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# **PETITION TO PARLIAMENT:**

# **PENSION RESTITUTION**

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## PETITION TO PARLIAMENT

### 1. Introduction

- 1.1. The Civil Servants Pension Redress Movement (CSPRM), is a community-based, non-profit (NPO) organisation with approximately 35 000 members in all nine provinces throughout South Africa and Namibia, which membership includes retired and former civil servants and GEPF members. (Before independence of Namibia in 1990 and until 1994, Walvis Bay formed part of the Cape Province in South Africa, and was handed over to Namibia in 1994);
- 1.2. The main objective of the CSPRM is, *inter alia*, to engage with Parliament, the GEPF, Government and other institutions, to assist current, retired and former government employees who had been unfairly discriminated against and who had been adversely affected by previous discriminatory pension laws and practices in the public service, to qualify for payment of pension redress benefits.

### 2. Background

#### 2.1. Discrimination through Apartheid-era Legislation

- 2.1.1. During the Apartheid era, the Apartheid government had discriminated widely against Black, Coloured and Indian teachers and government employees, since 1961;
- 2.1.2. **Proof** of this discrimination can be traced to, *inter alia*, the *Coloured Persons Education Act, 1963, Act 47 of 1963* (see **Annexure A**). Section 15 of this Act states *inter alia*:
- S. 15 (1): " Any person (other than an officer) occupying on a whole-time basis a post included in the establishment of a State school, ... may be **discharged** by the Minister- ..."
- "15 (1) (g): in the case of a female, if she marries";
- 2.1.3. This Section 15 (1) (g) in the above-mentioned act, has led to a myriad of widespread **unfair discrimination** to especially Black, Coloured and Indian female teachers and other government employees.

### 3. Western Cape Education Department (WCED) Circular on Pension Redress

- 3.1. A Circular: **"Internal Human Capital Administration Minute: 0002/2010"**, par.3, was published by the Western Cape Education Department (WCED), dated 16<sup>th</sup> July 2010 (See **Annexure B**), in which this department has urged its "eligible employees" to apply for pension redress pay-outs. The aim with this redress program was to provide restitution to those former teachers and



government officials who had been unfairly discriminated against by the Apartheid government's unfair discriminatory laws and practices".

The introductory paragraphs of this circular reads as follows:-

**“REDRESS FOR PREVIOUS DISCRIMINATORY PENSION PRACTICES IN THE PUBLIC SERVICE”**

“The purpose of this minute is to inform employees and former employees of the state that the Public Service Co-ordinating Bargaining Council (PSCBC) has embarked on a process of providing redress to current and former government employees affected by previous discriminatory pension practices in the public service;

In terms of Resolution 7 of 1998 (see **Annexure C**) and Resolution 12 of 2002 (see **Annexure D**) of the PSCBC, it has been decided to recognise, as pensionable service, the service of all public service employees who were in service on 2 September 1998. The **main qualifying criterion** for eligibility for redress under this process is that an employee or former employee **must have been in the employ of the state on 2 September 1998**. The closing date for submission of applications is 31 August 2010”.

#### **4. Categories of Eligible Employees for Redress**

The following **categories of employees** discriminated against on the basis of race, gender or status of employment, are eligible for redress for previous discriminatory pension practices, according to the WCED Circular:

- 4.1. “Female teachers and other female employees in the public service who lost pensionable service owing to a change in marital status and who were admitted to the Temporary Employees Pension Fund (TEPF) on re-employment”;

A female teacher had to **resign** her post, or was **discharged**, when she got married. She had to re-apply for a post and on re-appointment, her status would change from “permanent” to “**temporary indefinite**”;

During this “temporary indefinite” period, female teachers or other government employees could not contribute towards a state pension fund for a period of five years, as they were regarded as temporary employees and were admitted to the Temporary Employees Pension Fund;

- 4.2. “Female teachers and other female employees in the public service who had to **resign** owing to **accouchement** (maternity) and who, upon return, were admitted to the Temporary Employees Pension Fund (TEPF)”.

When a female teacher became **pregnant**, she had to resign, **vacate** her post and re-apply for re-appointment after serving a period of at least one year. While on accouchement, she would receive no salary and could therefore not contribute towards a state pension fund until she was re-appointed in a post;





These re-appointed teachers then had to wait for five years before they would be re-admitted to the State pension fund again, as they had been admitted to the Employees Temporary Pension Fund;

- 4.3. "Employees (male and female), admitted to temporary pension funds owing to their medical or physical status".

When employees were classified as "overweight", they could not be appointed as permanent and could therefore also not contribute towards a state pension fund;

These seemingly "overweight" employees or employees with a medical or physical condition, could also not be promoted to a senior post, even though they may have had above-average capabilities or skills;

- 4.4. "Former general assistants or casual workers whose waiting periods for a pension were not recognised under Phase 1 of the redress process";
- 4.5. "Ciskei strikers whose waiting periods for a pension were not recognised under the phase to address the strike period of 1991 – 1993";
- 4.6. "All other persons who had to complete a qualifying or waiting period for a pension before admission to a pension fund".

This "qualifying or waiting period" referred to above, was five (5) years;

- 4.7. "All students who were denied membership of a government pension fund based on their status of employment, i.e. fixed-term contract";
- 4.8. "RSA citizens employed in former TBVC states";
- 4.9. "*Kitskonstabels*, in respect of the period served as temporary policemen before permanent appointment";
- 4.10. "All former municipal police employees who were incorporated in the South African Police Service during 1989 and who still belong to municipal pension funds which have been administered by the Government Employees Pension Fund (GEPF) since 1 June 2003";
- 4.11. "Strikers (All qualifying employees dismissed for participating in strikes and who were later re-instated or re-employed with or without an agreement)";
- 4.12. **Other factors and categories of employees that need to be taken into consideration for Redress and who have been excluded**

- 4.12.1. Many South African former civil service employees, who are members of the GEPF, and who qualify for redress for previous discriminatory pension laws and practices in the public service and now living in Namibia, should be included in the pension redress programme,



as Walvis Bay in Namibia was part of The Cape Province until it was handed over to Namibia in 1994;

- 4.12.2. Female teachers received lesser salaries than their male counterparts, which affected their pension pay-outs negatively; and
- 4.12.3. Black, Coloured and Indian female and male teachers and government employees received lower salaries than their White counterparts;
- 4.12.4. White teachers working in so-called dangerous areas, received "**danger pay**", while Black, Coloured and Indian teachers, who worked at the same school and the same area, did not receive such "danger pay";
- 4.12.5. Many of our Coloured male Prison Service, now Correctional Service, members, allege that, when they did prison service at Robben Island, their White counterparts received higher salaries and higher allowances than the Coloured officers.
- 4.12.6. Our former Coloured, Black and Indian Prison Service, now Correctional Service, Defence Force, Navy, Police Service, Nursing staff members, teachers, Environmental Affairs (Nature Reserve), Forestry, and many other Coloured, Black and Indian government employees in other government departments, received lesser salaries than their White counterparts due to these unfair discriminatory laws and practices.

## 5. The Adverse Effect of these Discriminatory Laws and Practices

- 5.1. The adverse effect of these discriminatory laws and practices on especially the female teachers and other female government employees, is that, when they retire one day, they would experience that the GEPF made a short-payment in the calculation of their pension pay-out of between five to ten years, in some cases more, which is the period when their status had been changed from "permanent" to "temporary indefinite" and admitted to the Temporary Employees Pension Fund;
- 5.2. This short-payment on their pension-pay-out had caused these retirees to suffer huge financial losses and they still suffer financial hardships till this day;
- 5.3. Apart from the fact that these government employees were paid less on their cash gratuity when they retired, they also suffered, and are still suffering, huge losses in their monthly pension;
- 5.4. Even those former government employees who had received "pension redress" from the PSCBC and GEPF in 2019, were still short-cashed by these so-called pension redress, because they **were not compensated for the loss on their monthly pension pay-out.**



## 6. Resolutions 7 of 1998 and 12 of 2002 of the PSCBC

- 6.1. In order to address the adverse effects of these discriminatory laws and practices of the past, especially with regard to the inadequate, discriminatory pension pay-outs of civil servants, the Public Service Co-ordinating Bargaining Council (PSCBC), initiated a programme of pension redress by means of Resolution 7 of 1998 (clause 7) and Resolution 12 of 2002 (clauses 4 – 8);
- 6.2. In submitting a Resolution 2 of 2018 (see **Annexure F**), which is the closing out of the pension redress programme, Mr Frikkie de Bruin, General Secretary of the PSCBC, outlined the objectives of these two resolutions (7/1998 and 12/2002) as follows:

“the agreement (Resolutions 7 of 1998 and 12 of 2002), seeks to provide compensation to government employees who have suffered various forms of discrimination by the government pension fund under apartheid. This discrimination, among others, includes the following:

- Female teachers and other female employees in the public service who had to resign to give birth and upon return were admitted to the Temporary Employees Pension Fund (TEPF);
- RSA citizens employed in former Transkei, Bophuthatswana, Venda and Ciskei (the so-called TBVC States); and
- Employees admitted to temporary pension funds due to their medical/physical status”.

(All “Categories” mentioned in my paragraph 4 above, should be included here);

- 6.3. “Qualifying applicants had to be in service on the date of signing PSCBC Resolution 7 of 1998, being **02 September 1998**”; and
- 6.4. The closing date for the applications for pension redress was 31 March 2012, which date was later extended to the 31<sup>st</sup> July 2012 as per Resolution 3 of 2012 (see **Annexure E**).

## 7. Analysis of Resolution 7 of 1998 and 12 of 2002

- 7.1. Clause 7.1 of Resolution 7 of 1998 states, *inter alia*, that:-

“The parties agree that the GEPF shall increase the pensionable years of service or implement other measures for employees disadvantaged by past racial or gender discrimination related to pension”;

- 7.2. The objective of Clause 4.1 of Resolution 12 of 2002 is, *inter alia*:-

- 7.2.1. “to give effect to the provisions of Clause 7 of Resolution 7 of 1998”;
- 7.2.2. to instruct the “processing of payment of eligible employees within a period of 18 months”; and



**7.2.3.** to add additional categories of employees eligible for pension redress (clauses 4.2 – 4.8).

### **7.3. The Funding Provision**

7.3.1. Clause 7.2 of Resolution 7 of 1998 states:

“To fund the improvements under paragraph 7.1, the GEPF will reduce the funding level by the lesser of:-

Clause 7.2.1: 1 per cent, or;

Clause 7.2.2: the amount needed to increase to actual service the pensionable service of former **general assistants** who:

(a) are now permanent employees of the employer;

(b) had a stable and continuous employment relationship in the public service for at least a year immediately before they became permanent employees; and

(c) due to past measures that discriminated on the basis of race, were employed as casual employees and therefore did not belong to a government pension fund”;

7.3.2. The **funding principle** stated in Clause 7.2 (of Resolution 7/1998), is that the funding of the pension redress programme sets a clear **limit** by which the GEPF can fund this programme, which is equal to either 1% or “the amount needed to increase to actual service the pensionable service of **former general assistants**” – **only**;

7.3.3. But, judging by the categories of eligible members for pension redress indicated in clauses 4, 5, 6, 7 and 8 of Resolution 12 of 2002, which is also outlined in the circular: “Internal Human Capital Administration Minute: 0002/2010, issued by the Western Cape Education Department (WCED) on the 16<sup>th</sup> July 2010 (also indicated in my paragraph 4 - 4.11 above), the **funding required by far exceeds the funding provision** as stated in clause 7.2 of Resolution 7 of 1998;

### **7.4. Implications of Inadequate Provision of Funding**

7.4.1. The implication hereof is that the eligible employees had been **mislead** by the PSCBC and the Western Cape Education Department, namely that the GEPF would pay out pension redress moneys to them, **ignoring** the **funding limitation** imposed on the GEPF by clause 7.2 of Resolution 7 of 1998;





## 7.5. Just Administrative Action

7.5.1. This **misrepresentation** is a violation of Section 33 (1): “*Just Administrative Action*”, in the Bill of Rights, *Constitution of South Africa, 1996*, Act 108 of 1996, which stipulates, *inter alia*:-

### “Just Administrative Action”

S.33 (1): *Everyone has the right to administrative action that is lawful, reasonable and procedurally fair”;*

7.5.2. The consequence of this **administrative error** and **oversight** caused by the PSCBC, GEPF and the state department(s) giving effect to these PSCBC resolutions, are that:

7.5.2.1. By their own admission, the General Secretary of the PSCBC, Mr Frikkie de Bruin, in a live broadcast on RSG radio on the 25<sup>th</sup> July 2019 and also on the TV programme, “Klop”, on the 17<sup>th</sup> July 2019, declared that the **pension redress programme had run out of funding**;

7.5.2.2. Many GEPF members who were eligible for pension redress, have consequently not received their money and some members were requested to pay back the money paid out to them;

7.5.2.3. This “misrepresentation” to eligible former government employees by the PSCBC, is a violation of Section 33 (1) of the Bill of Rights of the *Constitution of South Africa* and can therefore be deemed as **unconstitutional**.

## 8. Exclusion of Majority of Previously Disadvantaged Former Civil Servants

8.1. The issue that is of immense importance and of great concern to the CSPRM, is that:-

8.1.1. Clause 2 of Resolution 7 of 1998, states that:

“This agreement applies to the employer and to all employees:  
2.1 **who are employed** by the **employer**, and  
2.2 who fall within the registered scope of the PSCBC”;

8.1.2. In the same way, Clause 1 of Resolution 12 of 2002, also states that this Resolution only applies to the “employees of the employer who are members of the trade union parties to this agreement”; and

8.1.3. “employees of the employer who are not members of any trade union parties to this agreement, but who fall within the registered scope of Council”.



8.1.4. The implication of the above-mentioned is that the majority of civil servants who had been discriminated against since 1961, and who should qualify for pension redress, are also “former employees of the state”, with the difference that they are not active employees anymore. As such, these former employees have now been **excluded** from the pension redress programme by the PSCBC, government and the GEPF;

8.1.5. This **exclusion is unconstitutional** in terms of Section 9 (1) - (4) of the Bill of Rights, *Constitution of South Africa*, 1996 as it unfairly discriminates against the majority of previously disadvantaged government employees, because they had not been in the employment of the State on the 2<sup>nd</sup> September 1998.

## 8.2. Implications of the Exclusion of “employees” through Resolutions 7 of 1998 and 12 of 2002:

8.2.1. The implications of Clause 7 of Resolution 7 of 1998 and Clause 4.1 of Resolution 12 of 2002 (as it pertains to Clause 7 of Resolution 7 of 1998 only), are that these resolutions are applicable only to government employees who **were in the employment of the “employer” on the 2<sup>nd</sup> September 1998**, which is the date on which this Resolution was signed in the PSCBC;

8.2.2. This **exclusion** of thousands of former civil service members from the pension redress programme of the PSCBC, Government and the GEPF, and the **exclusive conditions** imposed by the pension redress programme, is a **violation** of Section 9 (1) – 9 (4) of the Bill of Rights, as well as Sections 2 and 3 of the *Constitution of South Africa*, 1996, Act 108 of 1996, because it unfairly **discriminates** against these former civil servants;

8.2.3. Section 9 (1) – (4), read together with the Preamble to the *Constitution of South Africa*, 1996 and specifically also Section 3 (2), “Founding Principles”, of the *Constitution*, 1996, stipulates, *inter alia*:

“3 (2): All Citizens are –

- (a) Equally entitled to the rights, privileges and benefits of citizenship;  
and
- (b) Equally subject to the duties and responsibilities of citizenship ...”;

8.2.4. In the same manner, the Preamble to the *Constitution*, 1996, stipulates that:

“We, the people of South Africa ...”, should “... Respect those who have worked to build and develop our country ...”;

8.2.5. Our *Constitution* guarantees us equal citizenship. The PSCBC, GEPF and the State can therefore not give pension redress to some of the



citizens, and excludes the rest of the former government employees who had also suffered the same unfair discrimination;

- 8.2.6. In concluding this argument of the **exclusion** of these retired and former government employees, and the **exclusive conditions** imposed by the pension redress programme of the PSCBC, GEPF and Government, I would like to refer to Section 2, the “Founding Provisions” of the *Constitution, 1996*, which stipulates:  
 “This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled”.

### 8.3. The closing date for applications for pension redress

- 8.3.1. The other substantive issue of concern to the CSPRM and retired and former civil servants who had been discriminated against, is the **closing date** for the **applications for pension redress** of 31 March 2012, which date had been extended to the **31<sup>st</sup> July 2012** as per Resolution 3 of 2012 (**Annexure E**).
- 8.3.2. These former civil servants, who had been excluded from pension redress, **did not receive any notice to apply** for redress, as the notices to apply, in the case of the WCED Circular, were only sent to: “Deputy Directors General, Chief Directors, Directors, CEOs of FET Colleges, Heads of Educational Institutions and Recognised Staff Associations and Trade Unions”, as stated in the Circular 7/2/2, 20100301-0012 of the WCED, dated the 16<sup>th</sup> July 2010;
- 8.3.3. In instances where former civil servants **have applied**, following the official channels of communication, they received notices – and some of them did not even receive any notice – **that they do not qualify, as they were not in the employment of the “employer” (State) on the 2<sup>nd</sup> September 1998;**

## 9. Shortcomings of the PSCBC Redress Programme

- 9.1. In implementing a redress programme by the PSCBC, GEPF and Government, the PSCBC took a quick, shortcut route to address restitution to this unfair discrimination, practiced for decades by the Apartheid Government;
- 9.2. The consequence of this half-baked, quick-fix “pension redress” programme designed by the PSCBC, is that it is inadequate, not well thought through, and did not adequately address the full spectrum of pension restitution for pensions which had been lost due to the discriminatory laws and practices of the Apartheid Government since 1961;
- 9.3. By design, this programme is inadequate, as it is **not inclusive, it did not follow a transparent process**, and was not widely consulted with all the stakeholders;



9.4. These stakeholders include, *inter alia*, all the retired and former government employees who had been unfairly discriminated against since 1961;

9.5. There was also **no** representative on the Board of Trustees who represented the retired and former government employees **who had suffered unfair discrimination** since 1961;

#### 9.6. Lack of Proper Consultation

9.6.1. This process of pension redress by the PSCBC, was **flawed** right from the outset as there was also **no proper consultation** with those who had in effect been adversely affected by unfair discrimination;

9.6.2. Only **one pensioner** served on the Board of Trustees of the GEPF when this redress programme was approved for payment by the GEPF, and with all due respects, this one pensioner on the Board of Trustees, did not promote the interests of the retired and former government employees, the pensioners, who had been unfairly discriminated against;

9.6.3. This matter of pension restitution, is a complex matter and proper, wide consultations, on this complex matter of pension restitution, should take place in the same manner that was followed when consultations with the South African citizens were undertaken in preparation for the *Restitution of Land Rights Act, 1994, Act No 22 of 1994*.

