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No. 237

PRETORIA, 14 DECEMBER 1994

No. 5067

PREMIER'S NOTICE

OFFICE OF THE PREMIER

No. 40

14 December 1994

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

No. 3 of 1994: Provincial Service Commission Act
(Pretoria–Witwatersrand–Vereeniging)

ACT

To establish a Provincial Service Commission, and to provide for the appointment, tenure of office, conditions of service of members of the Commission, the objects, powers and functions of the Commission, and matters connected therewith.

*(English text signed by the Premier)
(Assented to 13 December 1994)*

BE IT ENACTED by the Provincial Legislature of the Province of Pretoria-Witwatersrand-Vereeniging, as follows:—

PREAMBLE

The Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), based on the recognition of human rights, democracy and the need for social and economic development, has created the opportunity for South Africans to establish appropriate public institutions for good governance at provincial level.

The PWV Provincial Government, in the establishment and functioning of its administration, is committed to the creation of a new ethos of equity, openness and accountability. The Provincial Service Commission shall advocate and ensure the realisation of these values within the public service environment, thereby enabling public servants employed by the Province to be ethical, responsive, productive and developmental.

In the exercise of its powers and functions, the Provincial Service Commission shall likewise encourage practices that enable citizens and communities to be informed about the shape public service delivery.

The building of a representative public service, developmental public management practices, strategic focus, goal orientation and productivity are required for effective implementation of reconstruction and development. The Provincial Service Commission shall design and monitor the human resource development policy framework required to achieve these aims.

CHAPTER I

PRELIMINARY PROVISIONS

Definitions

1. In this Act, unless the context indicates otherwise—

“calendar month” means a period extending from a particular day in any month up to and including the day immediately preceding the day which corresponds numerically to the first-mentioned day in the next month, and where there is no day in the next month which corresponds numerically to the first-mentioned day because the period starts at the end of a month which contains more days than the next month, the period shall extend up to and including the last day of the next month;

“Commission” means the Provincial Service Commission for the Province established by section 2, and in relation to any power or function of the Commission, includes the member or officer to whom such function has been delegated, or who has been authorised to perform such function, under section 213(1)(c) of the Constitution;

“Constitution” means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);

“developmental” means actions and aims are directed towards the principles of economic growth, basic needs, human development and training, and entrepreneurship;

“employee” means a person referred to in section 8(1)(c) of the Public Service Act;

“head of department” means a head of department mentioned in column 11 of Schedule 1 to the Public Service Act;

“Minister” means the Minister for the Public Service and Administration designated by the President in terms of section 88 of the Constitution;

“month” means a period extending from the first to the last day, both days inclusive, of any one of the 12 months of the year;

“officer” means a person who has been appointed permanently, notwithstanding that such appointment may be on probation, to a post referred to in section 8(1)(a) of the Public Service Act, and includes a person referred to in section 8(1)(b) or 8(3)(c) of that Act;

“Premier” means the Premier of the Province acting in accordance with section 147(2) of the Constitution;

- "prescribed" means prescribed by regulation under section 15;
- "Province" means the Province of Pretoria–Witwatersrand–Vereeniging contemplated in section 124(1)(h) of the Constitution;
- "Provincial Legislature" means the Provincial Legislature contemplated in section 125 of the Constitution, of the Province;
- "Public Service Act" means the Public Service Act, 1994 (Proclamation No. 103 of 1994);
- "public service" means the public service contemplated in section 8 of the Public Service Act;
- "Public Service Commission" means the Public Service Commission contemplated in section 209(1) of the Constitution.

CHAPTER II

PROVINCIAL SERVICE COMMISSION AND STAFF

Establishment of Commission

2. There shall be a Provincial Service Commission for the Province, which shall have the powers and functions entrusted to it by the Constitution, this Act or any other law, and which shall in respect of the exercise and performance of its powers and functions be accountable to the Provincial Legislature.

Objects of Commission

3. The objects of the Commission shall, with due consideration to the policy of the government of the day, be—

- (a) to promote the establishment and maintenance of a developmental, efficient, effective and competent public service;
- (b) to promote a career orientated and non-partisan public service;
- (c) to foster an ethos of equity, administrative accountability, openness and public participation in public policy making and implementation thereof;
- (d) to promote the establishment of a human resource development policy framework and related training programmes;
- (e) to promote an equitable labour relations environment;
- (f) to promote the establishment of a broadly representative public service by using affirmative programmes and procedures;
- (g) to encourage and facilitate consultation with a wide range of groups, agencies and employee bodies on significant policy issues;
- (h) to encourage and facilitate a culture of continuous improvement of the administration through regular strategic programme reviews, productivity and management performance reviews and the promotion of employee participation in decision making;

- (i) to promote high ethical standards, including full observance of a public service code of conduct and anti-corruption measures;
- (j) to promote efficient, economical and sustainable management of public resources;
- (k) to promote the effective achievement of legislative mandates and predefined objectives;
- (l) to promote systematic liaison with professional management and policy agencies at local, national and international levels and with relevant educational and training institutions; and
- (m) to ensure that the directions, norms, standards and policies as laid down by national legislation are being adhered to and followed.

