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REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

Regulation Gazette

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Regulasiekoerant

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2023

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AIDS HELPLINE: 0800-0123-22 Prevention is the cure

IMPORTANT NOTICE:

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No FUTURE QUERIES WILL BE HANDLED IN CONNECTION WITH THE ABOVE.

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government
printing

Department:
Government Printing Works
REPUBLIC OF SOUTH AFRICA

HIGH ALERT: SCAM WARNING!!!

TO ALL SUPPLIERS AND SERVICE PROVIDERS OF THE GOVERNMENT PRINTING WORKS

It has come to the attention of the *GOVERNMENT PRINTING WORKS* that there are certain unscrupulous companies and individuals who are defrauding unsuspecting businesses disguised as representatives of the *Government Printing Works (GPW)*.

The scam involves the fraudsters using the letterhead of *GPW* to send out fake tender bids to companies and requests to supply equipment and goods.

Although the contact person's name on the letter may be of an existing official, the contact details on the letter are not the same as the *Government Printing Works*. When searching on the Internet for the address of the company that has sent the fake tender document, the address does not exist.

The banking details are in a private name and not company name. Government will never ask you to deposit any funds for any business transaction. *GPW* has alerted the relevant law enforcement authorities to investigate this scam to protect legitimate businesses as well as the name of the organisation.

Example of e-mails these fraudsters are using:

PROCUREMENT@GPW-GOV.ORG

Should you suspect that you are a victim of a scam, you must urgently contact the police and inform the *GPW*.

GPW has an official email with the domain as [@gpw.gov.za](mailto:GPW@gpw.gov.za)

Government e-mails DO NOT have org in their e-mail addresses. All of these fraudsters also use the same or very similar telephone numbers. Although such number with an area code 012 looks like a landline, it is not fixed to any property.

GPW will never send you an e-mail asking you to supply equipment and goods without a purchase/order number. *GPW* does not procure goods for another level of Government. The organisation will not be liable for actions that result in companies or individuals being resultant victims of such a scam.

Government Printing Works gives businesses the opportunity to supply goods and services through RFQ / Tendering process. In order to be eligible to bid to provide goods and services, suppliers must be registered on the National Treasury's Central Supplier Database (CSD). To be registered, they must meet all current legislative requirements (e.g. have a valid tax clearance certificate and be in good standing with the South African Revenue Services - SARS).

The tender process is managed through the Supply Chain Management (SCM) system of the department. SCM is highly regulated to minimise the risk of fraud, and to meet objectives which include value for money, open and effective competition, equitability, accountability, fair dealing, transparency and an ethical approach. Relevant legislation, regulations, policies, guidelines and instructions can be found on the tender's website.

Fake Tenders

National Treasury's CSD has launched the Government Order Scam campaign to combat fraudulent requests for quotes (RFQs). Such fraudulent requests have resulted in innocent companies losing money. We work hard at preventing and fighting fraud, but criminal activity is always a risk.

How tender scams work

There are many types of tender scams. Here are some of the more frequent scenarios:

Fraudsters use what appears to be government department stationery with fictitious logos and contact details to send a fake RFQ to a company to invite it to urgently supply goods. Shortly after the company has submitted its quote, it receives notification that it has won the tender. The company delivers the goods to someone who poses as an official or at a fake site. The Department has no idea of this transaction made in its name. The company is then never paid and suffers a loss.

OR

Fraudsters use what appears to be government department stationery with fictitious logos and contact details to send a fake RFQ to Company A to invite it to urgently supply goods. Typically, the tender specification is so unique that only Company B (a fictitious company created by the fraudster) can supply the goods in question.

Shortly after Company A has submitted its quote it receives notification that it has won the tender. Company A orders the goods and pays a deposit to the fictitious Company B. Once Company B receives the money, it disappears. Company A's money is stolen in the process.

Protect yourself from being scammed

- If you are registered on the supplier databases and you receive a request to tender or quote that seems to be from a government department, contact the department to confirm that the request is legitimate. Do not use the contact details on the tender document as these might be fraudulent.
- Compare tender details with those that appear in the Tender Bulletin, available online at www.gpwonline.co.za
- Make sure you familiarise yourself with how government procures goods and services. Visit the tender website for more information on how to tender.
- If you are uncomfortable about the request received, consider visiting the government department and/or the place of delivery and/or the service provider from whom you will be sourcing the goods.
- In the unlikely event that you are asked for a deposit to make a bid, contact the SCM unit of the department in question to ask whether this is in fact correct.

Any incidents of corruption, fraud, theft and misuse of government property in the *Government Printing Works* can be reported to:

Supply Chain Management: Ms. Anna Marie Du Toit, Tel. (012) 748 6292.
Email: Annamarie.DuToit@gpw.gov.za

Marketing and Stakeholder Relations: Ms Bonakele Mbhele, at Tel. (012) 748 6193.
Email: Bonakele.Mbhele@gpw.gov.za

Security Services: Mr Daniel Legoabe, at tel. (012) 748 6176.
Email: Daniel.Legoabe@gpw.gov.za

Closing times for **ORDINARY WEEKLY** **REGULATION GAZETTE** **2023**

*The closing time is **15:00** sharp on the following days:*

- **29 December**, Thursday for the issue of Friday **06 January 2023**
- **06 January**, Friday for the issue of Friday **13 January 2023**
- **13 January**, Friday for the issue of Friday **20 January 2023**
- **20 January**, Friday for the issue of Friday **27 January 2023**
- **27 January**, Friday for the issue of Friday **03 February 2023**
- **03 February**, Friday for the issue of Friday **10 February 2023**
- **10 February**, Friday for the issue of Friday **17 February 2023**
- **17 February**, Friday for the issue of Friday **24 February 2023**
- **24 February**, Friday for the issue of Friday **03 March 2023**
- **03 March**, Friday for the issue of Friday **10 March 2023**
- **10 March**, Friday for the issue of Friday **17 March 2023**
- **16 March**, Thursday for the issue of Friday **24 March 2023**
- **24 March**, Friday for the issue of Friday **31 March 2023**
- **30 March**, Thursday for the issue of Thursday **06 April 2023**
- **05 April**, Wednesday for the issue of Friday **14 April 2023**
- **14 April**, Friday for the issue of Friday **21 April 2023**
- **20 April**, Thursday for the issue of Friday **28 April 2023**
- **26 April**, Wednesday for the issue of Friday **05 May 2023**
- **05 May**, Friday for the issue of Friday **12 May 2023**
- **12 May**, Friday for the issue of Friday **19 May 2023**
- **19 May**, Friday for the issue of Friday **26 May 2023**
- **26 May**, Friday for the issue of Friday **02 June 2023**
- **02 June**, Friday for the issue of Friday **09 June 2023**
- **08 June**, Thursday for the issue of Thursday **15 June 2023**
- **15 June**, Thursday for the issue of Friday **23 June 2023**
- **23 June**, Friday for the issue of Friday **30 June 2023**
- **30 June**, Friday for the issue of Friday **07 July 2023**
- **07 July**, Friday for the issue of Friday **14 July 2023**
- **14 July**, Friday for the issue of Friday **21 July 2023**
- **21 July**, Friday for the issue of Friday **28 July 2023**
- **28 July**, Friday for the issue of Friday **04 August 2023**
- **03 August**, Thursday for the issue of Friday **11 August 2023**
- **11 August**, Friday for the issue of Friday **18 August 2023**
- **18 August**, Friday for the issue of Friday **25 August 2023**
- **25 August**, Friday for the issue of Friday **01 September 2023**
- **01 September**, Friday for the issue of Friday **08 September 2023**
- **08 September**, Friday for the issue of Friday **15 September 2023**
- **15 September**, Friday for the issue of Friday **22 September 2023**
- **21 September**, Thursday for the issue of Friday **29 September 2023**
- **29 September**, Friday for the issue of Friday **06 October 2023**
- **06 October**, Friday for the issue of Friday **13 October 2023**
- **13 October**, Friday for the issue of Friday **20 October 2023**
- **20 October**, Friday for the issue of Friday **27 October 2023**
- **27 October**, Friday for the issue of Friday **03 November 2023**
- **03 November**, Friday for the issue of Friday **10 November 2023**
- **10 November**, Friday for the issue of Friday **17 November 2023**
- **17 November**, Friday for the issue of Friday **24 November 2023**
- **24 November**, Friday for the issue of Friday **01 December 2023**
- **01 December**, Friday for the issue of Friday **08 December 2023**
- **08 December**, Friday for the issue of Friday **15 December 2023**
- **15 December**, Friday for the issue of Friday **22 December 2023**
- **20 December**, Wednesday for the issue of Friday **29 December 2023**

LIST OF TARIFF RATES FOR PUBLICATION OF NOTICES

COMMENCEMENT: 1 APRIL 2018

NATIONAL AND PROVINCIAL

Notice sizes for National, Provincial & Tender gazettes 1/4, 2/4, 3/4, 4/4 per page. Notices submitted will be charged at R1008.80 per full page, pro-rated based on the above categories.

Pricing for National, Provincial - Variable Priced Notices		
Notice Type	Page Space	New Price (R)
Ordinary National, Provincial	1/4 - Quarter Page	252.20
Ordinary National, Provincial	2/4 - Half Page	504.40
Ordinary National, Provincial	3/4 - Three Quarter Page	756.60
Ordinary National, Provincial	4/4 - Full Page	1008.80

EXTRA-ORDINARY

All Extra-ordinary National and Provincial gazette notices are non-standard notices and attract a variable price based on the number of pages submitted.

The pricing structure for National and Provincial notices which are submitted as **Extra ordinary submissions** will be charged at **R3026.32** per page.

GOVERNMENT PRINTING WORKS - BUSINESS RULES

The **Government Printing Works (GPW)** has established rules for submitting notices in line with its electronic notice processing system, which requires the use of electronic *Adobe Forms*. Please ensure that you adhere to these guidelines when completing and submitting your notice submission.

CLOSING TIMES FOR ACCEPTANCE OF NOTICES

1. The *Government Gazette* and *Government Tender Bulletin* are weekly publications that are published on Fridays and the closing time for the acceptance of notices is strictly applied according to the scheduled time for each gazette.
2. Please refer to the Submission Notice Deadline schedule in the table below. This schedule is also published online on the Government Printing works website www.gpwonline.co.za

All re-submissions will be subject to the standard cut-off times.

All notices received after the closing time will be rejected.

Government Gazette Type	Publication Frequency	Publication Date	Submission Deadline	Cancellations Deadline
National Gazette	Weekly	Friday	Friday 15h00 for next Friday	Tuesday, 15h00 - 3 working days prior to publication
Regulation Gazette	Weekly	Friday	Friday 15h00 for next Friday	Tuesday, 15h00 - 3 working days prior to publication
Petrol Price Gazette	Monthly	Tuesday before 1st Wednesday of the month	One day before publication	1 working day prior to publication
Road Carrier Permits	Weekly	Friday	Thursday 15h00 for next Friday	3 working days prior to publication
Unclaimed Monies (Justice, Labour or Lawyers)	January / September 2 per year	Last Friday	One week before publication	3 working days prior to publication
Parliament (Acts, White Paper, Green Paper)	As required	Any day of the week	None	3 working days prior to publication
Manuals	Bi- Monthly	2nd and last Thursday of the month	One week before publication	3 working days prior to publication
State of Budget (National Treasury)	Monthly	30th or last Friday of the month	One week before publication	3 working days prior to publication
<i>Extraordinary Gazettes</i>	As required	Any day of the week	<i>Before 10h00 on publication date</i>	<i>Before 10h00 on publication date</i>
Legal Gazettes A, B and C	Weekly	Friday	One week before publication	Tuesday, 15h00 - 3 working days prior to publication
Tender Bulletin	Weekly	Friday	Friday 15h00 for next Friday	Tuesday, 15h00 - 3 working days prior to publication
Gauteng	Weekly	Wednesday	Two weeks before publication	3 days after submission deadline
Eastern Cape	Weekly	Monday	One week before publication	3 working days prior to publication
Northern Cape	Weekly	Monday	One week before publication	3 working days prior to publication
North West	Weekly	Tuesday	One week before publication	3 working days prior to publication
KwaZulu-Natal	Weekly	Thursday	One week before publication	3 working days prior to publication
Limpopo	Weekly	Friday	One week before publication	3 working days prior to publication
Mpumalanga	Weekly	Friday	One week before publication	3 working days prior to publication

GOVERNMENT PRINTING WORKS - BUSINESS RULES

Government Gazette Type	Publication Frequency	Publication Date	Submission Deadline	Cancellations Deadline
Gauteng Liquor License Gazette	Monthly	Wednesday before the First Friday of the month	Two weeks before publication	3 working days after submission deadline
Northern Cape Liquor License Gazette	Monthly	First Friday of the month	Two weeks before publication	3 working days after submission deadline
National Liquor License Gazette	Monthly	First Friday of the month	Two weeks before publication	3 working days after submission deadline
Mpumalanga Liquor License Gazette	Bi-Monthly	Second & Fourth Friday	One week before publication	3 working days prior to publication

EXTRAORDINARY GAZETTES

3. *Extraordinary Gazettes* can have only one publication date. If multiple publications of an *Extraordinary Gazette* are required, a separate Z95/Z95Prov *Adobe* Forms for each publication date must be submitted.

