



the dpsa

Department:
Public Service and Administration
REPUBLIC OF SOUTH AFRICA

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TO ALL HEADS OF NATIONAL AND PROVINCIAL DEPARTMENTS AND GOVERNMENT COMPONENTS

APPLICATION OF SECTION 38(2)(b)(i) OF THE PUBLIC SERVICE ACT, 1994

The Constitutional Court, on 7 December 2017, declared that section 38(2)(b)(i) of the Public Service Act, 1994 is unconstitutional. Section 38(2)(b)(i) of the Public Service Act has been the basis upon which wrongly granted remuneration paid to its employees were recovered directly from the salaries or wages of such employees. The effect of the declaration of unconstitutionality by the Constitutional Court is that section 38(2)(b)(i) of the Public Service Act no longer finds application in the public service and cannot be utilized to recover wrongly granted remuneration paid to employees.

The DPSA will undertake a process to amend the Public Service Act to remove the impugned provision. In the interim, departments are instructed not to utilise section 38(2)(b)(i) of the Public Service Act to recover remuneration wrongly paid to an employee. Departments may however utilise other available legal processes to recover such amounts, which may include recovery through a court of law or through processes in compliance with section 34 of the Basic Conditions of Employment Act, 1997.

Departments are requested to contact the DPSA should they require any further assistance in this regard.

Ms Thuli Radebe
Acting Director-General

Date: 12/04/2018