



DEPARTMENT: PUBLIC SERVICE AND ADMINISTRATION
REPUBLIC OF SOUTH AFRICA

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TO HEADS OF DEPARTMENT

MINISTERIAL DIRECTIVE: DISCIPLINARY CODE AND PROCEDURE FOR MEMBERS OF THE SENIOR MANAGEMENT SERVICE

1. As you are aware, the disciplinary code and procedure for the public service as contained in Public Service Co-ordinating Bargaining Council (PSCBC) Resolution 2 of 1999 was recently amended through PSCBC Resolution 1 of 2003.
2. Resolution 2 of 1999 was also applicable to members of the Senior Management Service (SMS) of the public service. As part of the amendments to the disciplinary code, the employer attempted to negotiate a dispensation in respect of SMS members in terms of which disciplinary hearings would, as a standard practice, be dealt with by an external third party. The decision of the third party would have been final and binding. The trade unions to the PSCBC were, however, not prepared to agree to the proposals. As a result, the SMS was removed from the provisions of PSCBC Resolution 2 of 1999 with a proviso that that they would remain covered by the Resolution until such time as the Minister for the Public Service and Administration issued a directive to cover the disciplinary matters of SMS members.
3. The Minister has now directed, in terms of Regulation 4/VIII/D of the Public Service Regulations, that the directives regarding the introduction to the misconduct and incapacity procedures for members of the SMS and the disciplinary code and procedures, as included in paragraphs 1 and 2 of Chapter 7 of the Handbook for the SMS (referred to in Regulation 4/I/D of the said regulations), be replaced with the amended introduction and

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disciplinary code and procedures attached hereto. The printed SMS Handbook will be amended accordingly.

4. The amendments to the SMS disciplinary code and procedures are in line with the amendments contained in PSCBC Resolution 1 of 2003 with the following notable exceptions:
 - (a) The representative of the employer in a disciplinary hearing does not have to be an employee, but can be a person from within or from outside the public service (see paragraph 2.6(1) – the restriction in terms of legal representation still applies (paragraph 2.7(3)(e)).
 - (b) The requirement that the chairperson of a disciplinary hearing must be of a higher grade than the representative of the employer no longer applies. It has been replaced by a provision requiring the employer to appoint a person from within or from outside the public service as a chairperson (paragraph 2.7(3)(b)).
 - (c) Unlike the case of other public servants (below the SMS level) where it was negotiated that the sanctions of demotion and suspension without pay would become stand-alone sanctions, the status quo remains in respect of members of the SMS. In other words in the case of SMS members these two sanctions may only be imposed as alternatives to dismissal and the employee concerned has to agree to such alternative. The reason for this is that the employer cannot unilaterally reduce the salary and benefits of an employee.
 - (d) The appeal procedure for members of the SMS has been removed, resulting in the sanction becoming effective immediately – in other words the implementation of a sanction can no longer be stayed. The right of a member of the SMS to utilise the dispute-settlement mechanisms provided under the Labour Relations Act, 1995, remains unaffected.
5. The Minister's directive becomes effective from 15 September 2003.
6. Please note that all disciplinary action instituted against a member of the SMS before the above-mentioned date must be finalised as if the Minister had not replaced the disciplinary code and procedure for the SMS.

[Handwritten Signature]

DIRECTOR-GENERAL

DATE: 03/09/2003