



NCOP PUBLIC SERVICE AMMENDMENT BILL SUBMISSION
YOLISWA MAKHASI, HEAD: PUBLIC SERVICE REFORM
PROGRAMME, 22 JULY 2025

n **s** new south
institute

1. ABOUT THE NEW SOUTH INSTITUTE

The New South Institute is a think tank that influences policy development and support implementation in SA and the Global South.

Areas of focus include public service reform, migration, state capture, anti corruption and strengthening South to South Relations

Our belief : people with passion can change the world by building democracies and capable governments – especially in critical regional democracies that live with challenges of state capture, social fragmentation, and civil war. This is what we call the New South.

We aim to build a coalition of like-minded organisations in the New South, to build knowledge, and to drive change that renews democracy.

MISSION AND SUCCESS

- **Mission** : to strengthen institutions in important regional democracies in the new South by providing evidence-based research and policy that is valued and applied. We will do this in partnership with others like us in the New South.
- **Success**: our insights and recommendations lead to actions by institutions that strengthen democracy and government, and we are considered a go-to institute on these issues.

The New South Institute: Building effective and resilient institutions in important democracies in the New South!



2. INTRODUCTION

Key areas of focus for this submission:

- Background and historical context
- The rationale for the separation of roles in public administration.
- Mandatory delegation of administrative powers to the Heads of Departments (HODs) (Clause 4).
- Limitation of political rights (Clause 16).
- Other aspects of the amendments.

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- The NSI has participated in the legislative review process since inception and agrees with the proposed amendments.
 - focus mainly on :
 - a) mandatory delegation of administrative powers to the Heads of Departments – Clause 4 and
 - b) Limitation of political rights (clause 16).

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- 1994, the ANC led government inherited a civil service that could not be trusted to implement its policies.
 - As a result the political executive was given wide discretion and influence in matters of public administration.
 - wide powers to recruit public servants and to intervene in operational decisions.
 - 30 years later our democracy is stabilising, and some of the transformation objectives have been met by the government;
 - lessons from the state capture further point to the need to separate roles between politicians and administrators

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- Political principals should be focused on constitutional, policy and strategy matters,
 - Heads of department and the entire departmental machinery be responsible for execution policies, departmental strategy as well as operational matters related to human capital management amongst others.
 - The time is now to ensure mandatory delegations to HODs to enable a professional public service geared towards serving quality public services.
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3. HISTORICAL CONTEXT TO DELEGATIONS IN THE PUBLIC SERVICE

a) The White Paper on the Transformation of the Public Service (1995)

- Focus on devolution and decentralisation
- increasing the accountability for performance against specified objectives will be established in the public service

b) The Public Service Laws Amendment Act 30 of 1997

- MPSA responsible for human resources policy, including appointments, promotions and transfers, as well as organisational structure
- delegates human resources functions formerly administered by the Public Service Commission (PSC) to executive authorities (EAs).
- The EAs could in turn delegate these functions to Heads of Department.

c) National Development Plan 2030 adopted in 2012

- The NDP directs *“a focus on skills and professionalism will be ineffective unless the political-administrative interface is clarified to ensure a clearer separation between the roles of the political principal and the administrative head. The current emphasis on “political deployment” needs to be replaced by a focus on building a professional public service that serves government but is sufficiently autonomous to be insulated from political patronage”*.
- The NDP further identified challenges with the political-administrative interface and provides for devolution of administrative powers to HODs and senior managers

d) 2013: Cabinet approved minimum levels of delegation from EA to HOD.

