



CHAPTER 8

CHAPTER 8

EMPLOYMENT OF HEADS OF DEPARTMENTS

1. INTRODUCTION

- 1.1 In accordance with the new management framework EAs have been granted extensive powers relating to the day to day management of their departments. These powers *inter alia* relate to appointment and other career incidents of Heads of Department.
- 1.2 Whilst the amended Public Service Act, 1994 and the Public Service Regulations, 2001 have freed EAs from the bureaucratic stranglehold of the previous regulatory framework, it remains a huge challenge to effectively communicate the basic requirements of the new framework.
- 1.3 Many EAs do not have time to study the Act and Regulations, hence this chapter has been developed to provide the relevant information in a concise format and in simple language.
- 1.4 Since HoDs normally have no career progression or prolonged employment opportunities, they have unique conditions of service. These conditions of service are all explained in this chapter. The chapter also provides information and examples on the management of all career incidents of HoDs, from appointment right through to termination of service.
- 1.5 Statutory provisions referred to in this chapter do not necessarily reflect the precise wording or meaning of that provision and are for easy reference only. In applying this chapter, it is important that the original statutory provision(s) be consulted and read in conjunction with this document.

2. DELEGATION OF POWERS

- 2.1 The *Public Service Act, 1994* (Section 3(B)(l)) entrusts –
 - (1) The President with the power to undertake and manage the appointment and other career incidents of Heads of Department of National Departments and organisational components; and
 - (2) Premiers with the power to deal with the appointment and other career incidents of a head of a provincial administration and Provincial Heads of Department.
- 2.2 The Act (Section 3(B)(4)) further stipulates that the President/ Premier may delegate:
 - (1) The power to appoint a HoD as well as;
 - (2) Any other power regarding the other career incidents of HoDs.

- 2.3 The President has delegated his powers to the Deputy President and Ministers. (Section 3(B)(4) of the Act. Letter of President dated 8 October 1999 – Annexure A). This chapter has been drafted on the assumption that EAs have been awarded the power to manage the career incidents of HoDs. The position at Provincial level may differ from Province to Province.
- 2.4 Attached at Annexure A is a copy of the letter to the Deputy President and Ministers. These delegated powers may be used by Premiers to guide them in the delegation of their powers for managing the appointment and other career incidents of HoDs at provincial level.
- 2.5 The powers for deployment of HoDs in terms of section 3 B of the Act has not been delegated.
- 2.6 Attached as Annexure B is a protocol document on the principles and procedures to be followed for the recruitment and filling of posts of HoD's and Deputy Directors-General at National level. This document only applies to national departments. However, the document may also prove to be useful at provincial level since it highlights regulatory requirements pertaining to recruitment and selection of senior managers.

3. ADVERTISING

- 3.1 The original power to recruit vests in the EA, which implies that a department has discretion to advertise or re-advertise a vacancy. An EA must determine the composite requirements for employment in the relevant post on the basis of the inherent requirements thereof (PSR Chapter 1 Part VII/C).
- 3.2 An EA must:

Step	Action
1.	Record the inherent requirements of a job.
2.	Comply with statutory requirements for appointment of employees.
3.	Draft the contents of the advertisement.

- 3.3 The advertising process must comply with the following PSR Chapter 1 Part VII/C:
- (1) Any vacant post of HoD must be advertised nationally inside and outside the Public Service.
 - (2) An EA shall ensure that the vacant post is advertised in such a way that, as far as possible, the entire pool of potential applicants is reached, especially those historically disadvantaged.

3.4 An advertisement should preferably contain the following particulars:

- (1) Job title, grade and department
- (2) Place to be stationed
- (3) Core functions and inherent requirement of the post
- (4) All inclusive remuneration package
- (5) Contact person to whom enquiries can be addressed
- (6) Closing date
- (7) Notification that it is a term contract appointment and an indication of the contract period
- (8) Notification that the HoD will have to enter into an employment contract and to sign an annual PA
- (9) That all shortlisted candidates will be subject to security vetting
- (10) Notification that the HoD will be required to disclose her/his financial interests in accordance with the prescribed regulation and form

3.5 An EA may fill a vacant post without advertising, if the post is filled in terms of section 3B of the Act (deployment by the President/a Premier) or through a transfer in terms of section 14 of the Act (PSR Chapter 4 Part V/B).

3.6 An EA may use an appropriate agency or selection consultant to assist in part or all of the advertising/selection process as long as she/he ensures that the advertising and selection procedures comply with the prescribed principles and procedures (PSR Chapter 1 Part VII/C).

4. RE-ADVERTISING VACANCIES

4.1 The re-advertisement of a vacancy should be done for good reasons and in exceptional circumstances only. These include:

- (1) No suitable candidate could be found. This is subject to a fair process of selection having been applied.
- (2) The operational requirements (or job contents) for the vacancy have changed drastically since the vacancy was advertised.
- (3) A long delay in finalising the selection process due to various unforeseen departmental circumstances, resulting in candidates no longer being available.
- (4) The exposure of the initial advertisement having been found to be too limited, not reaching all potential candidates.

Note:

The department should invite candidates who responded to the initial advertisement to apply again should they still wish.

5. SELECTION

5.1 The pre-selection and shortlisting of candidates should be based on a process and methods agreed to by the assigned selection committee i.e.

- (1) The selection process commences after the closing date of the advertisement.
- (2) For ease of reference, applications should be scheduled alphabetically indicating e.g. the surname, initials, gender, race, occupation, qualifications and experience.
- (3) The pre-selection and shortlisting, based on identified criteria, should be done in consultation with the EA.
- (4) It is of utmost importance for departments to verify the track record and qualifications of short listed candidates, especially the one nominated.
- (5) All shortlisted candidates must be subjected to security clearance. All cabinet memoranda dealing with the appointment of HODs must contain an indication whether the shortlisted candidate have been subjected to a security clearance or not.

5.2 During the pre-selection and shortlisting candidates can be eliminated by using legends related to the advertised requirements for the post such as:

- (1) lack of specific knowledge, competencies or high level skills.
- (2) lack of identified managerial skills.
- (3) lack of proven high level communication skills; and
- (4) candidate does not comply with requirements with regard to educational qualifications.

5.3 The EA's office shall arrange a date and venue for interviews and notify both panel members and candidates. An EA shall appoint a selection committee to make recommendations on appointments (PSR Chapter 1 Part VII/D).

5.4 A selection committee shall include the following EAs (PSR Chapter 1 Part VII/D):

For a head of a...	The committee shall include...
national department/organisational component	at least three Ministers.
provincial administration or provincial department	at least three Members of the Executive Council of that province .

5.5 The EA of the specific department/provincial administrations acts as chairperson of the selection committee.

- 5.6 Employees graded lower than that of the post to be filled may provide secretarial or advisory services during the selection process/interview but shall not form part of the selection committee.
- 5.7 The selection committee shall make a recommendation on the suitability of a candidate after considering *only* (PSR Chapter 1 Part VII/D):
- (1) information based on selection methods that are free from any bias or discrimination (i.e. using a scoring grid which provides space to rate each individual according to the weighted inherent requirements of the post), and
 - (2) the training, skills, competence and knowledge necessary to meet the inherent requirements of the post.
- 5.8 During the selection process, care should be taken that all candidates are provided equal opportunities. This implies that they must be evaluated against the same requirements and criteria implying that they be asked the same questions and be subjected to the same testing.
- 5.9 A selection committee shall record the reasons for its decision. These records together with all the information on the pre-selection process should be filed properly so that any queries can be responded to. The appointment of the successful candidate should only be approved after consultation with the MPSA (who is responsible for informing Cabinet). The latter requirement does not apply at provincial level.