NOTICE SUBMISSION PROCESS

4. Download the latest *Adobe* form, for the relevant notice to be placed, from the **Government Printing Works** website www.gpwonline.co.za.
5. The *Adobe* form needs to be completed electronically using *Adobe Acrobat / Acrobat Reader*. Only electronically completed *Adobe* forms will be accepted. No printed, handwritten and/or scanned *Adobe* forms will be accepted.
6. The completed electronic *Adobe* form has to be submitted via email to submit.egazette@gpw.gov.za. The form needs to be submitted in its original electronic *Adobe* format to enable the system to extract the completed information from the form for placement in the publication.
7. Every notice submitted **must** be accompanied by an official **GPW** quotation. This must be obtained from the *eGazette* Contact Centre.
8. Each notice submission should be sent as a single email. The email **must** contain **all documentation relating to a particular notice submission**.
 - 8.1. Each of the following documents must be attached to the email as a separate attachment:
 - 8.1.1. An electronically completed *Adobe* form, specific to the type of notice that is to be placed.
 - 8.1.1.1. For *National Government Gazette* or *Provincial Gazette* notices, the notices must be accompanied by an electronic Z95 or Z95Prov *Adobe* form
 - 8.1.1.2. The notice content (body copy) **MUST** be a separate attachment.
 - 8.1.2. A copy of the official **Government Printing Works** quotation you received for your notice. (*Please see Quotation section below for further details*)
 - 8.1.3. A valid and legible Proof of Payment / Purchase Order: **Government Printing Works** account customer must include a copy of their Purchase Order. **Non-Government Printing Works** account customer needs to submit the proof of payment for the notice
 - 8.1.4. Where separate notice content is applicable (Z95, Z95 Prov and TForm 3, it should **also** be attached as a separate attachment. (*Please see the Copy Section below, for the specifications*).
 - 8.1.5. Any additional notice information if applicable.

GOVERNMENT PRINTING WORKS - BUSINESS RULES

9. The electronic *Adobe* form will be taken as the primary source for the notice information to be published. Instructions that are on the email body or covering letter that contradicts the notice form content will not be considered. The information submitted on the electronic *Adobe* form will be published as-is.
10. To avoid duplicated publication of the same notice and double billing, Please submit your notice **ONLY ONCE**.
11. Notices brought to **GPW** by “walk-in” customers on electronic media can only be submitted in *Adobe* electronic form format. All “walk-in” customers with notices that are not on electronic *Adobe* forms will be routed to the Contact Centre where they will be assisted to complete the forms in the required format.
12. Should a customer submit a bulk submission of hard copy notices delivered by a messenger on behalf of any organisation e.g. newspaper publisher, the messenger will be referred back to the sender as the submission does not adhere to the submission rules.

QUOTATIONS

13. Quotations are valid until the next tariff change.
 - 13.1. **Take note:** **GPW**'s annual tariff increase takes place on **1 April** therefore any quotations issued, accepted and submitted for publication up to **31 March** will keep the old tariff. For notices to be published from 1 April, a quotation must be obtained from **GPW** with the new tariffs. Where a tariff increase is implemented during the year, **GPW** endeavours to provide customers with 30 days' notice of such changes.
14. Each quotation has a unique number.
15. Form Content notices must be emailed to the *eGazette* Contact Centre for a quotation.
 - 15.1. The *Adobe* form supplied is uploaded by the Contact Centre Agent and the system automatically calculates the cost of your notice based on the layout/format of the content supplied.
 - 15.2. It is critical that these *Adobe* Forms are completed correctly and adhere to the guidelines as stipulated by **GPW**.
16. **APPLICABLE ONLY TO GPW ACCOUNT HOLDERS:**
 - 16.1. **GPW** Account Customers must provide a valid **GPW** account number to obtain a quotation.
 - 16.2. Accounts for **GPW** account customers **must** be active with sufficient credit to transact with **GPW** to submit notices.
 - 16.2.1. If you are unsure about or need to resolve the status of your account, please contact the **GPW** Finance Department prior to submitting your notices. (If the account status is not resolved prior to submission of your notice, the notice will be failed during the process).
17. **APPLICABLE ONLY TO CASH CUSTOMERS:**
 - 17.1. Cash customers doing **bulk payments** must use a **single email address** in order to use the **same proof of payment** for submitting multiple notices.
18. The responsibility lies with you, the customer, to ensure that the payment made for your notice(s) to be published is sufficient to cover the cost of the notice(s).
19. Each quotation will be associated with one proof of payment / purchase order / cash receipt.
 - 19.1. This means that **the quotation number can only be used once to make a payment.**

GOVERNMENT PRINTING WORKS - BUSINESS RULES**COPY (SEPARATE NOTICE CONTENT DOCUMENT)**

20. Where the copy is part of a separate attachment document for Z95, Z95Prov and TForm03
- 20.1. Copy of notices must be supplied in a separate document and may not constitute part of any covering letter, purchase order, proof of payment or other attached documents.
- The content document should contain only one notice. (You may include the different translations of the same notice in the same document).
- 20.2. The notice should be set on an A4 page, with margins and fonts set as follows:
- Page size = A4 Portrait with page margins: Top = 40mm, LH/RH = 16mm, Bottom = 40mm;
Use font size: Arial or Helvetica 10pt with 11pt line spacing;
- Page size = A4 Landscape with page margins: Top = 16mm, LH/RH = 40mm, Bottom = 16mm;
Use font size: Arial or Helvetica 10pt with 11pt line spacing;

CANCELLATIONS

21. Cancellation of notice submissions are accepted by **GPW** according to the deadlines stated in the table above in point 2. Non-compliance to these deadlines will result in your request being failed. Please pay special attention to the different deadlines for each gazette. Please note that any notices cancelled after the cancellation deadline will be published and charged at full cost.
22. Requests for cancellation must be sent by the original sender of the notice and must be accompanied by the relevant notice reference number (N-) in the email body.

AMENDMENTS TO NOTICES

23. With effect from 01 October 2015, **GPW** will not longer accept amendments to notices. The cancellation process will need to be followed according to the deadline and a new notice submitted thereafter for the next available publication date.

REJECTIONS

24. All notices not meeting the submission rules will be rejected to the customer to be corrected and resubmitted. Assistance will be available through the Contact Centre should help be required when completing the forms. (012-748 6200 or email info.egazette@gpw.gov.za). Reasons for rejections include the following:
- 24.1. Incorrectly completed forms and notices submitted in the wrong format, will be rejected.
- 24.2. Any notice submissions not on the correct *Adobe* electronic form, will be rejected.
- 24.3. Any notice submissions not accompanied by the proof of payment / purchase order will be rejected and the notice will not be processed.
- 24.4. Any submissions or re-submissions that miss the submission cut-off times will be rejected to the customer. The Notice needs to be re-submitted with a new publication date.

GOVERNMENT PRINTING WORKS - BUSINESS RULES**APPROVAL OF NOTICES**

25. Any notices other than legal notices are subject to the approval of the Government Printer, who may refuse acceptance or further publication of any notice.
26. No amendments will be accepted in respect to separate notice content that was sent with a Z95 or Z95Prov notice submissions. The copy of notice in layout format (previously known as proof-out) is only provided where requested, for Advertiser to see the notice in final Gazette layout. Should they find that the information submitted was incorrect, they should request for a notice cancellation and resubmit the corrected notice, subject to standard submission deadlines. The cancellation is also subject to the stages in the publishing process, i.e. If cancellation is received when production (printing process) has commenced, then the notice cannot be cancelled.

GOVERNMENT PRINTER INDEMNIFIED AGAINST LIABILITY

27. The Government Printer will assume no liability in respect of—
 - 27.1. any delay in the publication of a notice or publication of such notice on any date other than that stipulated by the advertiser;
 - 27.2. erroneous classification of a notice, or the placement of such notice in any section or under any heading other than the section or heading stipulated by the advertiser;
 - 27.3. any editing, revision, omission, typographical errors or errors resulting from faint or indistinct copy.

LIABILITY OF ADVERTISER

28. Advertisers will be held liable for any compensation and costs arising from any action which may be instituted against the Government Printer in consequence of the publication of any notice.

CUSTOMER INQUIRIES

Many of our customers request immediate feedback/confirmation of notice placement in the gazette from our Contact Centre once they have submitted their notice – While **GPW** deems it one of their highest priorities and responsibilities to provide customers with this requested feedback and the best service at all times, we are only able to do so once we have started processing your notice submission.

GPW has a 2-working day turnaround time for processing notices received according to the business rules and deadline submissions.

Please keep this in mind when making inquiries about your notice submission at the Contact Centre.

29. Requests for information, quotations and inquiries must be sent to the Contact Centre ONLY.
30. Requests for Quotations (RFQs) should be received by the Contact Centre at least **2 working days** before the submission deadline for that specific publication.

GOVERNMENT PRINTING WORKS - BUSINESS RULES

PAYMENT OF COST

31. The Request for Quotation for placement of the notice should be sent to the Gazette Contact Centre as indicated above, prior to submission of notice for advertising.
32. Payment should then be made, or Purchase Order prepared based on the received quotation, prior to the submission of the notice for advertising as these documents i.e. proof of payment or Purchase order will be required as part of the notice submission, as indicated earlier.
33. Every proof of payment must have a valid **GPW** quotation number as a reference on the proof of payment document.
34. Where there is any doubt about the cost of publication of a notice, and in the case of copy, an enquiry, accompanied by the relevant copy, should be addressed to the Gazette Contact Centre, **Government Printing Works**, Private Bag X85, Pretoria, 0001 email: info.egazette@gpw.gov.za before publication.
35. Overpayment resulting from miscalculation on the part of the advertiser of the cost of publication of a notice will not be refunded, unless the advertiser furnishes adequate reasons why such miscalculation occurred. In the event of underpayments, the difference will be recovered from the advertiser, and future notice(s) will not be published until such time as the full cost of such publication has been duly paid in cash or electronic funds transfer into the **Government Printing Works** banking account.
36. In the event of a notice being cancelled, a refund will be made only if no cost regarding the placing of the notice has been incurred by the **Government Printing Works**.
37. The **Government Printing Works** reserves the right to levy an additional charge in cases where notices, the cost of which has been calculated in accordance with the List of Fixed Tariff Rates, are subsequently found to be excessively lengthy or to contain overmuch or complicated tabulation.

PROOF OF PUBLICATION

38. Copies of any of the *Government Gazette* or *Provincial Gazette* can be downloaded from the **Government Printing Works** website www.gpwonline.co.za free of charge, should a proof of publication be required.
39. Printed copies may be ordered from the Publications department at the ruling price. The **Government Printing Works** will assume no liability for any failure to post or for any delay in despatching of such *Government Gazette(s)*

GOVERNMENT PRINTING WORKS CONTACT INFORMATION

Physical Address:

Government Printing Works
149 Bosman Street
Pretoria

Postal Address:

Private Bag X85
Pretoria
0001

GPW Banking Details:

Bank: ABSA Bosman Street
Account No.: 405 7114 016
Branch Code: 632-005

For Gazette and Notice submissions: Gazette Submissions:

For queries and quotations, contact: Gazette Contact Centre:

E-mail: submit.egazette@gpw.gov.za

E-mail: info.egazette@gpw.gov.za

Tel: 012-748 6200

Contact person for subscribers: Mrs M. Toka:

E-mail: subscriptions@gpw.gov.za

Tel: 012-748-6066 / 6060 / 6058

Fax: 012-323-9574

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF EMPLOYMENT AND LABOUR


NO. R. 3970

20 October 2023

LABOUR RELATIONS ACT, 1995

**BARGAINING COUNCIL FOR THE FISHING INDUSTRY: EXTENSION TO
NON-PARTIES OF THE MAIN COLLECTIVE AGREEMENT**

I, **THEMBELANI WALTERMADE NXESI**, Minister of Employment and Labour, hereby in terms of section 32(2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the **Bargaining Council for the Fishing Industry** and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry with effect from the second Monday after the date of publication of this notice and for the period ending 30 September 2024.




MR TW NXESI, MP
MINISTER OF EMPLOYMENT AND LABOUR
DATE: 09/10/2023

UMNYANGO WEZEMISEBENZI NEZABASEBENZI**UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA-1995**

UMKHANDLU WOKUXOXISANA PHAKATHI KWABAQASHI NABASEBENZI EMBONINI YOKUDOBA: UKWELULWA KWESIVUMELWANO SABAQASHI NABASEBENZI NESIYINGQIKITHI SELULELWA KULABO ABANGEYONA INGXYENYE YASO

Mina, **THEMBELANI WALTERMADE NXESI**, onguNgqongqoshe WezemiSebenzi Nezabasebenzi, lapha ngokwesigaba 32(2) soMthetho Wobudlelwano Kwezabasebenzi ka 1995, ngazisa ukuthi isiVumelwano sabaqashi nabasebenzi esitholakala kwiSheduli yesiNgisi exhunywe lapha, esenziwa eMkhandlwini Wokuxoxisana Phakathi Kwabaqashi Nabasebenzi Bemboni Yokudoba, futhi ngokwesigaba 31 soMthetho Wezobudlelwano Kwezabasebenzi ka 1995, esibopha labo abasenzayo, sizobopha bonke abanye abaqashi nabasebenzi kuleyo Mboni kusukela ngoMsombuluko wesibili emva kokushicilelwa kwalesiSaziso kuze kube mhlaka 30 kuMandulo 2024.



