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Dear Ms Makhasi

DRAFT PUBLIC ADMINISTRATION MANAGEMENT AMENDMENT BILL

The South African Institute of Chartered Accountants (SAICA), welcomes the opportunity to make submissions to the DPSA on the draft Public Administration Amendment Bill.

SAICA is South Africa's pre-eminent accountancy body which is widely recognised as one of the world's leading accounting institutes. The Institute provides a wide range of support services to more than 46 000 members who are chartered accountants [CAs(SA)] and hold positions as CEOs, MDs, board directors, business owners, chief financial officers, auditors and leaders in their spheres of business operation.

Our work in the public sector goes beyond member support but also includes a significant focus on advocacy and capacity building to support and encourage an improvement in public finance management.

SAICA believes that in line with the professionalisation of public service, it is important that the laws and regulation that support the public service continue to be reviewed and revised to be harmonious with the public service.

SAICA has consulted its member through a survey and comments contained in this submission also reflect the views of our members who responded.



For ease of reference, we set out below in Annexure A, our detailed comments to draft Bill referred above.

Yours sincerely

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The South African Institute of Chartered Accountants

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Project Director: Public Sector
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Annexure A

Specific comments on the Public Administration Management Amendment Bill

Amendment of section 8 of Act 11 of 2014

The following section is hereby substituted for section 8 of the principal Act:

“Conducting business with State

8. (1) In this section and in section 9 [.,] =

(a) “employee” includes persons contemplated in section 12A of the Public Service Act and a person performing similar functions in a municipality [.,];

(b) “director”—

(i) means a director of a company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008); and

(ii) does not apply to an employee appointed *ex officio* as a director of a public entity.

(2) An employee may not—

(a) subject to subsection (4), conduct business with the State; or

(b) be a director of a [public or private] company incorporated in terms of the Companies Act, 2008 (Act No. 71 of 2008), [conducting] that conducts business with the State.

(3) A contravention of subsection (2)—

(a) is an offence, and any person found guilty of the offence is liable to a fine or imprisonment for a period not exceeding 5 years or both such fine and imprisonment; and

(b) constitutes serious misconduct which may result in the termination of employment by the employer.

(4) The Minister may prescribe that certain transactions between an employee and the State that are remunerative but not for profit do not constitute doing business with the State for the purposes of this section.

1. SAICA agrees with the amendments to section 8(1)(b) which defines a director and further indicates that this definition does not apply to an employee appointed *ex officio* as a director.
2. SAICA further agrees with the amendment in section 8(2)(a) and 8(2)(b) which indicates that an employee may not conduct business with the State and be a director of a company that conducts business with the state.
3. The above mentioned amendments further align to Public Service Regulation 13(c), which states that an employee shall not conduct business with any organ of state or be a director of a public or private company conducting business with an organ of state, unless such employee was in an official capacity a director of a company listed in schedule 2 and 3 of the Public Finance Management Act. However, consideration to the amendment of the wording in Regulation 113(c) to remove the words ‘public or private company’ and align to the amended wording in section 8(2)(b).
4. The Auditor – General South Africa (AGSA), continues to report on departmental employees doing business with the state following the Public Service Regulation amendments (with effect from 1 August 2016) prohibiting employees of departments from doing business with the state. In the 2019/20 audit outcomes, the AGSA identified 553 departmental employees doing business with the state with a total amount of R438



million. The AGSA further stated that the onus of complying with the regulations in on the employees, but departments have a responsibility to monitor such compliance.

5. It is therefore imperative that departments enforce the compliance with these regulation on their staff and that consequence management is implemented where there are transgressions to minimize the risk of fraud and corruption in government procurement processes.
6. SAICA agrees with the addition of section 8(4). However, without proper monitoring of implementation, it is likely that the section may be subject to abuse. Therefore, it is recommended that the Minister considers creating a list of the transactions prescribed as remunerative but not for profit and consider regulations that will indicate the process to be followed in identifying the transactions and also list those transactions in the regulations.

Amendment of section 10 of Act 11 of 2014

Section 10 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(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—
(a) must make appropriate provision in its budget—
(i) for the compulsory training contemplated in section 13(1)(b); and
(ii) within **[the] its** available resources **[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 for additional funds for training.

7. SAICA agrees with the amendment as it ensures that officials are developed where there have been gaps noted in the performance of the officials. Budget is also allocated for compulsory training.
8. The Department of Public Service and Administration together with the National School of Government issued for comment the National Implementation Framework towards the Professionalisation of the Public Sector (the framework). Amongst its objective, the framework seeks to entrench a dynamic system of professionalisation in public service as well as ensuring meritocracy in the recruitment and career management of public servants in line with the National Development Plan and the Medium Term Strategic Framework. It is imperative that the amendments to the Act supports the Framework so that there is alignment to ease the implementation Framework.
9. SAICA supports the framework and further believes that the amendment of section 10(2)(a)(i) and (ii) will further contribute to the objectives of the framework and result in the professionalisation of the public service.