#### 9.7. Monthly Pension

9.7.1. A normal pension pay-out, for those who qualify, consist of two major components, namely:

- (a) The cash gratuity; and
- (b) The monthly pension;

9.7.2. One of the major shortcomings of the existing pension redress programme of the PSCBC, GEPF and Government, is that it did not provide, and compensate, for the **loss** of the **monthly pension** component which these retired and former government employees - the few who had been paid out "redress money" - had sustained, due to unfair discriminatory laws and practices during the Apartheid era.

#### 10. Constitutional Court Ruling on Redress

10.1. It is stated in a legal article, "Constitutionally Speaking" 2015 (see **Annexure G**), that:

"the *Constitution* (1996) recognises the incontrovertible fact that all are not equal in our country. If legal rules and policies deny this reality, it will simply lead to an entrenchment of existing inequalities. As the Constitutional Court stated in the case of the *Minister of Finance v Van Heerden*":





“Our Constitution recognises that decades of systematic racial discrimination entrenched by Apartheid legal order cannot be eliminated without positive action being taken to achieve that result. We are required to do more than that. The effects of discrimination may continue indefinitely unless there is a commitment to end it”.  
(extract taken from an article: "Constitutionally Speaking"), 2015;

10.2. It is further stated in the article:

“This is why section 9(2) of the Constitution contains a so-called “affirmative action” clause, which provides for the achievement of full and equal enjoyment of all rights and freedoms and authorises legislative and other measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination. Our Constitution thus allows for and in some cases, requires, “remedial or restitutionary equality”.

“As the Constitutional Court explained in the Van Heerden case”:

“Such measures are not in themselves a deviation from, or invasive of, the right to equality by the Constitution. They are not “reverse discrimination” or “positive discrimination” ... They are integral to the reach of our equality protection. In other words, the provisions of section 9(1) and section 9(2) are complimentary; both contribute to the constitutional goal of achieving equality to ensure full and equal enjoyment of rights ....”.

(extract taken from an article: "Constitutionally Speaking", 2015).

10.3. In light of the above-mentioned, the CSPRM is pleading for this “remedial or restitutionary equality”, to achieve “equality of protection” of our members who had lost pension moneys due to them, due to unfair discriminatory laws and practices by the Apartheid Government.

#### 10.4. **International Human Rights**

10.4.1. The article, “Constitutionally Speaking”, 2015, further states:  
“Thus the lawyers and judges who staff the Committee on Human Rights, providing an authoritative interpretation of the International Convention on Civil and Political Rights (ratified by, and binding on, 167 countries) in a General Comment on the equality of Men and Women endorsed the notion that states have a duty to take positive measures to achieve equal empowerment of women.

Similarly, the judges and lawyers who staff the Committee on Economic, Social and Cultural Rights, providing an authoritative interpretation of the equality guarantee in the International Covenant on Economic, Social and Cultural Rights (ratified by, and binding on, 167 countries) endorsed the need for states to take affirmative action measures and explained the need for redress measures as follows”:



“In order to eliminate substantive discrimination, States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuates discrimination. Such measures are legitimate as long as they represent reasonable, objective and proportional means to redress *de facto* discrimination and are discontinued when substantive equality has been sustainably achieved;

11. If the measures taken by the PSCBC by means of Resolutions 7 of 1998 (clause 7) and 12 of 2002 (clauses 4 – 8), are considered in relation to the letter and spirit of Sections 9(1) – 9(4) and 33(1) of the *Bill of Rights, Constitution of South Africa*, as well as the International Conventions for Human Rights, then the provision of pension redress by the GEPF, government and PSCBC, falls short in the endeavours of the State to afford Pension Redress to the many former government employees who had been unfairly discriminated against and who had sustained huge monetary losses as a consequence of that;
12. There is still a large sector of the South African population – the former civil servants who had been unfairly discriminated against – who still suffer from the inequality and unfair discrimination of the past. The government of the day has further prolonged this inequality by not offering these affected pensioners an all-encompassing pension restitution;
13. The unfair, discriminatory actions by the PSCBC, government and GEPF, did not adequately address the inequalities of the past by this inadequate, discriminatory redress programme, which may be deemed unconstitutional.

#### **14. Position of Executive Authority of the State regarding Equity, Reconciliation, Justice and Redress**

##### **14.1. Statement released by President Ramaphosa on the National Day of Reconciliation**

- 14.1.1. According to an article published in the “Cape Argus” on 17/12/2019, with the title: “Reconciliation means Transformation”, President Ramaphosa released a media statement on the occasion of the National Day of Reconciliation (see **Annexure H**), in which he echoed the sentiments expressed in the SA Reconciliation Barometer (SARB) Survey 2019, published by the Institute of Justice and Reconciliation, when he said:

“The South Africa of today still suffers from the effects of centuries of discrimination, dispossession and unequal development ... We must address the unfinished business of our democratic transition. We must close the festering wound of Inequality that exists between our people...”;

- 14.1.2. In extracts from President Ramaphosa’s address on the occasion of the National Day of Reconciliation on the 16<sup>th</sup> December 2019, he states *inter alia*:



14.1.3. Referring to the reconciliation of our nation, he said:

“This day ... is now an occasion to celebrate the pact we made to start on a clean slate – to strive towards realising a society founded on reconciliation, non-racialism, non-sexism, equality, peace, justice and democracy”;

14.1.4. Referring to the Freedom Charter, he said that:

“... our people have been robbed of their birthright to land, liberty and peace by a form of government founded on injustice and inequality; that our country will never be prosperous or free until all our people live in brotherhood, enjoying equal rights and opportunities ...”;

“This vision of a nation reconciled is embedded in our democratic Constitution”;

“As we gathered to adopt a new fundamental law for our free land, we said – in the Preamble to the Constitution – that **reconciliation is about recognising the injustices of our past, and working together to correct them**”;

14.2. President Ramaphosa further said that,

“**Reconciliation** is therefore also about healing the wounds of the past by restoring the land and the wealth of all the people, and realising the rights of all South Africans to dignity, security and comfort. We know that unless we move with speed to address the unresolved business of nation-building, true reconciliation and unity will be difficult to achieve”;

14.3. Referring to the **Preamble of the Constitution**, President Ramaphosa said, *inter alia*, that we should:

“... Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights ...”;

14.4. President Ramaphosa ended his address by pronouncing:

“**Let us give true effect** and meaning to the profound words contained in the **Preamble to our Constitution**, in which we say:

We, the people of South Africa,  
Recognise the injustices of our past;  
Honour those who suffered for justice and freedom in our land;  
**Respect those who have worked to build and develop our country**;  
and  
Believe that South Africa belongs to all who live in it, united in our diversity”;



- 14.5. Quoting from the Preamble to the Constitution, 1996, President Ramaphosa also said:

“We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to –

Heal the divisions of the past and establish a society based on democratic values, social justices and fundamental human rights ...”.

## 15. Founding Principles of the Constitution, 1996

The Founding Principles of the *Constitution*, 1996, states *inter alia*:

Section 1 (a): “ The Republic of South Africa is one, sovereign, democratic state founded on the following values: ... Human dignity, the achievement of equality and the advancement of human rights and freedoms”;

Section 2: “The Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled; and

Section 3 (2): “ All citizens are –

- (a) equally entitled to the rights, privileges and benefits of citizenship...;
- (b) equally subject to the duties and responsibilities of citizenship ...;and
- (c) National legislation must provide for the acquisition, loss and restoration of citizenship”.

## 16. Plea of CSPRM with reference to the Founding Provisions of the *Constitution*, 1996

- 16.1. In light of the above-mentioned, it is the plight of the CSPRM that the State makes adequate, inclusive and proper provision for pension restitution to all those retired and former government employees who had been unfairly discriminated against, in the letter and spirit of the provisions of the Constitution, reconciliation and equality.

## 17. Comparison with Restitution of Land Rights

- 17.1. Pension restitution can in many ways be juxtaposed and compared with the restitution of land rights;

- 17.2. The Preamble to *The Restitution of Land Rights Act, 1994*, Act 22 of 1994, gives the constitutional rationale and legal framework for the restitution of land rights when it states, *inter alia*:-

“To provide for the restitution of rights in land to persons or communities dispossessed of such rights ... as a result of past racially discriminatory laws or practices ...” and





“Whereas the *Constitution of the Republic of South Africa, 1996* (Act No. 108 of 1996), provides for restitution of property or equitable redress to a person or community dispossessed ... as a result of past racially discriminatory laws or practices.”

AND Whereas legislative measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken to promote the achievement of equality: ...”

- 17.3. With reference to the above-mentioned preamble, the CSPRM requests Parliament and Government **to accept** an all-inclusive pension restitution to the thousands of retired and former government employees who had been “dispossessed” and had lost valuable pension pay-outs as a result of past racially discriminatory laws and practices, in the same manner and on similar grounds, that land restitution was approved by government;
- 17.4. An all-inclusive pension restitution is the only mechanism, as recognised and guaranteed by the *Constitution, 1996*, to promote and achieve equality, reconciliation and justice for the thousands of retired and former government employees who had been unfairly discriminated against due to past discriminatory laws and practices.

## 18. Example of Successful Petition for Pension Redress

- 18.1. Attached, as **Annexure I**, is an example of a successful Pension Redress application which was approved and Gazetted on 3 December 2008 for payment by the GEPP. It sets a clear-cut precedent of the power of Parliament to instruct a state institution such as the GEPP to initiate a Pension Redress process.

## 19. Petitioning Parliament

- 19.1. In order to remedy this practice of discriminatory, procedurally unfair, unjust and unconstitutional practice of a discriminatory pension redress programme by means of Clause 7 of Resolution 7 of 1998, Clause 4.1 of Resolution 12 of 2002 (insofar as it refers to Clause 7 of Resolution 7 of 1998), Resolution 3 of 2012 and Resolution 2 of 2018, by the PSCBC, Parliament is hereby **Petitioned**, in terms of Standing Rules of the National Assembly, nrs 309 - 315, to:-
- 19.1.1. Declare Clause 7 of Resolution 7 of 1998 and Clause 4.1 of Resolution 12 of 2002, (with regard to its reference to Clause 7.2.2 of Resolution 7 of 1998 only), as **unconstitutional**, as they are in **violation** of Section 9 (1) – (4) of the *Bill of Rights, Constitution of South Africa, 1996*, Act 108 of 1996;
- 19.1.2. Declare that the **limitations** indicated in clause 2: “Applications”, in Resolution 7 of 1998, and clauses 1.2 and 1.3 of Resolution 12 of 2002, are in conflict with Section 9 (1) – (4) of the Constitution of South



Africa, 1996, and therefore **unconstitutional**, because it makes provision for pension redress **only** to current members of the PSCBC who have been **in service of the “employer” (the State), on 2 September 1998,** and **excludes the majority of former disadvantaged employees of the State** who have retired, have deceased and/or **who have not been in the employment of the State on 2 September 1998;**

19.1.3. Declare that the funding of pension redress by the PSCBC and GEPF, in terms of clause 7.2.2 of Resolution 7 of 1998 as **unconstitutional**, in terms of section 9 (1) - (4) of the Constitution of South Africa, 1996, because **state funding is utilised to fund the pension redress program of the PSCBC, Government and GEPF,** which is based **on a discriminatory practice and process** that **excludes** the majority of former civil servants who had also been adversely affected by previous discriminatory pension laws and practices in the public service;

19.1.4. Declare PSCBC Resolutions 3 of 2012 and 2 of 2018 as **unconstitutional**, as it makes provision for the **closing of applications** (31 July 2012) and **the close-out of the pension redress period** for civil servants who had been in service on the 2<sup>nd</sup> September 1998, but **excludes** former civil servants who had also been disadvantaged by previous discriminatory pension laws and practices in the public service, **from submitting applications for pension redress,** as they were not in the employment of the “employer” (State) on the 2<sup>nd</sup> September 1998;

19.1.5. Declare that the **funding provision**, as set out in Clause 7.2 of Resolution 7 of 1998, with reference to Clauses 4 to 8 of Resolution 12 of 2002, is **in violation of Section 33 (1), “Just Administration Action”**, as there is a misrepresentation, giving false hopes to many eligible employees, that they will receive pension redress moneys, because the process that was followed are procedurally flawed; and

19.1.6. Consider **drafting adequate legislation**, in terms of Section 9 (2) of the Constitution, 1996, similar to that of the *Restitution of Land Rights Act*, (No. 22 of 1994), to deal with the whole spectrum of pension restitution to retired, current and former government employees who were adversely affected by previous unfair discriminatory pension laws and practices in the public service.

19.2. Parliament is petitioned further to:-

19.2.1. **Establish an appropriate vehicle or government department** to deal with the whole spectrum of pension restitution, providing redress to current and former government employees affected by previous unfair discriminatory pension laws and practices in the public service during the Apartheid era;



## 19.2.2. **Amendmend of the Limitations**

19.2.2.1. Amend the limitations set by referring to “all employees ... who are employed by the employer ...” in Clauses 2 of Resolution 7 of 1998, “employees of the employer” in Clauses 1.2 and 1.3 of Resolution 12 of 2002, and the definition of “employee” in Clause 10.3 of Resolution 7 of 1998, to: **“all employees and former employees of the state ...”**.

These amendments will have the effect that it will include all employees, and former employees of the state to benefit from the pension redress programme, since the unfair discrimination started in 1961;

19.2.3. **Amend the limitation** set by Clause 9 of Resolution 7 of 1998, “Date of Implementation”, namely the 2<sup>nd</sup> September 1998, so as to include **“all employees in the employment of the state before and on the 2<sup>nd</sup> September 1998:**

19.2.3.1. The discriminatory “qualifying criteria for eligibility for redress”, as clearly stated in the WCED Circular 0002/2010, par. 2, is that to qualify for redress, employees had to be in service of the employer on the 2<sup>nd</sup> September 1998, which is the date when Resolution 7 of 1998 was signed. The implication is that if you were not in the employment of the state by this date, you would not have qualified for pension redress;

19.2.4. It is therefore requested that this date be amended to read: “... employees of the state had to be in the service of the employer **on or before the 2<sup>nd</sup> September 1998”**.”

This amendment would make provision for the inclusion of all government employees who had been discriminated against since 1961, to qualify for pension restitution.

19.2.5. Request that **adequate funding** be provided to cover the whole spectrum of pension restitution to all those former government employees who had been discriminated against during the Apartheid era;

19.2.6. Request the GEPF and GPAA to **process**, the approximately 35 000 applications for redress of our members which have been couriered from throughout South Africa and Namibia, and submitted by the Civil Servants Pension Redress Movement (CSPRM) since May 2019 to the GEPF and GPAA for processing, and that **adequate funding** be provided for this administrative process;

19.2.7. Request the GEPF, GPAA and PSCBC to **refrain** from returning the applications referred to them by the CSPRM or individuals for processing, as indicated in par. 18.2.6 above, as they contain valuable



personal information. The GEPF and GPAA are in possession of all relevant information of all the former civil servants, who are also GEPF members, to equip themselves with the necessary information required to process these applications for purposes of pension redress;

- 19.2.8. Request that the whole **process of application for pension redress** be **re-opened**, so as **to allow** previously disadvantaged current and former employees who have been adversely affected by previous unfair discriminatory pension laws and practices in the public service and who had been excluded, the opportunity **to apply** for pension redress – this must be an all-inclusive process;

### 19.3. **Adjustment of the Monthly Pension**

Parliament is requested further to make provision for the pension restitution programme to **include an adjustment of the monthly pension** of these adversely affected retired and former government employees, and not only payment of a once-off cash amount that was provided for by the PSCBC redress programme, as indicated in paragraph 9.7 above;

### 19.4. **Amendment of Rule 4 of the Rules of the GEPF**

- 19.4.1. Request the Minister for Public Service and Administration to make an amendment to Rule 4.1.3 (a) of the “Rules of the Government Employees Pension Fund”, to **increase** the number of pensioners serving on the Board of Trustees:

19.4.1.1. Pensioners, who are the members of the GEPF, are under-represented on the Board of Trustees and, judging by the nature of the unconstitutional and ill-informed decisions made by the PSCBC representatives on the GEPF Board, as well as the one pensioner representative on the Board of Trustees, in terms of the pension redress issue of the pensioners who had been unfairly discriminated against, it is evident that the decisions made by the Board of Trustees of the GEPF, does not adequately take the specific and varied needs of the pensioners and members of the GEPF, into consideration;

- 19.4.2. The CSPRM’s request is therefore that the pensioner-representation on the GEPF Board of Trustees should be based on the basis of **proportional representation**;

- 19.4.3. Request the Minister to provide for a National Pensioners’ Council to elect its own representatives for the GEPF Board of Trustees. This will ensure better and more informed decisions for the pensioners, by the pensioners, on the Board of Trustees;





## 19.5. Adequate and Legitimate Consultations

- 19.5.1. Request the Minister to follow a legitimate process of adequate consultation of the retired and former government employees who had been adversely affected, so as to ensure a more inclusive and equitable process of pension restitution;

## 19.6. Justice delayed is Justice Denied

- 19.6.1. With reference to the legal maxim, as stated in the words of Martin Luther King Jr: "Justice delayed too long is Justice denied", it is requested that the Pension Restitution process be expedited and resolved speedily, as the recipient civil servants who had been unfairly discriminated against, are now in their twilight years.

## 19.7. Forensic Audit

The CSPRM further request Parliament to use its oversight functions to:

- 19.7.1. Do an in-depth Compliance Audit, Construction Audit, Financial Audit, Information Systems Audit, Investigative Audit and Operational Audit on the entire Pension Redress Programme of the PSCBC and the GEPF, from its very onset, right through the process, the funding of the programme, and moneys paid to each and every individual that benefitted from the programme;
- 19.7.2. Subject the decisions, actions and interactions of the PSCBC and the GEPF Boards pertaining to the Pension Redress Programme, to the afore-mentioned applicable audits on the entire Pension Redress Programme;
- 19.7.3. Subject the decisions, actions and interactions of all individual officials of the PSCBC and the GEPF involved in the entire Pension Redress Programme, in whichever way, from form or format, to the aforementioned applicable audits on the entire Pension Redress Programme; and
- 19.7.4. Subject the very validity of the entire Pension Redress Programme of the PSCBC and the GEPF, to the relevant investigations for its legitimate, statutory and mandatory authoritativeness, relevance, aptness and administrative correctness;
- 19.7.5. Investigate the use of State funding to fund a State programme which is based on unfair discrimination, a programme which is administratively unjust and which is unconstitutional; and



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30/10/2020



# **ANNEXURE A**



No. 47, 1963.]