6. APPOINTMENTS

- 6.1 According to a Cabinet decision, HoDs of national departments/organisational components must as a general rule be appointed for a period of three years or such shorter or longer period as may be approved by the relevant EA. This must not exceed five years, as stipulated in the Act (Section 12 of the Act. Cabinet minutes dated 1/9/99).
- 6.2 A serving employee who is appointed to the post of HoD, will automatically lose his/her status as a permanent employee. Her/his accrued pension and other benefits will, however, only be payable on the date that his/her term expires.
- 6.3 Section 7 read with amendments to section 12 of the Act changed the permanent employment status of serving Provincial Heads of Department with effect from 1 July 1999, to that of a five year term of office (contract).
- 6.4 Certain appointments are made only by the President. The President as head of the national executive:
- (1) is Commander in Chief of the Defence Force and must therefore appoint the Military Command of the Defence Force (Section 202(1) of the Constitution);

- (2) must appoint the National Commissioner of the Police Service (Section 209(2) of the Constitution); and
 - (3) must appoint the head of each Intelligence Service established in terms of the Constitution (Section 209(2) of the Constitution)
- 6.5 As regards national departments, the MPSA must be consulted on the selected candidate (Letter of President dated 8 October 1999). The MPSA is further responsible for obtaining Cabinet's concurrence on the appointment. To facilitate this process national EA's must provide the MPSA with a Cabinet Memorandum containing all relevant information - see Annexure B (Cabinet Minutes dated 4 August 1999). The Cabinet Memorandum should be sent to the MPSA at least a week before Cabinet's next meeting under cover of a letter containing the information indicated at Annexure C.
- 6.6 Following Cabinet's concurrence the relevant EA is responsible for issuing an appointment letter to the successful candidate which should include the following:
- (1) Provisions of the Act in accordance with which the appointment is effected (Section 12 of the Act) and probation period
 - (2) Term of contract and salary per annum
 - (3) Indicate need to sign an employment contract and enter into a PA
 - (4) Date of assumption of duty
 - (5) Requirement to disclose financial interests within one month after appointment.
- 6.7 The employment contract to be concluded by the EA and the HoD will be as set out in Annexure 2 of the Public Service Regulations.
- 6.8 Should any candidate require reasons why she/he was not appointed, it will be the responsibility of the relevant EA to provide such reasons.
- 6.9 The relevant EA must require the appointee to be subjected to security clearance (PSR Chapter 1 Part VII/B). In this respect the measures contained in the Minimum Information Security Standards, issued by the National Intelligence Agency must be complied with. Also refer to Annexure B item 12 in this regard.
- 6.10 The date of appointment will be with effect from a date as agreed to by the relevant EA and the appointee (which date should be after the date of approval of the appointment).
- 6.11 An EA shall not re-appoint a former employee as HoD where (PSR Chapter 1 Part VII/B):

- (1) the former employee left the public service earlier on condition that she/he would not accept or seek re-appointment;
- (2) the original grounds for termination of service militate against re-appointment; or
- (3) the former employee left the public service due to ill health and cannot provide recent and conclusive evidence of recovery.

7. EMPLOYMENT CONTRACTS

7.1 The purpose of an employment contract is to:

- (1) Regulate the appointment of HoDs.
- (2) Confirm the employment provisions and conditions of service of HoDs as determined by the Act and Regulations.

7.2 The contract entered into between an EA and a HoD shall be as set out in the PSR (Section 12 of the Act. PSR Chapter 1 Part VII/B). The Act provides that a contract may include any term and condition agreed upon between the relevant EA and the HoD as to:

- (1) Particular duties
- (2) Specific performance criteria for evaluating the performance of the HoD (Section 12(4) of Act).
- (3) Grounds upon and procedure according to which the services of an HoD may be terminated; and
- (4) Any other matter which may be prescribed.

7.3 The prescribed contract (PSR, Annexure 2) includes the following:

- (1) The appointment as HoD (dates of commencement and expiry dates)
- (2) Remuneration
- (3) Deployment
- (4) Renewal and extension of term office
- (5) Conduct, including confidentiality
- (6) Terms and conditions covering the entering into of PAs and management incentives
- (7) General aspects pertaining to good faith, applicability of the Act and interpretation of the contract, and

(8) Signatures of the EA and HoD.

7.4 Parties to an employment contract include the:

(1) relevant EA; and

(2) HoD.

7.5 EAs at national level should provide the MPSA with a copy of the contract as soon as possible after its completion. The MPSA is responsible for record keeping and involved in re-determination of HoDs' contract periods.

8. PERFORMANCE AGREEMENTS

8.1 The Act stipulates that an employment contract may include any term and condition agreed upon between the EA and the HoD on particular duties and specific performance criteria for evaluating the performance of the HoD (Section 12(4) of the Act).

8.2 The employment contract states that a HoD shall enter into an annual PA with the EA (PSR Annexure 2). This is linked to a specific financial year and shall include at least the minimum requirements prescribed in item 7 of the prescribed contract. The HoD should enter into a PA not later than three months after assumption of duty/entering into a new post.

8.3 Copies of PAs entered into by National HoDs should be forwarded to the MPSA at the latest on 30 June every year. (For attention: SMS Unit)

8.4 The minimum requirements for a PA are (Resolution No 13/1998. Chapter 4):

(1) Description of the purpose of the job.

(2) Identification of KRA's, their weighting and the standards for measuring them.

(3) Agreement on which CMCs are relevant, their weighting and the standards for measuring theme.

(4) Agreement on the personal development plan.

(5) Dates of reviews and formal assessment of the SMS member's performance.

(6) Dispute resolution.

(7) Dates for consideration of performance related rewards.

8.5 Chapter 4 will assist HoDs by providing guidelines regarding the development of PAs. The chapter explains the elements that should be included in a PA in more detail.

8.6 The signing of a PA will form the basis of the assessment of HoDs for cash bonuses and package progression.

9. PROBATION

9.1 The appointment of HoDs is effected on a minimum probation period of 12 calendar months unless the EA directs otherwise (Section 13 of the Act).

9.2 The purpose of a probationary period is to facilitate the process of evaluating a HoD in the post while freeing the EA from lengthy and cumbersome processes should it be necessary to (Section 13 of the Act). PSR, Part VII/E):

- (1) terminate the appointment; and
- (2) transfer/deploy her/him.

9.3 The process followed in evaluating a HoD during a probationary period and the actions to be taken are prescribed in the Act and in the Regulations (Section 13 of the Act. PSR Chapter 1 Part VII/E). The HoD should be supported by the EA and be given a fair opportunity to meet the conditions of her/his appointment. The relevant EA must quarterly evaluate the HoD's work performance in terms of her/his PA (Refer to Chapter 4). The HoD must endorse each report as confirmation that she/he is aware of how her/his work performance is being regarded and which areas if any, need to be improved on.

9.4 On expiry of the twelve months probationary period, the EA must:

- (1) Confirm the appointment; or
- (2) Extend the probation period; or
- (3) Terminate the appointment.

Also refer to Chapter 4 pertaining to the assessment.

9.5 The probation period may be extended under the following circumstances:

- (1) The period of probation must be extended by the number of days leave taken by the HoD during the initial period or any extension thereof.
- (2) If a probationary period is extended, the process of evaluation and reporting on a quarterly basis must be continued until the probation is ended by terminating the appointment or confirming it.
- (3) A shorter period of probation may be directed by the relevant EA when a HoD is deployed or transferred while on probation.
- (4) Where a decision is taken to extend the HoD's probationary period, it would be advisable to first apply the *audi alteram partem* rule, i.e. allow the HoD to state a case in response.

- 9.6 HoDs who are employed for a period not exceeding one year do not serve a probationary period.
- 9.7 The EA of a HoD on probation shall ensure that the probationer:
- (1) Knows the performance and other requirements needed for confirmation of probation at the start of the probationary period.
 - (2) Receives written feedback each quarter on her/his performance and compliance with other requirements
 - (3) Receives training, counselling or other assistance if needed.
 - (4) Receives written confirmation of appointment at the end of the probationary period if she or he has been found suitable.
 - (5) Is allowed to state her or his case if dismissal as a result of poor performance is considered. During this process the probationer may be assisted by a colleague or a trade union representative.
 - (6) Is managed in compliance with the stipulations of Schedule 8 Code of Good Practice, of the *Labour Relations Act, 1995*.

10. REMUNERATION AND SERVICE CONDITIONS

- 10.1 Provincial HoDs and Heads of organisational components (Schedule 2 and 3 of the Act) shall not by virtue only of their post be entitled to the rank, status or salary scale and benefits of the HoD mentioned in the second column of Schedule 1 of the Act (Section 7 of the Act). The all inclusive remuneration package that the HoD shall receive should be based on the grading of the post as determined through job evaluation and as specified in the prescribed employment contract (PSR, Annexure A, Appendix A). Only remuneration packages contained in the remuneration scale may be utilised.
- 10.2 The remuneration packages of HoDs will be in accordance with determinations made in this regard by the MPSA. The EA may set the remuneration package above the minimum notch of the salary range to enable the recruitment of suitable candidates (PSR Chapter 1 Part V/C). In such a case, the EA:
- (1) Must ensure that the decision will not create an anomaly or disparity compared with other HoDs, and
 - (2) Record the reasons for the decision.
- 10.3 The inclusive remuneration package consists of the basic salary, the state's contribution to the GEPF and a flexible portion. The structure and rules of the inclusive and flexible remuneration package are spelled out in Chapter 3. General conditions of service are also spelled out in Chapter 3 and benefits may be amended by determinations by the MPSA in terms of the Act. HoDs are also eligible for additional compensation in the form of a non pensionable

HoD allowance equal to 10% of the member's annual all inclusive remuneration package, payable in equal portions per month for the time that a member is designated as a HoD. Refer to Chapter 3 for more details as well as the circumstances under which the allowance is not payable as well as the circumstances under which the allowance is not payable.

