

REPUBLIC OF SOUTH AFRICA

PUBLIC SERVICE COMMISSION BILL

(As amended by the Portfolio Committee on Public Service and Administration (National Assembly))

(MINISTER FOR THE PUBLIC SERVICE AND ADMINISTRATION)

[B 31B—97]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE STAATSDIENSKOMMISSIE

(Soos gewysig deur die Portefeuljekomitee oor Staatsdiens en Administrasie (Nasionale Vergadering))

(MINISTER VIR DIE STAATSDIENS EN ADMINISTRASIE)

[W 31B—97]

ISBN O 621272523

BILL

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

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 provisions 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 maybe 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. 35

Removal from office

7. The removal from office of a commissioner shall be governed by section 196(11) 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—
 - (i) to attend at the time and place specified in the summons; or 25
 - (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 officer 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 months or to both such fine and such imprisonment. 5

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 Public Service Act, excluding the power referred to in this subsection or in section 11; or 10

(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 Constitution, 15

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

20

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. 25

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 10 the President or, as the case may be, the Premier of the province concerned may determine after consultation with the relevant executing authority.
- (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 15 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.

Short title and commencement

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

MEMORANDUM ON THE OBJECTS OF THE PUBLIC SERVICE COMMISSION BILL, 1997

The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), envisages that the newly established, single Public Service Commission for the Republic will no longer be responsible for the day to day administration of departments of State, but that the said Commission will perform the functions set out in section 196(4), (5) and (6) of the said Constitution. Detailed provisions governing the appointment of commissioners and the manner in which they may be removed from office are also contained in the said Constitution. **It** is, however, a constitutional requirement that the said Commission be regulated by national legislation. The most important objects of the Bill are to make provision for—

- * conditions of appointment-of commissioners;
- * mechanisms to facilitate the performance of the said Commission's functions;
- and
- * the abolition of the existing Public Service Commission and the provincial service commissions.

In the opinion of the State Law Adviser, the Bill must be dealt within accordance with the procedure prescribed by section 76 of the said Constitution.

INTERESTED PARTIES CONSULTED:

- * All departments and provincial administrations
- * The Public Service Commission
- * Provincial service commissions.