

CONSTITUTIONAL PRINCIPLES REGARDING PUBLIC SERVICE

1. There shall be a public service which shall -
 - (a) be non-partisan, career-orientated and based on equitable principles;
 - (b) be obliged to promote a broadly representative and efficient public service;
 - (c) serve all members of the public in an unbiased and impartial manner;
 - (d) be regulated by laws dealing specifically with such service, and in particular with its structure, functioning, terms and conditions of service; and
 - (e) loyally support the government of the day in the execution of its governmental functions.

2. *Every member of the PS shall be*
[A right to a pension by members of the public service shall be guaranteed.]
Accrued and accruing pension rights and interests, and resulting actuarial liabilities shall be constitutionally guaranteed. *entitled to a fair pension.*

3. Notes: (1) It is proposed that constitutional principle 25 on labour rights be amplified with the inclusion of the principle of protection against unfair labour practises.

- (2) It is further proposed that an urgent meeting be convened with the relevant employee organisations in the public service.

INTERIM CONSTITUTION: THE PUBLIC SERVICE

PUBLIC SERVICE COMMISSION

180. There shall be a Public Service Commission for the Republic which shall have the powers, functions and duties provided for by this Constitution and by law, and it shall be accountable to Parliament through the President.
181. (1) The Commission shall have the power to -
- (a) make recommendations, give directions and conduct inquiries regarding -
 - (i) the organisation and administration of departments and the public service;
 - (ii) the conditions of service of members of the public service and matters related thereto;
 - (iii) personnel practices in the public service, career incidents of members of the public service and matters connected with the employment of personnel;
 - (iv) the promotion of efficiency and effectiveness in departments and the public service; and
 - (v) a code of conduct applicable to members of the public service;

- (b) advise the President, a Minister or a political office bearer in regard to any matter relating to the public service or to any institution or body which receives funds wholly or partly appropriated by the national or SPR legislature;
 - (c) exercise such other powers, perform such other functions and carry out such other duties entrusted to it by any law; and
 - (d) delegate any of its powers, functions and duties to any a member or official in the public service subject to any limitation in law.
- (2) Until amended by law, the powers of the Commission set out in subsection (1) will be subject to existing statutory limitations.
- (3) A recommendation or direction of the Commission shall be implemented within 6 months from the date it has been made unless:
- (a) the President rejects and refers such a recommendation or direction back to the Commission before implementation thereof; and
 - (b) such recommendation or direction involves expenditure from public funds and approval from the treasury has not been obtained.

- (4) The Commission shall have such powers, personnel and other resources that are reasonably necessary to perform its functions and carry out its duties.
 - (5) On recommendation of the Commission the President may assign any power, function or duty of the Commission to an SPR service commission.
 - (6) The Commission shall annually frame a report on matters which have been dealt with by the Commission and transmit it to the President who shall place it before Parliament.
182. (1) (a) The Commission shall consist of no fewer than three members and no more than five members appointed by the President, one of whom shall be designated as chairperson by the President.
- (b) The Commission shall exercise its powers and perform its functions fairly, impartially and independently and no Act of Parliament or the executive shall amend the conditions of service in terms of which a Commissioner was appointed in a manner which may adversely impact upon the impartiality and independence of, or unfairly discriminate against, the Commission.
 - (c) A member of the Commission shall not hold office in any political party or political organisation and shall be non-partisan in the performance of his functions.

- (d) A member of the Commission may be removed from office by the President on account of misconduct or unfitness for his or her duties or incapacity to carry them out efficiently or if, for reasons other than his or her unfitness or incapacity his or her removal from office will promote efficiency, and the removal and the reasons therefor shall be communicated by the President by message to Parliament within 14 days after such removal or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.
- (2) A person shall be qualified to be appointed to the Commission if he or she -
- (a) is a South African citizen; and
 - (b) is a person who has sufficient knowledge of or experience in the administration, management or rendering of public services.
- (3) The composition, appointment, tenure, vacation of office, conditions of service and functioning of the Commission shall be as determined by Act of Parliament, and shall be such as to ensure the independence and impartiality of the Commission and the efficient and effective exercise of its powers, performance of its functions and carrying out of its duties.