10.4 HoDs are eligible for a cost of living (remuneration package) adjustment with effect from 1 January of a particular year, irrespective of the outcome of performance evaluation.

10.5 HoDs may furthermore be considered for performance related package increases and/or rewards (see Chapter 4 in this regard).

10.6 All jobs of Provincial HoDs as listed in Schedule 2 of the Act, must be evaluated with the EQUATE job evaluation system before amendments to the grading of such jobs (e.g. upgrading) are considered (PSR Chapter 1 Part IV.B. Letter from Minister to Premiers dated 3/11/99).

11. OVERTIME

The compensation for the overtime is not applicable for members of the SMS.

12. DEPLOYMENT

12.1 The Act states that (Section 3(B)(2) of the Act):

“any person appointed as head of department may before or at the expiry of his or her term of office be deployed with her/his consent to perform functions in a similar or any other capacity in a post or against a post of equal, higher or lower grading or additional to the establishment, as the EA deems fit.”

12.2 A HoD may be deployed (Section 3(B)(3) of the Act) only if:

- (1) The President deploys a HoD of a national department or organisational component to perform functions in a national department or organisational component; and
- (2) The relevant Premier deploys a head of provincial administration, department or office, to perform functions in the administration, department or office of the relevant province.

12.3 The Act states (Section 3(B) of the Act) that:

- (1) A deployed HoD shall be appointed for the unexpired portion of her/his term of office at the same salary and conditions of service.
- (2) If a HoD is deployed to a new HoD position with a higher grading, the position is to be job evaluated (if not already evaluated) and the HoD's salary should be adjusted accordingly for the remainder of her/his contract period.

- (3) A deployed HoD may be appointed at the expiry of her/his term of office (without advertising the post) at the salary and conditions of service attached to the post or capacity in which she/he is appointed.

12.4 In order to deploy a HoD, it is important to note that:

- (1) There should be consensus between the President/Premier and the responsible Minister/MEC that deployment is required to deal with the situation.
- (2) The arrangement cannot be made unilaterally as deployment is, in terms of the provisions of the Act, subject to the consent of the HoD.
- (3) Reasons must be given to the HoD for making the arrangement.
- (4) Further arrangements related to the new position and the level of employment shall be formalised in a service contract, and
- (5) It is the prerogative of the EA to determine the level of utilisation.

12.5 At the expiry of the term of office it is for the relevant HoD (Section 3(B) of the Act) to:

- (1) Accept the salary and conditions attached to the deployed position if appointed, or
- (2) Let her/his term of office expire, after which she/he will receive the normal benefits applicable at the expiry of a HoD's term of office in terms of section 16(3) of the Act.

13. TRANSFERS

13.1 The Act stipulates that a HoD may, when the public interest requires, be transferred to any post/position in the same or any other department (Section 14 of the Act). This transfer may occur irrespective of the grade of the post (lower or higher) and notwithstanding whether it is within or outside the Republic.

13.2 The transfer of a HoD from one post/position to another may be made upon the authority of the EAs having the power of transfer. Both EAs have to approve the transfer. A vacant post that is to be filled through a transfer in terms of section 14 of the Act, is not required to be advertised in terms of regulation VII C.2.3 of Chapter 1 (PSR V.B2 of Chapter 4).

13.3 A HoD shall not upon a transfer suffer any reduction in her/his salary/scale without her/his consent, except when wrongly granted remuneration was awarded in accordance with section 38 of the Act (Section 14 of the Act).

13.4 The HoD who has been transferred to or employed in a post which is graded higher than her/his own grade shall not by reason only of that transfer or employment be entitled to the higher scale or salary status that is applicable to the post (Section 14 of the Act).

14. SECONDMENT

14.1 A HoD can be seconded (Section 15 of the Act) to:

- (1) any other department within the Public Service; or
- (2) another government, institution, body or persons established by or under any law from such government; institution or person.

14.2 A secondment must (PSR, Part VII/B) occur:

- (1) With the mutual agreement of the HoD involved;
- (2) Under predetermined or prescribed conditions, and
- (3) After consultation with Treasury.

14.3 The President or a Premier will exercise this power together with the relevant EA's (and others in Cabinet/Executive Councils).

14.4 A HoD remains subject to the laws applicable to her/him in the public service while on secondment.

14.5 Posts of HoD may not be filled on the basis of secondment. The reason being that a seconded person does not hold the status of an employee as defined in the Public Service Act.

15. EXTENSION OF TERM OF OFFICE

15.1 The Act provides for the extension of the term of office of a HoD (Section 12(2) of the Act). Extension occurs at the expiry of the term and is carried out in accordance with the terms and conditions of the contract. A further contract may be concluded between the EA and the HoD for a period/successive periods of not less than twelve months and not more than five years at a time. **In accordance with a Cabinet decision the extension of national HoDs term of office must as a general rule not be extended for a period of longer than three years. There is no limit to the number of times a term of office can be extended.**

15.2 Departments shall establish clearly when terms of HoDs are due to expire (PSR, Annexure A):

Stage	Description
Three months prior to the expiry of the term of office	
1	The EA should inform the MPSA of her/his intention to extend a contract or not (Situation will be different in a Province, depending on the delegation of power)
2	The MPSA informs Cabinet prior to the expiry of the term of office of the intention to extend the term (Situation will be different in a Province, depending on the delegation of power).
At least two calendar months prior to the expiry of the term of office	
3	The EA communicates in writing with the HoD on whether she/he intends to retain the HoD's services for a further period not exceeding five years (60 calendar months)
Within one calendar month of the date of communication	
4	The HoD informs the EA in writing whether she/he accepts the offer of extended employment.

15.3 If it is agreed that the HoD will enter into a further contract at the end of the present contract, her/his continued service will be recognised under the new contract. This will avoid any break of service and any accrued or *pro rata* entitlement will be carried forward into the new contract.

15.4 Should the EA not renew the contract beyond the initial period(s) (Section 16(3) of the Act) the HoD shall be entitled to the pension and other benefits directly linked to the specific section of the Act. The EA should inform the HoD at least one month before the lapse of the contract that it is not her/his intention to extend the contract.

Note:

For more details refer to the part dealing with termination of employment contracts.

16. ACTING AS HoD

16.1 When necessary, the EA shall appoint a senior manager in an acting capacity (Section 32 of the Act). If a Premier has not delegated powers to other EAs, she/he shall appoint a senior manager in an acting capacity.

16.2 An acting HoD may be compensated for acting as HoD in terms of a determination of the MPSA (PSR Chapter 1 Part VII/B5). Refer to paragraph 10 in Chapter 3 for more details pertaining to the acting allowance and the policy.

16.3 A manager acting as HoD may not do so for an uninterrupted period exceeding 6 months. The person to be appointed in the acting capacity should be informed in writing and the letter should include the following:

- (1) an indication that she/he has been appointed in accordance with section 32 of the Act;
- (2) the period of acting;
- (3) an indication of post requirements and responsibilities in accordance with section 7(3)(b) of the Act; and
- (4) an indication that she/he acts as accounting officer in terms of section 37 of the Public Finance Management Act, 1999.

17. ETHICAL CONDUCT

17.1 A HoD is expected to comply with the Code of Conduct provided for in Chapter 2 of the PSR. Specific measures have been introduced to regulate the involvement of HoDs in work outside the public service and to enforce the disclosure of their financial interests.

17.2 No HoD shall perform paid work outside the public service unless provided for in her/his conditions of employment and without written permission from the relevant EA (Section 30 of the Act). A HoD may not claim any extra remuneration for any official duty or work which she/he performs voluntarily or is required by an EA to perform.

17.3 A policy on the disclosure of financial interests is contained in Chapter 3 of the PSR. HoDs must disclose their financial interests to their EAs by 30 April of each year. New appointees must disclose their interests within 30 days after assumption of duty. The framework includes a standardised form that has to be completed and certified. The regulatory framework prescribes that if HoDs do not disclose their interests by the prescribed date they may be charged with misconduct – see chapter 10 on Financial Disclosure.