MNUMZANE TW NXESI, MP
UNGQONGQOSHE WEZEMISEBENZI EZABASEBENZI
USUKU: 09/10/2023

BARGAINING COUNCIL FOR THE FISHING INDUSTRY

MAIN AGREEMENT

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SCHEDULE

SECTION I: GENERAL

PART A: INTRODUCTION

1. PARTIES TO THE AGREEMENT – to move Scope of Application to this section 1

In accordance with the provision of The Act, this agreement is made and entered into by and between

THE SOUTH AFRICAN FISHING INDUSTRY EMPLOYERS' ORGANISATION

(Herein after referred to as "the employer") of the one part and

FOOD AND THE ALLIED WORKERS UNION (FAWU),

(Herein after referred to as "the employee"), of the other part,

being the parties to this Main Agreement of the Bargaining Council for the Fishing Industry (hereinafter referred to as "the Council").

2. PURPOSE OF THE AGREEMENT

This agreement aims to advance economic development and social justice by fulfilling the primary objects by giving effect to, and regulate the right to, fair labour practices conferred by section 23 of the Constitution of the Republic of South Africa 1996, by establishing and enforcing basic conditions of employment in the scope of the Council for Employees employed on vessels at sea, excluded from the Basic Conditions of Employment Act. To create stability in the larger fishing industry.

PART B: APPLICATION

3. SCOPE OF APPLICATION

3.1. This agreement applies to all employers and/or employees within the Republic of South Africa, who are members of any of the parties to this agreement and who are employed in the: -

3.1.1. Hake Deep-sea Bottom Trawl Sector and

3.1.2. Hake Inshore Bottom Trawl Sector.

3.2. This agreement is extended to non-parties by the Minister and on extension of this agreement to non-parties by the Minister, any employer may apply to the Bargaining Council's Executive Committee for exemption from the terms of this collective agreement in terms of clause 37.

4. PERIOD OF OPERATION

The terms and conditions set out herein shall come into operation:

4.1. In respect of the parties as agreed and shall remain in force until cancelled by the parties and sufficient notice to be given to the other party to this Agreement; and

4.2. In respect of non-parties to the Agreement as from the date as determined by the Minister until 30 September 2024, or until cancelled by the Minister.

5. PRESUMPTION AS TO WHO IS AN EMPLOYEE:

5.1. Definition as detailed in Section 200A of the L.R.A Act 66 of 1995) as defined in the National Minimum Wage Act 9 of 2018 ("Act") If one of these factors is present, the person is presumed to be an employee until the employer proves that he/she is not.

PART C: DEFINITIONS

6. INTERPRETATION

- 6.1. Any interpretation or Application of this Agreement shall be dealt with by Section 24 of the LRA and in terms of the Interpretation Act 33 of 1957–
- 6.2. Unless the context indicates otherwise *any* word or expression that is defined in The Act shall have the same meaning as in The Act.
- 6.3. Unless inconsistent with the context words relating to: Any gender shall include the other gender, and vice versa; the singular shall include the plural, and vice versa; and a natural person shall include association of persons having corporate status by statute or common law.

7. GENERAL DEFINITIONS

Unless otherwise indicated the word-

- 7.1. **LRA** shall mean the Labour Relations Act 66 of 1995 as amended.
- 7.2. **BASIC DAILY RATE** shall mean the Basic Daily Rate of pay for the rank in which the employee is signed on the vessel, as detailed in the minimum remuneration prescribed in the respective chamber agreements as applicable to the employee's rank.
- 7.3. **CALENDAR DAY** shall mean *any* day of the week including Saturdays and Sundays starting at midnight each Day.
- 7.4. **COMMISSION** shall mean the amount payable to the employee for fish landed multiplied by the Unit Ton, where applicable, and the Commission rate for the rank in which the employee is signed on the vessel.
- 7.5. **DAY** shall mean a period of twenty-four (24) hours measured from when an employee starts work on a vessel.
- 7.6. **EMPLOYEE** shall mean the same as defined in the L.R.A, 1995.
- 7.7. **FISH** shall mean *any* form of marine life used as food for human consumption and landed in acceptable condition and quality as laid down by the employer's standard quality control regulations.
- 7.8. **FISHING INDUSTRY** shall for the purpose of this agreement hold the same meaning as defined in the Bargaining Council's Constitution as follows:

"Fishing industry" means the industry in which employers and employees are associated for the purposes of legally exploiting in respect of the Marine Living Resources Act, No 18 of 1998, any form of marine living resource by searching, catching, taking or harvesting and processing of fish, for financial gain.

"Deep-Sea Bottom Trawling" means the fishing operations at sea in which the employers and their employees are associated for the purpose of Deep-Sea Bottom Trawling by way of a net for fin fish species outside a five nautical mile perimeter west of twenty degrees east longitude and outside the hundred- and- ten meters isobaths east of twenty degrees east longitude.

"In-Shore Bottom Trawling" means the fishing operations at sea in which the employers and their employees are associated for the purpose of Bottom Trawling within the hundred-and-ten meters isobaths.

"Processing of Fish" for the purpose of this definition means the activities undertaken on any vessel at sea, where any substance or article is produced from any form of marine living resources by any method. To include but not limited to the work of cutting up, dismembering, separating parts of, cleaning and sorting, lining, and preserving thereof or where any form of marine living resources are packed, dried, gutted, salted, iced, chilled, frozen or otherwise processed for sale.

- 7.9. **HOME PORT** shall mean any port of fishing harbour in the Republic of South Africa in which the employee was engaged.
- 7.10. **LAY-OFF** shall be when the employer cannot provide employees with work, and they are temporarily placed on forced unpaid absence.
- 7.11. **PLACE OF WORK** shall mean the vessel on which the employee has signed the articles as amended time to time
 - 7.11.1. **PUBLIC HOLIDAY** shall mean all public holidays declared in terms of the Public Holidays Act no 36 of 1994 as amended from time to time,
- 7.12. **REMUNERATION** shall mean the sum of all monies not less than the National Minimum Wage as guided by the National Minimum Wage Act 9 of 2018 ("Act") as amended as received by the employee from the employer which includes but is not limited to -
 - 7.12.1. Basic Daily Rate.
 - 7.12.2. Commission.
 - 7.12.3. Bonuses.
 - 7.12.4. Allowances; and/or
 - 7.12.5. Leave Pay.
- 7.13. **SAMSA** shall mean the South African Maritime Safety Authority.
- 7.14. **SERVE** shall for the purpose of this agreement hold the same meaning as "notice" and which is defined in the Bargaining Council's Constitution to mean where notice was given by -
 - 7.14.1. affecting personal service of the notification on any representative of the party concerned.
 - 7.14.2. posting a registered letter containing the notification to the offices of the party concerned; or
 - 7.14.3. telefaxing the notification to the offices of the party concerned, provided that the telefax receipt shows that the notice has been transmitted to and received by the addressee; electronic
 - 7.14.4. mail where "read receipt" notifications are activated.

- 7.15. **SHORE LEAVE** shall mean the number of leave days due in terms of subclause 17.2 below.
- 7.15B. **TEMPORARY EMPLOYMENT SERVICE** shall mean a Labour Broker in layman terms and regulated in terms of section 198 of the Act
- 7.16. **TON** shall mean the metric ton of a thousand (1000) kilograms.
- 7.17. **TRAWLER** shall mean a fishing vessel irrespective of size or method of propulsion, which is employed in the catching of fish by way of trawling.
- 7.18. **TRIP** shall mean the period between the times of sailing from and docking in a port.
- 7.19. **UNIT TON** shall mean the tons of fish as per landing report converted by the factors for each size, species as defined by the employer and agreed to by the representative trade union, where applicable.
- 7.20. **VOYAGE** shall mean the number of days at sea plus the number of days Shore Leave related to one or more Trips with short turnarounds, where a turnaround shall refer a situation where the vessel docks and/or offloads and goes to sea again without a delay on another trip.
- 7.21. **WORKING DAY** shall mean any of or combination of the following: -
- 7.21.1. Working on board a fishing vessel.
 - 7.21.2. Shore Leave accumulated as contemplated in subclause 17.2. below.
 - 7.21.3. Standby awaiting a vessel.
 - 7.21.4. Working ashore awaiting a vessel; or
 - 7.21.5. Any form of sanctioned paid leave.

8. SUMMARY OF RANK ROLES:

- 8.1. **ABLE SEAMAN:** Means an employee employed as a deckhand on a freezer or fresh Fish Trawler who is in possession of an Able Seaman Certificate qualifying him proficient in Survival Craft and efficient at Deck Rating and who is knowledgeable about net mending, splicing and familiar with all types of rigging and running gear. Takes watch as lookout or helmsman, should this so be required by the Skipper.
- 8.2. **BOSUN:** Means an employee who is in possession of the required SAMSA Certificate and forms part of the Deckhand complement on a vessel. The employee is responsible for co-ordinate the deck and Fish-hold activities of the Spare Hands and Deckhands and who takes a watch when necessary.
- 8.3. **CHARGE HAND:** Means an employee on board a Trawler who actively works and supervises a team of Factory-/Spare-/Fish-hold Hands in the proper handling, gutting, cleaning, packing and stowage of the catch, and who reports to the Factory Supervisor/Assistant Factory supervisor in charge. The employee shall also perform other duties such as the preparation of production requirements (packaging, processing area, etc.) before sailing times, cleaning and painting of production areas as the employee shall be required to do so from time to time and assisting on deck as required by the Skipper. This should be read with the definitions of Able Seaman defined in 8.1 above and Lifeboat man defined in subclause 8.25 below.
- 8.4. **COOK:** Means an employee who is in possession of a Certificate of Efficient Cook or exempted by SAMSA, and who is responsible for the preparing of orders for victuals and for the preparation and cooking of food for a crew complement of not more than 30. The employee shall account for the galley and mess-room utensils, supplies of victuals, and is responsible for the cleanliness of the galley, mess-room, and provision storage areas.

- 8.5. **COOK- FIRST:** Means an employee who is in possession of a Certificate of Efficient Cook or exempted by SAMSA, and who is responsible for the preparing of orders for victuals and for the preparation and cooking of food for a crew complement of more than 30. The employee shall account for the galley and messroom utensils, supplies of victuals, and is responsible for the cleanliness of the galley, mess-room and provision storage areas.
- 8.6. **COOK - SECOND:** Means an employee on a Trawler, with a complement of more than 40 people, who assists the cook in the performance of the employee's duties and who is in possession of a Certificate for Efficient Cook or exempted by SAMSA.
- 8.7. **COOK- THIRD:** Means an employee on a Trawler, who reports directly to the Chief Cook who is in possession of an Efficient Cook Certificate. Prepares and cooks food aboard trawler vessel and cleans, cuts, and cooks' meat, fish, and poultry as directed by Chief Cook apportions food for servings and cleans pots, pans, ranges, and other cooking equipment.
- 8.8. **COOK - RELIEF:** Means an employee on a Trawler, with a complement of more than 40 people, who assists the cook in the performance of the employee's duties and who is in possession of a Certificate for Efficient Cook or exempted by SAMSA, in the absence of the Second Cook.
- 8.9. **DECKHAND -** Means an employee employed in catching, handling of fishing gear, repairing of nets cleaning and washing of decks, assisting in the processing in the factory/stowage of the catch. And who takes a watch as lookout or helmsman should it so be required by the Skipper, assists in keeping the ship clean and paints up to arm's length as required. This should be read with the definitions of Able Seaman defined in 8.1 above and Lifeboat man defined in subclause 8.25 below.
- 8.10. **DRIVER:** Means an employee holding a certificate of competency as a Marine Motorman Grade 3, equivalent or higher, appointed to a Trawler not less than 350 who is responsible for the running of the engine and the upkeep and maintenance of all ancillary equipment and who also assists in the handling of the catch.
- 8.11. **FACTORY HAND:** Holds a similar definition as Spare Hand defined in subclause 8.35 below.
- 8.12. **FACTORY MANAGER:** Means an employee, who is responsible to the Skipper, or the employee's designate for the proper handling, for the stowage and quality control (HACCP) of the catch on a Trawler and who is also responsible for ensuring that factory personnel carry out their duties in an efficient manner.
- 8.13. **FACTORY MANAGER • ASSISTING:** Means an employee who assists the Factory Manager in the performance of the employee's duties.
- 8.14. **FACTORY SUPERVISOR:** Holds a similar definition as Factory Manager defined in subclause 8.12 above.
- 8.15. **FACTORY SUPERVISOR• ASSISTING:** Holds a similar definition as Factory Manager-Assisting defined in 8.13 above

