

Single public service

IMPLICATIONS FOR
LOCAL GOVERNMENT



COMMUNITY
LAW CENTRE
University of the Western Cape

Single public service

GREAT WHITE HOPE OR DISASTER IN THE MAKING?

The Department of Public Service and Administration has published for comment a draft Public Administration Management Bill aimed at creating a single public service. The long-awaited Bill is being promoted as the magic bullet for addressing capacity shortages and streamlining service delivery. The intention is that the Bill will be submitted to Parliament in June and passed this year. We outline key aspects of the Bill and raise a number of concerns.

Senior municipal management

The Bill repeals all the provisions in the Municipal Structures Act and the Municipal Systems Act that deal with the appointment of municipal managers and section 56 managers. The appointment of senior municipal management (and all other municipal staff) will take place in terms of the new Act.

The maximum term of office of a municipal manager will change from seven years to five years. It is not clear whether senior managers will continue to be appointed and dismissed by the municipal council. While the Bill provides that the council makes these appointments, it also allows the council to delegate the power (for example, to the mayor). The current

key points

legal framework prohibits this, but the Bill replaces it with an uncertain position.

Remuneration and performance assessment

The Bill is silent on the question of who decides on the remuneration and performance assessment of municipal senior management. This, coupled with the repeal of all the relevant provisions in the Systems Act, means that there will be no rules for who decides on these matters. The country cannot afford legal uncertainty on this matter, which is already an arena of bitter contestation in too many municipalities.

In terms of the Bill, municipal managers must conclude an employment contract and, on a yearly basis, enter into a performance agreement. The content of both contracts will be prescribed by the Minister. Municipalities will no longer be compelled to enter into performance agreements with their section 56 managers.

Senior Management Service

Municipal managers and section 56 managers will be part of a national Senior Management Service. The Minister determines minimum and maximum remuneration and benefits for senior municipal management. Senior managers may be instructed by the Minister to teach at education and training institutions.

Service centres

The government wants 'one-stop shops' for public services offered by various spheres of government. A citizen should be able, for argument's sake, to query a water bill, apply for a driver's licence, collect a pension and apply for an ID in the same building. The realisation of this ideal will require close cooperation between the responsible spheres of government.

The Bill demands the establishment of at least one "service centre" in each municipality. The Minister determines by when the centres must be established and operational, though subject to the approval of the municipality. Furthermore, the Minister determines which institutions must participate in the service centre and which services they must provide. For example, the Minister may direct that the municipality's communication on water accounts and its traffic services be housed at the service centre, that the Department of Social Development use the service centre for the distribution of pensions and that Home Affairs use it for ID applications.

The Minister will also determine the management and governance arrangements for the centres and decide what the powers and duties of participating municipalities are. Staffing arrangements for the centres, including the utilisation of municipal employees, will be determined by the Minister.

- The Bill repeals all the provisions in the Structures Act and Systems Act that deal with the appointment of municipal managers and section 56 managers.
- The municipal staff appointment procedure and conditions of appointment will be determined by national law, not by the municipality.
- The Bill vests the power to appoint, dismiss and decide on career incidents of a municipal employee in the council, not in the municipal manager.
- In its drive to harmonise, it forces municipalities into the same mould as national and provincial government, even when the institutional design of a municipality makes this impossible.

Financial arrangements for the centres will be determined by the Minister in accordance with legislation.

It is suggested that this configuration, firstly, is in conflict with the Constitution and, secondly, reneges on the recently erected statutory framework for intergovernmental relations. Once a service centre is established, the municipality will have to adhere to the Minister's instructions regarding management, governance, power, duties, staffing and financial arrangements. The Bill does not limit the Minister's power in any way.

There is no constitutional basis for this. The Constitution does not permit the national government to issue individual instructions to municipalities regarding the exercise of their original powers. The only legal protection that the Bill offers municipalities is the requirement that they approve the establishment of the service centre. Thus the approval of the service centre is tantamount to permission for a Trojan Horse to enter the municipality, as the municipality effectively relinquishes control over whatever municipal services the Minister may decide to house in the service centre. In practice, this means that municipalities may refuse permission.

This approach is also at odds with the Intergovernmental Relations Framework Act 13 of 2005 (IRFA), which provides for implementation protocols (IPs) designed to streamline service delivery across spheres of government. The obvious difference is that the IP is a 'joint venture', with all parties having an equal say. The service centre, on the other hand, is an instruction from the national government, coupled with a blueprint for services, management, governance, staffing and finances. It is not clear how detailed the blueprint will be, but the Bill certainly does not encourage restraint on the part of the Minister.

It remains the prerogative of the municipality to decide whom to appoint.

Staff appointments

All appointments by municipalities of persons in their administration must be made in terms of the Act. Any appointment must be “in such manner and on such conditions as may be prescribed” by the Minister in regulations. So it remains the prerogative of the municipality to decide whom to appoint. However, the appointment procedure and the conditions under which the appointment takes place will be determined by national law.

The Bill vests the power to appoint, dismiss and decide on career incidents of a municipal employee in the council. It removes this power from the municipal manager (where it currently resides in terms of the Systems Act) and makes the council responsible. The council may, of course, delegate such power to the municipal manager. However, it is certainly not guaranteed that all councils will do so. There is a very good policy reason for the current legal provision that the municipal manager appoints all staff (other than the staff reporting to him or her). The location of all human resource decision-making in municipal councils would distract them from their core mandate, which is to represent communities, oversee the municipal executive and determine municipal laws, policies and programmes. It is not to appoint municipal staff below the level of senior management. In its current format, the Bill further confuses an area that, all too often, is already the scene of grim battles between municipal managers and local politicians.