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.

# ACT

To provide for the control of education for Coloured persons by the Department of Coloured Affairs, to amend the Special Education Act, 1948, the Vocational Education Act, 1955, and the Republic of South Africa Constitution Act, 1961, and to provide for matters incidental thereto.

(Afrikaans text signed by the State President.)  
(Assented to 15th May, 1963.)

**BE IT ENACTED** by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

## Definitions.

1. In this Act, unless the context otherwise indicates—
  - (i) "agricultural school" means a school for the education of Coloured persons in agriculture and allied subjects; (xvi)
  - (ii) "Coloured person" means a person classified under the Population Registration Act, 1950 (Act No. 30 of 1950), as a member of the Cape Coloured, Malay, Griqua or Other Coloured Group; (xiii)
  - (iii) "commercial vocational education" means education and training consisting of a course in which more than a third of the subjects are prescribed commercial subjects or in respect of which more than eight hours per week are devoted to prescribed commercial subjects; (ix)
  - (iv) "Department" means the Department of Coloured Affairs; (viii)
  - (v) "domestic science vocational education" means education and training consisting of a course in respect of which more than eight hours per week are devoted to prescribed domestic subjects; (xii)
  - (vi) "education" means any education other than education provided by a university or a university college established by or in terms of any law, and includes vocational education and special education not so provided; (xx)
  - (vii) "Education Council for Coloured Persons" means the council established by section *thirty*; (xxi)
  - (viii) "employee" means any person who is an employee as defined in section *one* of the Public Service Act 1957 (Act No. 54 of 1957); (xxxiii)
  - (ix) "financial year" means a period of one year ending on the thirty-first day of March of any year; (vi)
  - (x) "governing body", in relation to any college, school, home or class, means the person managing such college, school, home or class; (v)
  - (xi) "handicapped child" means a Coloured person between the ages of three and twenty-three years who, in the opinion of the Secretary, is capable of deriving appreciable benefit from a suitable course of education, but deviates to such an extent from the majority of persons of his age in body, mind or behaviour that he—
    - (a) cannot derive sufficient benefit from the instruction normally provided in the ordinary course of education; or
    - (b) requires special education in order to facilitate his adaptation to the community; or
    - (c) should not attend an ordinary class in an ordinary school, because such attendance may be harmful to himself or to the other pupils in such class; (i)
  - (xii) "high school" means a school for the education of Coloured persons up to and including the tenth standard; (xi)
  - (xiii) "home" means an institution in which handicapped children exhibiting undesirable behavioural characteristics are accommodated and cared for and receive education; (xxx)
  - (xiv) "Minister" means the Minister of Coloured Affairs; (xviii)
  - (xv) "nursery school" means a school for the education



- (xvi) "officer" means an officer as defined in section *one* of the Public Service Act, 1957 (Act No. 54 of 1957); (ii)
- (xvii) "prescribed" means prescribed by regulation; (xxxii)
- (xviii) "primary school" means a school for the education of Coloured persons up to and including the sixth standard; (xv)
- (xix) "reform school" means a reform school established and maintained by the Minister under the provisions of the Children's Act, 1960 (Act No. 33 of 1960); (xxxii)
- (xx) "regulation" means a regulation made under this Act; (xxiv)
- (xxi) "school of industries" means a school of industries established and maintained by the Minister under the provisions of the Children's Act, 1960 (Act No. 33 of 1960); (xix)
- (xxii) "secondary school" means a school for the education of Coloured persons up to and including the eighth standard; (xvii)
- (xxiii) "Secretary" means the Secretary for Coloured Affairs; (xxv)
- (xxiv) "special education" means education of a specialized nature provided to suit the needs of handicapped children, and includes general cultural education, vocational guidance, vocational education and medical, dental and mental examination and treatment, as well as care in a hostel, when provided to or taking place in respect of such children; (vii)
- (xxv) "special school" means a school in which handicapped children receive special education, either on a full-time or on a part-time basis, and includes a class which is attached to an ordinary school and in which such children receive special education; (xxvi)
- (xxvi) "State-aided school" means a college, school, home or class in respect of which grants-in-aid are made in terms of section *four* or in respect of which a loan was granted in terms of that section; (xxviii)
- (xxvii) "State school" means a college, school, home or class established under section *three* or deemed in terms of that section or section *five* to have been established thereunder; (xxvii)
- (xxviii) "technical vocational education" means education and training (theoretical or practical or both theoretical and practical) consisting of a course that includes education and training in any prescribed trade but does not include education or training in woodwork, metal work or any other practical art or craft not being specific education or training for any prescribed trade, if the duration of the education and training in such subjects does not exceed eight hours per week, irrespective of the number of handicraft subjects taken; (xxix)
- (xxix) "this Act" includes any regulation; (x)
- (xxx) "training-college" means an institution for the education and training of student teachers who are Coloured persons and have passed the examination for the tenth standard or an equivalent examination; (xxii)
- (xxxi) "training-school" means an institution for the education and training of student teachers who are Coloured persons and have passed the examination for the eighth standard or an equivalent examination; (xxiii)
- (xxxii) "vocational education" means commercial vocational education, domestic science vocational education and technical vocational education; (iv)
- (xxxiii) "vocational school" means a school, or a class attached to another school, for the provision of vocational education to Coloured persons. (iii)

Control of  
education for  
Coloured  
persons.

2. As from the date of commencement of this Act education for Coloured persons shall, subject to the provisions of the said Act, be controlled by the Department in which there shall, for that purpose, be a division of Education at the head of which shall be an officer who has expert knowledge of education matters.

Establishment,  
erection and  
mainteance  
of schools  
for Coloured

3. (1) The Minister may after consultation with the Minister of Finance and out of moneys appropriated by Parliament for the purpose—





- (b) establish and maintain part-time classes for the education of Coloured persons;
- (c) establish, erect and maintain hostels, teachers' quarters, school clinics and any other accessories in connection with State schools.

(2) Any college or school for the education of Coloured persons which at the date of commencement of this Act is being maintained by a provincial administration, and any vocational school, part-time class, special school or home for Coloured persons established or deemed to have been established under the Vocational Education Act, 1955 (Act No. 70 of 1955), or, as the case may be, the Special Education Act, 1948 (Act No. 9 of 1948), and existing at the said date, and any hostel, teachers' quarters, school clinic or other accessories established or erected by a provincial administration or under any of the said laws and used in connection with any such college, school, class or home, shall be deemed to have been established or erected under the appropriate provision of sub-section (1) of this section, on the said date.

(3) The Minister may at any time close or disestablish any State school or any hostel, teachers' quarters, school clinic or other accessories used in connection with a State school.

Making of grants-in-aid and loans in respect of private colleges, schools, homes and continuation classes.

4. (1) Subject to the provisions of sub-section (2) the Minister may out of moneys appropriated by Parliament for the purpose, make grants-in-aid and loans to the governing body of any college, school, home or continuation classes for the education of Coloured persons, including any nursery school.

(2) The making of grants-in-aid and loans in terms of sub-section (1) shall be effected on such basis and subject to such conditions as the Minister after consultation with the Minister of Finance may in every particular case determine, and subject to such other conditions as may be prescribed.

Transfer of management and control of State-aided schools to the Department.

5. (1) The Minister may by notice in the *Gazette* and after consultation with the Minister of Finance and with the governing body of a State-aided school, transfer the management and control of such school to the Department with effect from a date fixed in that notice.

(2) The school to which a notice issued in terms of sub-section (1) of this section relates shall be deemed to have been established in terms of the appropriate provision of sub-section (1) of section *three* on the date fixed in that notice.

(3) As from the date so fixed the governing body in question shall no longer have any rights, powers or duties in respect of the school in question.

Registration and management of private schools.

6. (1) No person shall manage any school for the education of Coloured persons which is not a State school or a State-aided school and at which more than fourteen pupils are enrolled—

(a) unless such school is registered with the Department in the prescribed manner and complies with the prescribed requirements; and

(b) otherwise than in accordance with the prescribed conditions.

(2) Any school for the education of Coloured persons which at the commencement of this Act is registered with a provincial administration under any law, shall be deemed to have been registered with the Department under sub-section (1).

(3) Any person who contravenes the provisions of sub-section (1) shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand or to imprisonment for a period not exceeding six months.

Admission of persons to and their discharge from State schools and State-aided schools.

7. The admission of persons to State schools and State-aided schools shall take place in the prescribed circumstances and subject to the prescribed conditions, and any person so admitted to any such school may be discharged therefrom in the prescribed circumstances.

Appointment, promotion, transfer and discharge of staff at State schools, schools of industries reform

8. (1) Notwithstanding anything to the contrary contained in any other law the establishment of any State school, school of industries or reform school, or any State-aided school other than a State-aided vocational school, shall be determined by the Minister, on such basis as he may fix from time



the power to appoint any person to any post included in the establishment of any State school, school of industries or reform school, or any State-aided school other than a State-aided vocational school, and to promote, transfer or discharge any person occupying any such post, shall be vested in the Minister.

Transfer of certain persons employed by a province to the service of the Department, and regulation of conditions of service of certain persons employed at private and vocational schools, schools of industries, reform schools and special schools and homes.

9. (1) Any person other than an officer or an employee who immediately prior to the commencement of this Act is employed by a provincial administration at a college or school referred to in sub-section (2) of section *three*, shall, as from such commencement, be transferred to the service of the Department, and any such person, and any other person, not being an employee, who immediately prior to such commencement is by virtue of any appointment by or with the approval of a provincial administration employed at any college or school for the education of Coloured persons recognized and subsidized by such administration, shall be deemed to have been appointed in terms of the provisions of this Act and on the date of such commencement, to a post included in the establishment of such college or school.

(2) Any person other than an officer or an employee who immediately prior to the commencement of this Act occupies a post included in the establishment of a school of industries or a reform school or of a vocational school, class, special school or home for Coloured persons established or deemed to have been established under the Vocational Education Act, 1955 (Act No. 70 of 1955), or, as the case may be, the Special Education Act, 1948 (Act No. 9 of 1948), or occupies a post at a special school or home for Coloured persons recognized and subsidized under the last-mentioned Act, shall be deemed to have been appointed to the post in question in terms of the provisions of this Act and on the date of such commencement.

Transfer of persons employed at a State-aided school to the service of the Department, in the event of the transfer of such school.

10. Any person who immediately prior to the date on which the management and control of a State-aided school is transferred to the Department in terms of sub-section (1) of section *five*, occupies a post included in the establishment of such school, shall, as from that date, be transferred to the service of the Department and shall, subject to the provisions of this Act, be deemed to have been appointed in terms of the provisions of the said Act to such post on that date.

Conditions of service of persons employed at State schools, schools of industries, reform schools and certain State-aided schools.

11. (1) Notwithstanding anything to the contrary contained in any other law but subject to the provisions of sub-sections (2) and (3) of this section, the conditions of service, salary scales, allowances and leave privileges of persons (other than officers) employed in any post included in the establishment of a State school, school of industries or reform school, or a State-aided school other than a State-aided vocational school, shall be determined or prescribed by the Minister after consultation with the Minister of Finance and on the recommendation of the Public Service Commission.

(2) The salary, salary scale, allowances and leave privileges of any person who is, by virtue of the provisions of sub-section (1) of section *nine*, deemed to have been appointed to a post in terms of the provisions of this Act, shall remain the same, as if he had continued occupying the post occupied by him immediately prior to the commencement of this Act, unless or until the Minister determines that the provisions of sub-sections (1) and (3) of this section shall apply in respect of him.

(3) As from the date on which a person is in terms of the provisions of section *ten* transferred to the service of the Department, his salary shall be adjusted to the salary scale applicable to his post, at such notch on that scale as the Minister may determine.

(4) Subject to the provisions of this Act any continuous whole-time employment of any person referred to in section *ten* at any State-aided school immediately prior to the date referred to in that section, shall, for leave purposes, be deemed to be employment in the service of the Department: Provided that any sick and accumulative vacation leave to which such person is entitled on that date shall, subject to such conditions as the Minister on the recommendation of the Public Service Commission may determine, be deemed to be leave earned in terms of this Act.

Pension rights and retirement benefits of persons employed

12. Notwithstanding anything to the contrary contained in any other law but subject to the provisions of section *thirteen* any person (other than an officer) employed on a whole-time



shall in respect of pension rights and retirement benefits be dealt with as if he occupied a post included in a division of the public service referred to in paragraph (a) of sub-section (1) of section *three* of the Public Service Act, 1957 (Act No. 54 of 1957).

Pension rights and retirement benefits of certain persons who are being or have been transferred to the service of the Department or are deemed to have been appointed in terms of this Act.

13. (1) Notwithstanding anything to the contrary contained in any other law but subject to the provisions of sub-sections (2), (3) and (4) of this section, the provisions of section *thirteen* of the Government Service Pensions Act, 1955 (Act No. 58 of 1955), shall *mutatis mutandis* apply in respect of any person—

(a) who by virtue of the provisions of section *nine* is transferred to the service of the Department or is deemed to have been appointed to a post under the provisions of this Act; and

(b) who immediately prior to the date of commencement of this Act was subject to a pension law administered by a provincial administration,

as if such person was, with effect from the said date, transferred to employment in respect of which he is liable to contribute to the fund referred to in paragraph (a) of sub-section (1) of section *two* of the Government Service Pensions Act, 1955.

(2) (a) If any person to whom the provisions of sub-section (1) apply, does not elect in terms of the provisions of sub-section (2) of section *thirteen* of the Government Service Pensions Act, 1955, to reckon his past pensionable service as pensionable service under that Act, he shall, notwithstanding anything to the contrary contained in any law, remain a member of but not a contributor to the pension or provident fund to which he contributed in respect of such past service.

(b) If for any reason such person retires or is retired or discharged from the service of the Department or from the public service, he shall be entitled to the benefit which would have been payable to him under the provisions of the law which immediately prior to the date of commencement of this Act governed such fund or any other pension or provident fund to which he previously contributed and of which he retained his membership, if at that date he had retired or been retired or discharged from such past service for the same reason: Provided that if such person is so retired or discharged for a reason mentioned in paragraph (c), (d) or (e) of sub-section (1) of section *twenty-seven* of the Government Service Pensions Act, 1955, any such benefit shall only be payable from the date on which he attains the age at which he would have had the right to retire on pension and would have been required to be retired on pension if the provisions of section *nine* of this Act had not become applicable to him: Provided further that if he is so retired or discharged for a reason mentioned in paragraph (c) or (d) of sub-section (1) of the said section *twenty-seven*, there shall be no addition to the benefit payable to him from any such fund.

(3) If any person to whom the provisions of sub-section (1) apply, retires or is retired or discharged from the service of the Department or from the public service for any reason before he has made an election in terms of sub-section (2) of section *thirteen* of the Government Service Pensions Act, 1955, the provisions of paragraph (b) of sub-section (2) of this section shall *mutatis mutandis* apply in respect of him.

(4) If any person to whom the provisions of sub-section (1) of this section apply, dies before he has made an election in terms of sub-section (2) of section *thirteen* of the Government Service Pensions Act, 1955, or if any person to whom the provisions of sub-section (2) of this section apply, dies before his retirement or discharge from the service of the Department or from the public service, there shall be paid from the relevant pension or provident fund referred to in paragraph (b) of sub-section (2) of this section, the benefit which would have been payable under the law governing such fund if he had died on the day immediately preceding the date of commencement of this Act.

(5) The provisions of this Act shall, subject to the provisions of sub-section (1), not affect the rights and benefits acquired or



(6) The provisions of this Act shall not affect the rights and obligations of the Department in respect of the pension rights and retirement benefits of any person referred to in sub-section (2) of section *nine*.

Transfer and secondment of certain persons employed at State schools, schools of industries, reform schools and certain State-aided schools.

14. (1) Any person (other than an officer) occupying a post included in the establishment of a State school, school of industries or reform school, or a State-aided school other than a State-aided vocational school, may, subject to the provisions of sub-sections (2) and (3), be transferred from the post in which he is employed to any other post at the said school or any other such school, or at any other institution under the control of the Department, whether established under this Act or any other law, and whether or not it is a transfer to a post of a lower grade.

(2) If a transfer in terms of sub-section (1) will involve a reduction of the pensionable emoluments of the person in question for the purposes of any law, such transfer shall not be made without his consent, unless it is made in consequence of a reduction of rank under section *seventeen* or *eighteen*.

(3) If a person is in terms of sub-section (1) transferred, without a reduction of his pensionable emoluments for the purposes of any law, to a post of a grade lower than that of the post which he occupied, he shall, as soon as a suitable vacancy occurs, be re-transferred to a post of a grade appropriate to his salary.

(4) Any person referred to in sub-section (1) may, subject to the provisions of sub-section (5) and upon such conditions as the Minister after consultation with the Minister of Finance may determine, be seconded by the Minister—

(a) upon the recommendation of the Public Service Commission, to the service of the State or the administration of the territory of South-West Africa or the service of the State in any other capacity; or

(b) with his own consent, to the service of the government of any other country or of any person.

(5) If any person is so seconded such secondment shall not affect the application in respect of him of any law which would have applied in respect of him if he had continued occupying his post at the school in question.

Discharge of persons employed at State schools, schools of industries, reform schools and certain State-aided schools.

15. (1) Any person (other than an officer) occupying on a whole-time basis a post included in the establishment of a State school, school of industries or reform school, or a State-aided school other than a State-aided vocational school, may be discharged by the Minister—

(a) on account of attaining the pensionable age as fixed by or in terms of any law which applies in respect of him, if he is not a person to whom sub-section (1) of section *thirteen* applies;

(b) on account of continued ill-health;

(c) on account of the abolition of his post or a reduction, reorganization or rearrangement of the staff of the school in question;

(d) subject to the provisions of section *eighteen*, on account of unfitness for his duties or incapacity to perform them efficiently;

(e) if for reasons other than those referred to in paragraph (d), his discharge will, in the opinion of the Minister, promote efficiency or economy in the school in question;

(f) subject to the provisions of section *seventeen*, on account of misconduct as defined in section *sixteen*;

(g) in the case of a female, if she marries.

(2) Any person referred to in sub-section (1) who without the permission of the Secretary or the head or the governing body of the school in question—

(a) is absent from duty for a period exceeding one month; or

(b) is absent from duty and has accepted other employment,

shall, subject to the provisions of sub-section (3), be deemed to have been discharged on account of misconduct in terms of sub-section (1) with effect from the date immediately succeeding the last day on which he was on duty.