- 8.16. **FISH-HOLD HAND:** Holds a similar definition as Spare Hand defined in subclause 8.35 below.
- 8.17. **FISH-HOLD HAND- SENIOR:** Holds a similar definition as Spare Hand defined in subclause 8.35 below but reports directly to the Factory Manager
- 8.18. **FISHMEAL OPERATOR:** Means an employee employed in the production of fishmeal and who cleans and paints fish-meal plant spaces and fish-meal storage areas as required and fulfils other production functions as required.
- 8.19. **GREASER:** Means an employee who takes an engine room watch together with a Certificated Marine Engineer, who assists in oiling and greasing of machinery in engine room and on deck, as well as cleans and paints engine room spaces.
- 8.20. **GREASER - M3:** Means an employee who is in possession of an M3 Efficient Certificate and who takes an engine room watch together with a certificated marine engineer and who assists in oiling and greasing machinery in the engine room and on deck and who cleans and paints engine-room spaces.
- 8.21. **GREASER- M4:** Means an employee who is in possession of an M4 Efficient Certificate and who takes an engine room watch together with a certificated marine engineer and who assists in oiling and greasing machinery in the engine room and on deck and who cleans and paints engine-room spaces.
- 8.22. **GREASER - TRAINEE:** Means an employee who reports directly to the Greaser and is responsible for the oils and grease moving parts, such as gears, shafts, and bearings, of engines and auxiliary equipment used to propel maritime vessels. This employee is also responsible for examining machinery for specified pressure and flow of lubricants. As well as filling the oil cups on machinery with grease and lubricating oil, according to machinery lubrication instructions and also to read pressure and temperature gauges and records data in engineering log.
- 8.23. **HOUSEKEEPING - GALLEYHAND:** Means an employee who keeps the galley, alley ways, toilets & officers' cabins clean, who assists the Cook in the employee's duties and keeps all eating utensils clean, and at the skipper's discretion assists in the handling of fish on deck and/or factory at times when fishing is heavy.
- 8.24. **HOUSEKEEPING - LAUNDRESS:** Means an employee who reports directly to the Chief Mate and is responsible for the washes and irons of crew sheets, blankets, and other linens used by crew on board. The employee uses equipment usually found in household and supplying crew with sheets, blankets, towels, and other linens.
- 8.25. **LIFEBOATSMAN (PISC):** Means an employee employed as a deckhand on a freezer or fresh Fish Trawler who is in possession of a Lifeboats man Certificate qualifying him Proficient in Survival Craft and who is knowledgeable about net mending, splicing and familiar with all types of rigging and running gear. Takes watch as lookout or helmsman, should it so be required by the Skipper.
- 8.26. **HOUSEKEEPING - CHIEF STEWARD/ESS:** Means an employee who reports directly to the Chief Mate and is responsible for comfort of the officers and for the cleaning of the Captain's Cabin and changes

the linens and towels and make up the beds and serve the food and drinks to the officers in the mess room.

- 8.27. **MARINE ENGINEER • CHIEF:** Means an employee holding a certificate of competency as required by SAMSA regulations for the vessel size the employee serves on, who is responsible for all technical aspects of the Trawler. He is also a watch-keeping officer and is appointed to be a Trawler as required by the current Manning Regulations Government Gazette No 15304, 1st December 1993.
- 8.28. **MARINE ENGINEER• ASSISTING:** Means an employee holding a certificate of competency as required by SAMSA regulations for the vessel size the employee serves on under a Chief Marine Engineer, and who as a watch-keeping officer is appointed to a Trawler as required by the current Manning Regulations Government Gazette No 15304, 1st December 1993.
- 8.29. **MARINE ENGINEER - MECHANIC:** Means an employee who is responsible for the upkeep of the machinery and other equipment to be in good working order. Also responsible for preventing breakdowns by checking, cleaning, and oiling machine parts regularly and to fix machines when they break down.
- 8.30. **MATE:** Means an employee holding a certificate of competency as a Fisherman Grade 7 or higher or equivalent, who is appointed to a Trawler of 100 or more gross registered tons, as a watch-keeping officer and who is responsible to the Skipper for handing of the catch, assembly of fishing gear, supervision of deck personnel and may be the appointed safety officer or representative.
- 8.31. **PRODUCTION MANAGER:** Holds a similar definition as Factory Manager defined in subclause 8.12 above.
- 8.32. **PRODUCTION MANAGER- ASSISTING:** Holds a similar definition as Factory Manager -Assistant defined in subclause 8.13 above.
- 8.33. **SKIPPER:** Means an employee holding a certificate of competency as a Fisherman Grade 4 or higher or equivalent who also is responsible for the safety, navigation, housekeeping, all operations of the Trawler of 100 or more gross registered tons, the crew complement and who directs fishing operations. The Skipper is appointed safety officer in terms of the Maritime Occupational and Safety Regulations, 1994.
- 8.34. **SECOND ENGINEER:** Holds a similar definition as Marine Engineer - Assisting as defined in subclause 8.28above.
- 8.35. **SPARE HAND:** Means an employee on a Trawler who actively participates in the handling and processing of Fish. Reports in the execution of the employee's duties to the Charge hand and shall perform any duties as the employee may be required to do by management of the company or the master of the vessel. The employee may also be appointed to assist the Cook with the employee's functions. The employee may further be instructed by the Skipper to assist in cleaning functions, i.e., galley, alleyways, and toilets. This should be read with the definitions of Able Seaman defined in subclause 8.1 above and Lifeboat man as defined in subclause 8.25 above.

SECTION II: CORE RIGHTS**PART D: REMUNERATION****9. MINIMUM REMUNERATION**

- 9.1. It is agreed by the parties that actual remuneration rates be increased by the percentage indicated in the respective chamber agreements as well as the minimum remuneration rates, as reflected in the new minimum rates scheduled attached:
- 9.1.1. Annexure "A" - Hake Deep-sea Bottom Trawl Sector
9.1.2. Annexure "B" - Hake Inshore Bottom Trawl Sector
- 9.2. No employee shall be paid less than the minimum remuneration prescribed in the respective chamber agreements attached for any employee's relevant rank after incorporation of the increase referred to in subclause 9.1 above.
- 9.3. Subject to subclause 9.2 above, some ranks are excluded from having a prescribed minimum remuneration and marked "Unprescribed", as the rate of remuneration for such rank normally exceeds an annual income level of two hundred twenty-four thousand and eighty rand and forty-eight cents (R 224,080.48).
- 9.4. The prescribed minimum remuneration schedule per chamber setting out the minimum rates of pay per Working Day for each rank that shall be effective from the date that this agreement comes into force.
- 9.5. Should the employer require an employee to work for five (5) days or more in a rank which has a higher remuneration as prescribed for the rank that the employee holds, the employer shall pay that employee at the higher remuneration for the full period the employee worked in the higher rank: Provided such change in rank is authorized by the Skipper and logged as such.
- 9.6. A temporary employee shall be paid at the rate for the rank the employee holds contained in the remuneration schedule for the specific sector in which the employee is employed.

10. PAYMENT OF REMUNERATION

- 10.1. An employee shall be paid, calculated over a period of a month, the greater remuneration of:
- 10.1.1. the actual amount earned paid in terms of any other agreement; or
10.1.2. The amount equal to the number of Working Days entitled to in the month in question multiplied by the minimum remunerations rate for the employee's rank, as set out for the specific sector in which the employee is employed.
- 10.2. To calculate the number of Working Days as contemplated in subclause 10.1.2, any Day that has been declared a Public Holiday, shall be calculated as two (2) Working Days when such a Public Holiday coincides with any Working Day.
- 10.3. The employer shall pay the employee all the remuneration due to him in terms of subclause 10.1 above at least once every 30 days.
- 10.4. Payment shall be made -
- 10.4.1. in cash.
10.4.2. by bank transfer.
10.4.3. by bank deposit; or

10.4.4. by cheque.

10.5. Payments in cash shall be made in an envelope during a Working Day.

10.6. Payment shall be accompanied by a pay slip with the following details:

- 10.6.1. The name of the employer.
- 10.6.2. The name, identity number, clock number and/or payroll number of the employee.
- 10.6.3. Employee's date of engagement.
- 10.6.4. The rank of the employee.
- 10.6.5. The total number of Working Days.
- 10.6.6. The rate(s) of remuneration.
- 10.6.7. Any other payment due to the employee in accordance with this agreement.
- 10.6.8. Any other payment due to the employee in accordance with the employee's individual contract of employment.
- 10.6.9. Deductions made.
- 10.6.10. Remuneration due; and
- 10.6.11. The period in respect of which payment is made.

11. Deductions

- 11.1. The employer may not fine or levy an employee or charge the employee a fee.
- 11.2. The employer may not make any deduction from an employee's remuneration unless -
 - 11.2.1. Subject to subclauses 11.3 to 11.5 below, the employee in writing agrees to the deduction in respect of a debt specified in their agreement; or
 - 11.2.2. The deduction is required in terms of a law, collective agreement, court order or arbitration award.
- 11.3. A deduction in terms of subclause 11.2.1 above may be made to reimburse the employer for loss or damage only should -
 - 11.3.1. The loss or damage occurred in the course of employment and was due to the fault of the employee.
 - 11.3.2. the employer has followed a fair procedure and has given the employee a reasonable opportunity to show why the deduction should not be made; and
 - 11.3.3. the total amount of the debt does not exceed the actual amount of the loss or damage.
- 11.4. Should the employer have a representative trade union claiming organizational rights in terms of The Act, then it may enter into an agreement with the trade union in terms of which union levies may be deducted from employees' remuneration and paid over in terms of such legislation read with the individual trade union's constitution.
- 11.5. The employer shall be authorized to make any deduction from an employee's remuneration as contemplated by the Merchant Shipping Act: Provided the employee is advised in writing of the section and terms of the deduction together with the pays lip reflecting such deduction.

PART E: BENEFITS

12. PROTECTIVE CLOTHING

- 12.1. The employer shall either provide the employee with protective clothing free of charge or alternatively reimburse an employee for the use of his own protective clothing at per working day at sea, of not less than that set out in the respective agreements attached hereto.
- 12.2. It is the employer's prerogative to elect to operate any of the alternatives in subclause 12.1 above: Provided any change in his election shall be negotiated with the affected employees or the representative trade union.

13. TOWAGE ALLOWANCE

- 13.1. In the event of a vessel being called upon to tow another vessel of the employer to port, the crew of the towing vessel shall be compensated for the loss of Commission.
- 13.2. The towage allowance shall be calculated at the average daily Commission per day of the previous Voyage for that vessel, multiplied by the number of days Commission lost whilst towing.

14. DEATH AND DISABILITY

- 14.1. The employer shall provide all its employees with accidental death and disability insurance to a minimum value as prescribed by the Merchant Shipping Act Chapter 4 read with the Merchant Shipping Seafarer Accidental and Insurance Regulations issued by SAMSA from time to time.
- 14.2. Should the employer have an operative existing Provident or Retirement fund that covers its employees to this extent stipulated in subclause 14.1 above, no additional cover is required.
- 14.3. The benefit referred to in subclause 14.1 above shall be limited to incidents occurring whilst on duty.

15. MEDICAL AID

- 15.1. Each employee employed with the employer more than twelve (12) months continuously shall have the right to be enrolled with the Fishermen's Medical Aid Fund on the primary option whereby the employee and employer shall equally pay the contribution towards such benefit.
- 15.2. Each employee shall have the right to nominate beneficiaries for his benefit in terms of subclause 15.1 above at his own cost unless agreement is reached with the employer regarding the sharing of this additional cost.

PART F: HOURS OF WORK**16. HOURS OF WORK**

- 16.1. The employer may not require or permit an employee to work more than a maximum of fourteen (14) hours per day.
- 16.2. The employer may not require or permit an employee to work more than five (5) hours continuously without a rest interval of at least thirty (30) minutes.

17. REST PERIODS

- 17.1. The employer shall provide an employee with hours of rest per day as prescribed in the applicable Occupational Health and Safety legislation and SAMSA regulations.
- 17.2. The employer shall grant at the end of every Voyage, an employee four (4) hours paid Shore Leave for every twenty-four (24) hours that the employee was at sea.
- 17.3. Shore Leave may commence upon actual arrival after the employee is granted permission to leave the ship.
- 17.4. Shore leave may be taken at the conclusion of a trip or a voyage at the discretion of the employer: provided in the event of shore leave being granted away from the employee's homeport then the employer shall be responsible for the transport to his homeport.

- 17.5. Notwithstanding paragraph 4 above, the employer and employee may enter into any alternative written agreement to address shore leave.