Performance management

The Bill is radical in its repeal of all provisions in the Systems Act that deal with performance management. In future, performance management in local government will be done according to the procedures and norms and standards prescribed by the Minister responsible for public administration. The risk is that the synergy linking the IDP and budgeting framework with performance management will be lost. The council adopts an IDP and a budget based on the IDP. The municipality’s service delivery and budget implementation plan translates these into annual goals and targets that are the basis for performance management. Municipalities may not yet have fully implemented this framework, but it is instrumental in achieving local accountability for municipal plans and budgets.

The Bill now removes performance management from the

framework, thereby rendering it a planning framework without teeth. Furthermore, the instruction to municipalities to facilitate community involvement in performance management renders it an important tool for communities to hold their municipalities accountable for realising the IDP. There is no similar legal framework currently applicable to national and provincial departments to fill the gap that the abolition of the performance management scheme will leave.

If performance management is conducted on the basis of national templates and national procedures and driven by national concerns, this will stimulate ‘upward accountability’ instead of accountability between the municipality and its community. It will drive a wedge between communities and their municipalities and exacerbate their already contentious relationship. It is clear that the Bill, in abolishing community participation in performance management, is not intent on strengthening the ability of communities to use performance management to hold their municipalities accountable. If anything, the plans for the repeal of the framework for performance management will cause deep uncertainty in local government for as long as there is no clarity on the system taking its place.

Moving of staff

Enhancing the mobility of civil servants is a key objective of the Bill. It suggests a number of instruments to move staff across and within spheres.

Transfers, deployment and secondment

A municipal employee may be transferred to another national, provincial or local government institution. In principle, this may only be done with the consent of the employee. However, it is possible for a transfer to take place without such consent. The Bill then requires that the transfer be “fair”, which depends on the operational requirements of both institutions involved and the views of the employee. The two institutions must agree on the conditions of service of the employee. The new conditions may, on the whole, not be less favourable than those that applied before the transfer. Transfers between institutions may be done by the two affected institutions. The Minister may also transfer a municipal employee from the municipality to another national, provincial or local government institution. In this instance, the affected municipality or municipalities must agree to the transfer.

When his or her term expires, a municipal manager can be deployed by the President to a national or provincial institution or to another municipality. The agreement of any affected municipality is required. If the manager is deployed to a provincial institution, the relevant Premier must agree. Such a

deployment may only be done with the consent of the municipal manager. The remuneration and conditions of service of the new position will apply after deployment.

Municipal employees may be seconded to other national, provincial or local government institutions. Again, the consent of the employee is required. In the absence of consent, the secondment may still be pursued if it is “operationally justified” (after the views of the employee have been heard). A somewhat cynical interpretation of this provision suggests that a municipal employee’s place of work will depend on how the elusive term ‘operational justification’ is interpreted by the municipality and the prospective host institution.

In principle, secondments are for no longer than six months, unless the recipient institution has taken all reasonable steps to replace the seconded employee and the interests of the seconded employee have been fairly accommodated.

In principle, a seconded employee retains the same conditions of service he or she enjoyed prior to the secondment. This is not the case in the event of the Minister prescribing otherwise, as he or she has the power to prescribe the conditions of secondments, including the conditions of service.

A secondment can be organised by the two affected institutions, in which case their consent to the secondment is the starting point. The secondment can also be done by the Minister, after consulting the affected institutions. The agreement of both institutions is then a requirement.

Collective bargaining

Negotiations on terms and conditions of municipal employees are dealt with in the South African Local Government Bargaining Council. In that respect, the current framework remains largely intact, albeit with some important nuances. If the bargaining council cannot come to an agreement, the Minister may make a determination, provided that negotiations have been exhausted. Importantly, national organised local government must agree to the determination. The Minister may refuse to authorise the outcome of negotiations in the bargaining council if the agreement results in “unjustifiable disparities within the Public Administration”. In that event, the Minister may submit proposals to the bargaining council to rectify these disparities. Again, if the bargaining council cannot agree on the matter, the determination of the Minister prevails.

Hot pursuit of misbehaving employees

The Bill provides for the ‘hot pursuit’ of municipal employees who seek to avoid disciplinary steps by applying for positions

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elsewhere in government. When applying for positions, employees must disclose any current or past actions taken against them on grounds of misconduct, ill health or poor performance. If a municipal employee is alleged to have committed misconduct and moves on to another national, provincial or local government institution, the former institution may insist that the new institution institute disciplinary proceedings against its new employee. In any event, the new institution may prosecute its new employee for misconduct committed at a former institution. If an employee is found guilty of misconduct, even if the misconduct relates to a previous employer, it constitutes a ground for dismissal by the new institution.

Comment

The concerns with the Bill are twofold. Firstly, the Bill encroaches on the constitutional status of local government. While autonomy for municipalities was never meant to be without limits, the right to organise an administration that suits local needs is fundamental to the notion of municipal self-governance. Clearly, the Constitution intended a single public service for national and provincial governments. However, it treats local government differently by granting municipalities specific decision-making powers for their personnel. This provision has no equivalent with respect to provincial government. Yet the Bill incorrectly assumes that the Constitution treats municipal public service powers in the same way as it treats provincial public service powers.

The second concern relates to the disruptive effects of this Bill. In its drive to harmonise, it forces municipalities into the same mould as national and provincial government, even when the institutional design of a municipality makes this impossible. At times it appears as if the Bill was drafted with insufficient knowledge of how municipalities are composed, the way in which they operate and the framework for their strategic planning and performance management.

Professor Jaap de Visser
Local Government Project Coordinator
Community Law Centre, UWC