17.4 The role of the PSC is to keep a centralised database of information on financial matters of HoDs and members of the SMS. The OPSC is responsible for the management of the information.

18. SUSPENSION

18.1 The suspension of HoD's is covered in Chapter 7.

18.2 The EA may suspend a HoD on full pay if:

- (1) She/he is alleged to have committed a serious offence; and
- (2) The EA believes that the presence of the HoD at the workplace might jeopardise an investigation into the alleged misconduct, or endanger the well-being or safety of any person or state property.

18.3 A suspension of this kind is a precautionary measure that does not constitute a judgement and must therefore be on full pay.

18.4 When a HoD is suspended, a disciplinary hearing must be held within 60 days. The chair of the hearing must then decide on any further postponement and or further suspension.

19. DISCIPLINARY PROCEDURE

19.1 Chapter 7 applies to the disciplining of HoDs.

19.2 Paragraph 2.5 of Chapter 7 provides for the process to be followed in cases of less serious misconduct that warrants only counselling or warnings. It is an “informal” process that requires at least a meeting with the HoD where she/he will have the opportunity to state her/his case.

19.3 If the alleged misconduct justifies a more serious form of disciplinary action, the EA may initiate a disciplinary enquiry. The disciplinary enquiry may follow in cases where:

- (1) the transgression is so serious that counselling or warnings by an EA will not suffice.
- (2) the transgression constitutes a material breach of the employment relationship.
- (3) transgressions are repeated and/or during validity of a written or final written warning.

19.4 The criteria for assessment of the seriousness of the alleged misconduct must be based on:

- (1) Actual or potential impact on the work of the public service, department, organisational component, colleagues and public.
- (2) Nature of the HoD's work and responsibility.
- (3) Circumstances in which the alleged misconduct took place.

19.5 The following are the steps/actions as prescribed in Chapter 7 on the disciplinary hearing:

- (1) The EA may suspend a HoD in accordance with paragraph 18.2 as a precautionary measure.
- (2) The EA must appoint a representative to initiate the enquiry.
- (3) The relevant EA must appoint a person as chairperson for the hearing.

(4) The HoD must be given written notice of at least 5 working days before the date of the hearing and must sign receipt of notice.

(5) Written notice must be done in a form as indicated at Annexure D.

19.6 The following are the main issues pertaining to the conducting of a hearing (See Chapter 7 in this regard):

(1) The disciplinary hearing must be held within 10 working days after the notice is delivered to the HoD

(2) The HoD may be represented by a fellow employee or a representative of a recognised trade union, but not by a legal practitioner.

(3) Both sides shall be allowed to present evidence and cross-examine.

(4) The decision/final outcome of the hearing must be communicated to the HoD within 5 working days after conclusion of the disciplinary hearing.

(5) If the Chair finds that the HoD has committed misconduct, she/he must pronounce a sanction.

(6) The EA and the HoD may agree that the disciplinary hearing will be chaired by an arbitrator from the relevant sectoral council.

20. GRIEVANCES

20.1 An HoD has the right to lodge a grievance about an official act or omission which adversely affects her/him in her/his employment relationship (excluding an alleged unfair dismissal)

20.2 Section H of PSCBC Resolution 14 of 2002 contains the procedure to be followed if a HoD lodges a grievance.

21. INCAPACITY CODE AND PROCEDURES FOR THE PUBLIC SERVICE IN RESPECT OF POOR WORK PERFORMANCE

21.1 If the EA considers that the HoD is unfit for her/his duties or incapable of carrying them out efficiently and is not performing in accordance with the job requirements, she/he should be managed in accordance with the appropriate collective agreement (Resolution 10/99). The Code of Good Practice contained in Schedule 8 of the Labour Relations Act, 1995, insofar as it relates to incapacity, constitutes part of this agreement.

21.2 The purpose of the incapacity code is to help the HoD to:

- (1) Overcome poor performance;
- (2) Correct inadequate performance; and
- (3) Prevent arbitrary or discriminatory actions being taken.

21.3 In applying this procedure, the EA must assess the incapacity by considering:

- (1) the extent to which the incapacity affects the work of the public service, the HoD's department, colleagues, and the public;
- (2) the extent to which the HoD fails to meet the required performance standards established by the EA;
- (3) the extent to which the HoD lacks the necessary skills to perform in accordance with the HoD's PA;
- (4) the nature of the HoD's work and responsibilities; and
- (5) the circumstances of the HoD.

21.4 If the EA considers that a HoD is not performing in accordance with the PA or job that the HoD has been employed to do, then the EA must:

Step	Action
1	Give written reasons why it is necessary to initiate this procedure.
2	Serve the written reasons referred to in Step 1 on the HoD.
3	Meet with the HoD and (if the HoD chooses) with the HoD's trade union representative and/or a fellow employee.

Also refer to Chapter 4 on the Performance Management and Development System for SMS in this regard.

21.5 When meeting with the HoD, the EA must apply the following procedure:

Step	Action
1	Explain the requirements, grade, skills and nature of the job
2	Give feedback on the HoD's performance in relation to the requirements of the job
3	Indicate reasons for perceived poor performance
4	Hear the HoD or her/his representative on whether: <ul style="list-style-type: none"> • she/he has performed in accordance with the requirements of the job; and • the HoD agrees that she/he has not performed in accordance with the requirements of the job.

21.6 After considering the HoD's position, the EA must, if necessary:

Step	Action
1	Develop and initiate a formal programme of counselling and instruction to enable the HoD to reach the required standard of performance. This must include: <ul style="list-style-type: none"> • assessing with the HoD the time that it would take for her/ him to overcome the poor work performance; • establishing from the assessment realistic time frames for the HoD to have met the required performance standards; and • identifying and providing appropriate training for the HoD to reach the required standard of performance (if necessary).
2	Establish ways to address any factors that affect the HoD's performance that lie beyond her/his control.

21.7 If the poor performance of the HoD is not remedied within the time frames established by the programme referred to above, then the EA must:

Step	Action
1	Give the HoD a written report on the outcome of the procedure
2	Consult again with the HoD to explain the outcome of the procedure, and on measures to address any problems indicated in the report.

21.8 After consulting with the HoD, the EA must consider whether to:

- (1) continue to give the HoD appropriate guidance, instruction and counselling and establish a further appropriate period for the HoD to meet the required standard performance;
- (2) mentor the HoD;
- (3) place the HoD in a more appropriate job (deployment); or
- (4) dismiss the HoD.

Important:

Before exercising the option of dismissal or deployment/transfer to an alternative job, the EA must give the HoD a hearing to establish reasons for failure to meet required standards.

22. INCAPACITY CODE IN RESPECT OF ILL HEALTH

22.1 If the EA considers that as a result of poor health or injury, a HoD is not performing in accordance with the job that she/he has been employed to do, then the EA shall investigate the extent of the incapacity or injury, with due consideration to the provisions of Resolution 12/99 and the leave provisions contained in Chapter 3.

22.2 In conducting the investigation, the EA must:

Step	Action
1	Give the HoD (and the HoD's trade union representative) the opportunity of stating the HoD's case and being heard on all the issues that the EA investigates and considers.
2	Consider relevant medical and other information.
After the investigation	
3	Provide the HoD with a written report setting out the results of the investigation.

22.3 In the investigation the EA must consider whether the nature of the HoD's ill health or injury is of a temporary nature and the period of time that she/he is likely to be absent from work. In this investigation the EA must consider the:

- (1) nature of the job;
- (2) likely period of absence;
- (3) seriousness of the illness or injury;
- (4) remuneration of the HoD during her/his period of absence; and
- (5) possibility of securing a temporary replacement for the ill or injured HoD.

22.4 If the EA established that the HoD's ill health or injury is of a temporary nature the period of absence must be covered by sick/incapacity leave whichever is applicable. Please refer also the Chapter 3 for more details.

22.5 If the HoD's ill health or injury is of a permanent nature the EA must investigate the possibility of:

- (1) securing alternative employment for the HoD (deployment in accordance with section 3B of the Act);
- (2) adapting the duties or work circumstances of the HoD to accommodate her/his disability; and
- (3) offering boarding on the grounds of ill health or injury.