18. PERIODS OF LAY-OFF

- 18.1. The employer shall notify all affected employees in writing of and discuss its intention to Lay-Off employees for operational reasons, at least forty-eight (48) hours before such Lay-Off: Provided such Lay-Off is expected to exceed a total of seven (7) Calendar Days.
- 18.2. The employer shall permit the affected employees the option to utilize their accumulated annual leave for the purposes of payment during such a period of Lay-Off.
- 18.3. The employer shall furthermore notify the Council and recognized trade union, where applicable, at least forty-eight (48) hours where possible before the start of any anticipated Lay-Off period.
- 18.4. The employer shall provide the trade union and the Council with the total number of employees affected and the reason(s) for the Lay-Off.
- 18.5. The employer undertakes to endeavor, where possible, to deploy or redeploy any affect employee during a period of Lay-Off in terms of 18.1 above.
- 18.6. The employer shall extend the possibility of registering for UIF to affected employees during a period of Lay-off, if the period exceeds one month.

PART G: LEAVE

19. ANNUAL LEAVE AS AMENDED IN THE BCEA

- 19.1. An employee shall be entitled to at least twenty-one (21) Calendar Days paid annual leave in his annual leave cycle, which shall refer to the period of twelve (12) months with the same employer, calculated immediately following:
- 19.1.1. the employee's commencement of employment; or
- 19.1.2. the completion of that employee's prior leave cycle.
- 19.2. An employee is entitled to take any leave accumulated in an annual leave cycle in terms of 19.1 above, on consecutive Calendar Days.
- 19.3. The employer must grant annual leave no later than four (4) months after the end of the annual leave cycle as defined in 19.1 above.
- 19.4. The employer may not require or permit an employee to take annual leave during -
- 19.4.1. any other period of leave to which the Employee is entitled in terms of this agreement; or
- 19.4.2. any period of notice of termination of employment.
- 19.5. Despite subclause 19.4 above, the employer may permit an employee, at the employee's written request, to take leave during a period of unpaid absence.
- 19.6. The employer may reduce an employee's entitlement to annual leave by the number of Calendar Days of paid occasional leave granted to the employee as contemplated in 19.5 above.
- 19.7. The employer shall grant an employee an additional Calendar Day of paid annual leave should a Public Holiday fall on a Calendar Day during an employee's period of annual leave.

- 19.8. The employer may not require or permit an employee to work for the employer during any period of annual leave.
- 19.9. Annual leave must be taken
- 19.9.1. in accordance with an agreement between the employer and employee; or
- 19.9.2. if there is no agreement in terms of subclause 19.9.1, at a time determined by the employer in accordance with this clause.
- 19.10. Annual leave must be paid in accordance with subclause 9.2 read with subclause 10.1 above as well as the applicable chamber minimum remuneration schedule.

20. SICK LEAVE as amended as per Section 22-24 of the BCEA January 2020

- 20.1. An employee shall be entitled to at least forty-two (42) Calendar Days paid sick leave in his sick leave cycle. 'Sick leave cycle' means the period of thirty-six (36) months employment immediately following:
- 20.1.1. the employee's commencement of employment; or
- 20.1.2. the completion of that employee's prior sick leave cycle.
- 20.2. Despite sub-clause 20.1 above, the employee shall only be entitled to one (1) day sick leave for every twenty-six (26) days worked during his first twelve (12) months of employment.
- 20.3. During an employee's first sick leave cycle, the employer may reduce the employee's entitlement to sick leave in terms of subclause 20.1 by the number of Calendar Day leave taken in terms of subclause 20.2.
- 20.4. Sick leave must be paid in terms of subclause 9.2 read with subclause 10.1 above as well as the applicable chamber minimum remuneration schedule.
- 20.5. The employer is not required to pay sick leave to an employee in terms of subclauses 20.1 or 20.2 above, should the employer and employee by written agreement contribute to a fund or organization that guarantees payment to the employee in lieu of any part of his remuneration during times of incapacity.
- 20.6. Sick leave shall only be paid on presentation of a certificate issued and signed by a medical practitioner entitled to practice in terms of section 17 of the Medical, Dental and Supplementary Health Service Professions Act.
- 20.7. Any employee who utilizes sick leave shall only be paid for the period specified in the medical certificate required in subclause 20.6 above and shall not be paid for any additional period until he re-joins his vessel, unless the employee make use of his annual leave as contemplated in sub-clause 20.5 above.
- 20.8. This clause does not apply to an inability to work caused by an accident or occupational disease as defined in the Compensation for Occupational Injuries and Diseases Act, except in respect of any period during which no compensation is payable in terms of this Act.

MATERNITY LEAVE, PATERNITY, ADOPTION LEAVE, COMMISSONING PARENTAL LEAVE**21. MATERNITY LEAVE, as amended as per Sections 25 and 26 in the BCEA JANUARY 2020**

- 21.1. An employee shall be entitled to unpaid maternity leave of at least seventeen (17) weeks.
- 21.2. An employee may commence maternity leave:
 - 21.2.1. at any time from four (4) weeks before the expected date of birth, unless otherwise agreed; or
 - 21.2.2. on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.
- 21.3. No employer may require or permit a pregnant employee to perform work that is hazardous to her health or to the health of her child and may therefore consult the employee regarding the commencement of her maternity leave to be taken.
- 21.4. An employee who has a miscarriage or bears a stillborn child during her third trimester of pregnancy, is entitled to maternity leave of six (6) weeks thereafter, irrespective of whether the employee had started maternity leave at the time of the miscarriage or stillbirth.
- 21.5. An employee shall notify the employer in writing, unless the employee is unable to do so, of the date on which the employee intends to:
 - 21.5.1. start maternity leave; and
 - 21.5.2. return to work after maternity leave.
- 21.6. Notification in terms of subclause 21.5 above shall be given at least four (4) weeks before the employee intends to start maternity leave.
- 21.7. The payment of maternity benefits shall be determined by the Minister of Employment and Labor subject to the provisions of the Unemployment Insurance Act.
- 21.8. During the period of maternity leave all terms and conditions of employment contract shall be suspended.
- 21.9. At the end of the period of maternity leave the employee shall be entitled to resume work with the employer in a position at least identical or like, but not less favorable than, the position she held at the start of her maternity leave.
- 21.10. No employee may resume work within six (6) weeks after the birth of her child, unless a medical practitioner or midwife certified that she is felt to do so
- 21.11. No employer may require or permit an employee who is nursing her child to perform work that is hazardous to her health or to the health of her child and may therefore consult the employee regarding the extension of her maternity leave taken:
 - 21.11.1. in accordance with an agreement between the employer and employee; or
 - 21.11.2. if there is no agreement in terms of subclause 21.11.1, at a time determined by the employer in accordance with this clause.

21.A Parental Leave – Section 25A (1) and (2) of the BCEA

- 1. An employee who is a parent of a child is entitled to at least 10 (ten) consecutive days' parental leave.
- 2. An employee may commence parental leave on–
 - a) the day on which the employee's child is born; or
 - b) the date on which–
 - i) the adoption order is granted; or
 - ii) the child is placed in the care of a prospective adoptive parent by a competent court, whichever date occurs first.

What is adoption leave?**21.B. Adoption Leave – Section 25B (1), (2) and (6) of the BCEA**

1. An employee who is an adoptive parent of a child below the age of two is, subject to subsection (6), entitled to–
 - a) Adoption Leave of at least 10 (ten) consecutive weeks; or
 - b) Parental Leave as referred to in Section 25A.
2. An employee may commence adoption leave on the date on which–
 - a) the adoption order is granted.
 - b) the child is placed in the care of a prospective adoptive parent by a competent court, whichever date occurs first.
6. If an adoption order is made in respect of two adoptive parents, one of the adoptive parents may apply for Adoption Leave and the other adoptive parent may apply for the Parental Leave referred to in Section 25A, provided that this choice shall be exercised by the two adoptive parents.

What is commissioning parental leave?**21.C. Commissioning Parental Leave – Section 25C (1), (2) and (6)**

1. An employee who is a commissioning parent in a surrogate motherhood agreement is, subject to subsection (6), entitled to–
 - a) Commissioning Parental Leave of at least 10 (ten) consecutive weeks; or
 - b) the Parental Leave referred to in section 25A.
2. An employee may commence Commissioning Parental Leave on the date that a child is born by virtue of a surrogate motherhood agreement.
6. If a surrogate motherhood agreement involves two commissioning parents, one of the commissioning parents may apply for Commissioning Parental Leave and the other commissioning parent may apply for the Parental Leave referred to in Section 25A, provided that this choice shall be exercised by the two commissioning parents.

22. FAMILY RESPONSIBILITY LEAVE

- 22.1. This clause applies to an employee–:
 - 22.1.1. who has been in employment with the employer for longer than hundred-and-twenty (120) Calendar Days; and
 - 22.1.2. who has had at least seventy (70) Working Days in that period.
- 22.2. At the employers' discretion an employee may be granted at his request, a maximum of five (5) Calendar Days paid family responsibility leave during each annual leave cycle, defined in subclause 22.1 above,
- 22.3. Family responsibility leave may be utilized by the employee in the event:
 - 22.3.1. when the employee's child is born.
 - 22.3.2. when the employee's child is sick; or
 - 22.3.3. of death in the immediate family of the employee, which shall refer to the employee's parents, adoptive parent, grandparent, spouse or life partner, child, adopted child, grandchild or siblings.
- 22.4. Before paying an employee for family responsibility leave in terms of this paragraph, the employer may require reasonable proof of an event contemplated in subclause 22.3 above, for which the leave was required.
- 22.5. Subject to subclause 22.4 above, the employer must pay the employee for the family responsibility leave in terms of subclause 9.2 above read with subclause 10.1 above as well as the applicable chamber minimum remuneration schedule.
- 22.6. An employee may not take family responsibility leave in respect of a part of a Day.
- 22.7. Utilizing family responsibility leave as contemplated in terms of subclause 22.3.1 above shall only be considered where the employee makes prior arrangement with the employer, which implies that no employer is obliged to ensure that the employee is returned to be present for the birth of his child.

- 22.8. Any employee who utilizes family responsibility leave shall do so for the period specified in sub-clause 22.2 above and shall not be paid for any additional period until he re-joins his vessel, unless the employee makes use of his annual leave as contemplated in sub-clause 19.5 above.
- 22.9. An employee's unused entitlement to family responsibility leave in terms of this paragraph lapses at the end of the annual cycle.

PART H: EMPLOYMENT

23. APPOINTMENTS

- 23.1. Subject to the provisions of this clause, no employer shall employ a new employee unless a valid certificate is delivered to the employer, satisfying him that the applicant:
- 23.1.1. has completed satisfactory pre-sea training as required in terms of the Standard Training and Certification or Watch-keeping Fishing.
 - 23.1.2. is in possession of the required qualification for the position to be occupied; and
 - 23.1.3. is in possession of a Seaman's Book.
- 23.2. The certificate required in terms of subclause 23.1.1 must be issued by an accredited training institution as regulated.
- 23.3. No employer shall employ an employee without a valid identity document or passport and a work permit.

24. PROHIBITION OF EMPLOYMENT OF CHILDREN

- 24.1. No person may employ a child on board a fishing vessel -
- 24.1.1. who is under eighteen (18) years of age unless indentured as an apprentice or
 - 24.1.2. cadet for whom sixteen (16) years of age would be the minimum age allowed.
- 24.2. No person may employ a child in employment -
- 24.2.1. that is inappropriate for a person of that age; or
 - 24.2.2. that places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development.
- 24.3. Subject to sub-clause 24.2 above, the Minister of Transport may make regulation to:
- 24.3.1. prohibit or place conditions on the employment of children on board a fishing vessel who are at least eighteen (18) years of age and no longer subject to compulsory schooling in terms of any law; and
 - 24.3.2. regulate the conducting of medical examinations of children in employment in addition to that required in terms of sub-clause 25 below.
- 24.4. In any proceedings in terms of this Act, if the age of an employee is a relevant factor for which insufficient evidence is available, it is for the party who alleges that the engagement complied with the provisions of this Chapter to prove that it was reasonable for that party to believe, after an investigation, that the person was not below the permitted age in terms of sub clauses 24.1 to 24.3.
- 24.5. It is an offence for an employer to:
- 24.5.1. employ a child in contravention of sub-clauses 24.1 to 24.3; or
 - 24.5.2. assist an employer to employ a child in contravention of the clause; or
 - 24.5.3. discriminate against a person who refuses to permit a child to be employed in contravention of this clause.

25. MEDICAL EXAMINATIONS

- 25.1. SAMSA requires that employees to be in good health when sent to work at sea due to the nature of the Fishing Industry, the employer may therefore require an employee to undergo and pass a medical examination valid for 2 years at the expense of the employer, by a medical practitioner elected by the employer from the accredited SAMSA list of medical practitioners,

- before being employed on a vessel.
- 25.2. Medical certificates for South African seafarers have officially had their validity extended from one year to two years, according to a Marine Notice (MN 22-21 published by the South African Maritime Safety Authority (SAMSA)

- 25.3. An employee accepting the conditions in subclause 25.1 above gives his irrevocable consent to the medical practitioner to make the results of the medical examination available to the employer.

