Service Commission	Director-General: Office of the Public Service Commission	
Public Administration Leadership and Management Academy	Director-General: Public Administration Leadership and management Academy	55
South African National Academy of Intelligence	Chief Executive Officer: South African National Academy of Intelligence	

Column 1	Column 2	
South African Secret Service	Director-General: South African Secret Service	
Sport and Recreation South Africa	Director-General: Sport and Recreation South Africa	5
Statistics South Africa	Statistician-General: Statistics South Africa	
The Presidency	Director-General: The Presidency	

Part B

Offices of Premier 10

(Section 7)

Column 1	Column 2	
Office of the Premier: Eastern Cape	Director-General: Office of the Premier of Eastern Cape	15
Office of the Premier: Free State	Director-General: Office of the Premier of Free State	
Office of the Premier: Gauteng	Director-General: Office of the Premier of Gauteng	
Office of the Premier: KwaZulu-Natal	Director-General: Office of the Premier of KwaZulu-Natal	20
Office of the Premier: Limpopo	Director-General: Office of the Premier of Limpopo	
Office of the Premier: Mpumalanga	Director-General: Office of the Premier of Mpumalanga	25
Office of the Premier: Northern Cape	Director-General: Office of the Premier of Northern Cape	
Office of the Premier: North West	Director-General: Office of the Premier of North West	
Office of the Premier: Western Cape	Director-General: Office of the Premier of Western Cape	30

Part C

Provincial Departments

(Section 7)

Column 1	Column 2	
Eastern Cape		35
Department of Agriculture	Head: Agriculture	
Department of Economic Affairs, Environment and Tourism	Head: Economic Affairs, Environment and Tourism	40
Department of Education	Head: Education	
Department of Health	Head: Health	
Department of Housing	Head: Housing	
Department of Local Government and Traditional Affairs	Head: Local Government and Traditional Affairs	45
Department of Public Works	Head: Public Works	
Department of Roads and Transport	Head: Roads and Transport	
Department of Safety and Liaison	Head: Safety and Liaison	50
Department of Social Development	Head: Social Development	
Department of Sport, Recreation, Arts and Culture	Head: Sport, Recreation, Arts and Culture	

Column 1	Column 2	
Provincial Treasury	Head: Provincial Treasury	
Free State		
Department of Agriculture	Head: Agriculture	
Department of Education	Head: Education	5
Department of Health	Head: Health	
Department of Local Government and Housing	Head: Local Government and Housing	
Department of Public Works, Roads and Transport	Head: Public Works, Roads and Transport	10
Department of Public Safety, Security and Liaison	Head: Public Safety, Security and Liaison	
Department of Social Development	Head: Social Development	
Department of Sport, Arts and Culture	Head: Sport, Arts and Culture	
Department of Tourism, Environmental and Economical Affairs	Head: Tourism, Environmental and Economical Affairs	15
Free State Provincial Treasury	Head: Free State Provincial Treasury	
Gauteng		
Department of Agriculture, Conservation and Environment	Head: Agriculture, Conservation and Environment	20
Department of Community Safety	Head: Community Safety	
Department of Economic Development	Head: Economic Development	
Department of Education	Head: Education	25
Department of Health	Head: Health	
Department of Housing	Head: Housing	
Department of Local Government	Head: Local Government	
Department of Public Transport, Roads and Works	Head: Public Transport, Roads and Works	30
Department of Social Development	Head: Social Development	
Department of Sports, Arts, Culture and Recreation	Head: Sports, Arts, Culture and Recreation	
Gauteng Shared Services	Head: Gauteng Shared Services	
Gauteng Treasury	Head: Gauteng Treasury	35
KwaZulu-Natal		
Department of Agriculture	Head: Agriculture	
Department of Arts, Culture and Tourism	Head: Arts, Culture and Tourism	
Department of Community Safety and Liaison	Head: Community Safety and Liaison	40
Department of Economic Development	Head: Economic Development	
Department of Education	Head: Education	
Department of Health	Head: Health	
Department of Housing	Head: Housing	
Department of Local Government and Traditional Affairs	Head: Local Government and Traditional Affairs	45
Department of Sports and Recreation	Head: Sports and Recreation	
Department of the Royal Household	Head: Royal Household	
Department of Social Development	Head: Social Development	50
Department of Traditional and Local Government Affairs	Head: Traditional and Local Government Affairs	
Department of Transport	Head: Transport	
Department of Works	Head: Works	55
Provincial Treasury	Head: Provincial Treasury	
Limpopo		
Department of Agriculture	Head: Agriculture	

