



REPUBLIC OF SOUTH AFRICA

1997-10-19

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

VOL. 388

CAPE TOWN, 3 OCTOBER 1997

No. 18336

KAAPSTAD, 3 OKTOBER 1997

OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

No. 1303.

3 October 1997

No. 1303.

3 Oktober 1997

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 46 of 1997: Public Service Commission Act, 1997.

No. 46 van 1997: Wet op die Staatsdienskommissie, 1997.

ACT

To provide for the regulation of the Public Service Commission and for matters connected therewith.

*(Afrikaans text signed by the President.)
(Assented to 25 September 1997.)*

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

PART I

APPLICATION OF ACT

| | |
|---|----------|
| Definitions | 5 |
| 1. In this Act, unless the context indicates otherwise— | |
| (i) “commission” means the Public Service Commission established by section 196(1) of the Constitution; (iv) | |
| (ii) “Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); (ii) | 10 |
| (iii) “officer” means an officer as defined in section 1(1) of the Public Service Act, and includes an employee contemplated in section 1(1)(a) of the Public Service Amendment Act, 1996 (Act No. 13 of 1996); (i) | |
| (iv) “prescribed” means prescribed by rule; (vii) | |
| (v) “Public Service Act” means the Public Service Act, 1994 (promulgated by Proclamation No. 103 of 1994); (vi) | 15 |
| (vi) “rule” means a rule made under section 11; (v) | |
| (vii) “this Act” includes a rule, (iii) | |
| and any other word or expression shall have the meaning assigned thereto in the Public Service Act. | 20 |

Application of Act

2. The protrusions of this Act shall apply in respect of the administration in the national and provincial spheres of government.

PART II

THE PUBLIC SERVICE COMMISSION 25

Constitution of Commission

3. The Commission shall consist of such number of commissioners as may be prescribed by the Constitution, which commissioners shall, subject to the provisions of this Act and the Constitution, be appointed by the President.

Appointment of commissioners 30

4. (1) Whenever the President is required to appoint a commissioner who has been approved by the National Assembly, the President shall address a request in writing to the Speaker of the National Assembly that a fit and proper person contemplated in section 196(10) of the Constitution be approved of as soon as may be practicable by the National Assembly in accordance with section 196(8)(a) of the said Act. 35

(2) Whenever the President is required to appoint a commissioner who has been nominated by the Premier of a province, the President shall address a request in writing to the premier of that province that a fit and proper person contemplated in section 196(10) of the Constitution be nominated as soon as may be practicable by that Premier in accordance with section 196(8)(b) of the said Act. 5

(3) Whenever necessary in terms of this Act—

(a) a committee contemplated in section 196(8)(a)(i) of the Constitution shall as soon as may be practicable be appointed in accordance with the rules and orders of the National Assembly; or

(b) a committee contemplated in section 196(8)(b)(i) of the Constitution shall as soon as may be practicable be appointed in accordance with the rules and orders of the provincial legislature concerned, 10

and the committee shall, unless the relevant rules and orders provide otherwise, conduct its business and proceedings and make the applicable recommendation in such manner as may be determined by resolution of the National Assembly or the provincial legislature concerned, as the case may be. 15

(4) Fit and proper persons shall be invited by public notice to apply for any vacancy contemplated in this section.

Chairperson and deputy chairperson of Commission

5.(1) The President shall designate one commissioner as chairperson and another as deputy chairperson of the Commission. 20

(2) If the chairperson is absent or for any reason unable to act as chairperson, the deputy chairperson shall act as chairperson of the Commission.

Conditions of appointment of commissioners

6.(1)(a) The President may from time to time determine the remuneration and other conditions of appointment of the chairperson, the deputy chairperson and any other commissioner. and such remuneration and conditions of appointment shall not be altered to his or her detriment during his or her term of office. 25

(b) The other conditions of appointment as determined by the President shall not be less favorable than the conditions of service of a head of a department. 30

(2) A commissioner shall not hold office in any political party or political organisation.

(3) A commissioner shall not without the consent of the President perform or engage himself or herself to perform any remunerative work outside the duties of his or her office. 3 5

Removal from office

7. The removal from office of a commissioner shall be governed by section 196(1) and (12) of the Constitution.

PART III

FUNCTIONS OF THE COMMISSION 40

Functions of Commission

8. Subject to the provisions of the Constitution, the Commission may exercise the powers and shall perform the duties entrusted to the Commission by or under this Act, the Constitution or the Public Service Act.

