



Department of Public Service and Administration

✉ X916 PRETORIA 0001

✉ X9148 CAPETOWN 8000

☎ (012) 314-7911 • FAX (012) 323-2386

☎ (012) 462-2238 • FAX (012) 462-2299

① F Pelser

☎

314 7312

REF. 2/2/1/1

22-5-1999

TO ALL HEADS OF DEPARTMENT AND PROVINCIAL ADMINISTRATIONS

EMPLOYMENT OF NON-RSA CITIZENS IN THE PUBLIC SERVICE

1. My evenly numbered circular dated 22 June 1998 (a copy is attached) regarding the above matter refers.
2. Following queries received regarding the matter and after obtaining advice from the State Law Advisers, the following clarification is provided herewith:

The judgement of the Constitutional Court implies that non-citizens issued with permanent residence permits should be treated on the same footing as RSA citizens for employment purposes.

The position in subparagraph 2.1 above does not apply to non-citizens holding temporary residence permits. In respect of such individuals, the *status quo* i.e. section 10(1)(a) of the *Public Service Act*, 1994 should still be applied.

It would be unconstitutional to target only RSA citizens during the recruitment of staff and to exclude non-citizens with permanent residence permits from such a process.

Non-citizens who have already been employed (in either temporary or contractual capacities) and who hold permanent residence permits, should be considered for permanent appointment if the positions occupied by them are of a permanent nature.

3. The aforementioned implies thus that no distinction should be made when the candidatures of non-citizens with permanent residence permits and RSA-citizens are considered. In practice, this entails

that the decision as to the successful candidate's employment capacity should only be made on the basis of the prevailing operational requirements of the job, i.e. whether the duties to be performed are of a permanent, part-time or temporary nature.

4. Section 10 of the *Public Service Act*, 1994 will be amended in due course.



A DIRECTOR-GENERAL