

Portfolio Committee on Public Service and Administration

16 February 2024

Upper Ground Floor

90 Plein Street

Cape Town

Per email to:

Mr Masixole Zibeko

pscb@parliament.gov.za

A. INTRODUCTION

1. This submission is made by the Equality Collective in response to the invitation for public comment on the Public Service Commission Bill (B30-2023), which was introduced in the National Assembly by the Minister for the Public Service and Administration, on 13 October 2023.
2. The Equality Collective is based in Nqileni Village in the Xhora Mouth Administrative Area in deep rural Eastern Cape. We promote the rights in our Constitution with an understanding that reliable access to quality socio-economic rights will advance greater equity in South Africa. We are committed to meeting the immediate needs of our community as well as building the capacity of community members to shape their own lives and the world around them.
3. We are grateful for this opportunity to participate in the public consultations on the Public Service Commission Bill (PSC Bill). The Equality Collectives engagements with the public service is through its interactions with local government. Local government is the central nervous system of service delivery in South Africa. A dysfunctional local government sector translates directly to poor service delivery and in turn, an impediment on a broad range of rights of already vulnerable and predominantly poor rural communities.
4. The state has made strides in proposing a raft of measures to the public service through the National Development Plan which promotes the professionalisation of the public service and proposes the establishment of a Public Service Commission (PSC).

5. We believe the powers and function of the Public Service Commission as outlined in section 196(4) of the Constitution, have the potential to have a direct impact in addressing the problems we have faced in our interactions with local government in our rural spaces.
6. For over two years, the Equality Collective has monitored the operations of the Amathole District Municipality (ADM). In 2022, it was revealed that the previous Municipal Manager of ADM, who led the Municipality for the previous five years, was actually unqualified for the position. The Eastern Cape MEC of the Department of Cooperative Governance and Traditional Affairs (COGTA) challenged his reappointment for another five year term, resulting in his appointment being [set aside](#). In 2023, the Municipality's attempt to [appoint a CFO](#), previously indicted for fraud and corruption, was similarly thwarted when the MEC for COGTA intervened. Additionally, in 2023, Ms Zondani, a senior manager who was released on bail for an outstanding fraud charge [just a month prior](#), was appointed to a senior manager role as the Director of Community Services. Her appointment, however, has not been formally challenged.
7. The repeated appointments of incompetent senior managers has exacerbated poor performance and derailed the capacity of the municipality to effectively operate and undertake their constitutional mandate. Our submission is made and drawn from this context.
8. The Equality Collective therefore strongly supports the proposed amendments to the Local Government: Municipal Systems Act, 2000 that provide for investigations and directions of the Public Service Commission.
9. Nonetheless, Government's Professionalisation Framework envisions the PSC playing a role in supporting the appointment of senior administrative staff in the public administration towards the development of a stable, productive political-administrative interface. Our primary issue with the Bill is that the Bill does not address this aspect. The Public Service Commission Act should play a role in the appointment processes.¹

Powers and functions of PSC

10. The PSC must promote the values and principles set out in section 195. In the context of rural local municipalities, the PSC can serve to better instil these principles and monitor their realisation.
11. The PSC serves to investigate, monitor and evaluate the organisation and administration, and the personnel practices, of the public service. Rural local municipalities in the Eastern Cape have been characterised by poor governance.² The PSC must have detailed powers and functions that allow for the oversight of matters of administrative and organisational efficiency as well as personnel practices. This role is imperative in the ultimate realisation of a professional public service as it relates specifically to the local government sphere of government.

¹ Brunette, R. 2021. "Appointment and Removal in the Public Service and in Municipalities" in *Reforming Public Administration in South Africa a path to professionalisation*. Cape Town: Siber Ink: <https://pari.org.za/reforming-the-public-administration-in-south-africa-a-path-to-professionalisation/>

² 'Eastern Cape's ailing municipalities rack up R3.1bn in irregular expenditure' accessed 12 February 2024 dailymaverick.co.za/article/2022-08-23-eastern-cape-s-ailing-municipalities-rack-up-r3-1bn-in-irregular-expenditure/

12. The PSC must propose measures to ensure effective and efficient performance within the public service. Local government is characterised by poor performance evidenced by poor service delivery and poor financial management.³ The PSC has an opportunity to effectively monitor and promote measures that speak directly to poor performance.
13. The PSC mandate includes giving directions aimed at ensuring that personnel procedures relating to recruitment, transfers, promotions and dismissals comply with the values and principles set out in section 195. Local government has been inundated with instances of improper and unlawful appointments which have been advanced by proponents of cadre deployment.⁴ Appointments of unsuitable candidates to important positions of power has a direct correlation to poor service delivery. The PSC has an opportunity to play a direct and impactful oversight role in this context.

B. OPPORTUNITIES TO IMPROVE THE PSC BILL

In Part B of this submission, we provide detailed commentary on specific provisions of the Bill.

The Bill is silent on conflict of interest.