Inspections 45

9. The Commission may inspect departments and other organisational components in the public service, and has access to such official documents or may obtain such information from heads of those departments or organisational components or from other officers in the service of those departments or organisational components as may be necessary for the performance of the functions of the Commission under the Constitution or the Public Service Act. 50

Inquiries

- 10. (1)** The Commission may conduct an inquiry into any matter in respect of which it is authorised by the Constitution or the Public Service Act to perform any function.
- (2) For the purposes of the inquiry, the Commission may—
- (a) summons any person who may be able to give information of material importance concerning the subject of the inquiry or who has in his or her possession or custody or under his or her control any book, document or object which may have a bearing on the subject of the inquiry, to appear before the Commission; 5
 - (b) call upon and administer an oath to, or accept an affirmation from, any person present at the inquiry who has or might have been summonsed in terms of paragraph (a); 10
 - (c) examine or require any person who has been called upon in terms of paragraph (b) to produce any book, document or object in his or her possession or custody or under his or her control which may have a bearing on the subject of the inquiry. 15
- (3) A summons for a person to appear before the Commission shall be—
- (a) in the prescribed form;
 - (b) signed by the chairperson of the Commission or any other person designated by the Commission; and 20
 - (c) served in the prescribed manner.
- (4) Any person who—
- (a) has been duly summonsed under this section and who fails, without sufficient cause— 25
 - (i) to attend at the time and place specified in the summons; or
 - (ii) to remain in attendance until excused by the Commission from further attendance;
 - (b) has been called upon in terms of subsection (2)(b) and who refuses to be sworn or to affirm as a witness; or
 - (c) fails, without sufficient cause— 30
 - (i) to answer fully and satisfactorily any question lawfully put to him or her in terms of subsection (2)(c); or
 - (ii) to produce any book, document or object in his or her possession or custody or under his or her control which he or she was required to produce in terms of subsection (2)(c), 35
- shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.
- (5) In connection with the examination of any person by, or the production of any book, document or object before, the Commission in terms of this section, the law relating to privilege, as applicable to a witness summonsed to give evidence or to produce any book, document or object before a court of law, shall apply. 40

Rules

- 11.** The Commission may make rules which are not inconsistent with this Act or the Constitution as to—
- (a) the investigation, monitoring and evaluation of those matters to which section 196(4) of the Constitution relates, the procedure to be followed at any such investigation, the documents to be submitted to the Commission in connection with any such investigation, and the manner in which and the time within which the said documents shall be submitted; 45
 - (b) the powers and duties of the chairperson, the deputy chairperson or any other commissioner, and the delegation or assignment of any power and duty entrusted to the Commission by or under this Act, the Constitution or the Public Service Act to a commissioner referred to in section 196(7)(b) of the Constitution; 50
 - (c) the manner in which meetings of the Commission shall be convened, the procedure to be followed at those meetings and the conduct of its business, the quorum at those meetings, and the manner in which minutes of those meetings shall be kept; 55

(d) any matter required or permitted to be prescribed by rule under this Act.

Obstruction of Commission

12. Any person who hinders or obstructs the Commission in the performance of its functions under the Constitution or the Public Service Act shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 5 months or to both such fine and such imprisonment.

Assignment of functions

13. (1) The Commission may—

(a) delegate to one or more commissioners, or to an officer or officers, any power conferred upon the Commission by or under this Act, the Constitution or the 10 Public Service Act, excluding the power referred to in this subsection or in section 11; or

(b) authorise one or more commissioners, or an officer or officers, to perform any duty assigned to the Commission by or under this Act, the Constitution or the Public Service Act, excluding the duty referred to in section 196(6) of the 15 Constitution,

on such conditions as the Commission may determine.

(2) Any delegation or authorisation may at any time be amended or revoked by the Commission.

PART IV

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GENERAL

Office of Commission

14. The Director-General: Office of the Public Service Commission shall, subject to the control and directions of the Commission, be responsible for the administration of the relevant office.

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Repeal of laws and transitional provisions in respect of certain offices and personnel

15. (1) Subject to the provisions of subsection (2), the laws mentioned in the Schedule are hereby repealed to the extent indicated in the third column thereof.