26. PROHIBITION OF FORCED LABOUR

- 26.1. Subject to the Constitution of the RSA, all forced labour is prohibited.
- 26.2. No person may, for his or her own benefit or for the benefit of someone else, cause, demand or impose forced labour in contravention of subclause 26.1.
- 26.3. A person who contravenes subclauses 26.1 or 26.2 commits an offence.

27. CONDITIONS OF EMPLOYMENT

- 27.1. The basic conditions of employment in terms of this agreement, takes precedence over any other contract of employment except to the extent that:
- 27.1.1. any other law provides terms which are more favourable to the employee; and
 - 27.1.2. the basic conditions of employment have been replaced, varied, or excluded in accordance with the provisions of this agreement; or
 - 27.1.3. the terms of the contract of employment are more favourable to the Employee than the terms of this agreement.
- 27.2. Every employer shall display this agreement in the Place of Work where employees can read it.
- 27.3. The parties acknowledge and recognise that this agreement or anything done under it takes precedence over any agreement, whether entered into before or after the commencement of this agreement subject to subclauses 27.4 and 27.5 below.
- 27.4. The parties acknowledge and recognise that all previously concluded agreements, whose contents are not specifically dealt with in this Agreement, shall continue to be binding on the parties to such agreements.
- 27.5. All current conditions applicable to the various participating employers and employees shall, where they are more favourable than those concluded in this Agreement, remain in full force and effect.

28. PARTICULARS OF EMPLOYMENT

- 28.1. The employer must supply an employee, when the employee commences employment, with the following particulars in writing:
- 28.1.1. The full name and address of the employer.
 - 28.1.2. The occupation of the employee, plus a brief description of the work for which the employee is employed as defined in clause 8 above.
 - 28.1.3. The date on which his employment begins.
 - 28.1.4. The way the employee shall be informed of the times at which the employee is to be on board or to begin work.
 - 28.1.5. The basis for the rest periods as stipulated in clause 17 above.
 - 28.1.6. The leave to which the employee is entitled in terms of Part G hereof.
 - 28.1.7. The currency of payment of the employee's remuneration.
 - 28.1.8. The employee's remuneration or the rate and method of calculating remuneration.
 - 28.1.9. Any other cash payments that the employee is entitled to.

- 28.1.10. Any payment in kind that the employee is entitled to and the value of the payment.
- 28.1.11. How frequently remuneration is paid.
- 28.1.12. Any deductions to be made from the employee's remuneration.
- 28.1.13. The period of notice to terminate employment or if employment is for a specified period, the date when employment is to terminate.
- 28.1.14. A description of the Bargaining Council that covers the employer and employee; and
- 28.1.15. A list of any other documents that form part of the contract of employment indicating a place that is reasonably accessible to the employee where a copy of each may be obtained.
- 28.2. A contract of employment for any employee employed should consist of at least the written details in terms of subclause 28.1 above but must be signed by the employer prior to the employee signing it.
- 28.3. If an employee is not able to understand the written particulars the employer shall ensure that they are explained to the employee in a language and in a manner that the employee understands.
- 28.4. If the employee is under the age of eighteen (18), his guardian's written consent must be obtained for his to enter employment for service at sea, as any agreement entered into without such consent shall be voidable by his guardian.
- 28.5. When an employee is first employed the details required in terms of subclause 28.1 above shall be signed in duplicate and one copy is to be given to the employee whilst the employer keeps the other copy.
- 28.6. When any matter listed in subclause 28.2 above changes then:
 - 28.6.1. the written contract must be revised to reflect the change; and
 - 28.6.2. the employee must be supplied with a copy of the document reflecting on the change.

29. KEEPING OF RECORDS

- 29.1. The employer shall keep a record containing at least the following information:
 - 29.1.1. The employee's name and occupation.
 - 29.1.2. Vessels sailed on, in what capacity for what period.
 - 29.1.3. The remuneration will be paid to each employee.
 - 29.1.4. The date of birth of any employee under the age of eighteen (18),
 - 29.1.5. Any other information required in terms of the Merchant Shipping Act.
 - 29.1.6. Name and contact details of next of kin.
 - 29.1.7. The identity document of any employee that is a South African Citizen; and
 - 29.1.8. The work permit and passport of any employee that is not a South African Citizen.
- 29.2. The employer shall keep a record in terms of subclause 29.1 above, for a period of three (3) years from the date of the last entry in the record.
- 29.3. An employer who keeps a record in terms of this paragraph is not required to keep any record of time worked and remuneration paid as required by any other employment law.

PART I: TERMINATION OF CONTRACT OF EMPLOYMENT

30. TERMINATION

- 30.1. Subject to subclauses 30.6 and 30.7, employment may only be terminated at the instance of a party to the employment agreement on notice to the other party of not less than:
 - 30.1.1. seven (7) days, if the employee has been in employment for twenty-eight (28) consecutive days or less.

- 30.1.2. fourteen (14) days, if the employee has been in employment for longer than twenty-eight (28) consecutive days but shorter than a year; and
- 30.1.3. twenty-eight (28) days, if the employee has been employed for longer than a year.
- 30.2. Despite subclause 30.1 the last day of the notice period shall coincide with a docking day.
- 30.3. Failure to comply with the minimum notice-period set out in subclause 30.1 above will result in monetary re-imbursment to the party not receiving the required notice: Provided that such re-imbursment shall only be proportioned to the shortfall in compliance with subclause 30.1 above.
- 30.4. Notice of termination of a contract of employment must be given in writing, however the notice must be explained orally in an official language that the employee reasonably understands, where -
 - 30.4.1. the employee is illiterate and is not able to read the termination notice, and
 - 30.4.2. the employee is not able to understand the language in which the notice is given.
- 30.5. Notice of termination of a contract of employment given by the employer -
 - 30.5.1. must not be during any period of leave to which the employee is entitled in terms of Part G above, and
 - 30.5.2. not run concurrent with any period of leave to which the employee is entitled in terms of Part G, except sick leave.
- 30.6. Nothing in this clause affects the right-
 - 30.6.1. of a dismissed employee to dispute the lawfulness or fairness of the dismissal in terms of Chapter VIII of The Act or any other law; and
 - 30.6.2. of the employer or an employee to terminate a contract of employment without notice for any cause recognized by law.
- 30.7. Instead of giving an employee notice in terms of subclause 30.1 above, the employer may pay the employee the remuneration the employee would have received, calculated in accordance with subclause 9.2 above, as if the employee had worked during the notice period.
- 30.8. If an employee gives notice of termination of employment and the employer waives any part of the notice, then the Employer must pay the remuneration referred to in subclause 30.7 above, unless the employer and employee agrees otherwise.
- 30.9. Section 144 of the Merchant Shipping Act is hereby incorporated to read that when the service of an employee terminates without his consent at a place other than his HOME PORT, and before the expiration of the period for which the employee was engaged, the employer shall make adequate provision for the maintenance of the employee and for his return to HOME Port at the employer's expense.
- 30.10. Further to subclause 30.9 above the employee shall be responsible for the cost of his maintenance and return to his HOME PORT where the employee deserts or fails to join his vessel in a port other than his HOME PORT.

31. PAYMENT ON TERMINATION

- 31.1. On termination of employment the employer must pay an employee:
 - 31.1.1. for any paid time off that the employee is entitled to in terms of clause 16 above that the employee has not taken or been paid for.
 - 31.1.2. remuneration calculated in accordance with clause 19 above for any period of annual leave due that the employee has not taken:
 - 31.1.3. notice as contemplated in sub-clause 30.1 above read with subclauses 30.7 and 30.8, calculated in accordance with subclause 31.2 below.
 - 31.1.4. any remuneration due to the employee for work performed, calculated in accordance with sub-clauses 5.4. above or 31.2 below whichever is the greater; and
 - 31.1.5. severance pay, where applicable in terms of clause 32 below.
- 31.2. The value of any re-imbursment in terms of subclause 30.3 for non-compliance with the required notice periods shall be based on the average remuneration received by the employee for the completed trips in the three (3) month period preceding the date of termination.

- 31.3. On termination of employment an employee is entitled to a certificate of service stating:
- 31.3.1. the employee's full name.
 - 31.3.2. the name and address of the employer.
 - 31.3.3. Description of the Bargaining Council.
 - 31.3.4. the title of the job as defined in clause 8 above.
 - 31.3.5. the date of termination of his employment; and
 - 31.3.6. if the employment so requests, the reason for termination of employment.

32. SEVERANCE PAY

- 32.1. On termination of employment for reasons based on the employer's operational requirements, as contemplated in section 189 and 189A of the Labour Relations Act, the employer must pay an employee severance pay equal to at least seven (7) days remuneration for each completed year of continuous service with the employer, calculated in accordance with subclause 31.2 above.
- 32.2. An employee who unreasonably refuses to accept the employer's offer of alternative employment with the employer or any other employment, is not entitled to severance pay in terms of subclause 32.1 above.
- 32.3. The payment of severance pay in accordance with this section does not affect an employee's right to any other amount payable according to sub-clause 31.1 above or any other law.
- 32.4. Any dispute regarding the entitlement to severance pay only in terms of subclauses 32.1 and 32.2 above, the employee may refer the dispute in the prescribed written format to the Council for conciliation and if the dispute remains unresolved, the employee may refer it to arbitration.
- 32.5. The employee who refers the dispute to the Council in terms of subclause 32.4 above, must satisfy it that a copy of the referral(s) has been served on all the other parties to the dispute.
- 32.6. Where the Labour Court adjudicates a dispute about a dismissal based on the employer's operational requirements, then the Labour Court may inquire into and determine the amount of any severance pay to which the dismissed employee may be entitled, and the Labour Court may make an order directing the employer to pay such amount.

PART J: GENERAL

33. THE LIMITATION ON THE RIGHT TO STRIKE

- 33.1. No employee shall participate in or support any strike in respect of any dispute about the interpretation or application, including enforcement of this agreement whilst this agreement is in force.
- 33.2. Participation in or support of a strike described in clause 33 above shall be in breach of this agreement and shall be unprotected industrial action in terms of The Act.
- 33.3. No employee shall participate in or support any form of strike, which may endanger the passage of the vessel or the lives of the crew on board that vessel.
- 33.4. Employees not complying with subclause 33.3 above may be subjected to disciplinary action by the employer of which the sanction may be dismissal irrespective of whether the strike was protected in terms of The Act or not.

34. RIGHTS OF EMPLOYEES

- 34.1. All employees shall be protected against any form of discrimination similarly as contemplated in Section 6 of the Employment Equity Act.

35. CODES OF GOOD PRACTICE

- 35.1. Any party to the Council may submit a code of good practice issued by the Minister of Employment and Labour in terms of the Basic Conditions of Employment Act of 1997 as amended, to the Secretary for consideration by the Executive Committee of the Council.
- 35.2. The Executive Committee of the Council shall consult with the respective chambers within its structure before-
 - 35.2.1. endorsing the code of good practice issued by the Minister of Employment and Labour for the fishing industry; or
 - 35.2.2. change any code of good practice issued by the Minister of Employment and Labour due to the requirements of the fishing industry; or
 - 35.2.3. replace any code of good practice issued by the Minister of Employment and Labour due to the requirements of the fishing industry.
- 35.3. Any code of good fishing industry practice shall be annexed hereto and form part of this agreement, once issued by the Council's Executive.
- 35.4. Any person interpreting or applying to this agreement must consider relevant code of good fishing industry practice.
- 35.5. A code of good fishing industry practice may provide that the code in question must be considered in applying or interpreting any employment law.

35A ORGANISATIONAL RIGHTS

35A.1 Any registered trade union that are a party to this Council shall automatically enjoy the rights contemplated in subclauses 35A.2 and 35A.3 below in respect of all Place of Work within the registered scope of the Council regardless of their representativeness in any particular place of Work.

35A.2 Any registered trade union shall have the right to access to a Place of Work within the registered scope of the Council, as set out in section 12 of the Act.

35A.3 Any registered trade union shall be entitled to have trade union subscription or levies deducted from any Employee authorizing same who is employed within a Place of Work within the registered scope of the Council, as set out in section 13 of the Act.

35A.4 The parties endorse the principle of a registered trade union exercising the organizational rights in terms of section 21 of the Act when read with section 14 to 16 of the Act, when dealing with organizational rights such as trade union representatives, leave for trade union activities and disclosure of information.

SECTION III: REGULATION OF AGREEMENT**PART K: MONITOR AND ENFORCEMENT****36. ADMINISTRATION**

- 36.1. Each employer shall deduct an amount of twenty rand (R 20 - 00) per month from the remuneration of each employee as agreed by the Council and as determined by the Minister in terms of subclause 4.2. for the non-parties.
- 36.2. Each employer shall pay to the Council an amount equivalent to that deducted from all its employees and make payment of these amounts to the Council before the 7th day of the next month with a schedule of the names of the employees from whom monies have been levied.
- 36.3. The Secretary shall keep a register of all employees employed in the Fishing Industry.
- 36.4. Should any amount that is payable to the Council in terms of this agreement not be paid by the stipulated date interest at a rate of twenty percent (20%) per month or any part thereof, shall accrue on that amount accrue on the stipulated date of payment.
- 36.5. The Council shall refer such non-compliance in terms of subclause 36.4 above to arbitration in terms of sub- clauses 41.4 and 41.5 below.
- 36.6. The employer shall become liable for any legal costs incurred by the Council for recovery of the amount due.