22.6 If the investigation conducted by the EA suggests that the HoD's ill health is as a result of alcohol or drug abuse, the EA may:

- (1) counsel the HoD;
- (2) encourage the HoD to attend rehabilitation;
- (3) establish a formal rehabilitation programme which the HoD will be expected to follow; or
- (4) terminate the employment of the HoD after following fair procedures, if the behaviour is repetitive.

22.7 If the HoD fails to follow the formal programme or to attend rehabilitation or to address the problem of alcohol or abuse, then the EA must:

- (1) give the HoD or her/his representative a written report; and
- (2) consult again with the HoD.

22.8 The EA may, if applicable and after consulting the HoD, consider whether to terminate the employment of the HoD after the normal disciplinary process is concluded.

23. TERMINATION OF CONTRACT OF EMPLOYMENT

23.1 Overview

- (1) The term of office of a HoD may be terminated in the following ways. Each of these reasons for termination of contract of employment is dealt with in greater detail below.

No.	Reason	Reference
1	On reaching the prescribed (or earlier optional) retirement age.	Section 16(1); (2), 2(A) and (4) of the Act
2	On completing a term or extended term of office.	Section 16(3) of the Act
3	Premature retirement at own request.	Section 16(5) of the Act
4	Discharge in terms of any of the subsections of section 17 of the Act.	Section 17 of the Act
5	Re-determination of original or extended term of office.	Section 12(1) or (2) of the Act
6	Voluntary resignation.	
7	Death.	

- (2) The employment contract provides that either party may after consultation and agreement, terminate the contract before the expiry of an original term of office or an extended term of office, by giving to the other party three months notice of termination (PSR Annexure 2). This notice must be given in writing and be given on or before the last day of a month and take effect of the first day of the succeeding month.
- (3) The payment of pension and other benefits is directly linked to the:
- (a) specific section of the Act;
 - (b) Government *Employees Pension Law*, 1996 and Rules of the Government Employees Pension Fund and regulations promulgated as applicable to a HoD;
 - (c) Public Service Regulations; and
 - (d) collective agreement(s) reached.

Note:

The following part illustrates the benefits that are payable in different circumstances. These are illustrations only and actual calculations must be done with reference to the above acts/ regulations/ agreements and with the help of experts.

23.2 Reaching retirement age

- (1) The following severance benefits are payable when a term of office is terminated by reaching the prescribed (or earlier optional) retirement age (Section 16(1); (2); 2(A) and (4) of the Act).
- (2) These are the pension benefits payable:

Length of service	Pension benefit
Less than 10 years pensionable service.	• <i>Actuarial interest.</i>
	HoDs who are <i>younger than 55</i> : Period of pensionable service x average salary over the last 24 months of service x actuarial factor.
	HoDs who are <i>older than 55</i> : [6,72% x average salary over last 24 months of service x years of pensionable service] + [(1/55 x average salary over last 24 months of service x period of pensionable service) x actuarial factor].

At least 10 years pensionable service.	• Gratuity at 6,72% x average salary over last 24 months of service x years of pensionable service.
	• Annuity at 1/55 x average salary over last 24 months of service x years of pensionable service.

Note: An HoD with at least 10 years of pensionable service may elect in writing to have either the gratuity or annuity reduced in favour of an increased spouse's pension entitlement.

- (3) A leave payout is made in respect of any unused leave credits of the previous and/or current leave cycle, and annual leave credits prior to 1 July 2000 (capped leave) on basis provided for in Chapter 3.
- (4) A *pro rata* 13th cheque is paid, if structured.
- (5) Resettlement benefits are paid as per the policy contemplated in Chapter 3.
- (6) The following post retirement medical assistance benefits are paid:

Length of service	Medical assistance
At least 15 years	Continued employer contribution from the age of 50 onwards as follows: Two-thirds of membership fees limited to the same maximum employer contribution applicable to serving employees.
At least 10 but less than 15 years	Cash benefit of 36 times the actual employer contribution as at the last day of service.
Less than 10 years	Cash benefit of 12 times the actual employer contribution as at the last day of service.

Note:

Medical benefits are only payable if the HoD is a member of a registered medical scheme for at least the 12 months before retirement.

23.3 Completing term (section 17 of the Act)

- (1) On expiry of a HoD's term of office, section 16(3)(b) of the *Act*, applies, which stipulates that the HoD must be deemed to be discharged in terms of section 17(2)(b) of the *Act*.

- (2) The following pension benefits are payable:

Length of service	Pension benefits
Less than 10 years pensionable service	Gratuity calculated at 15,5% of average salary over the last 24 months of service x the period of pensionable service. (The amount of the gratuity payable shall be increased by one-third of the said amount).
At least 10 years pensionable service	Gratuity calculated at 6,72% of average salary over the last 24 months x the period of pensionable service.
	Annuity calculated at 1/55 of average salary over the last 24 months x the period of pensionable service, and
	A supplementary amount of R360 per year.

- (3) For the purposes of the calculation of the gratuity and annuity of HoD's with at least 10 years of pensionable service, the period of pensionable service, (excluding all completed terms of office) shall be increased by:
- (a) one third of the period of pensionable service (excluding term of office) but not exceeding five years or the number of years up to the 60th birthday (or 65 in the case of a person in office on 1 May 1997), and
 - (b) one half of the (completed) period during which she/he held office as HoD.

Notes:

Provided that the total of a member's pensionable service shall not exceed 55 years.

An HoD with at least 10 years of pensionable service may elect in writing to have either the gratuity or annuity reduced in favour of an increased spouse's pension entitlement.

- (4) A leave payout is made in respect of any unused annual leave credits of the previous and/or current leave cycle on the basis provided for in Chapter 3.
- (5) A *Pro rata* 13th cheque is paid, if structured.

- (6) Medical assistance is based on the following:

Length of service	Medical assistance
At least 15 years	Continued employer contribution from the age of 50 onwards as follows: Two-thirds of membership fees limited to the same maximum employer contribution applicable to serving employees. A person who does not immediately qualify for the continued employer contribution may be paid a cash amount equal to 6 times the maximum employer contribution.
At least 10 but less than 15 years	Cash benefit equal to 36 times the actual employer contribution as at the last day of service.
Less than 10 years	Cash benefit equal to 12 times the actual employer contribution as at the last day of service.

Note:

Medical benefits are only payable if the HoD is a member of a registered medical scheme for at least the 12 months before retirement.

- (7) Resettlement benefits paid as per the policy contemplated in Chapter 3.

23.4 Premature retirement at own request

- (1) Section 16(5) of the Act provides that the HoD may be allowed to request retirement from the Public Service before her/his term of office expires.
- (2) If the HoD is allowed to retire from the Public Service in terms of this section, she/he shall not be entitled to any added pension benefits unless she/he retires during an *extended* term of office. In such a situation service is increased as if the term of office had been completed (maximum 5 years $\pm \frac{1}{2}$ of the completed term of office).
- (3) The following pension benefits will be payable:

Length of service	Pension benefit
Less than 10 years pensionable service	<ul style="list-style-type: none"> • Actuarial interest • HoDs who are <i>younger than 55</i>: <p>Period of pensionable service x average salary over the last 24 months of service x actuarial factor.</p>

Length of service	Pension benefit
More than 10 years pensionable service	<ul style="list-style-type: none"> HoDs who are <i>older than 55</i>: [6,72% x average salary over last 24 months of service x years of pensionable service] + [(1/55 x average salary over last 24 months of service x period of pensionable service) x actuarial factor]
	<ul style="list-style-type: none"> Gratuity at 6.72% x average salary over the last 24 months of service x period of pensionable service*.
	<ul style="list-style-type: none"> Annuity at 1/55 of average salary over the last 24 months of service x period of pensionable service*.
	<ul style="list-style-type: none"> Supplementary amount of R 360 per year.

Note:

If the HoD with 10+ years' service retires during an extended term of office, her/his pensionable service (excluding completed term of office) will be increased similar to the HoD who served a completed term, except that the uncompleted term is part of the pensionable service to be increased. An HOD with at least 10 years of pensionable service may elect in writing to have either the gratuity or annuity reduced in favour of an increased spouse's pension entitlement.

- (4) A leave payout is made in respect of any unused annual leave credits of the previous and/or current leave cycle on the basis provided for in Chapter 3.
- (5) *A pro rata* 13th cheque is paid if structured.
- (6) Resettlement benefits paid as per the policy contemplated in Chapter 3.
- (7) The following medical benefits apply:

Length of service	Medical assistance
At least 15 years	Continued employer contribution from age 50 as follows: Two-thirds of membership fees limited to the same maximum employer contribution applicable to serving employees.
At least 10 but less than 15 years	Cash benefit of 36 times the actual employer contribution as at the last day of service.
Less than 10 years	Cash benefit of 12 times the actual employer contribution as at the last day of service.

