



MINISTRY
PUBLIC SERVICE AND ADMINISTRATION
REPUBLIC OF SOUTH AFRICA

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TO ALL EXECUTIVE AUTHORITIES

**POWERS OF THE PRESIDENT AND THE RELEVANT PREMIER IN RESPECT OF
HEADS OF DEPARTMENT**

1. Following the recent rise in the number of disputes relating to heads of department that are referred to courts and the uncertainty created by the conflicting judgements emanating from the Labour Court and the High Court, guidance is hereby provided to all executive authorities on the interpretation of the provisions of the Public Service Act, in so far as it relates to heads of department.

2. Section 12 of the Public Service Act provides that-

12 Appointment of heads of department and career incidents

(1) Notwithstanding anything to the contrary contained in this Act, but subject to this section and sections 2 (2B) and 32 (2) (b) (i), the appointment and other career incidents of the heads of department and government component shall be dealt with, in the case of-

(a) a head of a national department or national government component, by the President; and

(b) a head of the Office of a Premier, provincial department or provincial government component, by the relevant Premier.

(2) (a) A person shall be appointed to the post of head of department in terms of section 9 for such term, not exceeding five years, as the relevant executive authority may approve.

(b) The head of department shall conclude the prescribed contract within the prescribed period.

*(c) The relevant executive authority may at the expiry of the term of office of a head of department or at the expiry of an extended term of office extend the term for a period of not more than five years at a time. **(our underlining)***

3. Section 12(1)(a) of the Public Service Act provides that, subject to sections 2(2B) and 32 (2)(b)(i), the appointment and other career incidents of heads of department must be dealt with, in the case of a national department or government component, by the President and in the case of a provincial department or government component, by the relevant Premier.

4. The court in *Masethla vs The President of the Republic of South Africa and another (2008)(1) SA 566(CC)* held that “career incident” is wide enough to include other matters relating to the career of a head of department including terms and conditions of employment and this includes the power to suspend or initiate disciplinary proceedings.

5. It is our view that the provisions of the Public Service Act are clear and unambiguous and we can determine that the power to deal with the appointment and other career incidents, including the power to suspend and discipline, is only given to the President or the relevant Premier, as the case may be. The only exception, as provided for in section 12 of the Public Service Act, can be found in sections 2(2B) and 32 (2)(b)(i) of the Public Service Act.

6. The courts in the cases of the *Director-General: Home Affairs vs The President of the Republic of South Africa and the Minister of Home Affairs (Case No 65757/2017)* and *The Director-General of the Department of Rural Development and Land Reform vs The Minister of Rural Development and Land Reform and the Minister of Public Service and Administration (Case No.J1947/17)*, came to conflicting conclusions. While the former judgement was issued from the High Court and the latter judgement emanated from the Labour Court, it must be noted that the High Court and the Labour Court are of equal status.

7. It is the view of the DPSA that the High Court judgement in the matter of the *Director-General: Home Affairs vs The President of the Republic of South Africa and the Minister of Home Affairs* correctly interpreted the provisions of the Public Service Act.

8. A process to finalise a set of delegations by the President, in terms of section 42A(3)(a), in respect of heads of department of national departments and government components is currently at an advanced stage and once finalised, same will be communicated to all executive authorities .

9. In the circumstances, executive authorities are urged to ensure that, subject to sections 2(2B) and 32 (2)(b)(i), all matters pertaining to the career incidents of heads of department, including the suspension and instituting of discipline, must, in the absence of delegations, be referred to the President or the relevant Premier.

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

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Yours sincerely,



MS AYANDA DLODLO, MP

MINISTER FOR THE PUBLIC SERVICE AND ADMINISTRATION

DATE: 6-04-2018

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