37. EXEMPTION AND APPEAL CRITERIA

- 37.1. Any employer falling within the scope of the Council may apply in writing to the Secretary of the Council in the applicable format provided for the Executive Committee to consider exemption from collective agreements concerning subject matters herein.
 - 37.1.1. The Exemptions Committee shall consider and decide on all written applications no later than thirty(30) days from the date the Council received the application.
- 37.2. The Executive Committee who shall consider such application and decide to –
 - 37.2.1. Grant the exemption unconditionally.
 - 37.2.2. Grant the exemption on any such conditions as they deem appropriate, where necessary.
 - 37.2.3. Refuse the exemption.

- 37.2.4. Request further information and/or representations from the applicant or any other interested person or party in the matter: Provided that the applicant shall be granted an opportunity to deal with any information or representations made before a decision is made in terms of subclauses to 37.2.3 above.
- 37.3. The Executive Committee may determine its own procedures for conducting its affairs in terms of this Council's Constitution.
- 37.4. The Council furthermore established an Independent Appeals Board to consider all appeal applications regarding exemption applications from collective agreements concerning subject matters herein that were dealt with by the Executive Committee in terms of subclause 37.2.2. above.
- 37.4.1. The Independent Appeals Board shall consider and decide on all written applications no later than thirty(30) days from the date the Council received the appeal.
- 37.5. **The Independent Appeals Board** must determine its own procedures for -
- 37.5.1. conducting its business except that its functions may not be delegated; and
 - 37.5.2. considering applications for exemptions, which must include a procedure for: -
 - 37.5.2.1. enabling it to obtain representations from interested parties.
 - 37.5.2.2. ensuring that all applications for exemptions are preceded by consultations between employers and employees at which the merits and terms of the exemptions have been considered; and there has been full disclosure to each other on all information relevant to the consideration of the exemption.
 - 37.5.2.3. informing the applicants and the Executive Committee of its decisions; and
 - 37.5.2.4. in the event of a refusal to grant any exemptions providing the reasons, therefore.
- 37.6. When considering an appeal application to an exemption, the application to the Independent Appeals Board shall have regard to the following: -
- 37.6.1. whether the executive committee refused to grant the requested exemption will result in undue financial hardship to the party making the application.
 - 37.6.2. the nature and size of the business in respect of which the exemption is made.
 - 37.6.3. any representations made by the employees likely to be affected by the exemption.
 - 37.6.4. the circumstances prevailing in the fishing industry as a whole or Chamber likely to be affected by the application; and
 - 37.6.5. whether the granting of the exemption will prejudice the objectives of the Council.
- 37.7. Although the decision of the Independent Appeals Board reached will be final and binding, the decision is nonetheless still subject to review by the Labour Court in terms of The Act.
- 38. NON-COMPLIANCE**
- 38.1. The Secretary may at any time require a designated agent to monitor compliance with the provisions of the agreement.
- 38.2. A dispute about the interpretation, application or enforcement of this agreement may be filed with or referred to the Secretary by any person covered by the scope of this agreement, for resolution in terms of this agreement.
- 38.3. The Secretary may require a designated agent to investigate the dispute where the designated agent shall investigate the facts surrounding the dispute and should the agent have reason to believe that the terms of this collective agreement have been breached; the agent may endeavour to secure compliance with the agreement through consent of the employer involved.
- 38.4. The designated agent shall submit within seven (7) days after consensus has been reached, a written report to the Secretary on the investigation, the steps taken to secure compliance and the agreed outcome at the investigation.

- 38.5. On receipt of the report from the designated agent, the Secretary may -
- 38.5.1. require the designated agent to make further investigations.
 - 38.5.2. should conciliation be indicated by the designated agent, appoint a conciliator from the Council's panel of conciliators.
 - 38.5.3. refer the dispute for conciliation and appoint a conciliator from the Council's panel of conciliators.
 - 38.5.4. issue a compliance order; or
 - 38.5.5. refer the dispute to arbitration in terms of this agreement.
- 38.6. Should the Secretary appoint a conciliator or refer the dispute as contemplated in subclauses 38.5.2 and 38.5.3 above, the Secretary shall decide the date, time and venue of the conciliation meeting and shall serve notices of these particulars on the parties to the dispute.
- 38.7. Should the Secretary issue a compliance order as contemplated in subclause 38.5.4 above, that order shall be served to the party allegedly in breach of this agreement as set out in clause 40 below.
- 38.8. The Secretary may apply for the compliance order to be made an award by referring it to arbitration: Provided the Employer has not complied with the compliance order and has not filed -
- 38.8.1. an objection in terms of subclause 40.8 below; or
 - 38.8.2. an appeal against the compliance order in terms of subclause 40.13 below; or
 - 38.8.3. a review against the compliance order in terms of clause 40 below.
- 38.9. The provisions of these enforcement procedures are supplementary to any other legal remedy through which the Council may enforce a collective agreement in terms of section 33A of The Act.

39. DESIGNATED AGENT(S)

- 39.1. The Council is responsible for the administration and enforcement of this agreement and shall request the Minister of Labour to appoint a designated agent to do so as contemplated in section 33(1) of The Act.
- 39.2. Despite section 33A (3) of The Act, a designated agent appointed in terms of subclause 39.1 may promote, monitor, and enforce compliance with this agreement under the auspices of the Secretary of the Council as prescribed in this agreement.
- 39.3. A designated agent shall fulfil his functions by -
- 39.3.1. advising employees and employers of their rights and obligations in terms of this agreement.
 - 39.3.2. conducting inspections on instruction of the Secretary of the Council as contemplated in subclause 38.1 above.
 - 39.3.3. conducting investigations on the instruction of the Secretary of the Council as contemplated in subclause 38.3 above.
 - 39.3.4. endeavoring to secure compliance with this agreement by securing undertakings as contemplated in subclause 38.3 above.
 - 39.3.5. requesting the Secretary to issue a compliance order as contemplated in subclause 38.7 above; and
 - 39.3.6. performing any other prescribed function.
- 39.4. A designated agent may not perform any function in terms of this agreement in respect of an undertaking in respect of which the designated agent has or may be perceived to have, any personal, financial, or similar interest.
- 39.5. To monitor and enforce compliance with this agreement a designated agent is bestowed with powers within the Council's as prescribed in Schedule 10 of The Act: Provided item 12 is amended to refer to this agreement as section 3(3) of the Basic Conditions of Employment Act of 1997 as amended, excludes the employees within the scope of the Council.
- 39.6. In any proceedings concerning a contravention of this agreement it is for the employer-

- 39.6.1. to prove that a record maintained by or for that employer is valid and accurate; and
- 39.6.2. who has failed to keep any record required by this agreement that it is relevant to those proceedings, to prove compliance with any terms of this agreement.

40. COMPLIANCE ORDER

- 40.1. Once the Secretary is satisfied by the designated agent that an employer has not complied with the terms of this agreement may issue a compliance order.
- 40.2. The compliance order must set out -
 - 40.2.1. the name of the employer and each workplace to which it applies.
 - 40.2.2. the clause number in this agreement that the employer has not complied with.
 - 40.2.3. the details of the conduct constituting non-compliance.
 - 40.2.4. the amount that the employer is required to pay to an employee, if applicable.
 - 40.2.5. the reference to the written undertaking given by the employer to a designated agent of the Council and the failure by the employer to comply therewith.
 - 40.2.6. the steps that the employer is required to take, including, if necessary, the stopping of the contravention in question.
 - 40.2.7. the period within which the steps stipulated in subclause 40.2.6 above must be taken; and
 - 40.2.8. the maximum fine that may be imposed upon the employer in accordance with clause 42 below for a failure to comply with a provision of this agreement.
- 40.3. A designated agent shall serve a copy of the compliance order on the employer named in it, and each employee affected by it unless this is impractical and on a trade union representative of the employee(s).
- 40.4. The failure to serve a copy of a compliance order on any employee or representative trade union of the employee(s) in terms of subclause 40.3 does not invalidate the order.
- 40.5. The employer must display a copy of the compliance order prominently within the workplace named in the order that is accessible to the affected employee(s).
- 40.6. An Employer must comply with the compliance order within the time stated in the order unless the Employer objects thereto in terms of subclause 40.8 below.
- 40.7. The Secretary may not issue a compliance order in respect of any amount payable to an employee because of a failure to comply with the terms of this agreement if-
 - 40.7.1. the employee is employed in a category of employees mentioned in subclause 9.3 above.
 - 40.7.2. No proceedings have been instituted for the recovery of the amount in question.
 - 40.7.3. No proceedings have been instituted for the recovery of the amount in question and those proceedings have been withdrawn.
 - 40.7.4. the amount in question has been payable by the employer to the employee for longer than twelve (12) months before the date on which a complaint was made to the Council by or on behalf of the Employee; or
 - 40.7.5. the amount in question has been payable by the employer to the employee for longer than twelve (12) months before the date on which a designated agent first endeavored to secure a written undertaking by the employer in terms of subclause 39.3.4 above.
- 40.8. An employer may object to a compliance order by making representations in writing to the Secretary of the Council within twenty-one (21) calendar days of receipt of the compliance order. However, if an employer shows good cause at any time, the Executive of the Council may permit t an employer to object after the period of twenty-one (21) days has expired.
- 40.9. The executive shall appoint one of its members to consider information that includes -
 - 40.9.1. any evidence concerning the employer's compliance record.
 - 40.9.2. the likelihood that the employer was aware of the relevant terms of the agreement; and

- 40.9.3. the steps taken by the employer to ensure compliance with the relevant term of the agreement.
- 40.10. After considering any representations by the employer and any other relevant information, the appointed Executive member in terms of subclause 40.9: -
- 40.10.1. may confirm, modify, or cancel an order or any part of an order; and
- 40.10.2. must specify the period within which the employer must comply with any part of an order that is confirmed or modified.
- 40.11. The Executive member of the Council shall instruct the Secretary for a copy of the order to be served on the employer named in it, and each employee affected by it unless this is impractical and on a trade union representative of the employees(s).
- 40.12. If the appointed Executive member of the Council confirms or modifies the compliance order or any part of the compliance order, the employer must comply with that order within the time specified in that compliance order.
- 40.13. An employer may appeal to the Secretary in writing against a compliance order issued by the Executive member of the Council within twenty-one (21) calendar days of receipt of the compliance order who shall refer the matter to arbitration in terms of clause 41 below. However, if an employer shows good cause at any time, the arbitrator may permit an employer to appeal after the period of twenty-one (21) days has expired.
- 40.14. The Arbitrator shall be bound by the process prescribed in subclauses 40.9 to 40.12 above, read with the necessary changes within the context of arbitration.

PART L: LEGAL PROCEEDINGS

41. ARBITRATION

- 41.1. In addition to the regulations in respect of the monitoring and enforcement of this agreement the Council shall be bound by the process prescribed in section 33A (4) to (11) of The Act read with the necessary changes within the context of review of an arbitration award regarding a compliance order.
- 41.2. The Arbitrator may decide to consolidate arbitration proceedings where:
- 41.2.1. A dispute concerning the contravention of this agreement may be instituted as contemplated in clause 38 above, jointly with proceedings instituted by an employee in terms of clause 34 above.
- 41.2.2. A dispute concerning the contravention of this agreement may be instituted as contemplated in clause 38 above jointly with proceedings instituted by an employee over the entitlement to severance pay in terms of clause 32 above.
- 41.2.3. a dispute concerning the contravention of section 191 of The Act may be instituted jointly with proceedings instituted by an employee for an amount owing to the employee in terms of this agreement: Provided the amount had not been owing by the employer to the employee for longer than twelve (12) months prior to the dismissal or unfair labour practice and no compliance order has been made and no legal proceedings have been instituted to recover the amount.
- 41.3. The Council shall apply the same rules as that of the Commission for Conciliation Mediation and Arbitration in any dispute arbitrated under its jurisdiction.
- 41.4. The Council shall charge a fee for performing the function of arbitration where the parties fail to submit a written pre-arbitration conference for disputes referred to the Council for arbitration in terms of section 128 of The Act.