Column 1	Column 2	
Department of Economic Development, Environment and Tourism	Head: Economic Development, Environment and Tourism	
Department of Education	Head: Education	5
Department of Health and Social Development	Head: Health and Social Development	
Department of Local Government and Housing	Head: Local Government and Housing	
Department of Public Works	Head: Public Works	10
Department of Roads and Transport	Head: Roads and Transport	
Department of Safety, Security and Liaison	Head: Safety, Security and Liaison	
Department of Sport, Arts and Culture	Head: Sport, Arts and Culture	
Provincial Treasury	Head: Provincial Treasury	15
Mpumalanga		
Department of Agriculture and Land Administration	Head: Agriculture and Land Administration	
Department of Culture, Sport and Recreation	Head: Culture, Sport and Recreation	20
Department of Economic Development and Planning	Head: Economic Development and Planning	
Department of Education	Head: Education	25
Department of Finance	Head: Finance	
Department of Health and Social Services	Head: Health and Social Services	
Department of Housing	Head: Housing	
Department of Local Government	Head: Local Government	
Department of Public Works	Head: Public Works	30
Department of Roads and Transport	Head: Roads and Transport	
Department of Safety and Security	Head: Safety and Security	
Northern Cape		
Department of Agriculture and Land Reform	Head: Agriculture and Land Reform	35
Department of Economic Affairs	Head: Economic Affairs	
Department of Education	Head: Education	
Department of Health	Head: Health	
Department of Housing and Local Government	Head: Housing and Local Government	40
Department of Safety and Liaison	Head: Safety and Liaison	
Department of Social Services and Population Development	Head: Social Services and Population Development	
Department of Sport, Arts and Culture	Head: Sport, Arts and Culture	45
Department of Tourism, Environment and Conservation	Head: Tourism, Environment and Conservation	
Department of Transport, Roads and Public Works	Head: Transport, Roads and Public Works	50
Provincial Treasury	Head: Provincial Treasury	
North West		
Department of Agriculture, Conservation and Environment	Head: Agriculture, Conservation and Environment	55
Department of Developmental Local Government and Housing	Head: Developmental Local Government and Housing	
Department of Economic Development and Tourism	Head: Economic Development and Tourism	60
Department of Education	Head: Education	
Department of Finance	Head: Finance	

Column 1	Column 2	
Department of Health	Head: Health	
Department of Public Works	Head: Public Works	
Department of Social Development	Head: Social Development	
Department of Sports, Arts and Culture	Head: Sports, Arts and Culture	5
Department of Transport, Roads and Community Safety	Head: Transport, Roads and Community Safety	
Western Cape		
Department of Agriculture	Head: Agriculture	10
Department of Community Safety	Head: Community Safety	
Department of Cultural Affairs and Sport	Head: Cultural Affairs and Sport	
Department of Economic Development and Tourism	Head: Economic Development and Tourism	15
Department of Education	Head: Education	
Department of Environmental Affairs and Development Planning	Head: Environmental Affairs and Development Planning	
Department of Finance	Head: Finance	20
Department of Health	Head: Health	
Department of Housing	Head: Housing	
Department of Local Government	Head: Local Government	
Department of Social Development	Head: Social Development	
Department of Transport and Public Works	Head: Transport and Public Works	25

Part D**National Government Components****(Section 8)**

Column 1 Name of national government component	Column 2 Designation of head of national government component	Column 3 Principal national department	
Centre of Public Service Innovation	Executive Director	Department of Public Service and Administration	30 35 40

Part E**Provincial Government Components****(Section 8)**

Column 1 Name of provincial government component	Column 2 Designation of head of provincial government component	Column 3 Principal Office of the Premier or provincial department	
			45 50

Part F**Municipal Government Components****(Section 8)**

Column 1 Name of municipal government component	Column 2 Designation of head of municipal government component	Column 3 Principal Municipality	
			60

SCHEDULE 2

PART A

ASSIGNMENT OF FUNCTIONS TO HEADS OF GOVERNMENT COMPONENTS

(Section 8)

5

1. Despite anything to the contrary in any other law, the executive authority of a government component may assign to the head of that component any power conferred, or duty imposed, on—
 - (a) that executive authority (except the making of regulations) by national legislation; or
 - (b) any official of the principal institution of that government component by national legislation.
2. Such assignment is subject to—
 - (a) if the executive authority is not the Minister responsible for the administration of the national legislation in question (“the responsible Minister”), consultation with that Minister;
 - (b) the approval of Parliament of the intended notice as contemplated in this Part; and
 - (c) publication by notice in the *Gazette*.
3. The notice must stipulate—
 - (a) the powers and duties to be assigned in terms thereof;
 - (b) the effective date of the assignment; and
 - (c) the conditions that the executive authority considers appropriate.
4. The responsible Minister must table the notice in Parliament for approval.
5. Parliament may reject the notice within 90 days after it has been tabled, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 45 days after the commencement of its next ensuing ordinary session.
6. If Parliament rejects that notice, the responsible Minister may table an amended notice in Parliament.
7. If the responsible Minister tables an amended notice and Parliament—
 - (a) approves the amended notice, the responsible Minister must publish that notice in terms of item 2(c) within 30 days of the Parliament’s approval; or
 - (b) rejects the amended notice within 90 days after it has been tabled, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 45 days after the commencement of its next ensuing ordinary session, item 6 and this item apply.
8. If Parliament does not reject a notice as contemplated in item 5 or 7(b)—
 - (a) that notice is regarded as having been approved by Parliament; and
 - (b) the responsible Minister must publish the notice in terms of item 2(c) within 30 days after the periods referred to in item 5 or 7(b), as the case may be.
9. A notice may at any time in like manner be amended or withdrawn.
10. Any assignment in terms of this Part divests the person whom was vested with the assigned power or duty.
11. Nothing in this Act prevents the assignment of powers or duties to—
 - (a) the head of a provincial government component in accordance with provincial legislation of the province in question; or
 - (b) the head of a municipal government component in accordance with a municipal by-law of a municipality.