Interpretation

4. In the interpretation of this Act, the courts shall have regard to the Preamble.

Constitution and appointment of members of Commission

5. (1) The Commission shall subject to section 211, read with section 213(2), of the Constitution consists of three members.

(2) Members of the Commission shall be appointed by the Premier after the posts have been advertised in accordance with the prescribed procedure: Provided that for the initial appointment of members of the Commission such posts shall be advertised widely by the Premier.

(3) Prior to the appointment of the members of the Commission the Premier shall in a notice in the *Provincial Gazette*—

- (a) publish the names of all applicants and those short-listed for interview; and
- (b) request the public and stakeholders to submit any comments or objections in respect of such persons within 21 days to the office of the Director-General for the Provincial Administration of the Province.

(4) In making appointments as contemplated in subsection (2), the Premier shall—

- (a) take into account all comments and objections received pursuant to the notice contemplated in subsection (3); and
- (b) consult with, and make relevant information concerning the applicants available to, a Standing Committee of the Provincial Legislature determined by the Speaker.

(5) The Premier shall designate a member of the Commission to act as chairperson of the Commission during the absence, for any reason, of the Chairperson designated in terms of section 211(1)(a), read with section 213(2), of the Constitution.

Tenure of office of members

6. (1) Subject to the provisions of subsection (2), and of section 7(3) and (4) and section 8, a member of the Commission shall, at his or her first appointment as such a member, hold office for a period of five years, but he or she shall on the expiry of his or her period of office, with his or her consent, be eligible for reappointment.

(2) The Premier may, if it is in the public interest, retain a member of the Commission, with his or her consent, in his or her office beyond the age at which the member shall, in accordance with section 7(3) vacate his or her office or retire, for the unexpired portion of his or her period of office or for such period or periods, which shall not exceed in the aggregate two years after such age, as the Premier may determine.

Conditions of service of members

7. (1) Subject to the provisions of section 211, read with section 213(2), of the Constitution and this Act, the Premier shall, after consultation with the Minister, prescribe the remuneration and other conditions of service of the Chairperson and other members of the Commission: Provided that until such time as remuneration and other conditions of service have been so prescribed, they shall be as determined by the Premier.

(2) A member of the Commission shall be appointed on a full-time basis and shall not without the consent of the Premier perform any remunerative work outside the duties of his or her office.

(3) Subject to the provisions of section 6(2), a member of the Commission shall vacate his or her office, and if he or she is a member referred to in subsection (4), he or she shall retire on attaining the age of 65 years, but if he or she attains that age after the first day of any month, he or she shall be deemed to have attained that age on the first day of the following month.

(4) If an officer or employee is appointed to the Commission—

- (a) the period of his or her service as such member shall be reckoned as part of and continuous with his or her employment in the public service for the purposes of leave, pension and any other condition of service, and the provisions of any pension law applicable to him or her as such officer or employee or, after his or her death, to his or her dependants, and which are not in conflict with the provisions of this Act, shall *mutatis mutandis* continue to apply; and
- (b) such member shall retain the same right to vacate his or her office and to retire as he or she would have had on the attainment of an age prescribed by the Public Service Act or any other law, or on the later date on which he or she desires to do so, had he or she remained in the public service.

Discharge and vacation of office of members

8. (1) (a) The Premier may require a member of the Commission to absent himself or herself temporarily from the duties of his or her office in order to afford the Premier the opportunity to consider the possible removal of such member from office under section 211(1)(e), read with section 213(2), of the Constitution.

(b) A member of the Commission shall, prior to his or her removal from office as contemplated in paragraph (a), be given a fair hearing in accordance with the prescribed procedure.

(2) (a) The Premier may allow a member of the Commission at his or her request to vacate his or her office—

- (i) on account of continued ill-health; or
- (ii) for any other sufficient reason.