THE PUBLIC SERVICE

183. (1) There shall be a public service for the Republic, consisting of employees employed to perform the functions assigned to departments of the state.
- (2) Such public service shall -
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 - (b) be obliged to promote a broadly representative and efficient public service;
 - (c) serve all members of the public in an unbiased and impartial manner;
 - (d) be regulated by laws dealing specifically with such service, and in particular with its structure, functioning, terms and conditions of service;
 - (e) loyally support the government of the day in the execution of its governmental functions; and
 - (f) be organised in departments and other organizational components and the head of such department or organizational component shall be responsible for the efficient management and administration of his department or organizational component.

(3) Employment in the public service shall be accessible to all South African citizens who comply with the requirements determined or prescribed by or under any law for employment in such service.

(4) In the making of any appointment or the filling of any post in [a] the public service, the qualifications, level of training, merit, efficiency and suitability of the persons who qualify for the appointment, promotion or transfer concerned, and such conditions as may be determined or prescribed by or under any law, shall be taken into account.

(5) Nothing in this Constitution shall preclude measures to promote the objectives set out in subsection (2).

(6) Provision shall be made for a pension for a member of the public service by means of a pension fund(s) by law and members of the public service ^{who are reqd. by law to be members of a pension fund} shall be entitled to fair representation on the body which manages the applicable pension fund(s).

(7) ~~[A member of the public service shall be entitled to pension rights, and the public service]. Accrued and accruing pension rights and interests of members and former members of the public service and other beneficiaries and resulting actuarial liabilities [which have accrued at the commencement of this constitution] shall not be amended, save with the consent of the member, former member or beneficiary concerned.~~ *In the event of changes to the law governing pension funds, the real value of the accrued benefits*

of a member of a fund and his or her beneficiaries, as
(8) Notes: (1) It is proposed that section 28 on labour rights be amplified with the inclusion of the principle of

represented by his or her actuarial liability, shall be maintained.

87. The retirement age applicable to a public servant by law as of 1 Oct 1992 shall not be changed without his or her consent.

protection against unfair labour practises.

- (2) It is further proposed that an urgent meeting be convened with the relevant employee organisations in the public service.

SPR SERVICE COMMISSIONS

- 184 (1) A SPR legislature may provide by law for an SPR service commission and, subject to the national norms and standards, such Commission shall, in respect of public servants employed by the SPR, have -
- (a) the power to make recommendations, give directions and conduct inquiries -
- (i) pertaining to the establishment and organisation of departments of the SPR;
- (ii) relating to career incidents of such public servants; and
- (iii) regarding the promotion of efficiency and effectiveness in departments of the SPR;

- (b) the power to -
 - (i) advise the Premier or a political office bearer in regard to any matter relating to the public service or to any institution or body which receives funds wholly or partly appropriated by the SPR legislature; and
 - (ii) delegate any of its powers, functions and duties to any a member or official in the public service subject to any limitation in law; and
 - (c) such other powers, functions and duties of the Public Service Commission assigned to it by the President with the approval of the Premier of the SPR.
- (2) The measures contained in sections 181(2),(3) and (4), and 182(1)(a), (b), (c) and (d), (2), and (3) pertaining to the Public Service Commission shall *mutatis mutandis*, apply to the SPR service commissions established by SPR legislation, save that any reference to an act of Parliament, Parliament or to the President shall be deemed to be a reference to an SPR act, SPR legislature or the Premier of the SPR respectively.

TRANSITIONAL ARRANGEMENTS

185. (1) The public service as regulated by legislation at the time of the commencement of this Constitution, shall continue to exist subject to changes made thereto by or in accordance with law.

- (2) (a) Any person employed in a public service immediately before the commencement of the Constitution shall remain in employment subject to the provisions of this Constitution and the laws governing employment in the public service.
- (b) Subject to the provisions of subsection (6), the terms and conditions of service of any person employed in a public service immediately before the commencement of the Constitution, shall continue to apply to him or her, until amended by or under any law including a law enacted in order to establish uniformity of conditions of service in accordance with those generally prevailing at the commencement of this Constitution.
- (3) The persons who immediately before the commencement of the Constitution occupied the positions of chairperson, member or members of the Commission for Administration, shall continue to hold their respective positions under their current terms of employment, subject to the provisions of any law regulating their discharge or vacation of office or redetermination of their terms of office.
- (4) Notwithstanding the provisions of this section, the conclusion or amendment of contracts, the appointment, promotion, the award of terms and conditions of service and other benefits occurring between 27 April 1993 and 30 September 1994 in respect of any person or class

[subject to agreement
at TEC level -
see TEC law]

of persons employed by a public service or public service institution referred to in this Constitution may, within one year of the coming into operation of this Constitution, be reviewed by a judicial Commission and if not proper or justifiable in the circumstances, the judicial commission may reverse or alter the contract, appointment, promotion, terms and conditions of service and award of benefits.