PART B**DELEGATIONS OF FUNCTIONS TO HEADS OF GOVERNMENT COMPONENTS***(Section 8)*

1. Despite anything to the contrary in any other law, the executive authority of a government component or the head of the principal institution of that government component may, except for the power or duty to make regulations, delegate to the head of the government component any power conferred or duty imposed on that executive authority or head of the principal institution by this Act or any other national legislation. 5
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2. The head of a government component may delegate to an employee of the government component any power or duty assigned to that head in terms of Part A of this Schedule or delegated to that head in terms of item 1 of this Part.
3. Any delegation in terms of item 1 or 2— 15
 - (a) must be in writing;
 - (b) is subject to such limitations and conditions as the person that made the delegation may impose in a specific case;
 - (c) may be either specific to the individual or to the holder of a specific post;
 - (d) may authorise that individual or post holder to sub-delegate the power or duty to an individual or holder of a specific post in the area of responsibility of the first-mentioned individual or post holder; 20
 - (e) does not divest the person who made the delegation of the responsibility concerning the exercise of the delegated power and the performance of the delegated duty;
 - (f) must be regularly reviewed and, if necessary, be amended or withdrawn. 25
4. The person that delegated a power or duty in terms of item 1 or 2 may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation, but no such variation or revocation of a decision may detract from any rights that may have been accrued as a result of a decision.
5. Nothing in this Act prevents the delegation of powers or duties to— 30
 - (a) the head of a provincial government component in accordance with provincial legislation of the province in question; or
 - (b) the head of a municipal government component in accordance with a municipal by-law of a municipality.

SCHEDULE 3

PART A

LAWS REPEALED OR AMENDED

(Section 55)

- 1. Public Service Act, 1994 (promulgated under Proclamation 103 of 1994)** 5
The Public Service Act, 1994, and all amendments thereto, are hereby repealed.

- 2. Labour Relations Act, 1995 (Act No. 66 of 1995)**
Section 213 of the Labour Relations Act, 1995, is hereby amended by the substitution for the definition of “public service” of the following definition:
“**‘public service’** means national and provincial institutions as defined in section 1 of the Public Administration Management Act, 2008, but excluding—
(a) the Regular Force of the South African National Defence Force;
(b) the National Intelligence Agency;
(c) the South African Secret Service;
(d) the South African National Academy of Intelligence;”.

- 3. Public Service Commission Act, 1997 (Act No. 46 of 1997)**
3.1 Section 2 of the Public Service Commission Act, 1997, is hereby amended by the substitution for the words “and provincial” of the following words:
“, provincial and local”.
3.2 The following sections are hereby inserted after section 8 of the Public Service Commission Act, 1997, as amended:

“Functions concerning local government

8A. The Commission is hereby vested in respect of municipal institutions and their employees, as defined in section 1 of the Public Administration Management Act, 2008 with the same powers and functions that the Commission has in terms of section 196(4)(a) to (f) of the Constitution in respect of the public service.

Enforcement of Commission’s directions

8B. (1) The Commission may investigate compliance with this Act and may issue directions contemplated in section 196(4)(d) of the Constitution in order to ensure compliance with the Public Administration Management Act, 2008 and in order to provide advice to promote sound public administration.

(2) If the Commission issues a direction contemplated in subsection (1), the relevant executive authority or head of institution, as defined in that Act, shall 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.”.

- 4. State Information Technology Agency Act, 1998 (Act No. 88 of 1998)**
4.1 Section 1 of the State Information Technology Agency Act, 1998 (Act No. 88 of 1998), as amended, is hereby amended by the substitution for paragraph (c) of the definition of “public body” of the following paragraph:
“(c) a municipal institution as defined in section 1 of the Public Administration Management Act, 2008;”
4.2 Section 7 of the State Information Technology Agency Act, 1998, is hereby amended by substitution for subsection (6) of the following subsection:
“(6)(a) The Minister must, on the recommendation of the Agency, set standards regarding the interoperability of information systems between

institutions, as defined in the Public Administration Management Act, 2008.

(b) The Agency must certify every acquisition of any information technology goods or services by a department for compliance with those standards.

(c) The Agency may—

(i) despite anything to the contrary in any other law, exclusively sell or provide authentication products or services for all departments;

(ii) on request of any public body, sell or provide authentication products or services for that public body; and

(iii) apply to the relevant authority for the accreditation of such authentication products or services in terms of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002); and

(d) The Agency may carry out research regarding the use of information technology to improve the efficiency of the public administration.”.

5. Municipal Structures Act, 1998 (Act No. 117 of 1998)

Section 82 of the Municipal Structures Act, 1998 (Act No. 117 of 1998), as amended, is hereby repealed.

6. Municipal Systems Act, 2000 (Act No. 32 of 2000)

6.1 Section 1 of the Municipal Systems Act, 2000 (Act No. 32 of 2000), as amended, is hereby amended by the deletion of paragraph (b) of the definition of “Code of Conduct”.