- a representation of Government's policy position on how delegations should be managed
- HoDs would be delegated to amongst others approve the appointment and career incidents of employees at levels 13 and 14 (Director/Chief Director) and below.
- EAs retained the appointment and career incidents of HoDs and Deputy Directors-General.
- In August 2014, the Minister for Public Service and Administration issued the Directive on Public Administration and Management Delegations, 2014, to action Cabinet approval.
- **CHALLENGE** : these delegations are discretionary in terms of the Public Service Act

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- The DPSA annual reports issued between 2016 and 2023 point to non-compliance by EAs;
 - EAs withdraw delegations without providing reasons or measures to rectify the circumstances that led to the withdrawal.
 - EAs were advised annually to confirm the status quo of the withdrawn and there was poor or no response.
 - Evidence suggests that this regime of discretionary delegation by EAs to HODs is not working
 - Relying on political principals delegating powers to the head of department is not sustainable or consistent across the public service.
 - The centralization of these operational roles to EAs remains a challenge and compromises the administrative processes.
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4. THE CASE FOR MANDATORY DEVOLUTION OF ADMINISTRATIVE POWERS TO ACCOUNTING OFFICERS

Rationale for separating roles:

- Woodrow Wilson (1887) – political administrative dichotomy :
 - distinction between elected officials who make policy (politics) and career civil servants who implement it (administration).
 - Apolitical PA, focus on enforcing laws and policies efficiently, irrespective of political changes,
 - Shield public servants from political interference and promote merit-based, professional service delivery.
 - supports constitutional values, strengthens accountability, and promotes a professional public service aligned with democratic principles (e.g. ground in constitutional and legal frameworks, curb political interference and patronage, enable clear accountability, support institutional stability and build state capacity).

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- Separating political and administrative roles promotes efficiency, accountability, and neutrality in governance.
 - South Africa's Constitution mandates impartial and responsive public administration.
 - Historical context shows dangers of politicized appointments and the need for merit-based recruitment.
 - Clear accountability improves governance and oversight by institutions like Parliament.
 - Professional civil service ensures stability during political changes and supports a developmental state.
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- Historical context highlights the need for a clear separation of roles between politicians and administrators.
 - Mandatory delegation of powers to Heads of Departments (HODs) is essential for professional public service.
 - Delegation optimizes resource use and aligns public administration with financial management (PFMA and PSA alignment of roles).
 - It speeds up decision-making and enhances the political-administrative interface.
 - HODs must accept accountability and encourage innovation through decentralization.
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5. LIMITATION OF POLITICAL RIGHTS – CLAUSE 16

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- The right to join and participate in a political party is:
 - fundamental & form the basis of South Africa's democratic dispensation.
 - Crucial to our system of multi-party democracy entrenched in section 1(d) of the Constitution.

The NSI supports the provision to limit political rights:

- The proposed limitation of political rights in Clause 16 is sufficiently restrictive and narrow, applicable only to HODs and those who report directly to them.
- Supports separation of roles as AO will focus on business of running the department and not be a decision maker in a political party

- These are officials who exercise discretionary powers in the management of the affairs of their departments.
- The limit only precludes this category of officials from holding office in political parties (as defined in Clause 1)
- These proactive measures are critical to manage conflict of interest real or perceived.
- These categories may still vote, support political parties, be members of political parties and even participate in the activities of political parties. The prohibition is thus a very narrow one and does not apply to any other employees.
- Therefore, there must be no desire to further extent categories of employees prohibited and to broaden definition of political office as this may interfere with the fundamental constitutional right.



6. OTHER MATTERS

- In support to devolution, the necessary checks and balances are included in the amendments (Clause 2)
- These checks and balances require:
 - The HOD to be accountable to the to the executive authority for the administration of the department and the functional area of responsibility;
 - to report as and when required; and
 - to assist the executive authority to fulfil the executive authority's accountability obligations in relation to the department and the Constitution.
- Therefore, the authority of the EA is strengthened section 3(9) – may intervene in instances where the head of department fails or refuses to fulfil a power or duty as required in terms of the Act,



6.CONCLUSION

- The NSI supports the proposed legislative amendments:
 - a) All administrative powers necessary for, but not limited to, the recruitment, appointment, secondment, transfer and performance management of employees, including that of Deputy Directors-General, is directly vested in the head of department
 - b) All strategic powers and responsibility which enables policy direction and guidance must be vested with the relevant executive authority, being the political head.
 - c) The political limitations is narrow and restrictive and is aimed at supporting the professional public service and delineation of roles and responsibilities
 - d) Checks and balances provided in section 2 strengthen the role of the EA



THANK YOU!

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