

6 July 2023

To: Advocate Shukrat Makinde  
Office of the Public Service Commission

Per: [REDACTED]

To: Ms Nontobeko Ngubane  
Office of the Public Service Commission

Per: [REDACTED]

Dear Sirs,

## **OUTA COMMENTS: PUBLIC SERVICE COMMISSION BILL 2023**

### **INTRODUCTION**

1. We refer to the above.
2. The Organisation Undoing Tax Abuse (OUTA) is a non-profit civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation. We envision a prosperous country, with an organised, engaged and empowered civil society that ensures responsible use of tax revenues.
3. Part and parcel to OUTA's mission is the challenging of legislation and the regulatory environment, this includes participating and engaging with government on legislation such as the Public Service Commission Bill 2023 ("the PSC bill").
4. OUTA welcomes the the PSC Bill and herewith are our comments:

### **OUTA COMMENTS**

#### **4.1. Section 2 of the PSC Bill: Application of the Act**

- 4.1.1. We welcome the expansion of the mandate of the Public Service Commission ("the Commission") to include local government and public entities, as there is a dire need to improve the effectiveness and efficiency of the public service in both local government and public entities.

4.1.2. The word selection however under Section 2(2), makes it sound as though the implementation of the PSC bill by local governments and public entities is limited and/or conditional, in that, there must first be a consultation between the Commission and the public entity or municipality in question before the provisions of the PSC bill can be implemented. If that interpretation is correct, then it can be argued that making the implementation of the PSC bill by municipalities and public entities conditional defeats the whole purpose of having the mandate of the Commission expanded.

4.1.3. Implementation of the PSC Bill should be mandatory. In the public service, there is often a gap between legislation and the actual implementation of the legislation. One may even argue that the ineffectiveness and inefficiency of public service is not necessarily a result of lack of legislation but a result of lack of implementation of the existing legislation. The Commission should prioritize the implementation of the PSC bill.

#### 4.2. **Section 4 of PSC Bill: Appointment of the Commissioners**

4.2.1. Section 4(5)(b) sets out the experience required for persons to be appointed as commissioners. Section 4(5)(b)(i) in particular, states that the person must have held office as a head of a department mentioned in Schedules 1 or 2 of the Public Service Act or held office as a Municipal Manager. Alternatively, the person must have, for a period of 5 (“five”) years been a member of Parliament, a provincial legislature, a municipal council, or the board or other control body of a public entity.<sup>1</sup>

4.2.2. It is our submission that, to guarantee the independence and impartiality of the Commission, the persons appointed as commissioners should be politically disinterested persons who have not previously held any public office. This is because there have been situations in public service where, to avoid accountability, people in public office are rotated from one department to another and it is in the public’s interest to not have such persons in the commission.

4.2.3. It is sufficient for the persons being appointed to have the necessary qualifications as set out in Section 4(5)(a) of the PSC bill and that they must have specialised knowledge of, or experience in, business administration, human resource management, human behavioural sciences, management, law or lecturing public administration or management at a recognised institution of higher learning.

4.2.4. We further submit that it is important for the Commission to establish relationships with other non-state actors like civil society organisations as these organisations advocate for accountability, transparency and professional ethics within the public

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<sup>1</sup> Section 4(5)(b)(iii)

service. Therefore, commissioners should also be appointed from people who have served in civil society organisations.

#### 4.3. **Section 5 of the PSC Bill: Disqualification from appointment as a commissioner**

4.3.1. In line with section 195(1)(a) of the Constitution which requires that a high standard of professional ethics must be promoted and maintained in public service, read together with section 196(2) of the Constitution which requires that the dignity of the Commission be protected, it is our submission that persons with “pending cases” relating to the offences listed under section 5(e) of the PSC bill should also be disqualified.

4.3.2. Notwithstanding our submission in paragraph 4.3.1 *supra*, we submit that contraventions of the Public Finance Management Act (PFMA) as well as the Municipal Finance Management Act (MFMA) should be added under the list of offences set out in section 5(e) of the PSC bill. This is because of the requirement in the PSC bill that persons must have either served as heads of departments in public service or as municipal managers. It is therefore, imperative that the PSC bill is not silent on on the contravention of these two acts.

#### 4.4. **Sections 9 and 10 of the PSC bill: Inspections and Investigations by the Commission**

4.4.1. These sections should provide clear guidelines with regards to the kind of inspections and investigations the Commission has competence to conduct. They should also specify whether such inspections and investigations will be conducted at the initiative of the Commission only or on receipt of complaints from other persons including members of the public or on both occasions.

#### 4.5. **Section 12 of the PSC bill: Access to the reports of the Commission**

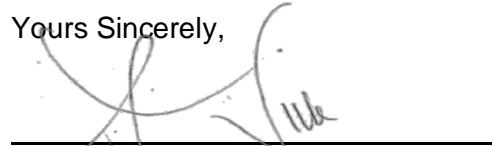
4.5.1. This Section should take cognisance of section 32 of the Constitution which promotes, amongst other things, transparency and accountability. Access to the reports of the Commission should be unconditional and without restriction. The public should not have to resort to utilising the Promotion of Access to Information Act of 2000 (“PAIA”) to gain access to the said reports. PAIA is sometimes a cumbersome mechanism that is often abused by the authorities.

#### 4.6. **Section 13 of the PSC bill: Implementation of decisions of the Commission**

4.6.1. OUTA welcomes this section. It is important that the Commission has the power and the mechanisms to enforce its decisions and not necessarily have to rely on other organs of state for same, as is the case with the current Public Service Commission Act of 1997.

5. We trust that you will find the above to be in order.

Yours Sincerely,



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**Stefanie Fick**  
**Executive Director of the Accountability and**  
**Public Governance Division**  
**OUTA – Organisation Undoing Tax Abuse**