(3) If any person referred to in paragraph (a) of sub-section





sub-section (1), and in that event the period of absence from duty shall be deemed to have been absence on vacation leave without pay or leave on such other conditions as the Minister may determine.

Definition of  
misconduct.

16. Any person referred to in sub-section (1) of section *fifteen* shall be guilty of misconduct and be subject to the provisions of section *seventeen* if—

- (a) he contravenes or fails to comply with any provision of this Act with which he is obliged to comply;
- (b) he does or causes or permits to be done or connives at, anything which is prejudicial to the administration, discipline or efficiency of any department, office or institution of the State or a State-aided school;
- (c) disobeys, disregards or makes wilful default in carrying out a lawful order given to him by a person having authority to give it, or by word or conduct displays insubordination;
- (d) he is negligent or indolent in the discharge of his duties;
- (e) he undertakes, without the permission of the Minister, any private agency or private work in connection with any matter connected with the performance of his functions or the carrying out of his duties;
- (f) he publicly, otherwise than at a meeting convened by an association or organization recognized by the Minister as representative of persons contemplated in sub-section (1) of section *fifteen*, criticizes the administration of any department, office or institution of the State;
- (g) he is a member of any party-political organization or of any organization which the Minister may by notice in the *Gazette* declare to be an organization of which a person contemplated in sub-section (1) of section *fifteen* may not be a member, or takes an active part in party-political matters, or takes part in any activity or furthers the objects of any organization to which any such notice relates, or encourages disobedience to or resistance against the laws of the State;
- (h) he attempts to secure intervention, through any person who is not in the employment of the Department, in relation to his position and conditions of service, unless it is done to obtain redress of any grievance through Parliament;
- (i) he conducts himself in a disgraceful, improper or unbecoming manner or, whilst on duty, is grossly discourteous to any person;
- (j) he uses intoxicants or stupefying drugs excessively;
- (k) he becomes insolvent or compromises with his creditors or if a decree of civil imprisonment is made against him by any court of law, unless it is shown that his insolvency or the composition or the making of such decree against him has been occasioned by unavoidable misfortune;
- (l) he becomes pecuniarily embarrassed, unless it is shown that his pecuniary embarrassment is not due to any imprudent or other reprehensible act or omission on his part and is not prejudicial to the faithful performance of his duties;
- (m) he, without first having obtained the permission of the Secretary, discloses, otherwise than in the discharge of his duties, information gathered or obtained by him through his employment in the Department or at a State-aided school, or uses such information for any purpose other than the discharge of his duties, whether or not he discloses such information;
- (n) any person corruptly offers him any gift or consideration in respect of or for the discharge or neglect of his duties, and he fails to report it as soon as possible to the Secretary;
- (o) he misappropriates or improperly uses any property of the State, and such misappropriation or use does not constitute an offence;
- (p) he commits a criminal offence;
- (q) he absents himself from duty without leave or valid



or to causing prejudice or injury to the State or such a school or any person in the employment of the Department or such a school, makes a false or incorrect statement, knowing it to be false or incorrect.

Procedure  
in case of  
misconduct.

17. (1) If any person referred to in sub-section (1) of section *fifteen* is accused of misconduct as defined in section *sixteen*, the Secretary or any person authorized thereto by the Secretary may charge him in writing under his hand with that misconduct.

(2) The person who signed the charge shall serve it upon the person charged by causing it to be delivered or sent by registered letter to him, or to be left at his place of residence or last known place of residence.

(3) The charge shall contain or shall be accompanied by a direction calling upon the person charged to transmit or deliver, within a period which is to be specified in such direction and is to be reasonable, to a person likewise specified, a written admission or denial of the charge and, if he so desires, a written explanation of the misconduct with which he is charged.

(4) The Minister or, if authorized thereto by the Minister either generally or in a particular case, the Secretary or any other officer in the Department, may suspend from duty any person accused of misconduct, as defined in section *sixteen*, whether or not such person has been charged with misconduct.

(5) The Minister or the other person who suspended any person in terms of sub-section (4), may at any time cancel the suspension, but the cancellation of the suspension shall not affect any proceedings in connection with the accusation of misconduct.

(6) A person who has been suspended from duty in terms of sub-section (4), shall not be entitled to any emoluments in respect of the period of his suspension: Provided that the Minister may order payment to the said person of the whole or a portion of his emoluments.

(7) If no charge under this section is preferred against a person who has been so suspended from duty, he shall be allowed to resume duty as soon as practicable and be paid his emoluments in respect of the period of his suspension in so far as it has not been done already.

(8) (a) If the person charged admits the charge, he shall be deemed to have been found guilty in terms of this section of the misconduct with which he has been charged.

(b) If the person charged denies the charge or fails to comply with the direction mentioned in sub-section (3), the Secretary shall appoint a person to enquire into the charge.

(9) (a) The person who is to hold the enquiry shall, in consultation with the person who signed the charge, fix the time and place of the enquiry, and the person who signed the charge shall give the person charged reasonable written notice of the time and place so fixed: Provided that the Secretary shall have the power to postpone the enquiry on good cause shown.

(b) The law relating to witnesses and evidence which applies in connection with criminal cases in a magistrate's court, shall *mutatis mutandis* apply for the purposes of and at any such enquiry: Provided that subpoenas to procure the attendance of witnesses thereat shall be issued by the person who is to hold the enquiry.

(10) The person who signed the charge may authorize any person to be present at the enquiry and to adduce evidence and arguments in support of the charge, and to cross-examine any person called as a witness for the defence.

(11) (a) At the enquiry the person charged may be present, shall have the right to be heard, to cross-examine any person called as a witness in support of the charge, to inspect any documents produced in evidence and to call other persons as witnesses, either personally or by a representative, and may give evidence himself.

(b) The failure of the person charged to be present at the enquiry, either personally or by a representative, shall not invalidate the proceedings.

(c) The person holding the enquiry shall keep a record



is the commission of an offence and it is proved that he has been convicted thereof by a court of law, a certified copy of the record of his trial and conviction by that court shall be *prima facie* evidence of the commission by him of that offence.

(13) The person holding the enquiry shall after the conclusion thereof decide whether the person charged is guilty or not guilty of the misconduct with which he is charged and inform him and the Secretary of his decision.

(14) If the person holding the enquiry finds that the person charged is not guilty of the misconduct with which he was charged and the person charged was suspended from duty in terms of sub-section (4), he shall be allowed to resume duty as soon as practicable and be paid his emoluments in respect of the period of his suspension in so far as it has not been done already.

(15) If the person holding the enquiry finds that the person charged is guilty of the misconduct with which he is charged, the person charged may within fourteen days after the date on which he was informed of the finding, appeal therefrom to the Minister by delivering or posting to the person who held the enquiry a written notice of appeal in which are set forth fully the grounds on which the appeal is based.

(16) If the person holding the enquiry finds that the person charged is guilty of the misconduct with which he is charged, he shall—

(a) after expiry of the period referred to in sub-section (15), forward to the Secretary—

(i) the record of the proceedings at the enquiry;  
(ii) the documentary evidence admitted thereat;  
(iii) a statement of his finding and his reasons therefor;

(iv) any observations which he may wish to make on the case; and

(v) if there is an appeal from his finding in terms of sub-section (15), the notice of appeal; and

(b) if there is such an appeal from his finding, furnish the appellant with a copy of his reasons for the finding.

(17) If the appellant applies to the Secretary for a copy of the record of the proceedings at the enquiry and of the documentary evidence admitted thereat, within seven days after the date upon which he was furnished with a copy of the reasons for the finding, the Secretary shall furnish him with it.

(18) The appellant may, if he has made an application in terms of sub-section (17), within fourteen days after the date upon which he was furnished with the copy in question, or, if he did not make such an application, within twenty-one days after the date upon which he was furnished with the copy of the reasons for the finding, submit to the Secretary written representations in support of his appeal, and the Secretary shall after receipt thereof or, if he did not receive such representations within the prescribed period, after the expiry of such period, submit to the Minister the record of the proceedings at the enquiry, the other documents in his possession which relate to the enquiry or appeal, and his recommendation concerning the appeal.

(19) After consideration of the record and other documents in question the Minister may allow the appeal in whole or in part and set aside or vary the finding, dismiss the appeal and confirm the finding, or, before arriving at a final decision on the appeal, remit any matter in connection with the enquiry to the person who held the enquiry and direct him to report thereon or to hold a further enquiry and to arrive at a finding thereon.

(20) If the Minister has directed that a further enquiry be held, the provisions of sub-sections (9), (10) and (11) shall apply in respect thereof.

(21) If the Minister has arrived at a final decision on the appeal, he shall convey that decision in writing to the appellant and the Secretary.

(22) If the Minister allows the appeal and the appellant was suspended from duty in terms of sub-section (4), he shall be allowed to resume duty as soon as practicable and be paid his emoluments in respect of the period of his suspension in so far as it has not been done already.

(23) If the person charged has admitted the charge of misconduct as is contemplated in sub-section (3), or if he has been found guilty of misconduct in terms of sub-section (12)



subject to the provisions of sub-section (24), recommend to the Minister that—

- (a) the person charged be cautioned or reprimanded;
  - (b) a fine, not exceeding two hundred rand, be imposed upon the person charged;
  - (c) the person charged be transferred to another post;
  - (d) the emoluments or grade or both the emoluments and grade of the person charged be reduced; or
  - (e) the person charged be discharged from the service of his employer or be called upon to resign therefrom.
- (24) (a) Except where the Secretary makes a recommendation under paragraph (a) or (e) of sub-section (23), he may make a recommendation under more than one of the other paragraphs of that sub-section.
- (b) The Secretary may postpone for a period not exceeding three months the making of a recommendation under sub-section (23).
- (25) (a) The Minister may act in accordance with the recommendation of the Secretary in terms of sub-section (23) or take any other action which he could have taken if the Secretary had recommended it in terms of that sub-section.
- (b) If a fine is imposed upon any person in terms of this sub-section, such fine may be recovered by deducting it from his emoluments in such instalments as the Minister may determine.
- (c) If the Minister discharges any person in terms of this sub-section, the discharge shall take effect on a date fixed by the Minister.
- (d) If the Minister in terms of this sub-section calls upon any person to resign from the service of his employer and such person fails so to resign with effect from a date fixed by the Minister, he shall be deemed to have been discharged in terms of this sub-section from such service with effect from that date.
- (26) If any person was suspended from duty in terms of sub-section (4) and the Minister deals with him in a manner contemplated in paragraph (a), (b), (c) or (d) of sub-section (23), or the Secretary deals with him in accordance with paragraph (b) of sub-section (24), such person shall be allowed to resume duty in an appropriate post as soon as practicable and be paid his emoluments in respect of the period of his suspension in so far as it has not been done already: Provided that if the emoluments or grade of such person is reduced as is contemplated in paragraph (d) of sub-section (23), his emoluments in respect of the period of his suspension shall be calculated on the basis of the reduced emoluments or grade, as the case may be: Provided further that if in respect of the period of his suspension emoluments in excess of the emoluments so calculated have already been paid to him in terms of sub-section (6), he shall not be obliged to refund the excess.
- (27) If any person who has been suspended or charged with misconduct in terms of this section, resigns from the service of his employer or assumes other employment before the appropriate charge of misconduct has been disposed of under this section, he shall be deemed to have been discharged on account of misconduct, from such service with effect from a date fixed by the Minister, unless prior to the receipt of his notification of resignation or his assumption of other employment, he was notified that he would not be charged with misconduct or, as the case may be, that the charge of misconduct against him had been withdrawn.
- (28) The fact that a person has been convicted or acquitted by a court of law of the commission of an offence, shall not preclude the taking of any steps in terms of this section against such person.
- (29) (a) If any person referred to in sub-section (1) of section *fifteen* who is deemed to have been appointed to his post in terms of the provisions of this Act, committed, prior to the commencement of this Act, any misconduct in contravention of the provisions of any law which applied prior to such commencement in respect of him, proceedings on account of such misconduct may, in terms of this section, be instituted or continued against him and he may be dealt with thereunder.
- (b) If any penalty on account of misconduct was prior





Action in the case of persons employed at State schools, schools of industries, reform schools and certain State-aided schools, who are inefficient.

18. (1) If it is alleged that any person referred to in sub-section (1) of section *fifteen* is unfit for, or is incapable of performing efficiently, the duties attached to his post from causes not within his control and not attributable to the performance of his duties in the employment of the Department or the school in question, the Secretary may appoint a person to enquire into the allegation.

(2) The provisions of sub-sections (9), (10) and (11), (13), (15) to (21), inclusive, and (23), paragraphs (a) and (c) of sub-section (25) and paragraph (a) of sub-section (29) of section *seventeen* shall *mutatis mutandis* apply in respect of any enquiry referred to in sub-section (1) and the person in respect of whom the allegation was made: Provided that in the application of the said sub-section (23) the Secretary shall only have the power to recommend that the person in question be discharged from the service of his employer or that his grade be reduced and his emoluments be reduced to the maximum for the reduced grade.

Powers of persons employed at State schools, schools of industries, reform schools and certain State-aided schools in respect of acceptance of other employment or remuneration.

19. (1) Any person referred to in sub-section (1) of section *fifteen*—

- (a) shall, as far as is practicable, place the whole of his time at the disposal of the school at which he is employed;
- (b) shall not, without the permission of the Secretary or a person acting on the authority of the Secretary, perform or bind himself to perform other remunerative work; and
- (c) shall not have the right to claim additional remuneration in respect of any duty or work performed by him by order of a competent authority.

(2) If any person referred to in sub-section (1) receives any remuneration or allowance otherwise than in terms or by virtue of the provisions of this Act or any other law, he shall pay it into the Consolidated Revenue Fund, and if he fails to do so, the Minister of Finance may recover it from him by legal proceedings or in such other manner as the said Minister may deem fit, and pay it into that fund.

Classification of certain posts at State schools, schools of industries and reform schools as posts in the public service.

20. The Minister may, on the recommendation of the Public Service Commission, designate any non-teaching post included in the establishment of a State school, school of industries or reform school, as a post which is to be classified in terms of the provisions of the Public Service Act, 1957 (Act No. 54 of 1957), under the fixed establishment as defined in section *one* of the said Act, and in respect of which the provisions of the said Act shall apply.

Courses for the education or training of persons in State schools, schools of industries, reform schools and State-aided schools, and conducting of examinations.

21. (1) The Minister may institute courses for the education or training of persons in State schools, schools of industries, reform schools and State-aided schools, and abolish any course so instituted.

(2) The Minister shall determine the nature and length of, and the conditions for admission to, any course instituted in terms of sub-section (1).

(3) The Minister may cause examinations to be conducted in respect of any course instituted in terms of sub-section (1), and may cause diplomas or certificates to be issued to persons who have passed such examinations.

(4) Until the Minister otherwise determines the Department of Education, Arts and Science shall institute the courses for the education and training of persons in special schools, homes, vocational schools, schools of industries and reform schools and conduct examinations in respect thereof, and the provincial administration in question shall institute such courses in respect of other State schools and State-aided schools and conduct examinations in respect thereof, in the same manner in which it would have been done if the control of such education were still vested in that Department or, as the case may be, in the provincial administrations.

Inspection of certain schools and enquiries in connection with matters relating to such schools.

22. (1) The Secretary or any officer authorized thereto by the Secretary may inspect any State school or any State-aided school, or enquire into any matter relating to any such school, and may require the head of or any other person employed at such school to furnish him with such information at the disposal of such head or person as, in his opinion, may be necessary for the exercise of his powers and the performance



- (a) if he has reason to believe that any person is able to give evidence or to produce any document or other article which will be relevant to any inspection or enquiry in terms of sub-section (1), summon such person by a subpoena under his hand, to appear before him at a time and place specified in the subpoena, to be interrogated or to produce that document or other article; and
- (b) call as a witness and administer an oath or affirmation to any person present at such inspection or enquiry who was or might have been summoned in terms of paragraph (a), interrogate such person and require him to produce any document or other article in his possession or custody or under his control which he has reason to believe may be relevant to the inspection or enquiry.

(3) The law relating to witnesses and evidence which applies in connection with criminal cases in a magistrate's court shall *mutatis mutandis* apply in respect of any person called as a witness in terms of paragraph (b) of sub-section (2).

(4) Any person who prevents any other person from appearing in accordance with a subpoena issued in terms of paragraph (a) of sub-section (2) at the time and place in question, or from producing any document or other article as required in terms of paragraph (b) of the said sub-section, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty rand.

Compulsory school attendance.

23. (1) If the Minister is satisfied that sufficient and suitable school accommodation is available he may by notice in the *Gazette* declare that regular attendance at such kind of State school or State-aided school as may be specified in such notice, shall be compulsory for every Coloured person belonging to an age group and resident in an area so specified.

(2) If a parent or the guardian or the person having the custody or charge of any person who by virtue of the provisions of sub-section (1) is required to attend a school regularly, after a period of six months from the date of the notice referred to in that sub-section fails, without reasonable cause and after a written warning by the Department, to cause such person to attend an appropriate school regularly, he shall be guilty of an offence and liable on conviction to a fine not exceeding ten rand or to imprisonment for a period not exceeding one month on conviction of a first offence or to a fine not exceeding forty rand or to imprisonment for a period not exceeding two months on conviction of a second or subsequent offence.

Financial and other assistance to pupils at certain schools.

24. The Minister may out of moneys appropriated by Parliament for the purpose and on such basis and subject to such conditions as he may after consultation with the Minister of Finance determine, grant financial or other material assistance or both financial and other material assistance to a pupil at a State school or a State-aided school.

Payment of school and boarding fees.

25. (1) Any person admitted to a State school or the person liable for the maintenance of any such person, shall pay such school fees (if any) and, if such person is being provided with board by the Department, such boarding fees as the Minister after consultation with the Minister of Finance may determine or prescribe.

(2) Different fees may in terms of sub-section (1) be determined or prescribed in respect of different classes of persons, and the Minister may after such consultation exempt in such manner as he may deem fit any person or any class of persons wholly or partly from the payment of fees so determined or prescribed.

Exercise of rights acquired and fulfilment of obligations incurred by a provincial administration in connection with education for Coloured persons.