14. The Bill under section 4 makes no mention of conflict of interest as a consideration in the process of the identification of suitable candidates to be appointed as commissioners. We believe the inclusion of a conflict-of-interest clause upholds the constitutional principles enshrined in section 196(2) which directs the commission to be *“independent and [...] impartial and exercise its powers and perform its functions without fear, favour or prejudice in the interest of the maintenance of effective and efficient public administration and a high standard of professional ethics in the public service.”*
15. **We believe the Bill must include a clause that provides for the assessment of conflicts of interest with specific processes that require the disclosure of financial interests or relationships that could influence the individual's decision-making as a commissioner.**

The Bill provides for a narrow standard for disqualification for appointments of commissioners.

16. Section 5(e) is narrowly framed and leaves out other considerations that we believe must be included as criteria for the disqualification from appointment as a commissioner. **We propose that section 5(e) ought to read “has at any time been dismissed from employment for misconduct or by reason of improper conduct involving a breach of such trust...”.**
17. Section 5 currently excludes a range of serious offences. **We propose the addition of section 5(g) that provides for the disqualification of candidates that have been found guilty of a crime and sentenced**

³ ‘Auditor-General calls on Eastern Cape municipal leaders to promote transparency and accountability’ accessed 12 February 2024 <https://www.dailymaverick.co.za/article/2023-06-07-auditor-general-calls-on-eastern-cape-municipal-leaders-to-promote-transparency-and-accountability/>

⁴ ‘Appointment of ‘incompetent’ Mahikeng manager unlawful, court finds’ accessed 12 February 2024 <https://mg.co.za/news/2021-10-26-appointment-of-incompetent-mahikeng-manager-unlawful-court-finds/>; Amathole District Municipality: State of municipalities, accessed 12 February 2024 <https://pmg.org.za/committee-meeting/32438/>.

to more than 12 months imprisonment without the option of a fine either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic.

The Bill encourages diversion from primary responsibilities.

18. We are concerned that the provisions of Section 6(1)(b) promote an environment where commissioners can be drawn away from their core duties within the PSC. This may risk the quality of commissioners work and directly impede the realisation of the PSC's objectives. It also creates a concerning and unclear framework for appropriate remuneration. One option is to expressly provide for part-time commissioners, and those commissioners may then pursue alternative work. Otherwise, **we propose amending Section 6(1)(b) to explicitly prohibit commissioners from undertaking any additional work while serving within the PSC.**

The Bill restricts transparency and accountability.

19. Section 12 of the Bill appears to disregard the provisions stipulated in section 32 of the Constitution, which uphold the right to access information held by the state. Section 12(1) is not clear on which reports may be accessed, leaving this solely to the discretion of the PCS. The Bill must endeavour to reduce reliance on the cumbersome process of the Promotion of Access to Information Act of 2000 (PAIA) requests. **We propose that section 12 be revisited to direct that all PSC reports be immediately made available on the PSC website and such reports included in the PSC reports to Parliament as per section 196(6) of the Constitution.**

The Bill is silent on diversity and inclusivity.

20. The Bill provides for the requisite experience criteria for candidates to be appointed to the PSC under section 4(4)(b). This is followed by the disqualifying criteria of candidates in section 5. These are welcomed inclusions. The Bill is however silent on considerations of diversity and inclusivity. Section 195(1) of the Constitution provides that “public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles: (i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.” The PSC commissioners ought to be appointed with these principles in mind.
21. By incorporating individuals from different communities, the Commission can better understand and address the diverse needs and challenges facing the nation, leading to more effective and equitable governance. Moreover, diverse perspectives contribute to innovative problem-solving and enhance the PSC's credibility and legitimacy among all South Africans, promoting a stronger and more inclusive public service for the benefit of the entire nation. **We believe that given the country's complex history of apartheid and systemic discrimination, ensuring representation from diverse backgrounds is essential for building trust in the public service system. We believe that diversity and inclusivity must**

be included as criteria for the appointment of commissioners, considering the realities of the diverse characteristics of the South African population and aim to ensure inclusivity as far and as reasonably as possible.

The Bill's implementation of the decision of the commission section can be bolstered.

22. Section 13 of the Bill makes great efforts to put in place measures of accountability as it relates to the implementation of the decisions of the commission. However, section 13(2) suggests that the PSCs powers to report are not mandatory. **We propose that the section be reworded to require rather than permit the commission to report refusals or failures to implement its decisions.**

The appointment of the CEO and deputy CEO is attenuated by provisions for political involvement.

23. We welcome the proposal to ensure a dedicated PSC Secretariat. However, the Bill ought to include provisions relating to the principles and processes for recruiting and appointing the CEO and Deputy CEO of the Secretariat. The power of which ought to lie with the Chairperson of the PSC. **We propose that changes must be made to section 16 of the Bill so that it provides clearly for the powers for the recruitment, appointment, performance management, dismissal, remuneration and other career incidents of the CEO and any other person or persons appointed as Deputy CEO, to sit with the chairperson of the PSC.** Further the power to appoint staff below the CEO and the Deputy CEO ought to lie with the CEO. This should also be made clear.
24. The CEO and Deputy CEO should also not hold office in a political party or political organisation during their tenure.

C. CONCLUSION

25. Equality Collective supports the Public Service Commission Bill, as an instrument that can advance the professionalisation, improve oversight, transparency and address corruption within the public service.
26. Equality Collective hopes that its submission and comments on the Bill will be considered and is available to make oral submissions if requested.

Yours sincerely



Tess Nolzwe Peacock
Executive Director

