

# CHAPTER 10

## PUBLIC ADMINISTRATION

### Basic values and principles governing public administration

195. (1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:
- (a) A high standard of professional ethics must be promoted and maintained.
  - (b) Efficient, economic and effective use of resources must be promoted.
  - (c) Public administration must be development-oriented.
  - (d) Services must be provided impartially, fairly, equitably and without bias.
  - (e) People's needs must be responded to, and the public must be encouraged to participate in policy-making.
  - (f) Public administration must be accountable.
  - (g) Transparency must be fostered by providing the public with timely, accessible and accurate information.
  - (h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.
  - (i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.
- (2) The above principles apply to—
- (a) administration in every sphere of government;
  - (b) organs of state; and
  - (c) public enterprises.
- (3) National legislation must ensure the promotion of the values and principles listed in subsection (1).
- (4) The appointment in public administration of a number of persons on policy considerations is not precluded, but national legislation must regulate these appointments in the public service.
- (5) Legislation regulating public administration may differentiate between different sectors, administrations or institutions.

- (6) The nature and functions of different sectors, administrations or institutions of public administration are relevant factors to be taken into account in legislation regulating public administration.

### Public Service Commission

196. (1) There is a single Public Service Commission for the Republic.
- (2) The Commission is independent and must be impartial, and must exercise its powers and perform its functions without fear, favour or prejudice in the interest of the maintenance of effective and efficient public administration and a high standard of professional ethics in the public service. The Commission must be regulated by national legislation.
- (3) Other organs of state, through legislative and other measures, must assist and protect the Commission to ensure the independence, impartiality, dignity and effectiveness of the Commission. No person or organ of state may interfere with the functioning of the Commission.
- (4) The powers and functions of the Commission are—
  - (a) to promote the values and principles set out in section 195, throughout the public service;
  - (b) to investigate, monitor and evaluate the organisation and administration, and the personnel practices, of the public service;
  - (c) to propose measures to ensure effective and efficient performance within the public service;
  - (d) to give directions aimed at ensuring that personnel procedures relating to recruitment, transfers, promotions and dismissals comply with the values and principles set out in section 195;
  - (e) to report in respect of its activities and the performance of its functions, including any finding it may make and directions and advice it may give, and to provide an evaluation of the extent to which the values and principles set out in section 195 are complied with; and
  - (f) either of its own accord or on receipt of any complaint—
    - (i) to investigate and evaluate the application of personnel and public administration practices, and to report to the relevant executive authority and legislature;

- (ii) to investigate grievances of employees in the public service concerning official acts or omissions, and recommend appropriate remedies;
  - (iii) to monitor and investigate adherence to applicable procedures in the public service; and
  - (iv) to advise national and provincial organs of state regarding personnel practices in the public service, including those relating to the recruitment, appointment, transfer, discharge and other aspects of the careers of employees in the public service; and
- (g) to exercise or perform the additional powers or functions prescribed by an Act of Parliament.

[Para. (g) added by s. 3 of the Constitution Second Amendment Act of 1998.]

- (5) The Commission is accountable to the National Assembly.
- (6) The Commission must report at least once a year in terms of subsection (4)(e)—
  - (a) to the National Assembly; and
  - (b) in respect of its activities in a province, to the legislature of that province.
- (7) The Commission has the following 14 commissioners appointed by the President:
  - (a) Five commissioners approved by the National Assembly in accordance with subsection (8)(a); and
  - (b) one commissioner for each province nominated by the Premier of the province in accordance with subsection (8)(b).
- (8) (a) A commissioner appointed in terms of subsection (7)(a) must be—
  - (i) recommended by a committee of the National Assembly that is proportionally composed of members of all parties represented in the Assembly; and
  - (ii) approved by the Assembly by a resolution adopted with a supporting vote of a majority of its members.
- (b) A commissioner nominated by the Premier of a province must be—
  - (i) recommended by a committee of the provincial legislature that is proportionally composed of members of all parties represented in the legislature; and
  - (ii) approved by the legislature by a resolution adopted with a supporting vote of a majority of its members.
- (9) An Act of Parliament must regulate the procedure for the appointment of

commissioners.

- (10) A commissioner is appointed for a term of five years, which is renewable for one additional term only, and must be a woman or a man who is—
  - (a) a South African citizen; and
  - (b) a fit and proper person with knowledge of, or experience in, administration, management or the provision of public services.
- (11) A commissioner may be removed from office only on—
  - (a) the ground of misconduct, incapacity or incompetence;
  - (b) a finding to that effect by a committee of the National Assembly or, in the case of a commissioner nominated by the Premier of a province, by a committee of the legislature of that province; and
  - (c) the adoption by the Assembly or the provincial legislature concerned, of a resolution with a supporting vote of a majority of its members calling for the commissioner's removal from office.
- (12) The President must remove the relevant commissioner from office upon—
  - (a) the adoption by the Assembly of a resolution calling for that commissioner's removal; or
  - (b) written notification by the Premier that the provincial legislature has adopted a resolution calling for that commissioner's removal.
- (13) Commissioners referred to in subsection (7)(b) may exercise the powers and perform the functions of the Commission in their provinces as prescribed by national legislation.

## Public Service

197. (1) Within public administration there is a public service for the Republic, which must function, and be structured, in terms of national legislation, and which must loyally execute the lawful policies of the government of the day.
- (2) The terms and conditions of employment in the public service must be regulated by national legislation. Employees are entitled to a fair pension as regulated by national legislation.
  - (3) No employee of the public service may be favoured or prejudiced only because that person supports a particular political party or cause.
  - (4) Provincial governments are responsible for the recruitment, appointment,

promotion, transfer and dismissal of members of the public service in their administrations within a framework of uniform norms and standards applying to the public service.