26. As from the commencement of this Act—

- (a) the control of all property which is being used immediately prior to or was acquired prior to such commencement by a provincial administration exclusively for the purposes of or in connection with education for Coloured persons and which is the property of the State, and all obligations of such provincial administration in respect thereof, shall



nection with education for Coloured persons and existing immediately prior to the said commencement (excluding any obligation to pay a bonus or an allowance to a retired teacher or retired employee who was in the service of such provincial administration in connection with education for Coloured persons or to a dependant or any person receiving a pension in respect of such service of such teacher or employee, in supplementation of any pension payable to any such person), shall pass to the Department;

- (c) all rights which a provincial administration has against any person immediately prior to the said commencement and which were acquired for the purposes of or in connection with education for Coloured persons, shall vest in the Department;

Provided that the provisions of this section shall not apply to any asset acquired or liability incurred in connection with any pension, retirement or provident fund administered by a provincial administration.

Passing of certain property and obligations to State on transfer of State-aided school to Department.

27. (1) As from the date on which the management and control of a State-aided school is, in terms of section *five*, transferred to the Department, all the property which immediately prior to that date was vested in the governing body of that school and used or intended to be used exclusively for the purposes of such school, shall vest in the State, and after the said date all the property which would have accrued to such governing body for such purposes if this Act had not been passed, shall vest in the State.

(2) If any property which by trust, donation or bequest was vested in or would have accrued to any governing body, vests in the State in terms of sub-section (1), the Secretary shall deal with such property in accordance with the conditions of such trust, donation or bequest.

(3) As from the date referred to in sub-section (1) the rights and liabilities acquired or incurred by the governing body in question for the purposes of or in connection with the school in question, shall pass to the State.

(4) No transfer duty, stamp duty or registration fees shall be payable in respect of the acquisition of any property or rights by the State in terms of this section.

Expropriation of land.

28. If a provincial administration prior to the commencement of this Act commenced the taking of steps to expropriate any land for the purposes of education for Coloured persons, such steps may be continued by such administration as if this Act had not been passed, and the provisions of paragraph (a) of section *twenty-six* shall *mutatis mutandis* apply in respect of any land so expropriated.

Exclusion of provisions of Workmen's Compensation Act, 1941.

29. No pupil at a State school, school of industries, reform school or a State-aided school shall for the purposes of the Workmen's Compensation Act, 1941 (Act No. 30 of 1941), and in connection with his attendance at such school be regarded as a workman under the said Act or another person entitled to payment thereunder.

Establishment and constitution of Education Council for Coloured Persons.

30. (1) There is hereby established a council to be known as the Education Council for Coloured Persons.

(2) The Education Council for Coloured Persons shall consist of—

(a) an officer in the Department having expert knowledge of education matters, to be designated by the Minister from time to time to serve in an advisory capacity on that council; and

(b) such other persons not being less than eight and being Coloured persons of whom four shall as far as possible be resident in different provinces, as the State President may appoint as members of that council because of their special knowledge of education



(3) The period of office of a member of the said council appointed in terms of paragraph (b) of sub-section (2) shall be not less than three years, and such a member shall be eligible for reappointment as a member of the council on the expiry of his period of office.

(4) If a member of the said council dies or vacates his office for any reason before the expiry of his period of office, the State President shall, subject to the provisions of sub-section (2), appoint another person as a member of the said council in his place for the unexpired portion of his period of office.

(5) (a) The State President shall designate one of the members of the said council appointed in terms of paragraph (b) of sub-section (2), as the chairman.

(b) If the said chairman is absent from any meeting of the council the members present thereat may elect one of their number to preside at that meeting.

(6) The procedure at meetings of the council shall be as prescribed.

(7) The Minister may designate an officer in the Department as secretary to the said council, and may designate such other officers for service with the council as he may deem necessary for the proper performance of the functions of the council.

(8) The prescribed allowances may be paid to a member of the council who is not in the full-time service of the State.

Functions of  
Education  
Council for  
Coloured Persons.

31. (1) (a) The functions of the Education Council for Coloured Persons shall be to advise the Minister on any matter in connection with education for Coloured persons which the Minister may refer to it or which the council may wish to bring to the notice of the Minister or may investigate with the approval of the Minister.

(b) Any advice tendered to the Minister by the aforesaid Education Council for Coloured Persons in the exercise of its functions under paragraph (a) shall be forwarded to the National Advisory Education Council for its information.

(2) Any negotiations between the said council and the National Advisory Education Council referred to in section two of the National Advisory Education Council Act, 1962 (Act No. 86 of 1962), shall take place through the Ministers in question.

(3) The said council shall before the thirty-first day of December of every year submit to the Minister an annual report on its activities during the immediately preceding financial year and shall also submit to the Minister such further information in connection with its activities as the Minister may require.

(4) The Minister shall lay copies of the annual report referred to in sub-section (3), including any minority report, upon the Table of the Senate and the House of Assembly within fourteen days after receipt thereof if Parliament is in ordinary session or, if Parliament is not in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.

(5) (a) The said council may with the approval of the Minister establish committees of the council to assist it in the performance of its functions.

(b) The said council may in its discretion delegate any of its functions to such a committee, but shall not be divested of its powers in connection with such functions, and may amend or rescind any decision of such a committee.

(c) The constitution, and procedure at meetings, of such a committee shall be as prescribed.

Establishment of  
boards, committees  
or other bodies  
for participating in  
management of  
certain schools.

32. (1) For the purposes of enabling the Coloured population of the Republic to participate in the management of State schools and State-aided schools, the Minister may in the manner prescribed by regulation establish for any such school or schools a board, committee or other body.

(2) The constitution, powers, duties and functions of, and the period of office of and the allowances payable to members of boards, committees or bodies established in terms of sub-section (1) shall be as prescribed.





other than the powers conferred upon him by sections *twenty-three* and *thirty-four*, to the Secretary or any other officer in the Department.

Regulations.

34. (1) Subject to the provisions of sub-section (3) the Minister may make regulations—

- (a) conferring powers and imposing duties upon the Secretary and other officers in the Department in connection with the carrying out of the provisions of this Act;
- (b) as to the establishment, erection, maintenance, management and control of State schools and hostels, teachers' quarters, school clinics and any other accessories in connection with such schools;
- (c) as to the making of grants-in-aid and loans to governing bodies of State-aided schools;
- (d) the registration and management of private schools referred to in section *six*, and the requirements to be complied with by such schools;
- (e) as to the admission of persons to, the control of pupils at and their discharge from State schools and State-aided schools, and the suspension of or the imposition or infliction of other punishments upon pupils at such schools;
- (f) subject to the provisions of sub-section (6), as to the medium of instruction and religious instruction in State schools, schools of industries, reform schools or State-aided schools;
- (g) as to the appointment of persons for duty at State schools, schools of industries and reform schools, and State-aided schools other than State-aided vocational schools, and the grading, remuneration, promotion, transfer, discharge, discipline, behaviour, powers, duties, hours of attendance, leave privileges and other conditions of service of, and the occupation of teachers' quarters by, and the payment of travelling, subsistence and other allowances and remuneration for services outside the prescribed hours of attendance to such persons and persons deemed to be appointed in terms of this Act;
- (h) providing for the registration of Coloured persons qualified as teachers;
- (i) as to the medical examination of teachers employed at, and of pupils at State schools, schools of industries, reform schools and State-aided schools, and the issue of certificates in connection with such examinations;
- (j) as to the mental, bodily or other examination of any person who is suspected of being a handicapped child and is in terms of section *twenty-three* required to attend a school regularly;
- (k) as to the school which any person is to attend for the purposes of section *twenty-three*, and exemption from the obligation so to attend a school;
- (l) as to the courses of education and training in State schools, schools of industries, reform schools and State-aided schools;
- (m) as to the inspection of State schools, schools of industries, reform schools and State-aided schools, of hostels, quarters, clinics and other accessories used in connection with such schools, and of pupils at such schools;
- (n) as to the conducting of examinations in respect of and the granting of diplomas and certificates to persons who attended a course of education or training at a State school, school of industries, reform school or State-aided school;
- (o) as to the fees (if any) payable in respect of board provided by the Department and the attendance at schools or courses referred to in paragraph (l), and in respect of examinations, diplomas and certificates referred to in paragraph (n), and as to the exemption from the payment of such fees;
- (p) as to the granting of financial or other material assistance to pupils at State schools or State-aided schools;
- (q) as to the control of moneys collected for any State school or any State-aided school;
- (r) as to the calling of meetings of the Education Council



thereof, the period of office of the members and chairman of the said council, and the constitution of committees of the council;

(s) as to the constitution, powers, duties and functions, and the period of office of and allowances payable to members of boards, committees or other bodies established in terms of section *thirty-two*;

(t) generally, as to any other matter in respect of which the Minister may deem it necessary or expedient to make regulations to achieve the objects of this Act.

(2) The generality of the power conferred by paragraph (t) of sub-section (1) shall not be limited by the provisions of the other paragraphs of the said section.

(3) Regulations as to any fees or allowances payable by or to any person or the control of any moneys, may only be made after consultation with the Minister of Finance.

(4) Different regulations may in terms of sub-section (1) be made in respect of different schools or different kinds of schools.

(5) Regulations made in terms of sub-section (1) may prescribe in respect of any contravention thereof or failure to comply therewith, a penalty of a fine not exceeding twenty rand or imprisonment for a period not exceeding one month.

(6) Regulations under paragraph (f) of sub-section (1) shall not deprive any parent of the right of final decision regarding the medium of instruction of a child of such parent where any doubt exists as to the home language of such child.

Insertion of section *1bis* in Act 9 of 1948.

35. The following section is hereby inserted in the Special Education Act, 1948, after section *one*:

"Applica-  
tion of Act. *1bis*. The provisions of this Act shall not apply in respect of any handicapped child as defined in section *one* of the Coloured Persons Education Act, 1963."

Insertion of section *1bis* in Act 70 of 1955.

36. The following section is hereby inserted in the Vocational Education Act, 1955, after section *one*:

"Applica-  
tion of Act. *1bis*. The provisions of this Act shall not apply in respect of any vocational school, part-time class or continuation class established and maintained exclusively for the education of Coloured persons as defined in section *one* of the Coloured Persons Education Act, 1963."

Amendment of section 84 of Act 32 of 1961.

37. (1) Section *eighty-four* of the Republic of South Africa Constitution Act, 1961, is hereby amended by the substitution in paragraph (c) of sub-section (1) for the word "education", where it appears for the second time, of the words "education, education for Coloured persons as defined in section *one* of the Coloured Persons Education Act, 1963,".

(2) Notwithstanding the provisions of sub-section (1) a provincial council shall continue to be as competent to make ordinances for the proper administration of any pension or provident fund referred to in sub-section (2) of section *thirteen* as it would have been if this Act had not been passed.

Short title and commencement.

38. (1) This Act shall be called the Coloured Persons Education Act, 1963, and the provisions thereof shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) A separate date in respect of the provisions of sections *thirty* and *thirty-one*, and different dates in respect of different provinces or different kinds of colleges or schools in the Republic or different provinces may be so fixed.

(3) If a date is so fixed in respect of a particular kind of college or school only—

(a) any reference in this Act and in paragraph (c) of sub-section (1) of section *eighty-four* of the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961), to education for Coloured persons shall, in respect of any province in question, be construed as a reference to such education provided in such colleges or schools; and

(b) any reference in this Act to schools in general shall, in respect of any province in question, be construed as a reference to such colleges or schools.



# **ANNEXURE B**



Close this minute

Maak minnat toe

Buyela emva

**Enquiries:** Call Centre  
**Telephone:** 086 192 3322  
**Fax:** 021 467 2996  
**Reference:** 7/2/2  
 20100301-0012



**Wes-Kaap Onderwysdepartement**  
**Western Cape Education Department**  
**ISebe IeMfundo IeNtshona Koloni**

### **INTERNAL HUMAN CAPITAL ADMINISTRATION MINUTE: 0002/2010**

**TO:** DEPUTY DIRECTORS-GENERAL, CHIEF DIRECTORS, DIRECTORS, CEOs of FET COLLEGES, HEADS OF EDUCATIONAL INSTITUTIONS AND RECOGNISED STAFF ASSOCIATIONS AND TRADE UNIONS

### **REDRESS FOR PREVIOUS DISCRIMINATORY PENSION PRACTICES IN THE PUBLIC SERVICE**

1. The purpose of this minute is to inform employees and former employees of the state that the Public Service Co-ordinating Bargaining Council (PSCBC) has embarked on a process of providing redress to current and former government employees affected by previous discriminatory pension practices in the public service.
2. In terms of Resolutions 7 of 1998 and 12 of 2002 of the PSCBC, it has been decided to recognize, as pensionable service, the service of all public service employees who were in service on 2 September 1998. The main qualifying criterion for eligibility for redress under this process is that an employee or former employee must have been in the employ of the state on 2 September 1998. **The closing date for submission of applications is 31 August 2010.**
3. The following categories of employees are eligible for redress for previous discriminatory pension practices:
  - 3.1 **Employees discriminated against on the basis of race, gender or status of employment**  
 They are the following
    - Former general assistants or casual workers whose waiting periods for a pension were not recognised under Phase 1 of the redress process. Admission to the following pension funds was subjected to a waiting period:
      - a. Temporary Employees Pension Fund (2 or 5 years' waiting period) - Fund operative from 1 October 1979
      - b. Temporary Employees Pension Fund (2 years' waiting period) - Fund operative from 4 September 1992
      - c. Black Authorities Superannuation Fund (2 or 5 years' waiting period) - Fund operative from 24 January 1992
      - d. Non-White Government Employees Pension Fund (5 years' waiting period) - Fund operative from 1 April 1967
    - Ciskei strikers whose **waiting periods for a pension were not recognised** under the phase to address the strike period of 1991-1993
    - All other persons who had to complete a qualifying or waiting period for a pension before admission to a pension fund
    - Female teachers and other female employees in the public service who lost pensionable service owing to a change in marital status and who were admitted to the Temporary Employees Pension Fund (TEPF) on re-employment
    - Female teachers and other female employees in the public service who had to resign owing to accouchement (maternity) and who, upon return, were admitted to the TEPF
    - All students who were denied membership of a government pension fund based on their status of employment, i.e. fixed-term contract
    - RSA citizens employed in former TBVC states
    - *Kitskonstabels*, in respect of the period served as temporary policemen before permanent appointment
  - 3.2 **Strikers (All qualifying employees dismissed for participating in strikes and who were**





## later reinstated or re-employed with or without an agreement)

They are the following:

- Gauteng Health - Natalspruit and Sebokeng; JG Strijdom (Helen Joseph) Hospital; Vereeniging (Kopanong) hospitals
- Dismissal in certain Free State hospitals
- Employees affected by the 1988 dismissals in the former Natal Provincial Administration
- Members of the South African Police dismissed in 1990
- Employees dismissed in the former Transvaal Provincial Administration between 1991 and 1993
- Other dismissals resulting from relevant strike action not indicated above during the period 1989 -1993, subject to verification by the PSCBC

### 3.3 Other categories of discriminatory practice

They are the following:

- Employees admitted to temporary pension funds owing to their medical or physical status
- All former municipal police employees who were incorporated in the South African Police Service during 1989 and who still belong to municipal pension funds which have been administered by the Government Employees Pension Fund (GEPF) since 1 June 2003

## 4. APPLICATIONS

### 4.1 The following documentation must be submitted:

- Application form
  - i. The official GEPF application form is compulsory for all applications.
  - ii. For in-service members, only the official GEPF application form must be completed.
  - iii. For former members, the official GEPF application form and the Z894 form must be completed.
    1. Letter of appointment
    2. Certified copy of identity document
    3. IRP5/ITB3
    4. Salary advices
    5. Letter of reappointment (if applicable)
    6. Letter of dismissal (if applicable)
    7. Members, who have already left the service, must provide bank account details on the Z894 form.
- **Note:**
  - i. In the absence of acceptable documentary proof as listed above, comprehensive affidavits may be submitted for consideration by the GEPF.
  - ii. The prescribed application form is obtainable from the WCED's Call and Walk-in Centre.

### 4.2 Deceased employees

- Beneficiaries must complete the official GEPF application form, and the Z864 and Z894 forms (in the case of beneficiaries who have attained the age of maturity).
- The above forms must be accompanied by the following documents:
  - i. Certified copy of the death certificate
  - ii. Certified copy of the identity document of the deceased
  - iii. Certified copy of the identity document of the applicant
- An estate account is compulsory in the case of members who died after leaving the service.
- The estate account must be accompanied by a letter of appointment from the court.

## 5. The closing date for submission of applications is 31 August 2010.

## 6. For further information and enquiries concerning the process, including the required



documentary proof, please call one of the telephone numbers listed below:

SURNAME	FIRST NAME	TEL. NO
ADDINALL	JENNY	0861923322
BRINKHUIS	CORNELL	0861923322
BRUCE	LEON	0861923322
BRINKHUIS	CORNELL	0861923322
CUPIDO	YUMNA	0861923322
DINGISWAYO	ALLEN G.	0861923322
DYANI	ZODWA	0861923322
FELTMAN	RONELLE	0861923322
FREDERICKS	REIGHLON	0861923322
GOLIATH	VANESSA	0861923322
JULIUS	ROSE-MAREE	0861923322
MGODELI	CHARMAIN	0861923322
MGODELI	KHOLIWE	0861923322
MGUGA	LINDA	0861923322
MURPHY	VIRGINIA	0861923322
NOBLE	FRANKLIN	0861923322
PHILANDER	FRANCOIS	0861923322
SIYAYA	CHANTEL	0861923322
SOKA	ASHLEY	0861923322
VAN DER BERG	QUINZY	0861923322

7. Serving staff are kindly requested and encouraged to bring the contents of this circular to the attention of all colleagues, especially former employees of the state.

**SIGNED: JH LYNERS**  
**HEAD: EDUCATION**  
**DATE: 2010-07-16**

Grand Central Towers, Lower Parliament Street, Private Bag X9114, Cape Town 8000  
 Please quote reference numbers in all correspondence  
 SAFE SCHOOLS: 0800 45 46 47  
 CLIENT CALL CENTRE: 0861 92 33 22

Close this minute

Maak miniat toe

Buyela emva



# **ANNEXURE C**



**RESOLUTION NO. 7 OF 1998****IMPROVEMENT PLAN FOR 1998/99**

Parties to Council AGREE as follows:

**1. Objective**

The objective of this agreement is to improve salaries and other conditions of service for employees in the public service for 1998/1999.

**2. Application**

This agreement applies to the employer and to all employees

- 2.1 who are employed by the employer, and
- 2.2 who fall within the registered scope of the PSCBC.

