



22 February 2021

The Principal  
National School of Government  
Per e-mail: [professionalisation@thensg.gov.za](mailto:professionalisation@thensg.gov.za)

**Submission on Draft Framework towards the Professionalisation of the Public Service**

Dear Principal of the National School of Government,

Thank you for the opportunity to submit input towards the Draft Framework on the Professionalisation of the Public Service (Draft Framework).

Following on the back of many government policies, including the National Development Plan, the Draft Framework does a good job of outlining the challenges facing the public service. The introductory chapters offer a frank assessment of the challenges facing the professionalisation of the public service, thereby creating a solid foundation for addressing the weaknesses in the system. The Draft Framework is indeed correct in its assessment that, in the current context, claims of professionalism amount to “merely wishful thinking and there is often little professionalism evident.”

That having been said, the document does not, unfortunately, offer solutions with nearly the same boldness with which it diagnoses problems. While proposals like mandatory entrance exams and involving the Public Service Commission and external experts in interview panels for Directors-General and Deputy Directors-General appointments are tentative steps in the right direction, they are unfortunately overshadowed by the fact that

the Draft Framework entirely ignores the two biggest elephants in the room, namely, cadre deployment and the lack of consequences for corruption and malfeasance.

Similar to Shaka's famous bull horn formation, we need a decisive pincer movement against incompetence and corruption in the public service. The one horn must be designed to prevent incompetents from being appointed in the first place by outlawing and uprooting cadre deployment. And the other horn must ensure that looters and thieves are swiftly punished by a Public Service Commission (PSC) that is more independent and has significantly enhanced powers to take remedial action.

In particular, the Draft Framework falls woefully short on the objectives set out in subsections (d) and (e). These two objectives aim to ensure "meritocracy in the recruitment and career management of public servants" and to initiate "consequence management for material irregularities through the transgression mechanisms available to professional bodies and the *Public Audit Amendment Act* (Act 5 of 2018)."

My submission now turns to proposals to address the significant shortcomings with regard to these two objectives.

**To achieve meritocracy in recruitment and career management, outlaw cadre deployment**

1. The various testimonies delivered in front of the Commission of Inquiry into Allegations of State Capture (State Capture Commission), since the State Capture Commission first commenced with its hearings on 21 August 2018, have revealed that political interference in the public service, which has effectively erased the line of separation between party and state, is the foundation of state capture and systemic corruption in South Africa.

2. As a result of this political interference, which results in the appointment of public servants and other officials on the basis of political loyalty rather than on the basis of

demonstrated or proven competence and merit, South Africa's public service is collapsing under the weight of corruption and a lack of skills. Governance failures and widespread corruption, including in the form of systemic state capture, also occupy a central place in our country's current public discourse.

3. The type of destructive political interference exposed by the State Capture Commission is, in part, enabled by the the Public Service Act of 1994, which provides for the President, Ministers, Premiers and Members of the Executive Council to be closely involved in the career incidents of public service servants, including appointment, promotion and dismissal, without enforcing the need for appointments to be based on demonstrated merit and proven competence.

4. Most developed and developing countries, including many of South Africa's peers, have long since made it impossible and unlawful for members of the executive and politicians to interfere with appointments to what is meant to be an independent bureaucracy. This is the only way to ensure that merit and proven competence trumps political patronage in the appointment of public servants. From Germany to the United Kingdom and Japan to Botswana, Brazil, South Korea, Malaysia and Mauritius – all of these countries have ensured merit and proven competency based recruitment by removing politicians from appointment decisions in the public service.

5. It is therefore unacceptable that the Draft Framework falls flat when it comes to identifying the politicisation of appointments through cadre deployment as the root cause of the lack of meritocracy in appointment and career management decisions within the public service.

6. In this context, I note with deep concern the tweet issued by the Principal of the National School of Government (NSG), Busani Ngcaweni, in the midst of the consultation process around the Draft Framework. In a tweet, issued on 16 February

2021, Ngcaweni appeared to pre-empt the consultation process when he tweeted that: “Cadre deployment is not a problem provided the process is transparent, not left to discretion of one individual & if there is fit 4 purpose (between the Cadre & the Deployment/position). In other words, it must be rational.”