(2) Notwithstanding the repeal of any law by subsection (1) but subject to the provisions of subsection (3)— 30

(a) any office of—

(i) the Public Service Commission functioning in accordance with any such law; or

(ii) any provincial service commission established by any such law, shall be deemed to constitute the office of the Commission until otherwise dealt with under this Act, the Public Service Act or any other applicable law; 35

(b) any officer who was immediately prior to the commencement of this Act employed by any such Public Service Commission or provincial service commission shall be deemed to have been transferred to the service of the Commission under the Public Service Act, and he or she shall perform such functions as the Commission may determine. 40

(3) Any member of staff in excess of the organisational needs of the Commission may—

(a) be transferred to any department or other organisational component in the public service; and 45

(b) be absorbed in an applicable post in any such department or organisational component, or be employed out of adjustment in a post in, or additional to the fixed establishment of, any such department or organisational component until otherwise dealt with. 50

Transitional arrangements in respect of former members of Public Service Commission or provincial service commissions

16. (1) Any person who, immediately prior to the commencement of this Act, held office as the chairperson or any other member of the Public Service Commission or a provincial service commission referred to in section 14(2)(a)- 5

(a) may be appointed as a commissioner; or

(b) if he or she is not so appointed, may with his or her consent be appointed on contract, at the same salary and conditions of service, for the unexpired portion of his or her term of office, and he or she shall perform such functions in any department or other organisational component in the public service as the President or, as the case may be, the Premier of the province concerned may determine after consultation with the relevant executing authority. 10

(2) If any such person is not appointed as a commissioner or on contract, he or she shall be entitled to such pension and other benefits as he or she would have been entitled to if he or she had been a head of a department who was discharged from the public service owing to the abolition of his or her post: Provided that the actual salary or other service benefits of any such person at the relevant time shall be taken into account in calculating his or her pension and other benefits. 15

Short title and commencement

17. (1) This Act shall be called the Public Service Commission Act, 1997, and shall come into operation on a date fixed by the President by proclamation in the Gazette. 20

(2) Different dates may be so fixed in respect of different provisions of this Act.

(3) A reference in this Act to its commencement shall be construed as a reference to the applicable date so fixed.

SCHEDULE**LAWS REPEALED (Section 14)**

| No. and year of law | Short title | Extent of repeal |
|--|---|---------------------------|
| Act No. 65 of 1984 | Public Service Commission Act, 1984 | The whole. |
| Act No. 67 of 1985 | Public Service Laws Amendment Act, 1985 | So much as is unrepealed. |
| Act No. 68 of 1988 | Commission for Administration Amendment Act, 1988 | The whole. |
| Act No. 120 of 1990 | Public Service Laws Amendment Act, 1990 | So much as is unrepealed. |
| Act No. 47 of 1993 | Public Service Acts Amendment Act, 1993 | So much as is unrepealed. |
| Act No. 1 of 1994 of Northern Province | Provincial Service Commission Act, 1994 | The whole. |
| Act No. 2 of 1994 of North-West | North West Provincial Semite Commission Act, 1994 | The whole. |
| Act No. 3 of 1994 of Free State | Provincial Service Commission Act, 1994 | The whole. |
| Act No. 3 of 1994 of Northern Cape | Northern Cape Provincial Service Commission Act, 1994 | The whole. |
| Act No. 3 of 1994 of Mpumalanga | Provincial Service Commission Act (Eastern Transvaal), 1994 | The whole. |
| Act No. 3 of 1994 of Gauteng | Provincial Service Commission Act, 1994 | The whole. |
| Act No. 5 of 1994 of Western Cape | Western Cape Provincial Service Commission Law, 1994 | The whole. |
| Act No. 5 of 1994 of Eastern Cape | Provincial Service Commission Act, 1994 (Eastern Cape) | The whole. |
| Act No. 6 of 1994 of KwaZulu/Natal | KwaZulu-Natal Provincial Service Commission Act, 1994 | The whole. |
| Proclamation No. 104 of 1994 | Amendment of Commission for Administration Act | The whole |
| Proclamation No. 135 of 1994 | Amendment of Public Service Commission Act | The whole, |
| Act No. 3 of 1995 of Free State | Provincial Service Commission Amendment Act, 1995 | The whole. |
| Act No. 4 of 1995 of Free State | Provincial Service Commission Second Amendment Act, 1995 | The whole. |
| Proclamation No. 70 of 1995 | Amendment of Public Service Commission Act | The whole |