**3. Salary improvements for 1998/99**

- 3.1 The employer shall provide salary increases as provided in Appendix 1, except for employees who:-
  - 3.1.1 remain on a salary scale that applied before July 1, 1996; and/or
  - 3.1.2 are defined as being part of the management echelon.
- 3.2 The employer shall increase salaries according to paragraph 3.1 from July 1, 1998.
- 3.3 In light of the investigation undertaken on job evaluation, pay and grading in the public service, excluding education, the employer agrees to fund a similar investigation for the educator sector. This process
  - 3.3.1 shall commence, under the auspices of the Education Labour Relations Council, within 30 days from date of signing this agreement, and
  - 3.3.2 submit the final report to the PSCBC within four months.
- 3.4 The parties to Council agree that the funds set out in Appendix 1, referred to in paragraph 3.1, shall constitute the amount set aside for salary increases for 1998/1999.

**4. Sectoral requirements**

- 4.1 The employer shall set aside R200 million to be allocated to the sectoral councils and the South African National Defence Force (SANDF) for transformatory measures not covered by other sections of this agreement.
- 4.2 The amount referred to at paragraph 4.1 shall be allocated as follows:-
  - 4.2.1 the Education Labour Relations Council shall receive R140 million;





- 4.2.2 the National Negotiating Forum shall receive R30 million;
- 4.2.3 the Health and the Public Administration Sector Councils, when established, shall receive R10 million each; and
- 4.2.4 the South African National Defence Force (SANDF) shall receive R10 million.
- 4.3 Prior to the employer allocating the amount referred to at paragraph 4.2, the sectoral councils must:-
  - 4.3.1 conclude an agreement on how the funds will be used in the sector; and
  - 4.3.2 submit this agreement to the Council for the purposes of record keeping.
- 4.4 The employer shall inform the Council of how the SANDF expects to utilise the funds received under paragraph 4.2.4.

## **5. Training**

- 5.1 A sectoral council of the PSCBC shall establish a Skills Development Committee to design a training plan for the sector by December 1998.
- 5.2 The employer shall provide R5 million for costs incurred during the development of sectoral training plans.
- 5.3 The PSCBC shall establish a committee with equal representation of employee and employer parties, which shall:-
  - 5.3.1 allocate the funds referred to in paragraph 5.2 between sectors;
  - 5.3.2 oversee the development and co-ordination of a sectoral training plan; and
  - 5.3.3 participate in the establishment of the Public Service Education and Training Authority (PSETA) and related research projects.
- 5.4 When the PSCBC has approved a sectoral training plan, the employer shall provide the funds needed to implement the plan.

## **6. Skills, service delivery and personnel audit**

- 6.1 The parties to the PSCBC agree to initiate and oversee a skills audit in the Public Service with the view to match service delivery with personnel and skills requirements.
- 6.2 The PSCBC shall appoint a committee with equal representation for employee and employer representatives, which shall:-
  - 6.2.1 identify specific departments, provincial administration and/or sectors of the public service as priorities for an audit;
  - 6.2.2 agree on who should manage an audit for a particular sector, province or department in order to ensure appropriate and efficient completion of the audit;
  - 6.2.3 if necessary, hire consultants or other experts to assist with an audit; and
  - 6.2.4 oversee the implementation of an audit and report regularly on its progress to the PSCBC.
- 6.3 An audit under this agreement shall determine, for the public service or a section of the public service:-
  - 6.3.1 the number of employees within the registered scope of the PSCBC;
  - 6.3.2 existing and improved mechanisms for service delivery;



- 6.3.3 employee skills relative to the skills needed to improve service delivery;
  - 6.3.4 existing skills not needed to improve service delivery;
  
  - 6.3.5 components with redundancies and components that need more positions;
  - 6.3.6 skills development needed to equip employees to perform necessary work;  
and
  - 6.3.7 mechanisms to redeploy employees in redundant positions to jobs needed to improve service delivery.
- 6.4 Decisions on the conduct of audits shall take into account work already done by departments, provinces or sectors.
  - 6.5 This agreement does not affect collective agreements concluded on work organisation, redeployment and/or staff levels in departments, provinces or sectors; Provided that a party to Council may request a review of a process undertaken at a department or province.
  - 6.6 The employer shall provide funding to conduct an audit.
  - 6.7 The final audit reports shall be submitted to Council for consideration and adoption.
  - 6.8 Any retrenchment initiative arising as a result of the audit reports referred to in paragraph 6.7 above shall be conducted in accordance with the relevant legislation and legal principles.

## 7. Pension funds

- 7.1 The parties agree that the GEPF shall increase the pensionable years of service or implement other measures for employees disadvantaged by past racial or gender discrimination related to pensions:-
  - 7.1.1 using the funds provided under paragraph 7.2, and
  - 7.1.2 subject to agreement in the PSCBC on specific measures.
- 7.2 To fund the improvements under paragraph 7.1, the GEPF will reduce the funding level by the lesser of:-
  - 7.2.1 1 per cent, or
  - 7.2.2 the amount needed to increase to actual service the pensionable service of former general assistants who;
    - a) are now permanent employees of the employer,
    - b) had a stable and continuous employment relationship in the public service for at least a year immediately before they became permanent employees, and
    - c) due to past measures that discriminated on the basis of race , were employed as casual employees and therefore did not belong to a government pension fund.
- 7.3 The employer shall not reimburse the GEPF for the reduction in the funding level resulting from this agreement.
- 7.4 The Pensions Task Team shall make proposals on the allocation of funds between relevant groups no later than November 1, 1998. The proposals from the Task Team shall:-
  - 7.4.1 cost no more than the funds foreseen in paragraph 7.2, and



- 7.4.2 in that context, take into account the current needs of the different groups affected by past discrimination.

## 8. Dispute resolution

- 8.1 Any dispute about the interpretation or application of this agreement shall be referred to the PSCBC for resolution in terms of the dispute resolution procedure of the PSCBC.
- 8.2 If a panel of arbitrators as specified in the agreement on dispute resolution procedures does not yet exist, the PSCBC shall appoint a private conciliator and/or a committee of three arbitrators, who will operate in accordance with the agreement on dispute resolution.

## 9. Date of implementation

This agreement shall, in respect of parties and non-parties to the PSCBC, come into effect on the date it is signed in Council.

## 10. General provision

- 10.1 In the event of a conflict between any provision of this agreement and a provision of any earlier agreement of the PSCBC, the Central Chamber of the Public Service, and/or a negotiating forum that was/is responsible for negotiations in the Public Service before the establishment of the PSCBC, the provision of this agreement shall apply.
- 10.2 This agreement determines the funds set aside to improve salary grades and other conditions of service for 1998/9.

## 11. Definitions

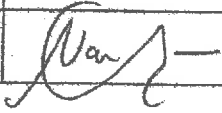
For the purposes of this agreement:-

- 11.1 "CCMA" means the Commission for Conciliation, Mediation and Arbitration;
- 11.2 "Council" means the Public Service Co-ordinating Bargaining Council;
- 11.3 "employee" means the employee of the employer;
- 11.4 "employer" means the State as employer falling within the registered scope of the Council;
- 11.5 "GEPF" means the Government Employees Pension Fund as set out in the Government Employees Pension Law, 1996;
- 11.6 "management echelon" means the employees of the employer that are at salary levels 13 to 16, but excluding those employees who are identified as professionals; and
- 11.6 "sectoral council" means a sectoral council established in terms of section 37 of the Labour Relations Act, No. 66 of 1995.

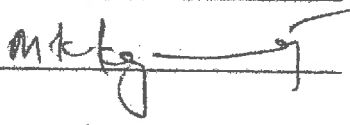
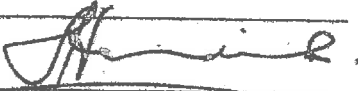

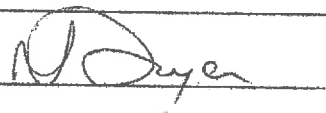

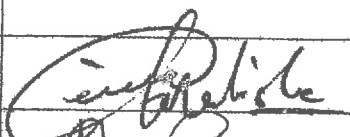
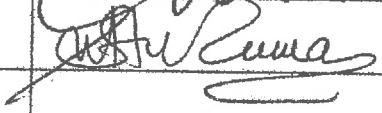


THIS DONE AND SIGNED AT ISANDO ON THIS THE 2<sup>th</sup> DAY OF SEPTEMBER 1998.

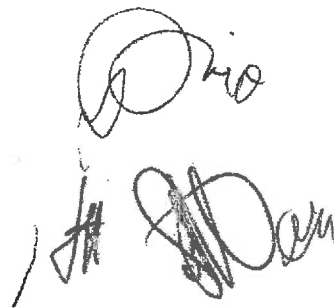
ON BEHALF OF THE EMPLOYER

	NAME	SIGNATURE
STATE AS EMPLOYER	NS Makgeth	

ON BEHALF OF TRADE UNION PARTIES

TRADE UNION	NAME	SIGNATURE
DENOSA	M. K. KICANGI	
HOSPERSA		
NAPTOSA	H. HENDRICKS	
NUPSAW	S. MATATISANE	
NWU		
NEHAWU	Molothoiso Lij	
PAWUSA		
POPCRU	B. P. NKUMA	
PSA		
SADTU	W. M. MADISHA	
SAPU	S. N. HULUMAN	
SAOU		









# **ANNEXURE D**





**PSCBC**

**PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL**

## **RESOLUTION NO 12 OF 2002**

### **PENSIONS RESTRUCTURING**

#### **SCOPE**

1. This agreement binds:
  - 1.1 the employer;
  - 1.2 the employees of the employer who are members of the trade union parties to this agreement; and
  - 1.3 the employees of the employer who are not members of any trade union parties to this agreement, but who fall within the registered scope of Council.



## **OBJECTIVES**

2. The objective of this resolution is:
  - 2.1 to restructure and amend the benefit and governance structure of the Government Employees Pension Fund (GEPF);
  - 2.2 to provide for the recognition of service in the former Non Statutory Forces (NSF) as pensionable service in the GEPF;
  - 2.3 to give effect to the provisions of Clause 7 of Resolution 7 of 1998;
  - 2.4 to investigate and provide for the recognition of pensionable years of service for the employees who were dismissed during the industrial actions;
  - 2.5 to investigate the alleged abuse of the Venda Pension Fund and the effect it had on the employees; and
  - 2.6 to accommodate the former Municipal Police now employed by SAPS in the GEPF

## **AGREEMENT**

3. The parties to the Public Service Co-ordinating Bargaining Council (PSCBC) hereby resolve to amend the Rules of the GEPF, in accordance with the rules ratified on the date of signing of this agreement, to give effect to the following:
  - 3.1 An employer contribution rate to the Fund that is required to ensure that the Fund is able to meet its obligations at all times, subject to a minimum funding level of 90%. The employer contribution rate shall be determined by the Employer in consultation with the Board and the



Minister of Finance, with due regard to the recommendations of the most recent actuarial valuation by the Fund.

- 3.2 An option to members to a higher spouse's pension entitlement (post retirement reversion percentage) by means of opting for either a reduced gratuity or reduced annuity payable on retirement or discharge where applicable.
- 3.3 An orphan's pension payable in the event of a member's or future pensioner's death where there is no surviving spouse as follows:
- 20% of the members expected pension for one child,
  - 30% of the member's expected pension for two children,
  - 40% of the member's expected pension for three and more children.

With the understanding that an eligible child will be a natural or adopted child of a member or pensioner, or a deceased member or pensioner who,

- is alive and under the age of 18 or
- under the age of 22 and is in the opinion of the Board a full time student or
- is over the age of 18 and who, in the opinion of the Board, is disabled and was factually dependent on the member or pensioner immediately before the death of such member or pensioner.

Upon the death of a surviving spouse, the orphan's pension will be calculated on 80%, 60% and 40% of the spouse's pension.

- 3.4. The provision of funeral benefits on the death of members and pensioners whose pensions commenced after the effective date of this agreement, and on the death of spouses and eligible children of





members and pensioners whose pensions commenced after the effective date of this agreement as follows:

- 3.4.1. In the case of a member or pensioner, a payment of R 7 500.
  - 3.4.2. In the case of a spouse, a payment of R 7 500.
  - 3.4.3. In the case of an eligible child, a payment of R 3 000 per child.
- 3.5. Guaranteed minimum annual pension increases with effect from 1 April each year. The increase shall be equal to at least 75% of the percentage increase in the Consumer Price Index (All items) over the previous year, together with additional increases annually with effect from 1 April of each year to those pensioners whose annuities are less than the minimum level.
- 3.6 The minimum level, referred to in paragraph 3.5, is defined as 75% of the annuity at retirement adjusted for full inflationary increases. To allow for implementation and publishing delays, the change in the CPI over the period ending four months prior to 1 April will be used.
- 3.7 Provide members with an option to purchase additional service in the GEPF that is cost neutral to both the Fund and Employer. To this end, the cost of purchasing service will relate directly to the increase in the member's actuarial interest.
- 3.8 An enabling rule for the provision of guarantees by the Board of Trustees in respect of home loans by registered financial or otherwise approved institutions to members. The amount of such a guarantee will be commensurate with the value of a member's withdrawal benefit after tax deductions and will be determined according to the adopted policy of the Board.
- 3.9 The recognition of the –
- 3.9.1. registered life partners, including same sex partners,



- 3.9.2. registered spouses, and
  - 3.9.3. registered multiple spouses according to the Recognition of Customary Marriages Act, 1998 and the tenets of any religion, for purposes of the Rules and Law.
- 3.10 The abolishment<sup>1</sup> of the provision allowing members to be granted the option to hold a dormant membership status to the Fund.
- 3.11 The expedited appointment of a Board of Trustees for the GEPF<sup>2</sup>, constituted as follows:
- 3.11.1 One pensioner representative elected by postal ballot by pensioners.
  - 3.11.2 One employee representative nominated by members employed by the South African National Defence Force, the National Intelligence Agency and the South African Secret Service.
  - 3.11.3 Six employee representatives nominated by the trade union parties in the PSCBC in accordance with proportionate representation to union membership in the PSCBC.
  - 3.11.4 The total of eight representatives referred to in 3.11.1 to 3.11.3 above will be matched by eight representatives appointed by the employer.
- 3.12. The removal of the collective bargaining requirement in respect of non-benefit related rule amendments.

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<sup>1</sup> The abolishment referred to in 3.10 does not affect dormant members currently remaining in the system.



- 3.13. The GEPF shall pay interest on any part of the amount of the benefit not paid within 60 days of the benefit becoming payable, calculated from the date following the last day in service. The date on which the benefit becomes payable means the last day of service, e.g. the last day of a member's employment or the day of the member's death.
- 3.14. The recognition of service in the former NSF as pensionable service in the GEPF on the following basis:
- 3.14.1. Members who qualify will be those who joined the respective former Non-Statutory Forces on or before 31 December 1990 and who entered into an employment agreement with the Department of Defence, the South African Police Service, the South African Secret Service and the National Intelligence Agency through integration or the attestation process, or who are employed in the rest of the public service. The recognition is subject to the cut-off dates provided for in the End of Integration Intake Act, 2001.
- 3.14.2. NSF service will be recognised on a sliding scale as follows: 33.3% thereof for members with less than 10 years NSF service; 80% thereof for members with more than 10 but less than 20 years NSF service, 100% thereof for members with 20 years and more NSF service.
- 3.14.3. Members will bear a part of the cost in respect of recognised service while the balance will be funded from the funds set aside under PSCBC Resolution 7/98 to a maximum of R 501 million for the Department of Defence. Members of the NSF employed by departments other

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<sup>2</sup> The Board of Trustees will act in terms of Sections 6, 7 and 31 of the Government Employees Pension Law, 1996.



than Defence, will be dealt with in terms of the Government Employees Pension Fund – Special Pension Increase (Members of Non-Statutory Forces) Bill.

3.14.4. For members who are unable or who choose not to pay the employee's contribution, pensionable service will be reduced accordingly.

3.14.5. Members who benefit from this agreement will be excluded from any benefits payable under the Special Pensions Act, 1996. Any and all amounts paid to eligible persons as a Special Pension or demobilisation benefit under the Demobilisation Act, 1996 at the date of recognition of NSF service will be taken into account in the computation of additional service under these provisions.

4. Parties further agree to recognise pensionable service of employees:

4.1 as contemplated in clause 7.2.2 of the PSCBC Resolution 7 of 1998. Furthermore process the payment of eligible employees, within a period of 18 months;

4.2. who were dismissed as a result of participating in industrial action<sup>3</sup> and later reinstated/re-employed in terms of strike settlement agreements concluded between the respective departments and trade unions and where such agreements provided for payment of pensionable years of service. This is in order to recognise the unbroken pensionable years of service:

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<sup>3</sup> Industrial action in this agreement refers only to strikes which took place between 1991 and 1993.





- a) For the employees who are now exiting the system, and the employer has ready information in the database, the employer should process the payment.
- b) For the workers who have already exited the system, and the employer has ready information in their database, the employer should process and adjust their pension payments within at least six (6) months from the date of signing this agreement.
- c) The employer will issue an invitation to workers who qualify in line with Clause 4 of this agreement, to apply and process those applications as and when they are received in accordance with Resolution 7 of 1998.
- d) In line with clause (c) above, national and provincial departments should form joint project teams, comprising of the employer and employee parties, to go through current files and those in archives to trace workers in order to verify and validate information. Progress reports should be sent to the PSCBC on a bimonthly basis.

For the purpose of clauses 4.1. and 4.2. above, payment will be made to the beneficiaries/estate in the event that the employee is deceased.

- 5. Parties also agree that in the event employees participated in industrial action<sup>4</sup> and were dismissed as a result, and reinstated immediately thereafter without an agreement to recognise their pensionable service as unbroken the following process will apply:

- 5.1 An investigation shall be conducted to establish the reason for not recognising their pensionable service as unbroken. Such an



investigation should not exceed a period of eighteen months(18 months)

- 5.2 The unbroken years of service in respect of employees who participated in industrial action in Kwa-Zulu Natal will be investigated.
  - 5.3 Should the result of the investigation suggest that the above category of employees' pensionable service should have been recognised, such outcome will be presented before Council for consideration.
6. The investigation into the implications on affected employees of the Venda Pension Fund will continue with the aim to provide information on the following areas within a period of 6 months:
- 6.1 The funding levels of the Government Pension Fund of Venda and the Government Superannuation Fund of Venda at the time of amalgamation into the GEPF.
  - 6.2 The verification of payments made to affected employees.
  - 6.3 The verification of payments made by affected employees who had to repay benefits.
  - 6.4 Develop proposals for consideration by the parties to the PSCBC.
7. Accommodate all former Municipal Police employees that were incorporated into the South African Police Services during 1989, and still belong to Municipal Pension Funds, in the GEPF with effect from 1 June 2003. The transfer of these employees and processes related thereto will be finalised at

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<sup>4</sup> Industrial action in this agreement refers only to strikes which took place between 1991 and 1993



sectoral level, provided that the outcome of such processes is cost neutral to the GEPF.