(b) If a member referred to in section 7(4)—

- (i) is allowed to vacate his or her office in terms of paragraph (a)(i), it shall be deemed that his or her services have been terminated on the ground of ill-health, and he or she shall be entitled to such pension as he or she would have been entitled to under the pension law applicable to him or her if his or her services had been terminated on the ground of ill-health without the member being instrumental in causing his or her own ill-health; or
- (ii) is allowed to vacate his or her office in terms of paragraph (a)(ii), he or she shall be deemed to have been retired in terms of section 16(4), or to have been discharged under section 17(2)(c), of the Public Service Act, as the Premier may the pension law applicable to him or her have been entitled to if he or she had been so retired or discharged.

(3) A member of the Commission who—

- (a) immediately prior to his or her appointment as such member was an officer;
- (b) at the expiry of his or her period of office as a member of the commission, is not reappointed thereto; and
- (c) at such expiry date has not reached the age at which he or she would under the Public Service Act have had the right to retire and would have been compelled to retire if he or she had not been appointed as a member of the Commission,

shall have the right to retire, or may be requested by the Premier to retire, after a fair hearing in accordance with the prescribed procedure, and if he or she so retires or is so requested to retire, he or she shall be entitled to such pension as he or she would under the pension law applicable to him or her have been entitled to, if he or she had been compelled to retire from the public service owing to the abolition of his or her post.

Powers and functions of Commission

9. (1) In addition to the powers and functions of the Commission set out in section 213 of the Constitution, and subject to norms and standards applying nationally, the Commission shall, in respect of public servants employed by the Province, be competent—

- (a) subject to section 11, to make recommendations, give directions, give advice and conduct inquiries with regard to the achieving of any of its objects set out in section 3; and

- (b) to consult and liaise as contemplated in section 3(g) and (l).

(2) If any matter has been referred to the Commission under section 213(1)(b) of the Constitution the Commission may inspect all such official documents and records and obtain all such information from the functionary or the head of department concerned or from the chief executive officer of the institution or body concerned as may be necessary in order to advise the Premier or the member of the Executive Council in question.

(3) A recommendation made or a direction given by the Commission under section 213(1)(a) of the Constitution in respect of public servants employed by the Province shall for the purposes of the Public Service Act, excluding section 14(2)(d) of that Act, be deemed to be a recommendation made or a direction given by the Public Service Commission.

Exercising and delegation of powers

10. (1) Subject to the provisions of subsection (2) and section 11(4), a recommendation or direction by the Commission as contemplated in section 213(1)(a) of the Constitution, this Act or any other law shall be made or given by at least two members of the Commission.

(2) In addition to any other limitation imposed by a law, the terms and conditions relating to any delegation or authorization by the Commission under section 213(1)(c) of the Constitution—

- (a) shall be in writing of which copies shall be submitted to the Standing Committee determined by the Speaker;
- (b) shall not be made in respect of the power contemplated in that section or section 11(5), or in respect of the function contemplated in section 14 and section 210(7), read with section 213(2), of the Constitution; and
- (c) shall be made to one or more of its members only, except that the power referred to in section 213(1)(a)(ii) of the Constitution may also be delegated to an officer or officers.

(3) Any delegation or authorization made by the Commission under section 213(1)(c) of the Constitution, may at any time be amended or revoked by the Commission.

Recommendations or directions to achieve objects of Commission

11. (1) Before the Commission under section 9(1)(a) makes a recommendation or gives a direction in order to achieve any of its objects, it shall publish a notice in the *Provincial Gazette* which shall contain—

- (a) the text of the proposed recommendation or direction;
- (b) a reasoned explanation of the proposed recommendation or direction;
- (c) a request to the public and a Standing Committee of the Provincial Legislature determined by the Speaker for comments on the proposed recommendation or direction within

the period stated in the notice, which period shall not be shorter than 45 days from the date of publication of the notice; and

(d) the address to which such comments shall be submitted.

(2) All comments received in pursuance of a notice published in terms of subsection (1) shall be kept by the Commission on a file which shall be open for inspection by the public, unless the person who made the comments specifically requested that his or her comments may not be made public.

(3) In making or giving its final recommendation or direction, the Commission shall give due consideration to all comments referred to in subsection (2) and shall briefly explain why it has rejected any material comment and why it has adopted any material alteration to its proposed recommendation or direction, and shall publish a notice in the *Provincial Gazette* which shall contain the text of the final recommendation or direction.

(4) The Commission shall maintain a list of persons and organisations which have expressed an interest in the work of the Commission and shall convey a notice referred to in subsection (1) and the final recommendations or directions referred to in subsection (3) to such persons and organisations.