Note:

Medical benefits are only payable if the HoD is a member of a registered medical scheme for at least the 12 months before retirement.

23.5 Discharge (section 17 of the Act)

- (1) Payment of pension and other benefits are directly linked to the specific section of the Act, as regulated by the pension laws and other prescripts and collective agreements (section 17 of the Act).
- (2) The Act allows for the following circumstances under which the contract may be terminated:
 - (a) Continued ill health.
 - (b) Abolition of the post, or any reduction, reorganisation, or readjustment of the department or office.
 - (c) If, for reasons other than the HoD's own unfitness or incapacity, her/his discharge will promote efficiency or economy in the department or office, or will otherwise be in the interest of the public service.
 - (d) Unfitness for her/his duties or incapacity to carry them out efficiently.
 - (e) Misconduct.
 - (f) If, in the case of a HoD on probation, her/his appointment is not confirmed.
 - (g) Misrepresentation of her/his position in relation to a condition for permanent appointment.
 - (h) If her/his continued employment constitutes a security risk for the State.
 - (i) If the President or a Premier appoints her/him in the public interest under any law to an office to which the provisions of this Act do not apply.

23.6 Re-determination of original or extended term of office

- (1) It might under certain circumstances be necessary to re-determine a HoD's term of office to expire earlier (section 12(1) and (2) of the Act). This represents a breach of contract (if it is not due to inefficiency or misconduct). This breach of contract entitles the outgoing HoD to be compensated for damages incurred.
- (2) In practice, the situation can be dealt with by the EA reaching an agreement with the HoD to re-determine the HoD's term of office. Compensation is then paid for the unexpired portion of the term.

(3) The following pension benefits are paid:

Length of pensionable service	Pension benefit
Less than 10 years pensionable service	Gratuity calculated at 15,5% of the average salary over the last 24 months of service x the period of pensionable service (+ the amount of the gratuity which is payable shall be increased by one-third of the said amount)
At least 10 years pensionable service	<ul style="list-style-type: none"> • Gratuity calculated at 6,72% of average salary over the last 24 months of service x the period of pensionable service. • An annuity calculated at 1/55 of average salary over the last 24 months of service x the period of pensionable service. • A supplementary amount of R360 per year.

Note:

For the purposes of the calculation of the gratuity and annuity in respect of HoD's with at least 10 years of pensionable service, the period of pensionable service (excluding all completed terms of office) shall be increased by a period equal to one third of the period of pensionable service, but not exceeding five years or the number of years up to the 60th birthday (or 65 in the case of a HoD in office on 1 May 1997), and one half of the (re-determined completed) period during which she/he held office as HoD (Provided that the total of a member's pensionable service shall not exceed 55 years). An HoD with at least 10 years of pensionable service may elect in writing to have either the gratuity or annuity reduced in favour of an increased spouse's pension entitlement.

- (4) A leave payout is made in respect of any unused annual leave credits of the previous and/or current leave cycle on the basis provided for in Chapter 3.
- (5) *Pro rata* 13th cheque is paid if structured.
- (6) Resettlement benefits paid as per the policy contemplated in Chapter 3.
- (7) The following medical benefits apply:

Length of service	Medical assistance
At least 15 years	Continued employer contribution from age 50 as follows: Two-thirds of membership fees limited to the same maximum employer contribution applicable to serving employees. A person who does not immediately qualify for the continued employer contribution may be paid a cash amount equal to 6 times the maximum employer contribution.

At least 10 but less than 15 years	Cash benefit of 36 times the actual employer contribution as at the last day of service.
Less than 10 years	Cash benefit of 12 times the actual employer contribution as at the last day of service.

- (8) Where the service of a HoD is re-determined before the expiry of her/his term of office for reasons acceptable to an EA, specific guidelines/ principles are applicable. The special benefits payable take into account the loss of income, and fairness. Special additional benefits are paid in terms of the provisions of section 37(2)(d) of the Act.
- (9) The Minister for the Public Service and Administration must be consulted on the fairness of the severance payment. The payment is subject to Treasury approval and normal income tax directives apply when paying the severance pay.

23.7 Voluntary resignation

- (1) When a HoD resigns from the Public Service, she/he shall receive the following pension benefits:
- A choice between:
- (a) A **cash resignation benefit** of 7.5% x average salary x years + (plus) increased with 10% interest for each full year of service between 5 and 15 years e.g. 6 years: 10%, 7 years: 20%; 8 years: 30% up to 100%; or
- (b) **Transfer benefit** equal to actuarial interest.
- (2) A leave payout is made in respect of any unused annual leave credits for the previous and/or current leave cycle on the basis provided for in Chapter 3.
- (4) A *Pro rata* 13th cheque, if structured.

Note:

A resignation is to be distinguished from early retirement in accordance with section 16(5) of the Act.

DELEGATION OF POWERS

8 October 1999

Dear Colleague

DELEGATION OF POWERS ENTRUSTED TO THE PRESIDENT: HEADS OF NATIONAL DEPARTMENTS

As you are aware, a new regulatory framework to effectively manage human resources within the Public Service has come into operation with effect from 1 July 1999.

Section 3B of the *Public Service Act*, 1994 entrusts me as President with the power to undertake and manage the appointment and other career incidents of heads of national departments. These powers include, *inter alia*, the appointment, deployment, performance management, salary increases, secondments and extension and termination of employment contracts of heads of departments in the national sphere of government.

In view of the fact that Ministers and their Departmental heads actively and continuously work together to optimise departmental functioning and to contribute towards effective service delivery, I have delegated, in accordance with section 3B(4)(a) of the *Public Service Act*, 1994, the powers entrusted to me as described in the first column of the attached Annexure, to Ministers. Please note that the deployment of heads of departments in terms of section 3B(2)(a) of the Act, is not delegated. I will exercise this power together with you and other Executing Authorities in Cabinet, as envisaged in the said section, read with section 85(2) of the Constitution, 1996. The application of the delegated powers listed in the Annexure is, besides the conditions laid down therein, also subject to the relevant provisions of the *Public Service Act*, 1994, the new Regulations and other instructions.

The Minister for the Public Service and Administration will gladly render support and give advice to the application of the delegated powers, if required.

Kind regards.

T M MBEKI
Dr E G Pahad
Minister in the Office of the Presidency
Room 223B
Tuynhuys
CAPE TOWN

(Submission to letter)

POWERS OF THE PRESIDENT IN TERMS OF SECTION 3 B(1) OF THE *PUBLIC SERVICE ACT*, 1994, WHICH ARE DELEGATED BY THE PRESIDENT TO MINISTERS FOR RECOMMENDATION OR APPROVAL

1. Purpose

- 1.1 To expedite as far as possible the taking of decisions regarding the appointment of Heads of Department (HoDs) as well as other career incidents of heads, within the new statutory framework.

2. Delegations

- 2.1 The President delegates the powers assigned to him in terms of Section 3 B(1) of the *Public Service Act*, 1994 (Proclamation 103 of 3 June 1994), to the extent indicated in the Annexure and subject to the conditions as set out thereunder, in terms of section 3B(4) of the *Public Service Act*, 1994 to Ministers as indicated.

3. Conditions

- 3.1 The delegations must be exercised with due regard to the Constitution of the Republic of South Africa, 1996, relevant statutory and financial requirements, the Public Service Regulations and applicable collective agreements.
- 3.2 The criteria prescribed/laid down in the *Public Service Act*, 1994, and the policy as contained in the new Regulations and other relevant documents, must be adhered to.
- 3.3 Even though the relevant powers have been delegated, the President may at any time decide to exercise/perform such powers personally.