8. Other categories of employees who were affected in respect of pensionable service by past employment practises, will be investigated and the results of such an investigation will be tabled in Council for consideration.

## **GENERAL PROVISIONS**

9. The employer will introduce mechanisms to provide GEPF members with information on the legal adoption process and all amendments to benefits and requirements on members established by this Agreement.
10. No amendment to this agreement shall be in force or effect unless reduced to writing and signed by all parties concerned.
11. The representatives of all relevant parties undertake to take all reasonable steps necessary to ensure the implementation of this agreement.

## **IMPLEMENTATION SCHEDULE**

12. Clauses 3.1, 3.5 and 3.6 of this Agreement shall come into effect on 1 April 2002.
13. Clause 3.2, 3.3, 3.4, 3.7, 3.9, 3.11, 4, 5, 6, 7, 8 and 9 of this Agreement shall come into effect on the first day of the month following the signing of this Agreement.
14. The effective date of clause 3.8 shall be determined through the investigation of the PSCBC Task Team responsible for the restructuring of Housing Assistance.



15. Clauses 3.12, 3.13 and 3.14 of this Agreement shall come into effect after finalisation of the required legislative processes.
16. Clause 3.10 of this Agreement shall come into effect on 1 April 2003.
17. Any other changes to the Government Employees Pension Law, 1996 and Rules to clarify provisions or to rectify errors and omissions will come into effect after finalisation of required legislative processes in the case of amendments to the Law and on the first day following the signing of this agreement in the case of changes to the Rules.

### **DISPUTE RESOLUTION**

18. If there is a dispute about the interpretation or application of the Agreement, any party may refer the matter to the Council for resolution in terms of the dispute resolution procedure of Council.
19. The Council will monitor the implementation of this agreement.

### **DATE OF IMPLEMENTATION**

20. This agreement comes into effect on the date of signing unless stipulated otherwise in this agreement.





# **ANNEXURE E**





PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL

RESOLUTION NO 3 OF 2012

**AGREEMENT ON THE CLOSING OUT OF THE PROJECT ON ADDRESSING PAST  
DISCRIMINATORY PENSION PRACTICES**

**1. OBJECTIVE**

To allow for the closing out of the project on pensions restructuring as agreed to in clause 7 of PSCBC Resolution 7 of 1998 and PSCBC Resolution 12 of 2002.

**2. SCOPE**

This agreement binds,

- 2.1 the employer,
- 2.2 the employees of the employer who are members of the trade union parties to this agreement; and
- 2.3 the employees of the employer who are not members of any trade union parties to this agreement, but who fall within the registered scope of Council.

**3. NOTING**

- 3.1 Council gave effect to clause 7 of PSCBC Resolution 7 of 1998 by the signing of PSCBC Resolution 12 of 2002.
- 3.2 Council agreed to and implemented the provisions of PSCBC Resolution 12 of 2002 by giving effect to the objectives as was listed in the agreement.
- 3.3 Council extended the implementation of the agreement on various occasions over a ten year period as to ensure maximum opportunity for potential beneficiaries to apply for the redress of discriminatory pension practices as listed in PSCBC Resolution 12 of 2002.

Public Service Bargaining Centre, 260 Basden Ave, Lyttelton, Centurion, Pretoria, 0176

P.O. Box 3123, Lyttelton South, 0176

Tel: (012) 644-8100 • Fax: 086 619 7884

E-mail: [info@pscbc.org.za](mailto:info@pscbc.org.za) • Website: <http://www.pscbc.org.za>

All correspondence must be addressed to the General Secretary of Council

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KCC  
[Handwritten signatures and initials]



- 3.4 Council set up various structures on National / Provincial level and conducted an intensive media campaign as to propagate the redress program among possible beneficiaries.
- 3.5 The latter closing date of this project as agreed to by Council was 31 March 2012.

#### 4. AGREEMENT




- 4.1 Parties agree that the implementation of the pensions redress program has been exhausted and will therefore lapse on 31 July 2012.
- 4.2 The National Pensions Task Team must close out the administrative process of applications;
- 4.2.1 The National Departmental and Provincial Task Teams may accept and submit late applications from potential beneficiaries up to 31 July 2012.
- 4.3 The administrative process on the implementation of PSCBC Resolution 7 of 1998 and PSCBC Resolution 12 of 2002 by the GPAA will commence on 1 August 2012.

#### 5. DISPUTE RESOLUTION

If there is a dispute about the interpretation or application of this agreement any party may refer the matter to the Council for resolution in terms of the dispute resolution procedure of the Council.

#### 6. IMPLEMENTATION OF AGREEMENT

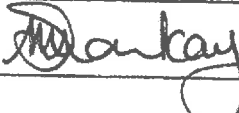
- 6.1 This agreement shall come into effect on the date it enjoys majority support and will remain in force unless terminated or amended by agreement.
- 6.2 The Council will monitor the implementation of this agreement

  
2 kc  
 

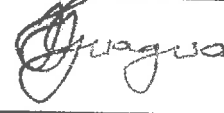
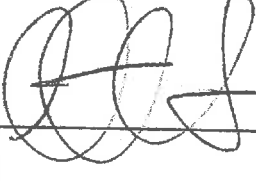

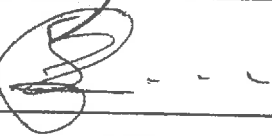

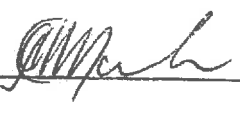


THIS DONE AND SIGNED AT Centurion OF THIS 03 DAY  
OF September 2012.

ON BEHALF OF THE EMPLOYER

	Name	Signature	Date of signing
State as Employer	M. Mtshikila		18/6/12

ON BEHALF OF TRADE UNION PARTIES

Trade Union	Name	Signature	Date of signing
DENOSA	Thembeka Gwagwa		28/08/2012
HOSPERSA/NUPSAW/ NATU	Susan Ntlatle		29/08/2012
NAPTOSA			
NEHAWU	CLEMENT MARULE		28/08/2012
POPCRU	HKOSINATHI MABHIDA		31/08/2012
PSA	MALEKA REUBEN		29/08/2012
SADTU	MUGWENA MALULEKE		03/09/2012
SAPU			





# **ANNEXURE F**





PUBLIC SERVICE CO-ORDINATING BARGAINING COUNCIL

## RESOLUTION 2 OF 2018

Enquiries: VM Kola

Tel: 0126448104

Email: [valenciak@pscbc.org.za](mailto:valenciak@pscbc.org.za)

### PSCBC PROVINCIAL CHAMBERS

Dear Chamber Members

#### **CONCLUSION OF PSCBC RESOLUTION 02 OF 2018: AGREEMENT ON THE COMPENSATION METHODOLOGY OF THE REDRESS OF DISCRIMINATORY PENSIONS PRACTICES**

The Public Service Co-ordinating Bargaining Council (PSCBC) is pleased to announce the conclusion of PSCBC Resolution 02 of 2018 (Agreement on the compensation methodology of the redress of discriminatory pensions practices).

The agreement allows for the closing out of the pensions redress process as agreed to in clause 7 of PSCBC Resolution 7 of 1998 and PSCBC Resolution 12 of 2002 to address specific discriminatory practices related to pensions within the public service. The agreement was signed by the parties to the PSCBC and the agreement enjoys a 74.84% majority.

The agreement seeks to provide compensation to government employees who have suffered various forms of discrimination by the government pensions fund under apartheid. This discrimination among others includes the following; female teachers and other female employees in the public service who had to resign to give birth and upon return were admitted to the Temporary Employees Pension Fund (TEPF), RSA citizens employed in former Transkei, Bophuthatswana, Venda, and Ciskei (the so-called "TBVC States" ) and Employees admitted to temporary pension funds due to their medical/physical status. Qualifying applicants had to be in service on the date of signing PSCBC Resolution 7 of 1998, being 02 September 1998.

Public Service Bargaining Centre, 260 Baden Ave, Lyttelton, Centurion, Pretoria, 0176

P.O. Box 3123, Lyttelton South, 0176

Tel: (012) 644-8100 • Fax: 086 619 7884

E-mail: [info@pscbc.org.za](mailto:info@pscbc.org.za) • Website: <http://www.pscbc.org.za>

**All correspondence must be addressed to the General Secretary of Council**



An extensive media campaign was conducted (radio, TV, Newspapers, newsletters and workshops) when the process commenced in order to encourage eligible candidates to apply for the redress. The closing date for the applications was the 31 March 2012. A total of 138 000 applications were received by the PSCBC. These applications were sent to the Government Pensions Administration Agency (GPAA) in April 2013 for the verification process. The GPAA verified all applications at the end of September 2013. A database of qualifying candidates was determined by the GPAA and letters were sent out to candidates indicating their qualification status.

Qualifying applicants in terms of pensions redress programme who have exited the public service will receive a cash lump sum, in lieu of payment for the redress programme, based on the applicable reduction factor as to remain within the budgetary limitations set out in clause 7.2 of Resolution 7 of 1998.

Qualifying applicants who are still in service GPAA will adjust their pensionable years' of service.

Resolution 2 of 2018, will allow for the closing out of the pensions redress process as agreed to in clause 7 of PSCBC Resolution 7 of 1998 and PSCBC Resolution 12 of 2002 to address specific discriminatory practices related to pensions within the public service.

The GPAA will communicate with qualifying candidates to indicate to them that the process has been concluded and to contact GPAA for any payment related enquiries.

The PSCBC will monitor the agreement until payments have been effected.

Ps. Resolution 2/2018 is attached for easy reference.

Yours sincerely



**Frikkie De Bruin**  
**General Secretary**



# **ANNEXURE G**







0.

## QUOTE OF THE WEEK

*Senekal last week had nothing to do with solutions. It was all about politicians' testosterone. It was all about politicians' egos. What useful idea came out of all that heat and noise generated by all those politicians in Senekal last week? There is nothing. Nothing that makes SA a better place. Nothing that leads us to a better understanding of race relations in SA after 1994. Nothing that is a solution to farm murders – many of whose victims are poorly paid, desperate black people – or a solution to the incredibly horrendous murder and crime problem in this country.*

JUSTICE MALALA  
SUNDAY TIMES DAILY

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### [PREVIOUS QUOTES OF THE WEEK \(quotespage\)](#)

24 JANUARY 2014

## WHY REDRESS MEASURES ARE NOT RACIST

Anybody who highlights the pervasive racism and racial discrimination still experienced by black South Africans are invariably attacked by enemies of equality who oppose legal measures to address the effects of past and on-going racism and racial discrimination. Claiming that measures aimed at addressing the effects of past and on-going racial discrimination are "racist", some of them assert that the right to equality always requires all people to be treated the same, regardless of their race, sex, gender or sexual orientation. These arguments, I contend, are both ignorant and wrong.

Insisting on the equal treatment of all people in all circumstances is deeply unfair. Insisting on such equal treatment can also have bizarre and even dangerous consequences.

To use an uncontroversial example, most of us would be horrified if schools insisted that all boys and girls, regardless of age or sex, must play in the same rugby league. Most of us would also be horrified by a government policy requiring every child to pay R50,000 a month to be allowed to attend a government school.

People are often discriminated against on the basis of age, sex or financial status. Yet few of us would deny that the policies mentioned above (which insist on the equal treatment of children regardless of their age, sex or financial ability) are profoundly unfair.

We may point out, when pressed, that because the playing field is not equal for the children involved, an insistence on equal treatment is profoundly discriminatory. It would endanger the lives of some children. It would also exclude children from life-enhancing benefits and opportunities based on no more than the



historical “accident” that some children were born later than others, or on the fact (entirely unrelated to the abilities of the particular child) that some parents are able to afford the school fees while most will not.

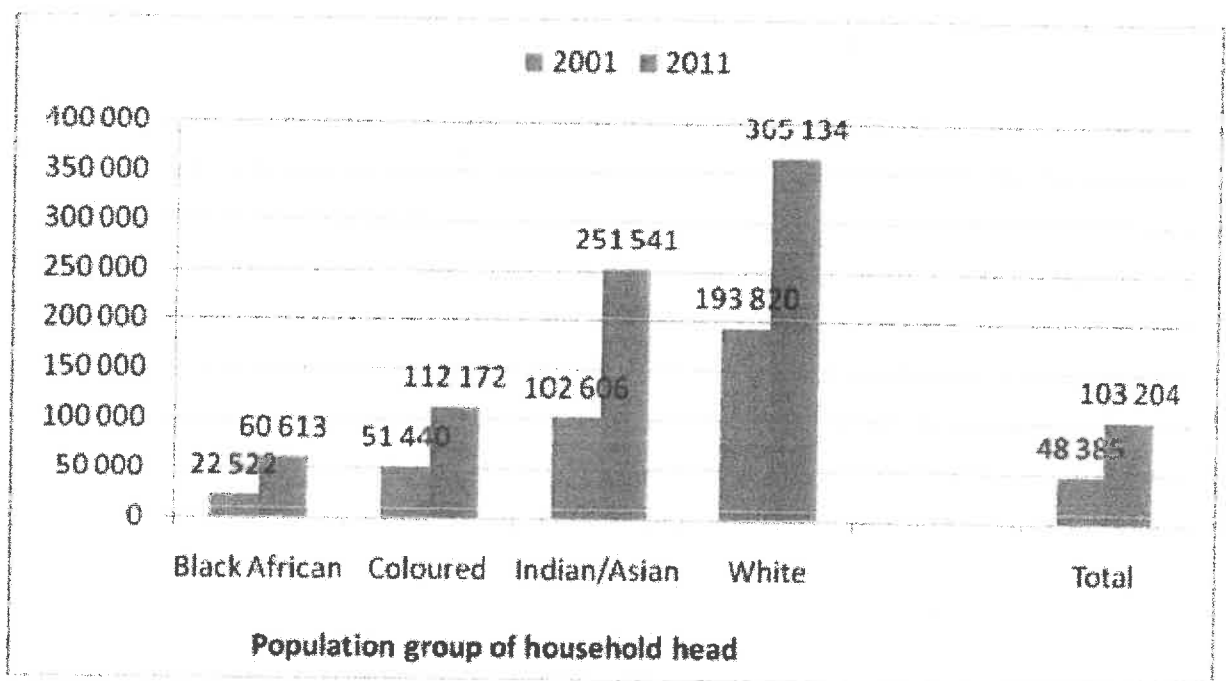
For this reason the principle of equality cannot be based on the requirement that all people must be treated in exactly the same manner at all times, regardless of their personal circumstances or their personal attributes and characteristics.

Unless you are wilfully ignorant of South Africa’s history, you would not be able to deny that when our Constitution was adopted our society was “deeply divided, vastly unequal and uncaring of [the] human worth” of black South Africans. Anyone who has eyes to see must also admit that these “stark social and economic disparities” persist to this day.

Given our history of racial subjugation and oppression, it is no surprise that these inequalities are racially marked (although, as the Constitutional Court has pointed out, this racial inequality often intersects with other forms of disadvantage based on sex, gender, sexual orientation and – not mentioned by the Court – the relative poverty or wealth of individuals).

In 2011 the average annual income of a “white” household was about R365,000, that of an “Indian” household R251,000, that of a “coloured” household R251,500 rand and that of an average “black” household R60,600. (See table below.)

**Figure 3.26: Average annual household income by population group of household head**



([http://constitutionallyspeaking.co.za/wp-content/uploads/2014/01/southafrica\\_income.png](http://constitutionallyspeaking.co.za/wp-content/uploads/2014/01/southafrica_income.png))

Our Constitution responds to this undisputed reality. Unlike opponents of redress measures, who insist that we should ignore these facts and should turn a blind eye to the way in which past racial exploitation continues to affect the life-chances of the overwhelming majority of South Africans, the Constitution recognises the incontrovertible fact that all are not equal in our country. If legal rules and policies deny this reality, it will simply lead to an entrenchment of existing inequalities. As the Constitutional Court stated in the case of *Minister of Finance v Van Heerden*:

Our Constitution recognises that decades of systematic racial discrimination entrenched by the Apartheid legal order cannot be eliminated without positive action being taken to achieve that result. We are required to do more than that. The effects of discrimination may continue indefinitely unless there is a commitment to end it.



This is why section 9(2) of the Constitution contains a so-called “affirmative action” clause, which provides for the achievement of full and equal enjoyment of all rights and freedoms and authorises legislative and other measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination.

Our Constitution thus allows for and in some cases, requires, “remedial or restitutionary equality”. As the Constitutional Court explained in the Van Heerden case (ironically brought by a white National Party member of Parliament who complained that he was being discriminated against):

Such measures are not in themselves a deviation from, or invasive of, the right to equality guaranteed by the Constitution. They are not “reverse discrimination” or “positive discrimination”... They are integral to the reach of our equality protection. In other words, the provisions of section 9(1) and section 9(2) are complementary; both contribute to the constitutional goal of achieving equality to ensure full and equal enjoyment of all rights.... Absent a positive commitment progressively to eradicate socially constructed barriers to equality and to root out systematic or institutionalised under-privilege, the constitutional promise of equality before the law and its equal protection and benefit must, in the context of our country, ring hollow.

As I have explained before, this does not mean that redress measures will always be constitutionally valid.

First, while the Constitutional Court acknowledges that redress measures aimed at bringing about transformation “will inevitably affect some members of the society adversely, particularly those coming from the previously advantaged communities”, a measure that constitutes “an abuse of power” or imposes “such substantial and undue harm on those excluded from its benefits that our long-term constitutional goal would be threatened” would not be permissible.

Second, the Court acknowledged that in the assessing the validity of redress measures “a flexible but situation-sensitive” approach is indispensable. This is so “because of shifting patterns of hurtful discrimination and stereotypical responses in our evolving democratic society.” Once the income of the average “black” household is more or less equal to that of the average “white” household and once the racially skewed patterns of property ownership have become less glaringly unjust, race-based redress measures may well be found no longer to be constitutionally valid.

It also does not mean that there are not, in certain cases, practical and conceptual problems with the implementation of race-based redress measures. For example, the way in which the current so called Broad Based Black Economic Empowerment (BBBEE) policy is being implemented is a recipe for nepotism and corruption. BBBEE can often look suspiciously like a form of bribery aimed at moderating the economic policies of the ANC government and at opening direct channels of communication between the big companies and government leaders.

The revelations about Cyril Ramaphosa’s direct communications with several government ministers during the strike that led to the Marikana massacre clearly demonstrate the “benefits” of political connectivity that BBBEE bring to big business.