- (5) Subject to section 119, section 185(3) shall apply to the persons who, immediately before the commencement of the Constitution, occupied the positions of chairperson and member of the public service commissions of Transkei, Bophuthatswana, Venda, Ciskei, if reincorporated, or a Self-governing Territory.
- (6) Subject to section 185(4) and any law relating to unfitness or incapacity to carry out duties efficiently or improper or unauthorised award of terms and conditions of service, the pensionable salary or pensionable salary scale of a member of any public service shall not be reduced below that applicable to such member as at the commencement of the Constitution.
- (7) (a) In order to give effect to section 119, provision shall be made by law for the establishment of an expeditious procedure ~~and a~~ *before the Labour Appeal Board* ~~judicial tribunal appointed by the President/Chief Justice~~ to hear and adjudicate all claims arising out of the application of section 119 provided that the laws regulating employment in the public service as at 1 October ^{November} 1993 shall apply, ~~and the powers of the Industrial Court as at the commencement of this Constitution shall mutatis mutandis apply to such tribunal.~~

- (b) ~~Notwithstanding the provisions of any law, the procedures contained in the sub-section (a) shall be the exclusive procedures and the decision of the judicial tribunal shall be final and binding.~~ *Labour Appeal Court*

~~Any party to any proceedings before the tribunal referred to in subsection (a) may appeal to the Labour Appeal Court against a decision of the tribunal.~~

- (c) The provisions of this sub-section shall lapse one year after the commencement of this constitution.

186. Provision shall be made by law for the payment of pensions from the exchequer for such persons, and dependents of such persons, who have not served in any public service, prior to the commencement of this Constitution, but who have made sacrifices or who have served the public interest in the establishment of a democratic constitutional order and who qualify for such pensions in terms of the relevant law.

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- (7) (a) In the event of changes to the law governing pension funds, the real value of the accrued benefits of a member of a fund and his or her beneficiaries, as represented by his or her actuarial liability, shall be maintained.
- (b) The retirement age applicable to a public servant by law as at 1 October 1993, shall not be changed without his or her consent.

8

- (8) Notes: (1) It is proposed that section 27 on labour rights be amplified with the inclusion of the principle of protection against unfair labour practises.
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(3) The persons who immediately before the commencement of the Constitution occupied the positions of chairperson, member or members of the Commission for Administration, shall continue to hold their respective positions under their current terms of employment, subject to the provisions of any law regulating their discharge or vacation of office or redetermination of their terms of office.

(To be revisited by the ANC.)

(4) Notwithstanding the provisions of this section, the conclusion or amendment of contracts, the appointment, promotion, the award of

terms and conditions of service and other benefits occurring between 27 April 1993 and 30 September 1994 in respect of any person or class of persons employed by a public service or public service institution referred to in this Constitution may, within one year of the coming into operation of this Constitution, be reviewed by a judicial Commission and if not proper or justifiable in the circumstances, the judicial commission may reverse or alter the contract, appointment, promotion, terms and conditions of service and award of benefits.

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(To be revisited by the ANC.)
- (6) Subject to section 185(4) and any law relating to unfitness or incapacity to carry out duties efficiently or improper or unauthorised award of terms and conditions of service, the pensionable salary or pensionable salary scale of a member of any public service shall not be reduced below that applicable to such member as at the commencement of the Constitution.
- (7) (a) In order to give effect to section 119, provision shall be made by law for the establishment of an expeditious procedure before the Labour Appeal Court to hear and adjudicate all claims arising and determine all disputes out of the application of section 119 provided that the laws regulating employment in the

public service as at 1 November 1993 shall apply.