**(Annexure to letter (submission):
Delegation of Powers)**

POWERS OF THE PRESIDENT IN TERMS OF SECTION 3 B(1) OF THE *PUBLIC SERVICE ACT, 1994*, WHICH ARE DELEGATED BY THE PRESIDENT TO MINISTERS FOR RECOMMENDATION OR APPROVAL

DELEGATED POWER			CONDITIONS	
TOPIC	MINISTER TO WHOM DELEGATED, EXCEPT WHERE OTHERWISE INDICATED	PRESCRIPT	EXECUTION	REPORTING
1. The recruitment/ appointment/ employment/ promotion/of any person or employee to the post of HoD.	Minister who is the executing authority for the department/ organisational component concerned or in the case of the Office of the Presidency, the President acting on his own.	Section 12(1) and (2) of <i>Public Service Act, 1994</i> Regulation VII/B, C and D	<ol style="list-style-type: none"> 1. Suitable vacancy. 2. The relevant Minister to beforehand notify the Minister for the Public Service and Administration (MPSA) of her/his intention to fill the post of HoD to allow the MPSA to advise the President* regarding possible redeployment of other HoDs. 3. Post to be advertised within and outside the Public Service. 4. Relevant Minister's Department to effect the shortlisting. 5. Selection Panel must comprise of the Minister concerned who must act as Chairperson, at least two other Ministers; and an official to provide secretarial support. 6. Appointment, etc. of the successful person to be decided upon by relevant Minister after consultation with MPSA. 7. Appointment to be effected with the signing of the employment contract prescribed in the Public Service Regulations, which contract must include a Performance Agreement between the Minister and the HoD. 8. Appointee to be security cleared. 	
2. Determination of commencing salary.	As in No. 1	Regulations V/A, B and C	<ol style="list-style-type: none"> 1. Commencing salaries should be negotiated between the relevant Minister and the selected person and decided upon after consultation with the MPSA. 2. The provisions contained in Regulations V/A,B and C should be adhered to. 	
3. Awards to HoD in recognition of suggestions, inventions, improvements, etc. and sustained above average job performance, for exceptional efficiency and/or for an exceptional achievement.	As in No.1	Section 37(2)(c) of <i>Public Service Act, 1994</i> Regulation VIII/F	An award must be made by the relevant Minister after consultation with the MPSA.	
4. Retirement when term expires	As in No.1	Section 16(3)	1. Three months prior to expiry of term of office relevant Minister	Cabinet to be informed prior to

DELEGATED POWER			CONDITIONS	
TOPIC	MINISTER TO WHOM DELEGATED, EXCEPT WHERE OTHERWISE INDICATED	PRESCRIPT	EXECUTION	REPORTING
			to inform MPSA of intention of HoD to retire. 2. Relevant Minister to take decision not to extend term of office of HoD after consultation with MPSA.	expiry of term of office by relevant Minister.
5. Permission for the performance of remunerative work outside employment in the public service.	As in No. 1	Section 30(b)	Approval by relevant Minister.	MPSA to be informed.
6. Suspension of HoD suspected of misconduct.	As in No.1	Resolution 2 of 1999 of PSCBC.	1. Relevant Minister may suspend HoD with emoluments. 2. Suspension may at any time be withdrawn by relevant Minister.	MPSA to be informed.
7. Extention of the term of office.	As in No.1	Section 12(1) and (2)	1. Three months prior to the expiry of term of office MPSA to be informed of intention to extend contract. 2. Extention to be dealt with after consultation with MPSA. 3. Extention must be effected with the signing of a new employment contract and a Performance Agreement. 4. Extention can be granted for up to 5 years.	Cabinet to be informed prior to expiry of term of office by relevant Minister.
8. Salary increases in accordance with the performance of the HoD.	As in No.1	Resolution 13 of 1998 of PSCBC.	To be determined in accordance with bases provided by the MPSA after consultation with MPSA.	
9. Secondment of HoD between departments; to the service of another government/board, institute, or body.	As in No.1	Section 15(3)	After consultation with MPSA.	Cabinet to be informed by relevant Minister.
10. Retirement on reaching the prescribed (or earlier optional) retirement age.	As in No.1	Section 16(1), (2) (2A) and (4)	HoD to notify relevant Minister.	MPSA to be informed. Cabinet to be informed by relevant Minister.
11. Premature retirement at request of HoD.	As in No.1	Section 16(5)	After consultation with the MPSA.	Cabinet to be informed by the relevant Minister.
12. Redetermination of original term/ extended term of office by Employer.	As in No.1	Section 12(1) & (2)	1. Recommendation by relevant Minister to MPSA to redetermine term of office of HoD. 2. MPSA to advise President* on redeployment if possible and advisable, otherwise MPSA has to approve and determine the benefits.	Cabinet to be informed by relevant Minister.
13. Resignation	As in No.1		Relevant Minister to note resignation.	MPSA to be informed. Cabinet to be informed by the relevant Minister.
14. Discharge due to continued ill-health.	As in No.1	Section 17(2)(a)	Approved by relevant Minister.	MPSA to be informed. Cabinet to be informed by the relevant Minister.

Notes:

- * The President exercises the executive authority together with the other members of Cabinet (section 85 (2) of the Constitution, 1996).
- * The President exercises the executive authority together with the other members of Cabinet (section 85 (2) of the Constitution, 1996).
- * Other administrative and operational arrangements related to the employment of Heads of Departments such as information on remuneration, working hours, leave etc. must be dealt with within the national norms and standards determined in terms of legislative and other prescripts.
- * Deployment of HoDs in terms of section 3 B(2)(a) of the *Public Service Act*, 1994, cannot be delegated and shall be dealt with by the President (who will exercise the power with other members of Cabinet).

**PROTOCOL DOCUMENT ON THE PRINCIPLES AND PROCEDURES
TO BE FOLLOWED FOR THE RECRUITMENT AND FILLING OF
POSTS OF HEADS OF DEPARTMENT (HoDs) AND DEPUTY
DIRECTORS-GENERAL (DDGs) AT NATIONAL LEVEL**

PRINCIPLES/PROCEDURES	REFERENCE
1. The purpose of this document is to confirm the principles/procedures that apply in appointing HoDs and DDGs at national level.	
2. Although HoDs and DDGs are appointed by Executing Authorities (EAs), Cabinet also plays a role in their employment.	
3. The Minister for the Public Service and Administration (MPSA) has the responsibility to submit motivations for the filling of HoD and DDG posts to Cabinet. Only after Cabinet has concurred with the nomination, can the appointment of the candidate be formalised.	
4. HoDs are appointed for a term of five years or such shorter period as determined by the relevant EA. Cabinet, however, decided in September 1999 that HoDs should as a general rule be appointed for a period of three years.	Section 12 of the <i>Public Service Act</i> , (PSA), 1994
5. DDGs are normally appointed in the same way as any other career public servant.	Section 9 and 11 of the PSA, 1994
6. Before a post is advertised/filled, an EA must first determine the composite requirements of the post based on the inherent requirements of the job. The EA must - (a) record the inherent requirements of the job; and (b) comply with any statutory requirement for the appointment of employees.	Public Service Regulations (PSR) Part VII/C
7. The job must also be evaluated, unless it has been evaluated before.	PSR Part III/F.1
8. An EA must ensure that the vacant post is so advertised to reach, as efficiently and effectively as possible, the entire pool of potential applicants. The filling of posts of HoD and DDG must be effected by means of advertising such vacancy nationally inside and outside the Public Service. An advertisement for a post must specify the following – - Job title. - Core functions to be performed by the incumbent. - Inherent requirements of the post. - All-inclusive package payable. - Contact person to whom enquiries can be addressed. - Closing date. - The contract period (in the case of an HoD). - That the successful candidate will be required to enter into an annual performance agreement and that she/he will have to disclose her/his financial interests. - That all shortlisted candidates will be subjected to security vetting.	PSR Part VIII/C

<p>9. An EA may only fill the vacant post without advertising in the circumstances outlined in the PSR.</p>	<p>PSR Part VII/C</p>
<p>10. An EA may utilise an appropriate agency or selection consultant to assist in some or all of the selection processes as long as the prescribed advertising and selection procedures are followed.</p>	<p>PSR Part VII/C</p>
<p>11. After the closing date of the advertisement the department concerned must do the shortlisting. In this regard it is of the utmost importance for departments to verify the track record and qualifications of shortlisted candidates, especially the one nominated.</p>	
<p>12. All shortlisted candidates must be subjected to security clearance.</p>	<p>“Dear Colleague” letter by MPSA dated 24/4/2002 PSR Part VII/D</p>
<p>13. An EA must appoint a selection committee. Such a selection committee constituted for the appointment of an HoD shall include at least three Ministers. In accordance with a Cabinet decision, the Selection Committee for DDG’s must include a member of the Executive (Minister or Deputy Minister).</p>	
<p>14. During the selection process, care should be taken that all candidates are provided equal opportunities. This implies that they must be evaluated against the same requirements and criteria.</p>	
<p>15. The selection committee shall make a recommendation on the suitability of a candidate after considering only –</p> <ul style="list-style-type: none"> (a) Information based on valid methods, criteria or instruments for selection that are free from any bias or discrimination (e.g. using a scoring grid which provides space to rate each individual according to the weighted inherent requirements of the post); and (b) the training, skills, competence and knowledge necessary to meet the inherent requirements of the post and the need to redress the imbalances of the past to achieve a representative public service. 	<p>Section 11 of the PSA PSR Part VII/D</p>
<p>16. The selection committee shall record the reasons for its recommendation. The appointment of the successful candidate should only be approved after consultation with the MPSA (who is responsible for obtaining Cabinet’s concurrence) and once the President has exercised his prerogative on deployment.</p>	<p>Cabinet Minutes of 4/8/1999</p>
<p>17. In order to allow the MPSA to add value and to facilitate the appointment of the suitable candidates, departments are requested to forward information on these candidates to her. For this purpose Cabinet Memorandum (Annexure C of this Chapter) and a pro-forma letter (Annexure D of this Chapter) containing all relevant information should be forwarded to her at least a week before the Cabinet meeting.</p>	
<p>18. In accordance with a Cabinet decision, agreement on the remuneration of prospective appointees must be concluded between the relevant EA and the prospective appointee before Cabinet is approached for approval of the appointment. The remuneration to be awarded to the</p>	<p>Cabinet Minutes of 28/5/2003</p>