6.2 Section 26 of the Municipal Systems Act, 2000, is hereby amended by the insertion after paragraph (i) of the following paragraph:

“(j) the service charter contemplated in section 4 of the Public Administration Management Act, 2008;”.

6.3 Sections 55(1)(e) to (h), 56, 57 and 66 to 72 of, and Schedule 2 to, the Municipal Systems Act, 2000, are hereby repealed.

PART B—SAVING AND TRANSITIONAL ARRANGEMENTS

(Section 55)

1. All employees appointed in terms of the Public Service Act, 1994, or by municipalities, or regarded as having been so appointed, immediately before the commencement of this Schedule, are regarded as having been appointed in terms of this Act. 5
2. If a voluntary or compulsory retirement age different than the age provided for in section 41 applied immediately before the commencement of section 41 to an employee, such different age will apply to that employee.
3. Subject to item 4, a national department, an Office of the Premier or a provincial department listed in Schedule 1 or 2 of the Public Service Act, 1994, immediately before its repeal by this Act is regarded as having been established by or in terms of section 7 of this Act. 10
4. The South African Management Development Institute, listed as a national department in Schedule 1 to the Public Service Act, 1994, before its repeal, is regarded to be the Public Administration Leadership and Management Academy, referred to in section 32(1). 15
5. A national or provincial government component listed in Schedule 3 of the Public Service Act, 1994, immediately before its repeal by this Act is regarded as having been established in terms of section 7 of this Act. 20
6. A service delivery improvement programme established by a national department, an Office of the Premier or a provincial departments in accordance with regulations made under the Public Service Act, 1994, is regarded as the service charter referred to section 4 of this Act, provided that it must be reviewed within 12 months after the commencement of that section to ensure that it complies with that section. 25
7. Anything done in terms of a provision of a law repealed by Part A of Schedule 3 and which could be done under a provision of this Act, is regarded as having been done under that provision.
8. For the avoidance of doubt, the bargaining councils established by or under and registered in terms of the Labour Relations Act with jurisdiction over institutions and employees in the Public Administration or any portion thereof are regarded as bargaining councils for the purposes of this Act. 30
9. Any collective agreement in force on the date immediately before the commencement of this Schedule will remain in force until expiry, subject to item 9.
10. If a collective agreement, referred to in item 9, does not provide for a notice period, it may be terminated on three months' notice. 35

PART C**CO-ORDINATION OF COLLECTIVE BARGAINING IN THE PUBLIC
ADMINISTRATION**

1. As soon as practicable after the commencement of this Act, the Commission for Conciliation, Mediation and Arbitration (“the Commission”) must invite the employee and employer representatives in the bargaining councils contemplated in item 8 of Part B to attend a meeting with a view to obtain consensus on the process of collective bargaining in the Public Administration and arrangements to co-ordinate the negotiation and conclusion of collective agreements in those bargaining councils. 5
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2. The Commission must appoint a senior commissioner to facilitate the conclusion of a consensus on the process of collective bargaining and the co-ordination of collective agreements.
3. The commissioner appointed in terms of item 2 must report to the Minister on progress and, at the end of the process, report to the Minister on any consensus reached and, if no consensus is reached, make recommendations on an appropriate process and arrangements for collective bargaining in the Public Administration. 15

MEMORANDUM ON THE OBJECTS OF PUBLIC ADMINISTRATION MANAGEMENT BILL

BACKGROUND

1.1 The Constitution of the Republic of South Africa, 1996 (the Constitution), requires cooperative and effective government while recognising that government in the national, provincial and local spheres is “distinctive, interdependent and interrelated” (section 40(1)). Together the three spheres of government are required to provide effective, transparent, accountable and coherent government for the country. This requires that the spheres respect each other’s territory and powers and functions while striving to work together in a meaningful way to improve service delivery to the public.

1.2 The drive towards coordinated government has been at the heart of government’s transformation and reform programmes for the last ten years. In 1998, the Presidential Review Commission advised government that coordination at the centre of government was weak, and that intergovernmental relations needed to be improved. As a result government reconfigured its Cabinet committees to facilitate coordination in particular sectors, namely the governance, economic, social, justice and international clusters. Similar clusters of Directors-General were created. These measures supported a horizontal integration among national departments.

1.3 To complement this horizontal integration, a system of vertical integration was developed by the establishment of a framework for national, provincial and local governments to promote and facilitate intergovernmental relations, which is regulated in the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005).

1.4 Despite the positive changes that have been introduced over the last ten years, there is room for improvement in public service delivery. Government does not present itself as a coordinated front, but as a myriad of national, regional, provincial and municipal offices, each with a separate identity, each operating in its own silo. The lack of coordination between the different spheres of government has hindered service delivery with people often being forced to visit more than one office or make multiple visits in respect of a single service. People are often expected to travel great distances to obtain the services they need. Most services are available only during office hours, forcing people to interact with government during their productive time. It is not just a burden on the people; it is a duplication and bureaucratisation of resources.

1.5 Integration of government services, systems and personnel would assist in addressing these challenges. This is a massive task, requiring extensive change throughout public administration and encompassing a change in mindset as much as legislative and institutional change. A people-centred administration is envisaged that permits, or may require, public service employees from different branches of the administration to work together to find creative solutions to the service delivery challenges facing the country. In order to better coordinate service delivery and to motivate staff, it is essential to remove the unjustifiable disparities that continue to exist between employees in the public administration.

