



COSATU SUBMISSION ON THE PUBLIC SERVICE AMENDMENT BILL

07 May 2007

1. Introduction

During the Parliamentary call on the public and stakeholders to make submissions on the Public Service Amendment Bill [B31-2006], COSATU made a submission on the aspects of the Bill as outlined in the following Table:

CLAUSE	CONCERN	PROPOSAL
N/A	Consultation process: civil society not effectively consulted	A fresh start or hold back controversial issues
7A	Government agencies will fragment service delivery	Rejection or deletion of all references to GAs
	Government agencies- an attempt to transfer employee contracts to individual institutions	Rejection
	Ring-fencing will dislocate government agencies from principal department	Rejection
	Establishment of agencies undermines the collective bargaining process	Rejection
3	Labour relations and conditions of service are collective bargaining issues	Revise or Negotiate
3(3)(3)	How would employees to serve on advisory bodies be identified?	DPSA response
	Will there be any union consultation on the matter?	DPSA response
	These bodies will undermine the functioning of the PSCBC and the PSC	DPSA response
7(6)(b)	MPSA supplementing and elucidating deemed determinations	Delete the clause
20	How would "public interest" be determined?	DPSA response
	Will transfer be individual or collective?	DPSA response
	Is transfer a collective bargaining issue or not?	DPSA response
25	Termination for absence without leave exceeding 10 days	Re-look into the issue
26	Other remunerative work by employees	Do not target only junior employees but also highly skilled and senior employees



2. A NARRATIVE ON THE SUBMISSION

2.1 Concerns about consultation process

COSATU is of the opinion that civil society was not effectively consulted. They are therefore calling for a fresh start of the consultation process or a holdback of sections they believe are controversial. COSATU believes that the DPSA is gradually introducing policies that are preparatory to the "single public service". COSATU calls for a halt on the Bill until the labour market and development chambers of NEDLAC have considered the Bill.

2.2 Government agencies

COSATU believes that the establishment of government agencies will lead to fragmentation of service delivery. They also see this as an attempt to transfer employees' contracts of employment to individual institutions. An example they give is that of the South African Social Security Agency (SASSA).

They indicate that Clause 10 as reflected in paragraph 7A of the Bill speaks about **delegation of powers, which should in their opinion be open public comment or PSCBC's input than merely through a Government Gazette notice.**

They are concerned that "ring-fencing" of government agencies will dislocate them from the principal department and make them operate independently, thus impacting on swift service delivery and non-compliance with government policies. However, the Portfolio Committee should note that clause 10 7A(2)(c) states as follows, "(f)or each government agency the relevant executive authority, in consultation with the Minister and the Minister of Finance and by notice in the Gazette shall, subject to applicable legislation, determine the reporting requirements to the head of the principal department to enable that head to advise the relevant executive authority on the oversight of the agency on policy implementation, performance, integrated planning, budgeting and service delivery".¹

COSATU avers that the establishment of government agencies undermines the collective bargaining process. They want to know whether stakeholders and recipients of service were consulted and how many agencies would be established, including the percentage of the staff complement in these agencies. **They call for the deletion of all references to government agencies until the matter is discussed in the Public Service Collective Bargaining Chamber (PSCBC).**

2.3 Clause 3: Functions of the Minister

COSATU asserts that in terms of this clause labour relations with concomitant collective bargaining powers are given back to the MPSA. They believe that other ministerial powers mentioned in the Bill are well placed under the MPSA, except labour relations and conditions of service, which are collective bargaining issues.

It should be noted here that the Bill does not expropriate the bargaining aspect on conditions of service but that the Minister is functional in terms of the portfolio she/he occupies is an important factor here. Clause 7(4) says: "Any act by any functionary in terms of this Act may not be

¹ Public Service Amendment Bill [B31-2006]



contrary to the provisions of—(a) any collective agreement contemplated in item 15(i) of Schedule 7 to the Labour Relations Act, 1995 (Act No. 66 of 1995); or (b) any collective agreement concluded by a bargaining council established in terms of the said Act for the public service as a whole or for a particular sector in the public service”.² COSATU is also concerned about Clause 3(3)(3) which empowers the Minister to establish consultative or advisory bodies. **They want to know how employees that would serve on these bodies will be identified and whether unions will be consulted on the matter.** COSATU believes that these bodies will undermine the functioning of both the PSCBC and the Public Service Commission.

2.4 Clause 7(6)(b): “The Minister may supplement or elucidate deemed determinations”

COSATU believes that this implies that the MPSA may unilaterally change a deemed determination. COSATU is calling for the deletion of this clause. **COSATU raises a genuine concern, which may be rebutted through further clarity by the DPSA. The Committee should seek further clarification on this issue.**

2.5 Clause 20: Transfers within public service

COSATU seeks clarification on how “public interest” is determined. As indicated earlier, “public interest” is a subjective matter open to all sorts of interpretations that might infringe upon employee rights and privileges.

COSATU raises a concern about whether the transfer can be individual and/or collective. A typical example may be a transfer “in the public interest” of a substantial number of employees to a government agency.

Furthermore, COSATU questions whether transfer is a collective bargaining issue or otherwise and, if so, argues that whenever a transfer arises it should be tabled in the PSCBC.

2.6 Clause 25: Termination of employment

COSATU has reservations about termination of employment due to absence without leave for a period exceeding 10 days, instead of after one calendar month. They believe that this is a substantive matter that fundamentally alters conditions of service. **They say the provision “removes the right of employee to due process through a disciplinary procedure”.** A fair observation would indicate that COSATU has a point because the period of absence without leave has been drastically and substantially reduced. COSATU asks the Committee to delete provision 17(3) of Clause 25.

2.7 Clause 26: Other remunerative work by employees

COSATU indicates that it is not always the junior employees who take other remunerative work outside the public service (moonlighting) but even highly skilled senior employees. COSATU has four proposals concerning other remunerative work and they are that:

- Approval to do other remunerative work should not be unreasonably withheld.

² Public Service Amendment Bill [B31-2006]



- Objective performance monitoring framework should be formulated to assess reasonableness of a request for permission to do other remunerative work.
- Approval should be given within reasonable stipulated time frames; and
- Provision should be made for the right to challenge refusal to grant such permission.

References

Constitution of the Republic of South Africa

Public Service Amendment Bill [B31-2006]