<p>relevant person should be included in the proposal to be presented to Cabinet. An EA may not request a deviation after the Cabinet has taken a decision on the matter.</p> <p><u>Note:</u></p> <p>With reference to the Cabinet Memorandum (Annexure C of this Chapter), departments are required to list and inform Cabinet about the extent of representivity of the institution concerned, and how this will be affected by the appointment.</p> <p>19. After Cabinet's concurrence has been obtained the relevant EA will issue an appointment letter to the successful candidate. Such a letter should include the following:</p> <ul style="list-style-type: none"> - Indicate in accordance with which provision of the Act the appointment is effected. Term of contract and all-inclusive package. - Attach the prescribed employment contract (PSR, Annexure 2, Parts 1, 2 and 3) and refer to the requirement to enter into a performance agreement within first three months of appointment. - Date of assumption of duty (The date of appointment will be with effect from a date as agreed to by the relevant EA and the appointee.). - Requirement to disclose financial interests within one month of appointment. <p>20. Should any candidate require reasons why she/he was not appointed, it will be the responsibility of the relevant EA to provide such reasons.</p>	<p>Cabinet minutes of 5/12/2001</p> <p>Chapter 3 of PSR</p>
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Annexure C

Copy _____ of _____

CABINET MEMORANDUM NO _____ OF 2002

DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION

DATE:

FILE NUMBER: _____

**FILLING OF ADVERTISED POST OF DIRECTOR-GENERAL/DEPUTY DIRECTOR-GENERAL AT
THE DEPARTMENT OF _____**

1. SUBJECT

Filling of a post of Director-General/Deputy Director-General: _____ in the Department of _____.

2. PURPOSE

To obtain Cabinet's concurrence for the intended appointment of Ms/Mr _____ to the advertised post of Director-General/Deputy Director-General at the Department of _____.

3. SUMMARY

It is the intention of the Minister of _____ to appoint Ms/Mr _____ to the post of Director-General/Deputy Director-General on the establishment of the Department of _____.

4. DISCUSSION

The relevant post was advertised in the media as well as in the Public Service Vacancy Circular with a closing date of _____.

A total of _____ applications for this post were received of which _____ candidates were shortlisted.

The following key performance areas for this post have been identified:

A pre-selection was done through scrutinising each of the applications received, with due consideration to the core functions and requirements for the post as indicated in the advertisement. On completion of this process a shortlist was compiled and the following candidates were invited for the interview:

Name:	Employer/Department	Rank/Position
Mr _____	_____	_____
Dr _____	_____	_____

Mr _____
Mr _____
Ms _____

A selection committee was constituted consisting of:

The Committee conducted interviews with the shortlisted candidates. After thorough consideration of the candidature of these individuals Mr/Ms _____, was found to be the most suitable candidate for the post. Security vetting was conducted i.r.o. all shortlisted candidates (Indicate outcome pertaining to nominated candidate). Their track records and qualifications were also verified.

(Provide motivation of most suitable candidate.)

A copy of the candidate's application form and *curriculum vitae* is attached for information.

The other candidates for the position were found to be either less suitable than the nominee or not suitable at all.

5. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The relevant vacant post exists on the establishment of the Department of _____ . The appointee will fill the vacant post on the establishment.

(Provide information about the representivity of the department/institution, and how the appointment of the candidate will affect the department's/institution's representivity)

6. FINANCIAL IMPLICATIONS

The post has been budgeted for. Funds are thus available to cover the relevant expenses.

7. COMMUNICATION IMPLICATIONS

The Department will inform the candidate of her/his appointment, if Cabinet concurs and also inform the other candidates that they have been unsuccessful.

8. STRATEGIC FOCUS

None

9. CONSTITUTIONAL IMPLICATIONS

None

10. **OTHER DEPARTMENTS/INSTITUTIONS CONSULTED**

None

11. **RECOMMENDATION**

That Cabinet concurs with the appointment of Mr/Ms _____ to the advertised post of Director-General/Deputy Director-General at the Department of _____ with a salary of R _____ per annum, for a term of _____ years – *(in the case of a contract employee)* with effect from a date as agreed to by the relevant Executing Authority and the appointee.

12. **CONTACT PERSON**

Mr/Ms _____ can be contacted at tel: _____, should there be any enquiries on the particulars provided in this Memorandum.

Annexure D

Ms GJ Fraser-Moleketi

Minister for the Public Service and Administration
Private Bag X884
PRETORIA
0001

Dear Colleague

FILLING OF THE VACANT POST OF _____: DEPARTMENT OF _____

The post mentioned above was advertised nationally within and outside the Public Service during _____. After assessment of these applications against the key performance areas and requirements attached to the post as advertised, candidates were shortlisted.

A Selection Committee conducted interviews with all the shortlisted candidates. Ms/Mr _____, acted as scribe to assist the Committee.

After thorough consideration of the candidature of these individuals against the backdrop of the particular requirements and circumstances of the post, _____ was found to be the most suitable candidate for the post.

The following documents regarding the filling of the post are attached:

- i) Copy of advertisement.
- ii) A list of the candidates who applied for the post.
- iii) A Cabinet Memorandum for submission to Cabinet.
- iv)
- v) Comments on suitability of shortlisted candidates.

In view of the aforementioned, it will be appreciated if you can obtain Cabinet's concurrence with the appointment of _____ (on a ____ year term of office), to the vacant post of Director-General/Deputy Director-General: _____, with a salary of _____ per annum with effect from a date to be agreed between myself and the nominee.

Thank you for your co-operation and assistance.

Kind regards

MINISTER

Mr _____
Mr _____
Ms _____

A selection committee was constituted consisting of:

The Committee conducted interviews with the shortlisted candidates. After thorough consideration of the candidature of these individuals Mr/Ms _____, was found to be the most suitable candidate for the post. Security vetting was conducted i.r.o. all shortlisted candidates (Indicate outcome pertaining to nominated candidate). Their track records and qualifications were also verified.

(Provide motivation of most suitable candidate.)

A copy of the candidate's application form and *curriculum vitae* is attached for information.

The other candidates for the position were found to be either less suitable than the nominee or not suitable at all.

5. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The relevant vacant post exists on the establishment of the Department of _____ . The appointee will fill the vacant post on the establishment.

(Provide information about the representivity of the department/institution, and how the appointment of the candidate will affect the department's/institution's representivity)

6. FINANCIAL IMPLICATIONS

The post has been budgeted for. Funds are thus available to cover the relevant expenses.

7. COMMUNICATION IMPLICATIONS

The Department will inform the candidate of her/his appointment, if Cabinet concurs and also inform the other candidates that they have been unsuccessful.

8. STRATEGIC FOCUS

None

9. CONSTITUTIONAL IMPLICATIONS

None

10. **OTHER DEPARTMENTS/INSTITUTIONS CONSULTED**

None

11. **RECOMMENDATION**

That Cabinet concurs with the appointment of Mr/Ms _____ to the advertised post of Director-General/Deputy Director-General at the Department of _____ with a salary of R _____ per annum, for a term of _____ years – *(in the case of a contract employee)* with effect from a date as agreed to by the relevant Executing Authority and the appointee.

12. **CONTACT PERSON**

Mr/Ms _____ can be contacted at tel: _____, should there be any enquiries on the particulars provided in this Memorandum.