SINGLE PUBLIC SERVICE INITIATIVE

2. In responding to the service delivery challenges described above, government has prepared draft legislation enabling a coordinated public administration of the national, provincial and local spheres. A coordinating Single Public Service Task Team under the auspices of the Governance and Administration Cluster of Directors-General and a Single Public Service Programme Management Office have been established. Five workstreams, which focus on legislation, enhanced access to services, information and communication technologies (ICT) enablement of integrated service delivery, human resource management norms and standards for an integrated public administration and a public sector anti-corruption strategy, carry forward the work of the task team.

BASIC VALUES AND PRINCIPLES GOVERNING PUBLIC ADMINISTRATION

3.1 The Constitution provides the framework for intergovernmental relations and prescribes basic values and principles for public administration (section 195(1)). The Constitution explicitly requires public administration to be developmental and participatory. Citizens’ rights, including socio-economic rights, are enshrined. The

Constitution requires that the State take “reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights” (section 27(2)). The Constitutional Court has interpreted these provisions in various cases, in a manner which has placed pressure on government to improve the performance of organs of state responsible for delivering services.

3.2 In order to respond to the challenges of poverty and inequality, and to respond to the requirements of the Constitution, South Africa has strived to become a developmental state. The emerging South African developmental state is democratic, non-racial, interventionist, redistributive, people-centred and participatory. The Accelerated and Shared Growth Initiative for South Africa (ASGISA) and subsequent initiatives including the Apex Priorities have placed the South African government on a “business unusual” footing for the last year of the third term of democratic governance.

CONSTITUTIONAL ISSUES

4.1 The Public Administration Management Bill (the Bill) respects the powers vested by the Constitution in municipalities, particularly their power to appoint, direct and dismiss their own employees. While the Bill does contain provisions that, in carefully circumscribed circumstances, enable the Minister for the Public Service and Administration (the Minister), to set limits on terms and conditions of employment of municipal employees, these provisions do not compromise or impede municipalities in exercising their rights or performing the functions conferred on them by the Constitution.

4.2 The Bill empowers municipal councils to appoint municipal managers and those reporting directly to them and municipal managers to appoint their other staff. Municipal councils and municipal managers are empowered to decide on all career incidents—which include discipline, performance management, transfers, etc—of their staff. They, and they alone, have the power to dismiss their employees. Employees may only be transferred or seconded to or from a municipality with the concurrence of its municipal council. (In this regard see clauses 10, 11, 13, 21, 24, 25 and 38 of the Bill).

4.3 The Bill permits employers and trade unions in the local government sphere to negotiate terms and conditions of employment in their bargaining council. This is, however, constrained by provisions that enable the Minister, over time, to address unjustifiable disparities within the public administration, including unjustifiable disparities between the local government and other spheres of government. The rationale is that the Bill is intended to enable and facilitate the harmonisation of the systems, practices and conditions of service within public administration over time and employer proposals that fail to address or exacerbate unjustifiable disparities in respect of conditions of service would need to be addressed.

4.4 Like other public administration employers, local government employers may not conclude collective agreements concerning certain prescribed matters without the prior authorisation of the Minister, which authorisation may only be refused if the Minister believes that the agreement maintains or introduces unjustifiable disparities. The Minister is also empowered, for the purpose of removing or preventing unjustifiable disparities, to propose terms and conditions of employment for negotiation in a bargaining council. In respect of local government, such tabling is to take place through the South African Local Government Association (SALGA). If no agreement is reached, the Minister may make a determination. Such a determination would require the consent of SALGA, the organisation currently recognised in terms of the Organised Local Government Act, 1997 (Act No. 52 of 1997), as the national organisation representing the majority of those provincial organisations which represent the majority of municipalities in their respective provinces. (See clauses 29 and 30 of the Bill in this regard.)

4.5 Other provisions of the Bill require that SALGA concurs where the interests of municipalities are affected. These include concurrence on norms and standards for conditions of service of members of the Senior Management Service as well as on regulations insofar as they apply to municipalities (clauses 6, 15 and 44 of the Bill).

CENTRALISATION VERSUS DECENTRALISATION

5.1 Critics of the policy and the first version of the draft legislation made public have argued that it constitutes the centralisation of public administration, and is aimed at

concentrating power in the hands of national government. In fact the Bill continues a tradition of decentralisation of power established in 1999. The state machinery inherited in 1994 was highly centralised and executive powers over public service personnel and organisational matters were vested in the Public Service Commission as it was then constituted. The mandate of the Commission changed to monitoring and evaluation following the adoption of the Constitution in 1996 and the passing of amendments to the Public Service Act, 1994, in 1997 and 1998 vested regulatory powers in the Minister and powers over internal organisation and personnel matters in individual executive authorities.

5.2 New Public Service Regulations were issued in 1999, which repealed the Public Service Staff Code and substantially simplified the prescripts regulating the public service. The approach taken in the Public Service Act as amended and the new Regulations was for the Minister as regulator to set a framework of norms and standards within which executive authorities and their delegates could make policies suited to their own unique circumstances. This approach is decentralisation (or devolution) rather than centralisation of power; indeed this approach has in some instances given rise to failures to comply with the generally applicable norms and standards, which have been addressed in the latest Public Service Amendment Act, 2007, and the Bill.