(5) If the Commission has reasonable grounds for believing that compliance with provisions of subsection (1) would frustrate the effectiveness of the Commission's work, it may by unanimous vote decide not to comply with these provisions.

(6) A decision made under subsection (5) shall be published in the *Provincial Gazette* and be reported by the Commission to a Standing Committee of the Provincial Legislature determined by the Speaker, and the Provincial Legislature may overrule such decision.

Commissioner's power of inquiry

12. (1) For the purposes of conducting an inquiry as contemplated in section 213(1)(a) of the Constitution or section 9(1)(a) the Commission may—

(a) direct any person to submit an affidavit or affirmed declaration, or summon any person who may be able to give material information concerning the subject of the inquiry, or who has in his or her possession or under his or her control any document or object which may have a bearing upon the subject of the inquiry, to appear before it at the time and place specified in the summons; and

(b) call upon and administer an oath to, or accept an affirmation from, any person present at the inquiry or who has or might have been summoned in terms of paragraph (a), and may examine him or her and require him or her to produce any document or object in his or her possession or under his or her control which may have a bearing upon the subject of the inquiry.

(2) A summons contemplated in subsection (1)(a) shall be signed by the Chairperson of the Commission or by the person or one of the persons who hold an inquiry in accordance with a delegation under section 213(1)(c) of the Constitution, and shall be served in the manner determined by the Commission from time to time.

(3) (a) Any person who—

- (i) after having been duly summoned under this section, fails without sufficient cause to attend at the time and place specified in the summons, or to remain in attendance until excused by the Commission from further attendance;
- (ii) after having been called upon under subsection (1)(b), refuses to be sworn or to affirm as a witness; or
- (iii) fails without sufficient cause to answer fully and satisfactorily to the best of his or her knowledge all questions put to him or her, or to produce any document or object in his or her possession or under his or her control which he or she has been required to produce under subsection (1)(b),

shall, subject to paragraph (b), be guilty of an offence and liable upon conviction to a fine not exceeding R2 000.

(b) The law relating to privilege, as applicable to a witness summoned to give evidence or to produce any document or object before a court of law, shall apply in connection with the examination of any such person by, or the production of such document or object before the Commission.

(4) Any person who hinders or prevents any other person from obeying any summons served in terms of subsection (2), or from giving evidence or producing any document or object which that other person may be required to give or produce, shall be guilty of an offence and liable upon conviction to a fine not exceeding R2 000.

Staff of Commission

13. (1) The persons which the Commission may appoint under section 210(4), read with section 213(2), of the Constitution may include a chief official, and shall be appointed in accordance with the Public Service Act.

(2) Any person appointed in terms of subsection (1) shall observe such directions and carry out such duties as may from time to time be given to or imposed upon him or her by the Commission.

CHAPTER III

GENERAL

Reports of Commission

14. (1) The annual report of the Commission contemplated in section 210(7), read with section 213(2), of the Constitution shall contain the prescribed information and shall be framed as soon as may be practicable after 31 December of each year and not later than 28 February of the following year, but the Commission may also from time to time frame such special reports as may be desirable.

(2) The Commission shall submit every report framed in terms of subsection (1), as soon as shall be practicable through the Speaker to the Provincial Legislature.

Regulations

15. (1) (a) The Premier shall make regulations relating to the procedure contemplated in section 5(2).

(b) The Premier shall, after consultation with the Minister, make regulations relating to the conditions of service contemplated in section 7(1).

(2) The Premier may, in consultation with the Commission, make regulations relating to—

(a) the procedure for hearings to be given to members of the Commission before their removal from office in terms of section 8(1)(b) and 8(3)(c);

(b) the information to be contained in the Commission's report in terms of section 14; and

(c) any other matters which are necessary to achieve the objects of this Act.

(3) Regulations made under subsections (1) and (2) shall be tabled in the Provincial Legislature, which may withdraw them within a period of not more than 21 days after tabling.

Limitation of legal proceedings

16. (1) Unless a court directs otherwise, no legal proceedings shall be instituted against the State, the Provincial Legislature or any body or person in respect of any alleged act in terms of this Act, or any alleged omission to do anything which should in terms of this Act have been done, unless those proceedings are instituted before the expiry of a period of 12 calendar months after the date upon which the claimant had knowledge, or after the date on which the claimant might reasonably have been expected to have knowledge, of the alleged act or omission, whichever is the earlier date.

(2) (a) Unless a court directs otherwise, no such legal proceedings shall be commenced before the expiry of at least one calendar month after a written notice of the intention to bring those proceedings has been served on the defendant.