- (b) Notwithstanding the provisions of any law, the procedures contained in the sub-section (a) shall be the exclusive procedures and the decision of the Labour Appeal Court shall be final and binding.
- (c) The provisions of this sub-section shall lapse one year after the commencement of this constitution.
(Subject to confirmation by the RSA Government.)

186. Provision shall be made by law for the payment of pensions from the exchequer for such persons, and dependants of such persons, who have not served in any public service, prior to the commencement of this Constitution, but who have made sacrifices or who have served the public interest in the establishment of a democratic constitutional order and who qualify for such pensions in terms of the relevant law.

(Subject to further consideration by the RSA Government.)

DIAGRAM 3

PUBLIC SERVICE : ALLOCATION OF RESPONSIBILITIES, POWERS AND ACCOUNTABILITY

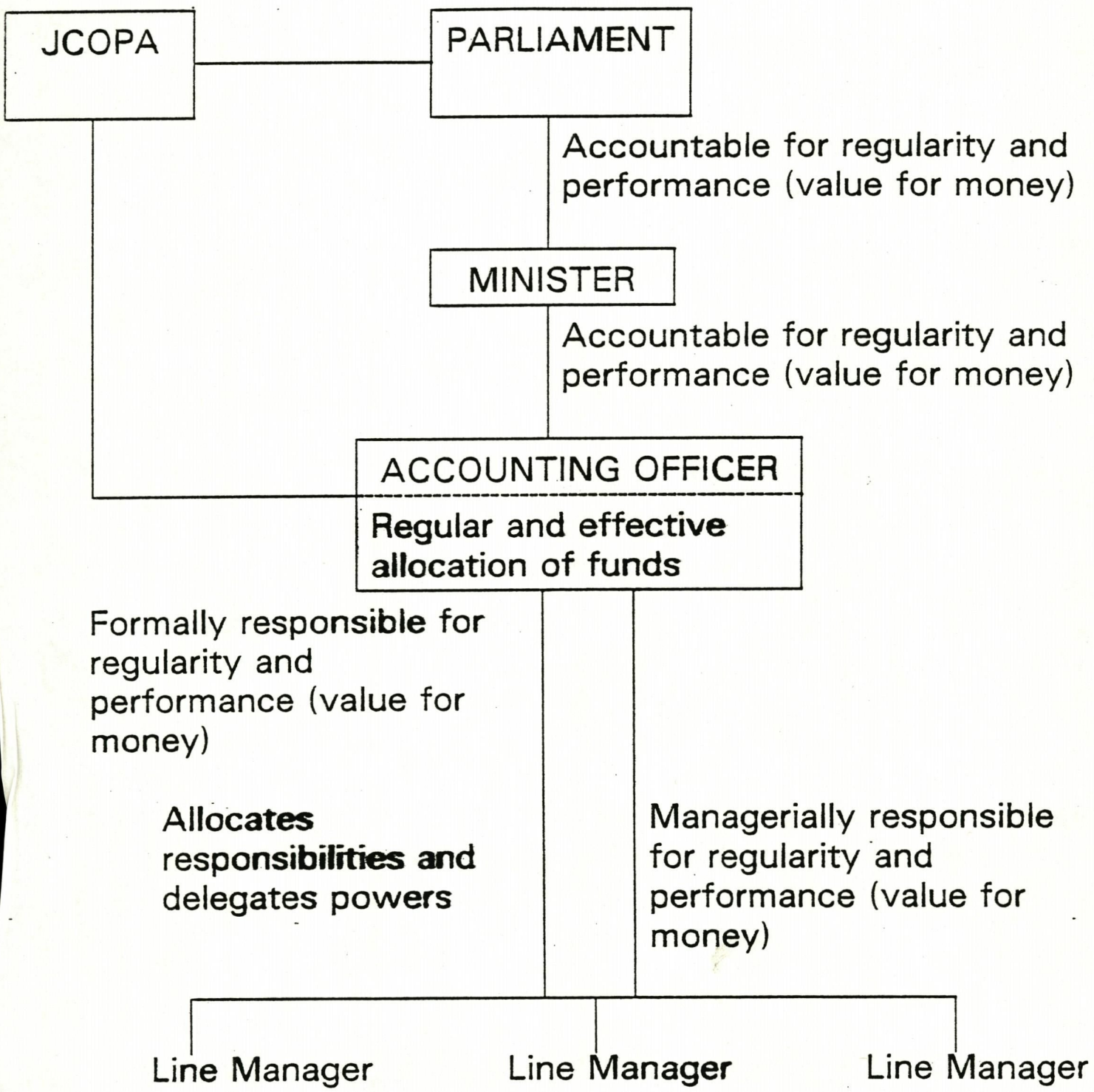
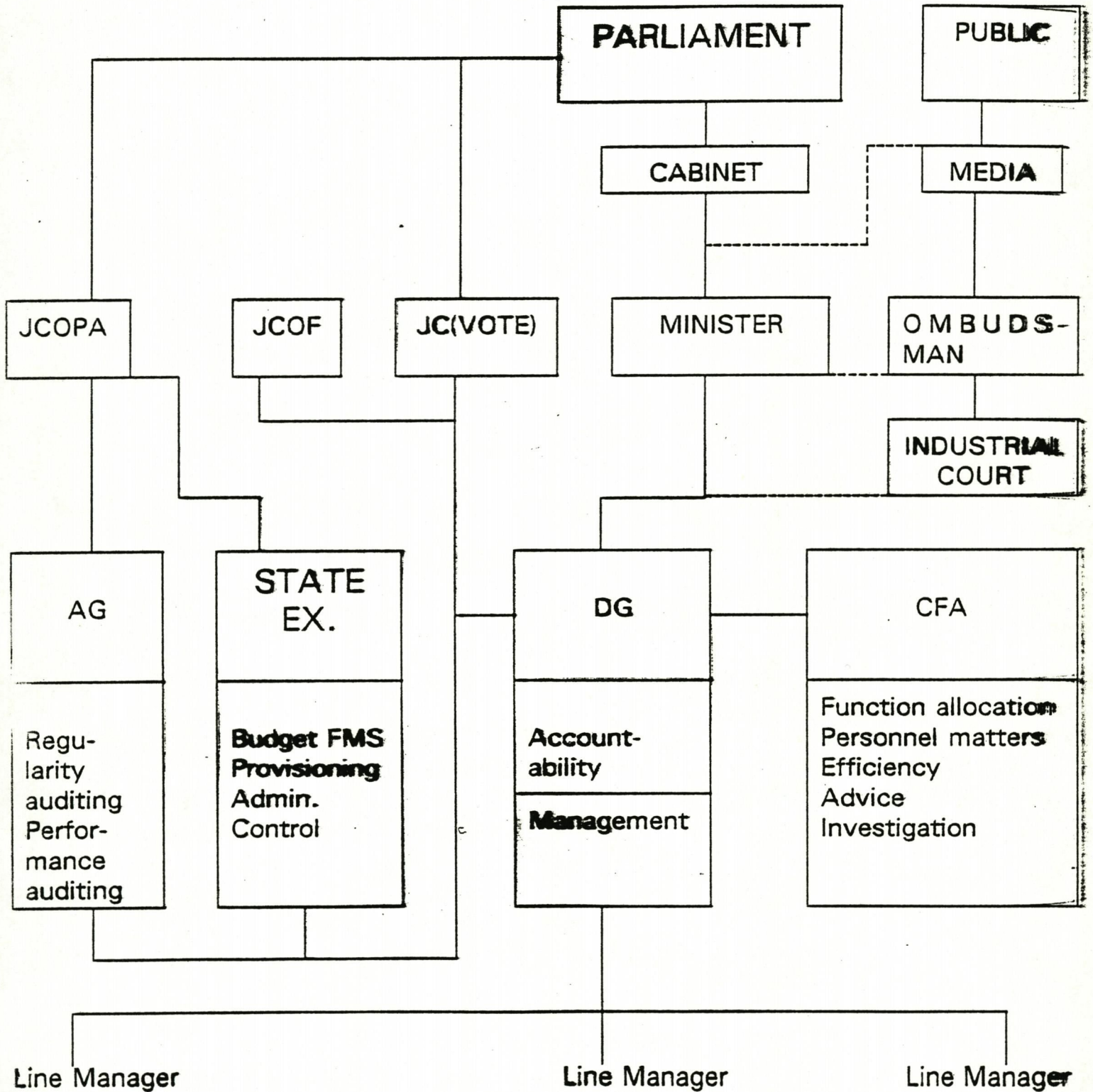