5.3 The decentralised approach adopted in 1996 and implemented in stages culminating in the promulgation of the Regulations in 1999 remains the approach for the Bill. The Minister is enabled to create a framework of generally applicable norms and standards within which government institutions in the national, provincial and local spheres may determine their own policies and practices. At the same time, however, efforts will be made to harmonise systems, structures and conditions of service in order to reduce unjustifiable disparities, duplication and lack of interoperability between institutions, and to promote integration and coordination for improved service delivery.

KEY PROVISIONS OF THE BILL

6.1 Scope (clause 2)

Under the current legislative framework, the law regulating the structure and staffing of the public administration are dealt with under different statutes. One of the primary objects of the Bill is to have one basic statute to do so. It is for this reason that the Public Service Act and those provisions of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), and the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), dealing with staffing are to be repealed and integrated into one statute. Accordingly, the Bill will apply to all departments and government components in the national and provincial spheres of government (i.e. the public service), and municipalities and municipal government components.

Although there are exceptions in respect of certain provisions insofar as security and intelligence services and educators (sectors) are concerned, the Bill applies to the public administration as a whole. It is because of the special nature of these sectors and the non-applicability of the Labour Relations Act, 1995 (Act No. 66 of 1995), to some in these sectors, that the Bill (like the PSA) applies to the extent that its provisions are not contrary to specific legislation regulating these sectors.

6.2 Extending scope of Public Service Commission's mandate (clause 43 and Schedule 3, Part A)

Since 1996 the Public Service Commission has monitored and evaluated the performance of the public service in relation to the administration of personnel practices and service delivery and submitted its reports to the National Assembly. Section 196(4)(g) of the Constitution provides that the Commission may exercise or perform the additional powers or functions prescribed by an Act of Parliament. The Bill envisages an expanded role for the Public Service Commission. It is proposed that the oversight mandate of the Public Service Commission include national, provincial and local spheres of government. Part A of Schedule 3 of the Bill amends the Public Service Commission Act, 1997 (Act No. 46 of 1997), to extend the Commission's oversight powers (contained in section 196(4) of the Constitution) to include local government.

6.3 Vesting of human resource powers (clauses 13 and 21)

The Bill effects a significant change to the current public service legislation in that it vests human resource powers in relation to the career incidents of national and provincial employees (other than heads of institutions and employees reporting to them) in the head of the relevant institution. Currently, these powers are vested in executive authorities. This is intended to enhance the accountability of heads of institutions by locating both human resource and financial management powers in him or her. In relation to top management (heads of institutions and the next layer of management), the appointment powers are vested in the President (with concurrence of Cabinet) for national departments and components and in the Premier (with concurrence of the relevant Executive Council) for provincial departments and components.

In the case of municipalities, powers concerning appointments and other career incidents of both top management vest in the municipal council and the municipal manager is responsible for the appointment and other career incidents of other staff.

6.4 Service charters and service centres (clauses 4 and 5)

Provision is made for all institutions to have service charters to set standards for their services and to promote a culture of service delivery among its employees. In the case of municipalities, these charters are to be included in the integrated development plans for municipalities. A regulatory framework is also proposed for service centres (so-called Thusong Service Centres) as sites of delivery of services across the spheres of government.

6.5 Government components (clause 8)

Government components are intended to provide a specific-purpose vehicle for service delivery, regulatory functions and other purposes in instances where it is desirable to ring-fence the particular activity, provide it with a designated budget and administrative head, while ensuring that the precepts of sound corporate governance within a public sector setting are adhered to. The head of a government component will report to the head of the principal institution. Government components may have advisory boards which are accountable to the Minister of the parent department.

An executive authority in the national, provincial or local sphere may create or abolish a government component, provided a feasibility study has been conducted and the creation or abolition has been recommended. In addition, executive authorities in the different spheres must consult with the relevant authorities: in the case of national departments, they must exercise their powers in consultation with the Minister and the Minister of Finance; in other spheres, executive authorities must do so after consultation with the Minister.

6.6 Senior Management Service (clauses 12-17)

Improved service delivery cannot be achieved without capable, committed, loyal and strong leadership. Public administration requires dynamic leaders with an array of skills to manage and drive the implementation of government policy priorities. The public service has established a Senior Management Service (SMS) and the Bill provides for an SMS consisting of national, provincial and municipal heads as well as at least those at the next level of management. The regulatory framework is intended to achieve alignment, where appropriate, in recruitment and selection, remuneration and conditions of service, performance management and development, competency framework, standards of ethics and conduct, financial disclosure requirements and procedures for transfer and secondment.

The object of the envisaged SMS is to create a cadre of senior managers and senior professionals across institutions for the purpose of *(a)* developing a public management culture of excellence based on the values and principles in section 195(1) of the Constitution and the provisions of the Bill; *(b)* facilitating cooperation among management structures of institutions; *(c)* transmitting organisational, managerial, professional and strategic expertise across institutions; and *(d)* providing an organised network for the dissemination of policy, strategy and expertise.