(b) A notice referred to in paragraph (a) shall contain full particulars of the alleged act or omission.

Assurance of independence, impartiality and efficiency of Commission

17. If a Supreme Court in any proceedings before it finds that a member of the Commission has not acted independently, impartially or efficiently as contemplated in section 211(3), read with section 213(2), of the Constitution, the Court may after having heard the member concerned, in addition to any other competent order, order that that member be removed from his or her office.

Short title

18. This Act shall be called the Provincial Service Commission Act, 1994.

MEMORANDUM ON THE OBJECTS OF THE PROVINCIAL SERVICE COMMISSION BILL, 1994

In terms of section 213, read with sections 210 and 211, of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), a provincial legislature may provide by law for a provincial service commission in respect of public servants employed by the province.

The Bill therefore provides for the establishment of a Provincial Service Commission for the Province of Pretoria-Witwatersrand-Vereeniging, the objects of which, in terms of Clause 3, shall be—

- (1) to promote the establishment and maintenance of a developmental, efficient, effective and competent public service;
- (2) to promote a career orientated and non-partisan public service;
- (3) to foster an ethos of equity, administrative accountability, openness and public participation in public policy making and implementation thereof;
- (4) to promote the establishment of a human resource development policy framework and related training programmes;
- (5) to promote an equitable labour relations environment;
- (6) to promote the establishment of a broadly representative public service by using affirmative programmes and procedures;
- (7) to encourage and facilitate consultation with a wide range of groups, agencies and employee bodies on significant policy issues;
- (8) to encourage and facilitate a culture of continuous improvement of the administration through regular strategic programme reviews, productivity and management performance reviews and the promotion of employee participation in decision making;
- (9) to promote high ethical standards, including full observance of a public service code of conduct and anti-corruption measures;
- (10) to promote efficient, economical and sustainable management of public resources;
- (11) to promote the effective achievement of legislative mandates and predefined objectives;
- (12) to promote systematic liaison with professional management and policy agencies at local, national and international levels and with relevant educational and training institutions; and
- (13) to ensure that the directions, norms, standards and policies as laid down by national legislation are being adhered to and followed.

The Commission shall consist of three members appointed for five years after a public hearing by the Premier, who may also determine their conditions of service and may remove them from office after a fair hearing.

In terms of section 213(1) of the Constitution (the provisions of which may not be repeated in the Bill in terms of Opinion No. 194/94 of the Chief State Law Adviser), the Commissioner shall, subject to norms and standards applying nationally, in respect of public servants employed by the Province, be competent—

- (a) to make recommendations, give directions and conduct inquiries with regard to—
 - (i) the establishment and organisation of departments of the Province;
 - (ii) appointments, promotions, transfers, discharge and other career incidents of such public servants; and
 - (iii) the promotion of efficiency and effectiveness in departments of the Province;
- (b) when so requested, to advise the Premier or a member of the Executive Council of the Province in regard to any matter relating to the public service or the employment, remuneration or other conditions of service of functionaries employed by an institution or body which receives funds wholly or partly appropriated by the Provincial Legislature;
- (c) subject to any limitation imposed by a law, to delegate any of its powers to a member of the Commission or official in the public service or authorise any such member or official to perform any of its functions; and
- (d) to exercise and perform such other powers and functions of the Public Service Commission assigned to it by the President with the approval of the Premier of the Province.

In addition to these powers, the Commission may also make recommendations or issue directions in order to achieve its objects, after having obtained and considered the comments of the public at large in terms of Clause 11.

Clause 12 prescribes the Commission's powers for the purposes of conducting an investigation as contemplated in section 213(1)(a) of the Constitution, and creates certain offences.

Clause 13 deals with the staff of the Commission, and Clause 14 with its reports to the Provincial Legislature.

Under Clause 15 the Premier may make certain regulations, which shall be tabled in the Provincial Legislature for its scrutiny.

Clause 16 limits the institution of legal proceedings against the State or any person in respect of any alleged act in terms of the Bill.

In Clause 17 effect is given to section 211(3), read with section 213(2), of the Constitution, which requires that the Bill shall ensure the independence, impartiality and efficiency of the Commission.

The Bill originated from the Public Service Commission and was circulated to the Administration, the employee representatives and the Premier's Office, in order to consult as widely as possible.

CONTENTS

<i>No.</i>		<i>Page No.</i>	<i>Gazette No.</i>
PREMIER'S NOTICE			
40	Provincial Service Commission Act, No. 3 of 1994	1	5067

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