7. In the abovementioned tweet, the Principal of the NSG, in essence, implies that the entire Draft Framework consultation process is a sham, because he has already decided that it will refuse to engage sincerely with the revelations of the Commission, where even members of the governing party, like former Minister Barbara Hogan, called cadre deployment “an abuse of power.” Judge Raymond Zondo himself has also speculated that cadre deployment may have provided fertile ground for state capture.

8. These public comments by the Principal of the NSG also appear to condone violations of section 197 (3) of the Constitution, which provides that “No employee of the public service may be favoured or prejudiced only because that person support a particular political party of cause.”

9. If there is, despite the comments by the Principal of the NSG, a sincere desire to professionalise the public service, it must start with the recognition that appointments will always be fundamentally flawed for as long as politicians have the power to appoint public servants on the basis of political loyalty rather than demonstrated merit.

10. I consequently propose the following:

(a) That the Draft Framework commits to ending cadre deployment by advocating for legislation that makes it illegal for public servants to hold political office. I draw your attention to the fact that the National Assembly recently passed the Municipal Systems Amendment Bill, which contains this exact provision in relation to municipal employees. There is no rational reason why this stipulation must apply only to the municipal sphere and not to the national and provincial spheres; and

(b) To further solidify the separation between party and state in order to ensure strictly merit and proven competence based appointments, that the PSC be given the power to fulfil its Constitutional duty, as contained in section 196 (4) (d) of the Constitution, “to give directions aimed at ensuring that personnel procedures relating to recruitment, transfers, promotions and dismissal comply with the values and principles set out in section 195.” The PSC must be given the power to issue directions to ensure objectivity and fairness so that any recruitment, transfer or promotion is done on merit and proven competence alone and does not favour or prejudice any person because that person supports, or does not support, a particular political party or cause. Moreover, defiance of the PSC’s directions, in this regard, must be made a criminal offence.

**To ensure consequence management for material irregularities, bolster the independence of the Public Service Commission and give it the power to take remedial action**

1. The second part of our bullhorn approach to professionalising the public service must focus on ensuring swift and decisive consequences for any irregularities.
2. While the proposals to make greater use of professional bodies and the remedial powers of the Office of the Auditor-General are welcome, it is unclear why the Draft Framework chooses to ignore the one institution that already exists and has the Constitutional authority to investigate the public service, namely, the PSC.
3. Unfortunately, the PSC has itself recently been tainted by nepotism and scandal. To first of all protect our most sacred public sector ethics watchdog, we must bolster the independence of the PSC to ensure that it can carry out its work without fear or favour.

4. A more independent PSC must also get far greater powers to take remedial action where it identifies irregularities.

5. I therefore propose the following:

(a) That the Draft Framework commits to bolstering the independence of the PSC, including by advocating for the necessary legal changes. To this end and to ensure financial independence, the PSC must be included in Schedule 1 of the Public Finance Management Act of 1999 and take its rightful place alongside other independent Constitutional institutions like the Public Protector and the Human Rights Commission. The Public Service Commission Act of 1997 must also be amended to assign to the Chairperson of the PSC, subject always to the concurrence of a majority of all Commissioners, the powers of executive authority, thereby removing and replacing the powers of the Minister of Public Service and Administration in this respect; and

(b) That the Draft Framework commits to bolstering the power of the PSC to take firm remedial action against any wrongdoing, including by advocating for the necessary legal changes. At present, approximately eighty percent of all recommendations issued by the PSC annually are ignored. We need legal changes that will compel officials to respond to these recommendations within clear deadlines. In instances where the PSC finds evidence of malfeasance, it must be compelled to refer this evidence to relevant authorities such as the Office of the Auditor-General and the Special Investigating Unit, and also be compelled to report regularly to the relevant legislature on the remedial actions taken. Failure to respond to the recommendations of the Commission within the stipulated timeframe must further be made a criminal offence.

### **Public Administration Laws General Amendment Bill**

All of the above recommendations are already contained in a Private Member's Bill called the Public Administration Laws General Amendment Bill. The Bill will soon be

gazetted in Parliament, but, in the spirit of productive cooperation, I have attached a copy of the Bill to this letter for your attention.

I look forward to having serious engagements with the Department, in relation to the reformulation and improvement of the Draft Framework.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'L. Schreiber', with a stylized flourish at the end.

Dr Leon Schreiber MP