Often the policy is implemented in ways that allow the old business elite to “buy off” the new political elite by handing large amounts of shares or board positions to politically connected individuals, without benefiting the broad community and without redistributing assets and benefits to the large majority of South Africans.



Reasonable people could therefore engage in a serious debate about the correct scope and content of such redress measures. But claims that such measures are inherently “discriminatory”, that they infringes on long established human rights norms or that they are inherently unjust, are not based on either facts or any understanding of the legal landscape.

Those who oppose redress measures in principle (not having read much about anything and smugly holding on to their own ignorance) may not be aware that in the legal and philosophical discourse, the Constitutional Court’s approach to redress is neither unique nor conceptually problematic.

In fact, with the exception of some far right-wing judges on the US Supreme Court (who believe corporations have rights – just like people) I am unaware of any modern equality jurisprudence in foreign jurisdictions or in international law supporting the notion that race-base redress measures constitutes “reverse discrimination”.

Thus the lawyers and judges who staff the Committee on Human Rights, providing an authoritative interpretation of the International Covenant on Civil and Political Rights (ratified by, and binding on, 167 countries) in a General Comment on the Equality of Men and Women endorsed the notion that states have a duty to take positive measures to achieve equal empowerment of women.

Similarly, the judges and lawyers who staff the Committee on Economic, Social and Cultural Rights, providing an authoritative interpretation of the equality guarantee in the International Covenant on Economic, Social and Cultural Rights (ratified by, and binding on, 167 countries) endorsed the need for states to take affirmative action measures and explained the need for redress measures as follows:

In order to eliminate substantive discrimination, States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination. Such measures are legitimate as long as they represent reasonable, objective and proportional means to redress de facto discrimination and are discontinued when substantive equality has been sustainably achieved.

The Committee on the Elimination of All Forms of Discrimination Against Women, in its authoritative interpretation of the International Covenant on the Elimination of All Forms of Discrimination Against Women (ratified by, and binding on, 187 countries) endorsed affirmative action measures as follows:

It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences. Pursuit of the goal of substantive equality also calls for an effective strategy aimed at overcoming underrepresentation of women and a redistribution of resources and power between men and women.

Lastly, the judges and lawyers who staff the Committee on the Elimination of All Forms of Racial Discrimination, in its authoritative interpretation of the International Convention on the Elimination of All Forms of Racial Discrimination (ratified by, and binding on, 176 countries) explicitly rejects the use of the term “positive discrimination” when dealing with race-based “affirmative action”, noting that in the context of international human rights standards, this term is a *contradictio in terminis* (a contradiction in terms). It then proceeded to note that such “affirmative action” measures:





include the full span of legislative, executive, administrative, budgetary and regulatory instruments, at every level in the State apparatus, as well as plans, policies, programmes and preferential regimes in areas such as employment, housing, education, culture and participation in public life for disfavoured groups, devised and implemented on the basis of such instruments.

There are, of course, some reasonably credible lawyers and philosophers who support the principle that the effects of past and on-going discrimination should be addressed by affirmative action measures, but hold that such measures should not rely on "race". I have previously written about structural racism, (<http://constitutionallyspeaking.co.za/structural-racism-the-invisible-evil-that-must-be-addressed/>) which – I believe – counter these arguments by showing that in South Africa race is not a proxy for disadvantage but itself always causes disadvantage.

All I will add here is that, if you support redress measures but agree with those who oppose the use of racial categories for redress purposes, the examples provided above at the very least must remind you that your argument is neither self-evident nor widely accepted "common sense". I despair that many people taking part in the debate (wholly ignorant of the writing and jurisprudence on equality which have developed over the past 50 years) seem to believe that it is obvious that race-based redress measures are "racist". It is not.

My advice to those would be simple: do some basic reading on equality law and the use of racial categories in effecting redress. It may, at the very least, make you realise that the view you think is based on self-evident common sense is not nearly as obvious as you believe. It may even lead you to reflect and think.

SHARE:  

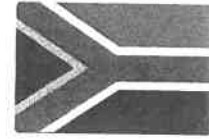


# **ANNEXURE H**





Republic of South Africa



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### President Cyril Ramaphosa: National Day of Reconciliation

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16 Dec 2019

Address by President Cyril Ramaphosa on the occasion of the National Day of Reconciliation, Bergville Community Sports Complex, Okhahlamba Local Municipality

Programme Director,  
Minister of Arts and Culture, Mr Nathi Mthethwa,  
Premier of KwaZulu-Natal, Mr Sihle Zikalala,  
Ministers and MECs,  
Members of the National and Provincial Legislatures,  
Leaders of various political, trade union and civil society formations,  
Mayors and Councillors,  
Traditional and religious leaders,  
Fellow South Africans,

Sanibonani! Dumelang! Molweni! Avuxeni! Goeie Dag! Thobela!

It is my privilege to be here in Bergville to mark our national Day of Reconciliation, a time to celebrate how far we have come in restoring the broken bonds of the past and in building a united nation.

A special greeting to the people of eMangwaneni, this place that is so rich in history.



From the founding of Ezintabeni ZoKhahlamba by Inkosi uZikhali, to the establishment of the Bergville Mountain Village in the late 1800s, to the South African War of 1899, when a small fort was built here, this area has been witness to a past of both turbulence and progress.

Bergville is also the gateway to the uKhahlamba-Drakensburg Park where the San rock art at this World Heritage Site gives us a glimpse into the lives of our ancestors who lived here thousands of years ago.

The design of our national coat of arms pays homage to our Khoisan forebears, and every time it is displayed we are reminded of the deep and enduring links between us and our ancient past.

This is a place of immense beauty, lying at the foot of the majestic Drakensberg.

But like many parts of this province it has been in the grip of drought.

So we were all immensely pleased last week when the heavens opened to give some relief to Bergville.

As we celebrate the coming of the rains, today is a day for celebration.

A celebration of the triumph of reconciliation over retribution, of goodwill over animosity, and of fellowship over hatred.

That we have been able to overcome a bitter past and stand here today to proclaim ourselves proud South Africans, black and white, is testimony to the strength and resolve of a great people.

This day of the year was proclaimed as the Day of the Vow by our apartheid rulers to remember the fierce battle in 1838 at the Ncome River between the Voortrekkers and the Zulu people under His Majesty King Dingane.

In that historic battle, brave Zulu warriors with assegais succumbed in large numbers to the firepower of the Voortrekkers, and, it is said, the Ncome River ran red with the blood of these freedom fighters.

It is therefore significant that this day of the year also marks the day in 1961 on which Umkhonto we Sizwe, the military wing of the ANC, was formed to resist the savagery of apartheid dispossession and oppression.

When we attained our democracy in 1994 we took a conscious decision that the 16th of





December would be a day we commemorate both historical events, and in doing so, reconcile our nation.

This day, that once symbolised the domination of one group over another, is now an occasion to celebrate the pact we made to start on a clean slate – to strive towards realising a society founded on reconciliation, non-racialism, non-sexism, equality, peace, justice and democracy.

This is the society that the people of this country envisioned nearly 65 years ago in the Freedom Charter, when they said:

We, the People of South Africa, declare for all our country and the world to know: that South Africa belongs to all who live in it, black and white, and that no government can justly claim authority unless it is based on the will of all the people; that our people have been robbed of their birthright to land, liberty and peace by a form of government founded on injustice and inequality; that our country will never be prosperous or free until all our people live in brotherhood, enjoying equal rights and opportunities...

This vision of a nation reconciled is embedded in our democratic Constitution.

As we gathered to adopt a new fundamental law for our free land, we said – in the Preamble to the Constitution – that reconciliation is about recognising the injustices of our past, and working together to correct them.

Reconciliation is about acknowledging that even though we are diverse, with different histories and experiences, languages and cultures, we can be united.

Today, as we gather here to celebrate this day, let us affirm the principles which guide us as we work towards reconciliation, unity and peace.

Let us affirm that, indeed, we cannot achieve reconciliation unless we first recognise the injustices of our past, unless we are forthright and honest about the suffering that the people of this country had to endure.

As a country, it is important that we recognise the devastating effect of domination by colonial and apartheid rulers.

It is important that we recall how the indigenous African people were forced off their land, denied even the most basic of rights, how families were torn apart by the migrant labour system.

Reconciliation is also about honouring those who suffered for justice and freedom.



We should recall how, enduring dispossession, racism and poverty, African people actively resisted attempts to turn them into aliens in the land of their birth, keeping up sustained, active and organised resistance.

We should recall how African, coloured and Indian South Africans, together with white democrats, fought a brave and protracted struggle for freedom.

We should recall the sacrifices that so many of our people made – suffering imprisonment, exile, bannings, torture, deprivation and even death – so that we can today call ourselves a democracy.

We do so not only to honour their memories, but also so we should never forget the price that was paid in human suffering for the achievement of a free South Africa.

Reconciliation is about acknowledging that South Africa belongs to all who live in it, united in our diversity.

It makes us all equal citizens of this country, with an equal claim to being South African.

This means that this country belongs to the descendants of those who come to these shores just a few generations ago in the same measure as it belongs to those whose ancestors have lived here for centuries.

If all the people in this country, black and white, can call this place home, then it is essential that all its people must share equally in the land, the resources, the wealth and the opportunity in South Africa.

Reconciliation is therefore also about healing the wounds of the past by restoring the land and the wealth to all the people, and realising the rights of all South Africans to dignity, security and comfort.

We know that unless we move with speed to address the unresolved business of nation-building, true reconciliation and unity will be difficult to achieve

This is clearly demonstrated in access to and ownership of land.

Right here in Bergville is a stark example of the necessity of transforming patterns of land ownership for the benefit of our people.

This town is the centre of a dairy and cattle ranching area and plays an important role in the



economy of the province and the country.

But skewed patterns of racial ownership have played out here for centuries, where communities and subsistence farmers were removed from their ancestral land to make way for white-owned commercial farms.

The story of land dispossession in this province is indeed a painful one, and mirrors the lived experiences of millions of our people across this country.

It is the priority of this government to accelerate the process of land reform, and in doing so we will be guided by the decisions of our Parliament and recommendations of the Presidential Advisory Panel on Land Reform.

At the same time we will continue with the restitution process, and with freeing up state-owned land for farming and for the building of houses for our people.

We call on private landowners, commercial farmers and the private sector to take proactive steps to accelerate the land reform process by supporting farmworkers and communities to acquire land and to farm it.

Reconciliation requires that we end inequality in all its forms, not only in access to land, but in access to water, education and skills, to employment, to housing, to health care and to basic services.

It is this goal, of improving the lives of the poor and marginalised, that stands at the centre of the programme of this government, and to which we must mobilise our collective efforts.

Reconciliation is not only about race.

It is also about effecting reconciliation on matters that affect the human condition.

It means bridging the divide between women and men.

This means that the empowerment of women and the achievement of gender equity is one of our most important tasks.

Reconciliation means that we need work with greater effort and urgency to end the scourge of gender-based violence.

We cannot be a strong nation if we continue to abuse women and children and are intolerant towards members of the LGBTQI+ community.



Let us impart the value of respect to our young, so that boys and young men learn to respect women and girls.

Let us speak out against violence wherever we see it, whether it involves our brothers, our uncles, our sons or our friends.

Let us say enough is enough. Sekwanele.

Reconciliation cannot be based on pious words, must be based on all South Africans reaching out to one another to support one another as we rebuild a nation free of racism, exploitation and oppression.

We see evidence of national reconciliation in ordinary stories shared by our people, including on social media.

They are stories of coexistence, of friendship and camaraderie, but also of compassion and empathy.

Of a white man engaging in lobola negotiations on behalf of an adopted black daughter.

Of an Afrikaans-speaking toddler in a Springbok jersey fluently rendering the national anthem with his eyes closed.

Of interracial couples and adoptions and blended families; of neighbours of different races helping each other, and of domestic workers graduating at university because their employers supported their dreams.

This is not superficial unity.

These stories show that although we have a long way to go to become a truly united nation, day by day, little by little, we are breaking the barriers of race and class that were put up to divide us.

Reconciliation must mean that South Africans must reach out to one another through language, cultural appreciation, sports and through the activities of daily life.

Although there may be pockets of intolerance, we remain a people prepared to see each other as equals.

We witnessed this clearly with the outpouring of joy when the Springboks won the Rugby





World Cup in Japan last month, and when our Zozibini Tunzi was crowned Miss Universe last week.

We saw South Africans of all races take to the streets, proudly waving the national flag, and proclaiming their pride in their country.

We need only look around us to see just how far we have come.

For the first time, our national rugby team is captained by a black man, Siya Kolisi.

Our most famous athlete is a black woman from Ga-Masehlong, Mokgadi Caster Semenya, and our most famous swimmer, Chad le Clos, is a white man.

We see it in our schools, where black children and white children learn and play side by side.

And when the newspapers carry stories of the top performing matriculants they are African, white, Indian and coloured.

We see it in universities that are becoming ever-more inclusive, where students graduate in traditional attire and their families break out into ululation and dance.

We see it in our Parliament, where young and old, black and white represent the interests of their communities and give voice to their concerns.

We see it on our television screens, where programming reflects the diversity of cultures of this country, but most especially the diversity of language.

Let us not see language as a barrier to coexistence, but as a means to reach out to those of different cultures.

Let us make an effort to learn each other's languages and to teach our own to others.

We will not allow the prophets of doom to tell us that we are worse off than before 1994, or that race relations have deteriorated.

We have reached across the divide and embraced each other, and in this month and every month we must continue to do so.

Despite our backgrounds, cultures and beliefs and political affiliations, we are one nation.

Fellow South Africans,



In celebrating the 25 years of democracy, and in line with established international practice, I have decided, in terms of the Constitution, to grant a special remission of sentence to specific categories of sentenced offenders, probationers and parolees.

Remissions of sentences are always carefully considered, taking into account the interests of the public and the administration of justice.

We recognise that incarceration has followed a judicial process and that sentences have been duly imposed after conviction.

There have been previous remissions of this nature granted to coincide with important national days.

These include President Nelson Mandela's inauguration on 10 May 1994, the first anniversary of our freedom on 27 April 1995, Madiba's 80th birthday on 18 July 1998, the first year of President Mbeki's second term of office on 30 May 2005 and in celebration of 18 years of freedom on 27 April 2012.

The process will be done in various phases, starting with special categories, including women, children, the elderly, youth and inmates with disabilities.

The Minister of Justice and Correctional Services will provide the relevant details and specific circumstances with regard to relevant offenders.

It must be emphasised that this remission excludes those sentenced for violent, aggressive and sexual offences, as well as people declared dangerous criminals in terms of section 286A of the Criminal Procedure Act of 1977.

Compatriots and Friends,

In striving to build a strong and united nation we will not forget our past, nor seek to diminish its impact.

It lives with us today still.

But as the famous son of this province Alan Paton once said:

"It is not 'forgive and forget' as if nothing wrong had ever happened, but 'forgive and go forward' – (it is about) building on the mistakes of the past and the energy generated by reconciliation to create a new future."



We look to this new future with hope.

We are all products of our past, but let it not be that our past should hold us down.

Just as the river that once ran red with blood has been washed clean, so too let us renew, let us reconcile, let us move together to realise the South Africa we all want.

Let us give true effect and meaning to the profound words contained in the Preamble to our Constitution, in which we say:

We, the people of South Africa,  
Recognise the injustices of our past;  
Honour those who suffered for justice and freedom in our land;  
Respect those who have worked to build and develop our country; and  
Believe that South Africa belongs to all who live in it, united in our diversity.

We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to -

Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;  
Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;  
Improve the quality of life of all citizens and free the potential of each person; and  
Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

May God protect our people.

Nkosi Sikelel' iAfrika.

Morena boloka setjhaba sa heso.

God seën Suid-Afrika.

God bless South Africa.

Mudzimu fhatutshedza Afurika.

Hosi katekisa Afrika.



I thank you.

**Issued by:** The Presidency

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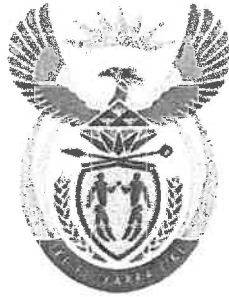






# **Annexure I**





# Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 522 Cape Town

3 December 2008

**No. 31669**

## THE PRESIDENCY

No. 1311

3 December 2008

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 43 of 2008: Government Employees Pension Fund (Condonation of Interrupted Service) Act, 2008.**



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**





*(English text signed by the President.)  
(Assented to 28 November 2008.)*

## ACT

To give effect to a petition granted by the National Assembly condoning the interrupted service of a certain individual for the calculation of pension benefits payable to his spouse under the Government Employees Pension Fund Law, 1996 (Proclamation No. 21 of 1996); and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

### Interpretation

1. In this Act, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Government Employees Pension Fund Law, 1996 (Proclamation No. 21 of 1996), has the meaning assigned to it in that Act. 5

### Condonation of interrupted service

2. (1) Despite anything to the contrary in any other law, the service of Advocate Abraham Gerhardus Kellermann, as rendered to the former Department of Justice for the period 1 January 1980 until 31 January 1991 and for the period 1 September 1991 until 6 September 2000, must be regarded as continuous service of 20 years for the purposes of calculating the pension benefits due to his surviving spouse, Chloe Jemima Kellermann, under the Government Employees Pension Fund Law, 1996 (Proclamation No. 21 of 1996), and the Rules issued under that Law. 10

(2) The benefits to which his spouse is entitled to in terms of subsection (1) is payable from the date of his death on 6 September 2000, and is payable by the Government Employees Pension Fund. 15

(3) The benefits payable under subsection (2) must be paid to his spouse within 60 days of the commencement of this Act.

### Compensation of Fund

3. (1) (a) The employer must pay a single one-off amount calculated by an actuary appointed by the Fund as compensation in full for the liability incurred by the Fund in terms of section 2. 20

(b) In calculating the liability contemplated in subsection (1), the actuary must take into account— 25

- (i) any contributions paid to the Fund or a previous fund, by the employer or Advocate Abraham Gerhardus Kellermann, not paid to Advocate Abraham Gerhardus Kellermann on termination of his services on 31 January 1991; and
- (ii) interest on the contributions contemplated in subparagraph (i).



**Act No. 43, 2008**                      **GOVERNMENT EMPLOYEES PENSION FUND  
(CONDONATION OF INTERRUPTED SERVICE) ACT, 2008**

(2) The compensation contemplated in subsection (1) is a direct charge against the National Revenue Fund.

**Short title**

**4.** This Act is called the **Government Employees Pension Fund (Condonation of Interrupted Service) Act, 2008.**