DIAGRAM 4

CONTROL OVER STANDARDS OF MANAGEMENT AND ETHICAL CONDUCT

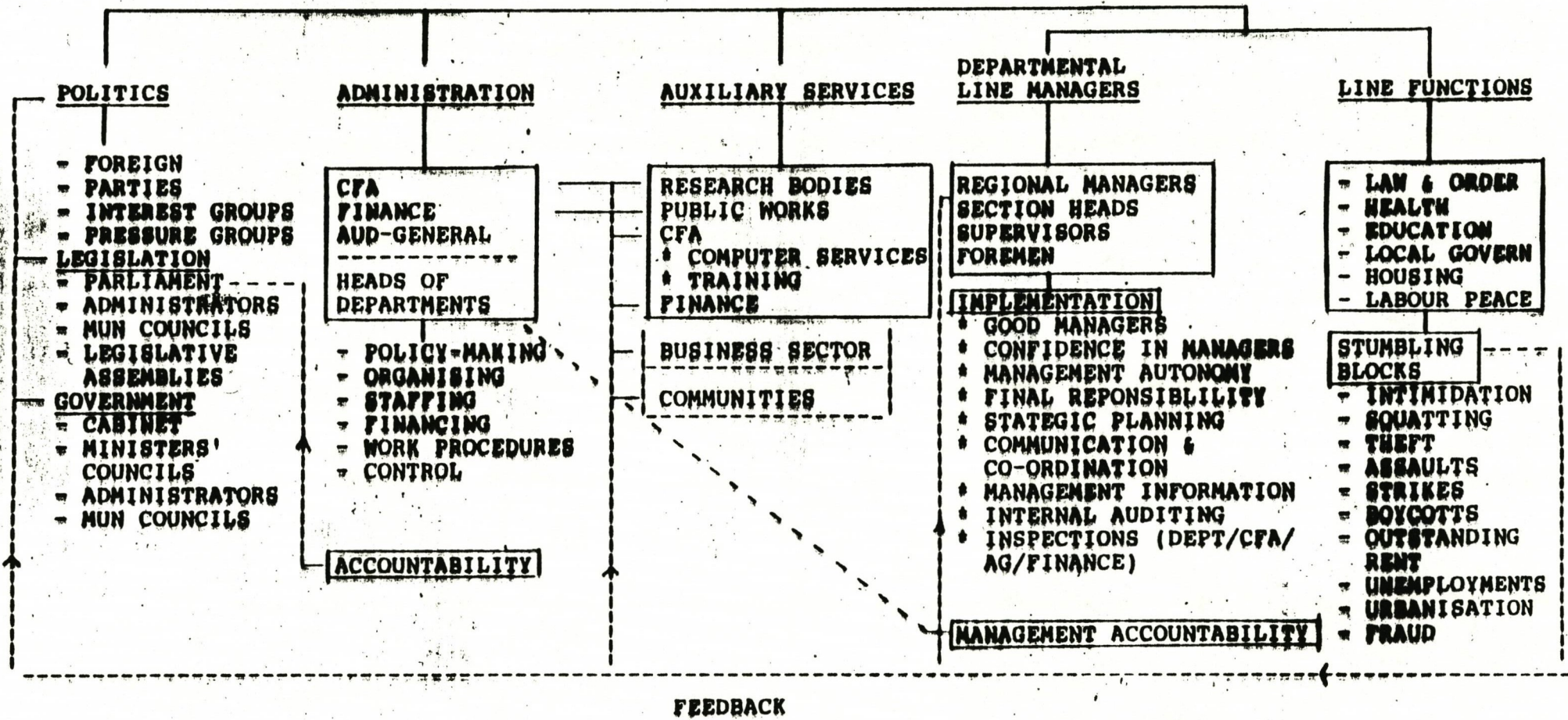


MEASURES TO ENSURE EFFICIENT MANAGEMENT AND EFFECTIVE UTILIZATION OF RESOURCES IN THE PUBLIC SERVICE

1. Role of individual departments

"A head of department is responsible for the efficient management and administration of his department including the effective utilization of staff, the maintenance of discipline and the proper use and care of State property ..." [Section 6(2) (b) of the Public Service Act, 1984].