The Bill empowers the Minister to establish a framework of minimum and maximum remuneration and benefits and also norms and standards on conditions of service

applicable to SMS members for national, provincial and local government. In relation to local government, the MPSA must act with the concurrence of national organised local government. For national and provincial SMS members (including certain sectors), the Minister may determine specific conditions of service.

6.7 Terms and conditions of employment (clauses 29 and 30)

The Bill envisages the continuation of the current structure of collective bargaining in the public administration. The existing bargaining councils in the public administration will remain as separate bargaining councils each with their own jurisdiction. It is intended though to institute a process for the bargaining councils in the public administration to agree on arrangements to coordinate the negotiation and conclusion of collective agreements. That process will be initiated and facilitated by the Commission for Conciliation, Mediation and Arbitration.

Negotiations on conditions of service will be negotiated in the respective bargaining councils in accordance with their constitutions. If agreement is reached in a council, the agreement may be binding on all parties to that council and non-parties within the jurisdiction of that council by way of a ministerial determination. This determination fulfils a similar function to an extension of an agreement under section 32 of the Labour Relations Act, 1995 (Act No. 66 of 1995). If no agreement is reached and the negotiation procedures of the bargaining council have been exhausted, the Minister may, as she may do currently under section 5(5) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), make a determination giving effect to the government's final proposals. The trade unions however retain their right to strike and as a result of any settlement flowing from a strike, the determination must be amended to give effect to that settlement.

In order to prevent and eradicate unjustifiable disparities in conditions of employment in the public administration, the Bill provides for proposals to be mandated by the Minister in respect of the national and provincial spheres and to authorise employer proposals in the municipal sphere. In order to properly meet the requirements of municipal autonomy, the Minister may only refuse to authorise proposals if they retain or introduce unjustifiable disparities. That decision is subject to judicial scrutiny. Provision is also made for the Minister to table proposals to eradicate unjustifiable disparities in the bargaining councils. In respect of local government, such proposals must be tabled by SALGA if so requested by the Minister.

6.8 Deployment of staff (clauses 24 to 27)

Greater mobility of staff facilitates the transfer of functions from one sphere to another, which is desirable in certain instances to allow services to be delivered at the most appropriate sphere and to enable the deployment of staff to where they are most needed in government. The Bill contains provisions to enable transfers, secondments and staff transfers linked to a transfer of functions. Transfers may be made without the consent of the employee concerned provided that the transfer is fair taking into account the operational requirements of the affected institutions, whether secondment is an alternative as well as the employee's representations. In the case of transfers or secondments to or from a provincial or municipal institution, the sending and recipient provincial and municipal institutions must consent to the transfer or secondment of staff. Conditions of service may on the whole not be less favourable. The Bill also contains special provisions regulating disputes about transfers.

6.9 Capacity development (clauses 31 to 34)

The provisions relating to capacity development require public administration institutions to develop their human resource capacity through the education and training of their employees. Minimum requirements regarding compliance with the Skills Development Act, 1998 (Act No. 81 of 1998), are stipulated, and institutions are empowered to make additional provision for training and education on their budgets and to seek outside funding. The Bill provides for the Public Administration Leadership and Management Academy, currently called the South African Management Development Institute, as trainer and facilitator of training for the public administration. It also provides for compulsory training and accreditation of training.

6.10 Participation of employees in elections (clause 36)

The Bill allows employees to stand in national, provincial or local elections, subject to prescribed limitations and conditions. The employment contract of a successful candidate terminates automatically on assumption of political office.

6.11 Post employment restriction (clause 37)

Provision is made for the imposition of a 12-month ‘cooling off’ period for employees involved in the procurement of goods or services from service providers. It provides for a prohibition from accepting employment or appointment to the board of the provider, the performance of remunerated work or the receipt of any other gratification. Service providers or employees who contravene this provision are guilty of an offence and on conviction liable to a fine of R1 million. An additional fine of an amount up to the monetary value of the proceeds of the prohibited transactions may be levied against the transgressing employee. A contravention by a service provider also constitutes good cause for the cancellation of the contract in question and, if the contract is cancelled, may result in a court declaring the monetary value of the proceeds derived from the contract forfeit.

6.12 Disclosure of previous actions against employees and continuation of disciplinary and other steps (clause 39)

The Bill provides for the continuation of disciplinary steps and other measures when an employee leaves an institution while an investigation regarding misconduct, poor performance or ill-health is pending and joins another institution. The aim is to ensure that an employee cannot evade the outcome of procedures by moving between public administration institutions. The ‘new’ institution may on its own initiative continue steps, or if the ‘previous’ institution requests it, must continue such steps. The clause also requires employees to disclose prior actions on the grounds of misconduct, ill-health or poor performance and any such known pending or incomplete actions when applying for a position.

6.13 Prohibition on re-employment if dismissed for misconduct (clause 40)

The Minister may in regulations prescribe a term within which re-employment of an employee found guilty of misconduct is prohibited. Decision-makers are guided to consider the nature of the misconduct when considering re-employment outside such period.