Amendment of section 11 of Act 11 of 2014

The following section is hereby substituted for section 11 of the principal Act:

“(1) The National School of Government is hereby established as a national department to enhance the quality, extent and impact of human resource capacity in institutions through training in order to achieve the progressive realization of a capable developmental state.

(2) The School—

(a) must provide training and education courses or cause training and education courses to be



provided in the public administration;
(b) may collaborate and, if necessary, enter into agreements with other training institutions, higher education institutions as defined in section 1 of the Higher Education Act, 1997 (Act No. 101 of 1997), further education and training institutions as defined in section 1 of the Further Education and Training Act, 1998 (Act No. 98 of 1998), and private sector training providers to assist in providing that training and education;
(c) may conduct tests, or cause tests to be conducted, in respect of training and education courses;
and
(d) may issue diplomas or certificates on the successful completion of training and education courses or cause diplomas and certificates to be issued.”

10. The 2019/20 annual report for the National School of Government (NSG) refers to the NSG as a national department (vote 10). The NSG is under the Minister of Public Service and Administration.
11. SAICA agrees with this amendment as it establishes the NSG as a department and further provides for the functioning of the department as a higher education institute. Furthermore, the NSG is pivotal to the professionalisation of the public service which is an initiative SAICA fully supports.

Amendment to section 13 of Act 11 of 2014

Section 13 of the principal Act is hereby amended by—
(a) the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
“The Minister may [, **after approval by the Cabinet,**]
direct that the successful completion of specified training is—”
(b) the substitution for subsection (2) of the following subsection:
“(2) The Minister must consult organised local government and obtain the concurrence of the Minister responsible for local government [**before seeking the approval of the Cabinet contemplated in subsection (1)**] in respect of a directive to be applicable to municipalities.”

12. In the 2019/20 audit outcomes report, the AGSA indicated that there was an overall improvement in the audit outcomes for the year and cited the filling of vacant positions, most notably those of accounting officers and chief financial officers, as one of the reasons for the improvement in audit outcomes.
13. It is therefore clear from the AGSA’s 2019/20 report that the filling of key positions leads to an improvement in the audit outcomes.
14. SAICA therefore agrees with the amendment of section 13 as it will reduce the red tape associated with obtaining Cabinet approval for the issuing of directives for the compulsory training needing to be completed by officials and the prerequisites for appointments and promotes the faster filling of positions within the public service.

Amendment of section 16 of Act 11 of 2014

Section 16 of the principal Act is hereby amended by the deletion of subsection (2).

15. This section deals with the prescription of minimum norms and standards. Subsection 2 stated that the Minister must prescribe these norms and standards in consultation with the relevant executive authority.



16. SAICA agrees with the deletion of subsection 2 as it will assist in removing the red tape and for faster decision making on the prescribed norms and standards and will assist in creating consistency across government.

Insertion of sections 17A and 17B in Act 11 of 2014

The following sections are hereby inserted after section 17 of the principal Act:

“Removal of disparities in public administration

17A. In order to remove unjustifiable disparities in relation to remuneration and conditions of employment in the public administration, the Minister may, subject to applicable labour legislation and legislation governing the employment of employees in the public administration and after consultation with the committee of Ministers contemplated in section 17B, prescribe the factors that institutions and public entities must take into account in determining remuneration and conditions of service for employees or any category of employees in the public administration.

Mandate for the determination of conditions of service with financial implications

17B. (a) Subject to the Labour Relations Act, the laws governing the employment of employees and any collective agreement, the determination of any conditions of service for employees in the public administration must be made in accordance with the factors prescribed in section 17A and with the concurrence of a committee of Ministers.

(b) For the purposes of paragraph (a)—

(i) ‘conditions of service’ include annual salary adjustments, salary scales or levels, performance bonuses, pay incentives, pension benefits and any other benefits with financial implications;

(ii) the committee of Ministers must consist of the Minister, the Ministers responsible for finance, local government, educators, public enterprises, defence, police, correctional services and such other Ministers as the Cabinet may designate (if any), and must function the same as a committee of the Cabinet.

17. SAICA agrees with the insertion of section 17A and 17B and believes that this is an important section as it seeks to align remuneration and conditions of service, that is, salary adjustments, salary scales and levels, performance bonuses, pay incentives, pension benefits and any other benefits with financial implications.
18. It is common course that the public sector salary bill has remained high over the years. Government has proposed a salary freeze to assist in managing the salary levels as well as the country’s debt levels.
19. Therefore, a balance needs to be maintained between the management of the government salary bill in line with the outcomes of negotiations at the bargaining council and the attraction of the relevant skills and experience needed in the public sector for the improvement of effective management of public finances.



References

1. AGSA Consolidated General Report on national and provincial audit outcomes – PFMA 2019/20
<https://www.agsa.co.za/Portals/0/Reports/PFMA/201920/PFMA%202019-20%20Report%20-%20Full%20Interactive.pdf>