POLITICAL, LEGISLATIVE, GOVERNMENTAL AND ADMINISTRATIVE ROLE-PLAYERS AND FUNCTIONS



FEEDBACK

SOUTH AFRICA : PUBLIC SECTOR EMPLOYMENT, SEPTEMBER 1991

Sector	1991	Percentage of econ active population
Central Govt & Prov Adm	764 132	5,7
Self-Governing Territories	188 610	1,4
Independent National States ¹⁾	181 292	1,4
Parastatal Institutions	25 344	0,2
* Scientific Councils	8 215	-
* Other	17 129	-
Universities & Technikons	44 299	0,3
	1 203 677	9,0
Local Authorities	228 931	1,7
Govt Trade Establishments	260 058	1,9
* Transnet	162 442	1,2
* Posts & Telecom	97 616	0,7
Agr Marketing Boards	2 843	(0,02)
Public Corporations	123 792	0,9
	1 819 301	13,5
Total : Public Sector		
Total : Econ active population June 1990 ²⁾	13 420 000	
	39 510 000	
Total : Population June 1990 ²⁾		

TABLE 1 - RSA PUBLIC SERVICE : PERSONS EMPLOYED, SEPTEMBER 1991

Department	Number	Increase/ Decrease 1989-1991	% of total personnel corps 1991
S A Police	99 302	26 929	13,00
Defence	75 648	3 835	9,90
Correctional Services	22 830	180	2,99
SUB-TOTAL - SERVICES	197 780	30 944	25,88
Admin : House of Delegates	16 611	588	2,17
Admin : House of Representatives	61 115	1 055	8,00
Admin : House of Assembly	119 423	2 744	15,63
SUB-TOTAL - OWN AFFAIRS	197 149	4 387	25,80
Cape Prov Administration	63 493	- 3 481	8,31
Natal Prov Administration	35 906	- 3 058	4,70
Prov Admin of the OFS	22 205	550	2,91
Transvaal Prov Administration	90 247	- 354	11,81
SUB-TOTAL - PROV ADMIN	211 851	- 6 343	27,72
Education and Training	76 406	7 555	10,00
Development Aid	5 290	1 912	0,69
SUB-TOTAL - EDUC & T & DEVEL AID	81 696	9 467	10,69

OTHERS

Agriculture	2 742	- 111	0,36
Environment Affairs	1 080	- 8 808	0,14
Finance	10 394	1 065	1,36
Foreign Affairs	1 475	23	0,19
Home Affairs	5 540	- 1 341	0,73
Justice	8 478	423	1,11
Local Govern & Nat Housing	342	- 343	0,04
Manpower	4 329	203	0,57
Mineral and Energy Affairs	890	- 78	0,12
National Education	509	- 88	0,07
Nat Health & Population Development	2 928	- 39	0,38
Office of the Auditor-General	943	134	0,12
Office of the Com for Admin	1 192	103	0,16
Public Works & Land Affairs	12 035	- 793	1,57
State President's Office	133	2	0,02
Trade and Industry	885	- 83	0,12
Transport	2 734	97	0,36
Water Affairs	18 126	4 255	2,37
Central Econ Advisory Service	29	29	0,004
Constitutional Devel Service	103	103	0,01
Office for Pub Enter & Privatisation	13	13	0,002
Regional & Land Affairs	198	198	0,03
S A Communication Servirvice	558	19	0,07
SUB-TOTAL - OTHERS	75 656	- 5 017	9,90
GRAND TOTAL	764 132	33 438	100,00

TABLE 5 - PUBLIC SERVICE PERSONNEL CORPS (MALE AND FEMALE), APRIL 1991

GROUP	Number			Percentage		
	Male	Female	Total	Male	Female	Total
1. Whites	154 770	154 387	309 157	50,06	49,94	40,73
2. Coloureds	59 748	60 771	120 519	49,58	50,42	15,88
3. Asians	16 364	15 363	31 727	51,58	48,42	4,18
4. Blacks	180 820	116 796	297 616	60,76	39,24	39,21
TOTAL	411 702	347 317	759 019	54,24	45,76	100

Source: Commission for Administration