6.14 Regulations (clauses 44-46)

The Bill empowers the Minister to set norms and standards on personnel and public administration practices, procedures and systems. A norm and standard is intended to guide employers and employees in the public administration and to set parameters within which important procedures (such as grievance procedures and disciplinary procedures) or practices (such as recruitment) are established. It may include codes of good practice, default procedures, principles and factors to be taken into account in decision-making. In other words, what is intended is not centralised uniformity but a harmonisation that properly allows for specialised differentiation and autonomy.

SALGA must also concur with regulations affecting municipal institutions. It is also important to note that the regulations require a notice and comment procedure before promulgation.

If a draft regulation concerns a matter of mutual interest, the Bill makes provision for the Minister, SALGA on request of the Minister, or a party to the bargaining council, to table it for negotiation. If there is a dispute over whether a matter constitutes a matter of mutual interest, provision is made for it to be resolved on an expedited basis by the Labour Court.

6.15 Failures to comply (clause 49)

This clause seeks to introduce measures to ensure compliance with the Bill, by requiring executive authorities to take disciplinary measures against the heads of institutions over which they have authority, and for heads of institutions to take action against employees who contravene the provisions of the Bill. The clause requires that a record of instances of non-compliance be kept.

6.16 Delegation (clause 53)

The clause provides for delegations: from the Minister to the head of the institutions reporting to the Minister and from them to employees within those institutions; from the Premier to the head of the Office of the Premier; from the President to Deputy President and Ministers; from the Premier to Members of the Executive Council; from an executing authority to the head of institution; and from the head of institution to employees within that institution. The performance of a duty may also be delegated. The Minister may not delegate certain powers in relation to collective bargaining or the powers to make regulations.

6.17 Jurisdiction of Labour Court (clause 54)

In a recent decision of the Constitutional Court, the Court held that public service employees were not entitled to remedies under both labour law and administrative law. It criticised the formulation of section 157(2) of the Labour Relations Act, 1995 (Act No. 66 of 1995), which gives concurrent jurisdiction to both the Labour Court and the High Court. In order to give effect to that decision, the Bill proposes to give the Labour Court exclusive jurisdiction in respect of all employment or labour matters pertaining to employers and employees in the public administration. In line with the thinking that motivates both the Labour Relations Act, 1995 (Act No. 66 of 1995), and this Bill, there should be only one institutional framework for giving effect to employee rights to challenge employer decisions and to supervise the operation of that framework.

6.18 Amendments to other legislation (clause 55 and Schedule 3, Part A)

The Bill repeals or amends the Public Service Act, 1994 (Proclamation No. 103 of 1994) (repeals the whole Act), the Labour Relations Act, 1995 (Act No. 66 of 1995) (amends the definition of “public service”), the Public Service Commission Act, 1997 (Act No. 46 of 1997) (amends to extend mandate to local government), the State Information Technology Agency Act, 1998 (Act No. 88 of 1998) (amends to extend measures to enhance interoperability of information systems to local government), the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (amends to align with human resource arrangements in the Bill), and the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) (amends to align with mainly human resource arrangements in the Bill).

6.19 Transitional arrangements (clause 55 and Schedule 3, Part B)

The saving and transitional arrangements inter alia provide for the continued employment of employees employed in terms of the Public Service Act or by municipalities, and that anything done in terms of a repealed provision that may be done in terms of the Bill will be deemed to have been done in terms of the Bill.

6.20 Commencement (clause 56)

Clause 56 allows for the provisions of the Bill to be brought into operation on different dates and also on different dates for different categories of employees or institutions.

7. INSTITUTIONS CONSULTED

7.1 The development of the first draft occurred through a dedicated work stream of the Governance and Administration Single Public Service Task Team. After the Cabinet approved in July 2007 that consultation on the draft legislation may proceed, extensive stakeholder engagement and information sharing took place with respect to provincial

inter-governmental relation forums, municipalities through SALGA, the National Economic, Development and Labour Council (Nedlac), the Public Service Commission and some human resource forums and institutions.

7.2 Thereupon the draft Bill was revised to take into account inputs received during these engagements and, as required by section 154(2) of the Constitution, the revised draft was published on 9 April 2008 for public comment. A total number of 56 submissions were received. These submissions were studied and, where considered necessary or desirable, amendments were made.

8. FINANCIAL IMPLICATIONS FOR THE STATE

8.1 The harmonisation of conditions of service, where appropriate, will take place through collective bargaining and in respect of those employees outside collective bargaining through ministerial determinations. For this purpose the Department of Public Service and Administration, together with an inter-departmental task team, has conducted a study on the cost-benefit analysis of the single public service, in terms of the alignment of remuneration and conditions of service. A number of scenarios have been explored. Based on the study, a remuneration framework will be prepared in conjunction with SALGA, and the implementation costs thereof will then be determined.

8.2 The financial arrangements for service centres (known as Thusong Service Centres) will be regulated through a framework determined by the relevant Ministers and also in specific implementation protocols for each centre.

9. PARLIAMENTARY PROCEDURE

9.1 The State Law Advisers and the Department of Public Service and Administration are of the opinion that the Bill must be dealt with in accordance with the procedure prescribed in section 76(1) or (2) of the Constitution since it provides for legislation envisaged in sections 195 and 197 of the Constitution.

9.2 The State Law Advisers are of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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