



For attention: Adv Shukrat Makinde and Ms Nontobeko Ngubane

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Submission on the Draft Public Service Commission Bill 2023.

We attach our written submission in response to the invitation for comments on the Draft Public Service Commission Bill 2023.

We would like to confirm our interest in making oral representations at a later convenient date.

Should you have any queries, it would be appreciated if you could contact me at the following email address: nicole@hsf.org.za.

Yours sincerely

Nicole Fritz

Executive Director

Executive Director: Nicole Fritz
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Patrons: Prof. Thuli Madonsela • Lord Robin Renwick

1. Introduction

- 1.1. In this submission, the Helen Suzman Foundation (“HSF”) proposes that government use the opportunity presented by the Draft Public Service Commission Bill 2023 (“Bill”) to meaningfully reform the Public Service Commission (“PSC”) so that it can effectively carry out its constitutional mandate.
- 1.2. That mandate is rooted in promoting section 195 of the Constitution, which envisages a South African public service that is, among other things, effective, ethical, accountable and whose human resources are well-managed.
- 1.3. In summary, HSF submits that the Bill should craft a role for the PSC in appointing persons to high-level positions in the public service – as the Constitution requires and in line with government’s own policy vision for the PSC set out in its ‘National Framework Towards the Professionalisation of the Public Sector.’¹

2. The PSC’s Role in Appointments

- 2.1. Appointment processes for high-level personnel are often the point at which the public service’s greatest departures from section 195 of the Constitution begin.
- 2.2. Yet, the Bill does not craft a role for the PSC in appointing high-level officials within the public service.
- 2.3. Such a role is not only consistent with the PSC’s constitutional design but required by it. The Constitutional Court said as much in the *First Certification Judgment* when it held that:

*“an independent PSC should have some role in the process of appointing, promoting, transferring and dismissing members of the public service...”*²

¹ National Framework Towards the Professionalisation of the Public Sector, available [here](#), at page 72.

² *Certification of the Constitution of the Republic of South Africa, 1996* (CCT 23/96) [1996] ZACC 26; 1996 (4) SA 744 (CC); 1996 (10) BCLR 1253 (CC) (6 September 1996) para 170.

- 2.4. Moreover, by not crafting a role for the PSC in high-level appointments, the Bill leaves hollow the PSC's power to "give 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 [of the Constitution]."³
- 2.5. HSF appreciates that the PSC's resources are limited, so we do not suggest that the PSC be intimately involved in all aspects of appointing high-level members of the public service.
- 2.6. However, we suggest that Parliament should at least give the PSC a role in vetting candidates⁴ for appointment as a:
- 2.6.1. member of an SOE's board or its executive management;
 - 2.6.2. national or provincial Director-General;⁵ and
 - 2.6.3. municipal manager.⁶
- 2.7. This would not unduly hamper the power of political authorities to appoint high-level members of the public service – it would simply ensure that they do so under the auspices of the PSC carrying out its constitutional mandate.
- 2.8. Indeed, government's own National Framework Towards the Professionalisation of the Public Sector explicitly envisages that the PSC should play a role in appointing high-level personnel in the public service, making the Bill's failure to provide for such a role all the more surprising.⁷

³ Section 196(4)(d) of the Constitution.

⁴ Ivor Chipkin, 'South Africa: an Agenda for Reform' a Policy Brief by the New South Institute, available [here](#), at pages 3 and 5.

⁵ National Framework for Professionalisation of the Public Sector, available [here](#), at page 72.

⁶ Ibid.

⁷ Ibid.



3. Conclusion

- 3.1. In conclusion, HSF has submitted that the Bill falls short of ensuring that the PSC can effectively carry out its constitutional mandate by not crafting it a role in the appointment of high-level officials in the public service.
- 3.2. Without this role, the PSC is unable to function as an independent check on the political authorities that run the public service.
- 3.3. This not only represents a refusal to learn from the hard lessons of the State Capture era – it also ignores the PSC's constitutional design and government's own express policy vision for the PSC set out in the National Framework Towards the Professionalisation of the Public Sector.