- 41.5. The Council may still charge a fee for performing the function of arbitration where the parties submit a written pre-arbitration conference that is not to the satisfaction of the Secretary for disputes referred to the Council for arbitration in terms of section 128 of The Act.
- 41.6. An employer may apply to the Labour Court for the review of the arbitration award in terms section 145 of The Act within twenty-one (21) days of receipt of the arbitration award. However, if an employer shows good cause at any time, the Labour Court may permit an employer to apply for review after the period of twenty- one (21) days has expired.
- 41.7. In addition to the regulations in respect of review applications The Labour Court shall be bound by the process prescribed in sections 77 and 77A of the Basic Conditions of Employment Act of 1997 as amended read with the necessary changes within the context of review of an arbitration award regarding a compliance order.
- 41.8. Any compliance order is suspended pending -
- 41.8.1. the confirmation or modification of the objection by the appointed Executive member in terms of subclause 40.9 above.
 - 41.8.2. the determination of the appeal by the arbitrator in terms of subclause 40.14 above; and/or
 - 41.8.3. the final review of the arbitration award by the Labour Court in terms of subclause 41.6 above.
- 42. FINES**
- 42.1. In accordance with the notice promulgated by the Minister of Labour in terms of section 33A (13) of The Act, an arbitrator conducting an arbitration in terms of section 33A of The Act, may impose a fine in terms of this section subject to the maximum fines set out in subclauses 42.2 and 42.3 below.
- 42.2. The maximum permissible fine for non-compliance with the agreement that does not involve an underpayment is:
- 42.2.1. a hundred rand (R 100-00) per employee in respect of whom the failure to comply occurs where the employer has never previously failed to comply.
 - 42.2.2. two-hundred rand (R 200-00) per employee in respect of whom the failure to comply occurs where the employer has previously failed to comply with the same term of this agreement.
 - 42.2.3. three-hundred-rand (R 300-00) per employee in respect of whom the failure to comply occurs where the employer has previously failed to comply with the same term of this agreement within the previous twelve (12) months.
 - 42.2.4. three-hundred-rand (R 300-00) per employee in respect of whom the failure to comply occurs where the employer has previously failed on two (2) occasions to comply with the same term of this agreement within the previous thirty-six (36) months.
 - 42.2.5. four-hundred-rand (R 400-00) per employee in respect of whom the failure to comply occurs where the employer has previously failed on three (3) occasions to comply with the same term of this agreement within the previous thirty-six (36) months; and
 - 42.2.6. five-hundred-rand (R 500-00) per employee in respect of whom the failure to comply occurs where the employer has previously failed on four (4) or more occasions to comply with the same term of this agreement within the previous thirty-six (36) months.
- 42.3. The maximum permissible fine for non-compliance with the agreement that does involve an underpayment is:
- 42.3.1. twenty-five percent (25%) of the amount due, including any interest owing on the amount at the date of the order in respect of whom the failure to comply occurs where the employer has never previously failed to comply.
 - 42.3.2. fifty percent (50%) of the amount due, including any interest owing on the amount at the date of the order in respect of whom the failure to comply occurs where the employer has previously failed to comply with the same term of this agreement within the previous thirty-six (36) months.

- 42.3.3. seventy-five percent (75%) of the amount due, including any interest owing on the amount at the date of the order in respect of whom the failure to comply occurs where the employer has never previously failed to comply within the previous twelve (12) months.
 - 42.3.4. seventy-five percent (75%) of the amount due, including any interest owing on the amount at the date of the order in respect of whom the failure on two (2) occasions to comply occurs where the employer has never previously failed to comply within the previous thirty-six (36) months.
 - 42.3.5. one hundred percent (100%) of the amount due, including any interest owing on the amount at the date of the order in respect of whom the failure on three (3) occasions to comply occurs where the employer has never previously failed to comply within the previous thirty-six (36) months; and
 - 42.3.6. two hundred percent (200%) of the amount due, including any interest owing on the amount at the date of the order in respect of whom the failure on four (4) or more occasions to comply occurs where the employer has never previously failed to comply within the previous thirty-six (36) months.
- 42.4. An Employer must pay interest on any amount due and payable in terms of this agreement at the rate of interest prescribed in terms of section 1 of the Prescribed Rate of Interest Act of 1975 as amended, to any person to whom a payment should have been made.
- 42.5. Any obligation to pay a fine is suspended pending the outcome of the application where an employer upon whom a fine has been imposed in terms of clause 42, files either an objection or an appeal or a review application in terms of subclause 40.8 or 40.13 above.

ANNEXURE A: DEEP-SEA BOTTOM TRAWL SECTOR CHAMBER

A1. MINIMUM DEEP-SEA REMUNERATION

1. Actual Remuneration rates shall be increased by at least 7% (seven) percent as from 01 July 2023 – Year Two for the parties to the Two-Year Agreement and from the date as determined by the Minister in terms of clause 4.2 for non-parties.
2. The following minimum Remuneration schedule sets out the increased minimum rates of pay per Working Day for each rank that shall be effective from the dates indicated

EMPLOYEE RANK TERMINOLOGY OF SECTOR	MINIMUM REMUNERATION PER WORKING DAY	PROTECTIVE CLOTHING (GEAR) ALLOWANCE	STANDARD RANKS DEFINITIONS (SEE CLAUSE 8 OF THE MAIN AGREEMENT)	
Able Seaman	R 347.51	R 1-95	8.1.	Able Seaman
Assistant Factory Manager	R 376.05	R 1-95	8.13	Assistant Factory Manager
Assistant Marine Engineer	R 355.28	R 1-95	8.28	Assistant Marine Engineer
Bosun	R 379.03	R 1-95	8.2	Bosun
Charge Hand	R 326.09	R 1-95	8.3	Charge Hand
Cook	R 445.93	R 1-95	8.4	Cook
Cook – First	R 516.84	R 1-95	8.5	Cook – First
Cook – Second	R 379.03	R 1-95	8.6	Cook – Second
Deck Hand	R 326.09	R 1-95	8.9	Deck Hand
Factory Manager	R 485.39	R 1-95	8.12	Factory Manager
Fishmeal Operator	R 409.99	R 1-95	8.18	Fishmeal Operator
Galley Hand	R 300.34	R 1-95	8.23	Galley Hand
Greaser	R 367.23	R 1-95	8.19	Greaser
Greaser – M3	R 386.66	R 1-95	8.20	Greaser – M3
Greaser – M4	R 376.49	R 1-95	8.21	Greaser – M4
Lifeboat man (PISC)	R 326.09	R 1-95	8.25	Lifeboat man (PISC)
Spare Hand	R 300.34	R 1-95	8.35	Spare Hand

A.1. MINIMUM DEEP-SEA REST PERIODS

The employer shall provide an employee with at least ten (10) hours of rest per Day of which at least six (6) hours of the ten (10) hours shall be continuous uninterrupted rest when the employee is employed in the Deep-sea Bottom Trawl Sector.

ANNEXURE B: INSHORE BOTTOM TRAWL SECTOR CHAMBER**B.1. MINIMUM INSHORE REMUNERATION**

1. Actual Remuneration rates shall be increased by at least six and a half percent (6.5%) as from 01 July 2022 for the parties to the Agreement and from the date as determined by the Minister in terms of clause 4.2. for non-parties.
2. The following minimum Remuneration schedule sets out the increased minimum rates of pay per Working Day for each rank that shall be effective from the dates indicated

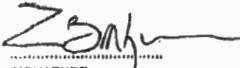


EMPLOYEE RANK TERMINOLOGY OF SECTOR	MINIMUM REMUNERATION PER WORKING DAY	PROTECTIVE CLOTHING (GEAR) ALLOWANCE	STANDARD RANKS DEFINITIONS (SEE CLAUSE 8 OF THE MAIN AGREEMENT)	
Able Seaman	R 279.49	R 1-95	8.1	
Assistant Marine Engineer	R 308.98	R 1-95	8.28	Marine Engineer-Assisting
Bosun	R 272.61	R 1-95	8.2	
Chief Engineer	R 472.57	R 1-95	8.27	
Cook	R 235.89	R 1-95	8.4	
Deck Hand	R 272.61	R 1-95	8.9	
Driver	R 272.61	R 1-95	8.10	
Spare Hand	R 218.32	R 1-95	8.35	

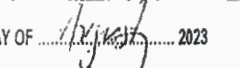
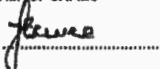

B.2. MINIMUM INSHORE REST PERIODS-

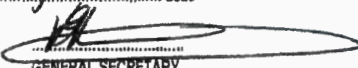

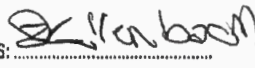
The employer shall provide an employee with at least ten (10) hours of rest per Day.

SECTION IV: CONSENSUS

Through application of signature hereof the parties of the Bargaining Council for the Fishing Industry (in alphabetical order), confirm their acceptance of the terms and conditions contained herein:

SIGNED AND AGREED TO IN CAPE TOWN ON THIS 10 DAY OF August 2023	
Zolani Mbanjwa	
DULY AUTHORISED THERETO FOR AND ON BEHALF OF ORGANISED LABOUR	SIGNATURE:
WITNESS: 	WITNESS: 

SIGNED AND AGREED TO IN CAPE TOWN ON THIS 10 th DAY OF August 2023	
Brenda Jale	
DULY AUTHORISED THERETO FOR AND ON BEHALF OF SAFEO	SIGNATURE:
WITNESS: 	WITNESS: 

SIGNED AND AGREED TO IN CAPE TOWN ON THIS 10 th DAY OF August 2023	
Victoria Hanmer	
DULY AUTHORISED THERETO FOR AND ON BEHALF OF THE BARGAINING COUNCIL FOR THE FISHING INDUSTRY	GENERAL SECRETARY
WITNESS: 	WITNESS: 

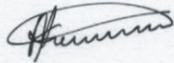
DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION

NO. R. 3971

20 October 2023

PUBLIC SERVICE AMENDMENT REGULATIONS, 2023

The Minister for the Public Service and Administration, in terms of section 41 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), hereby makes the Regulations as set out in the Schedule.



MS NOXOLO KIVIET, MP**MINISTER FOR THE PUBLIC SERVICE AND ADMINISTRATION****DATE: 09/10/23**

Schedule

Definition

1. In this Schedule "the Regulations" means the Public Service Regulations, 2016 published in Government Notice No. R. 877 of 29 July 2016, as amended by Government Notices Nos. R. 125 of 08 February 2019 and R. 581 of 11 April 2019.

Amendment of regulation 2 of the Regulations

2. Regulation 2 of the Regulations is hereby amended by the insertion in subregulation (2) of the following definition before the definition of "CDWP":

"Basic Conditions of Employment Act" means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);".

Amendment of regulation 13 of the Regulations

3. Regulation 13 of the Regulations is hereby amended—

(a) by the substitution for paragraph (a) of the following paragraph:

"(a) not receive, solicit or accept any gratification, as defined in section 1 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), in return for performing or not performing his or her official duties;"

(b) by the substitution for paragraph (b) of the following paragraph:

"(b) not engage in any conduct that is in conflict with or infringes on the execution of his or her official duties;"

(c) by the substitution for paragraph (d) of the following paragraph:

"(d) recuse himself or herself from any official action or decision-making process which may result in improper personal gain or conflict of interest, and this shall immediately be properly declared by the employee;" and;

(d) by the substitution for paragraph (h) of the following paragraph:

"(h) not receive or accept any gift in the course and scope of his or her employment to the cumulative value exceeding R500 per year, unless approval is obtained from the relevant executive authority;".

Amendment of regulation 14 of the Regulations

4. Regulation 14 of the Regulations is hereby amended—

(a) by the substitution for paragraph (m) of the following paragraph:

"(m) not release official information unless he or she is authorised or has the necessary approval;"

(b) by the deletion of the word "and" after paragraph (p):

(c) by the substitution for paragraph (q) of the following paragraph:

"(q) immediately report any non-compliance with the Act to the head of department and in the event that the non-compliance is by the head of department, report such non-compliance to the executive authority;" and

(d) by the addition of the following paragraphs:

"(r) not claim any intellectual property over work done in the course and scope of his or her employment; and

(s) not act in a manner that brings his or her department or the public service into disrepute."

Amendment of regulation 16 of the Regulations

5. Regulation 16 of the Regulations is hereby amended by the substitution for the definition of “**form**” of the following definition:

“**form**’ means a form contemplated in regulation 18;”.

Amendment of regulation 18 of the Regulations

6. Regulation 18 of the Regulations is hereby amended —

(a) by the substitution for subregulation (1) of the following subregulation:

“(1) An SMS member, except for a head of department shall, not later than 30 April of each year, disclose to the relevant head of department, in the form directed for this purpose by the Minister, particulars of all his or her interests in respect of the previous financial year.”;

(b) by the substitution for subregulation (2) of the following subregulation:

“(2) A head of department shall, not later than 30 April of each year, disclose to the relevant executive authority, in the form directed for this purpose by the Minister, particulars of all his or her interests in respect of the previous financial year.”; and

(c) by the substitution for subregulation (4) of the following subregulation:

“(4) Any person who assumes duty as a designated employee on or after 1 April shall make such disclosure within 30 days after assumption of duty in respect of the previous financial year.”.

Amendment of regulation 19 of the Regulations

7. Regulation 19 of the Regulations is hereby amended by the addition of the following paragraph:

- "(k) Other financial liabilities:
- (i) nature of liability;
 - (ii) date on which liability was incurred;
 - (iii) principal amount of liability;
 - (iv) institution or person to whom liable; and
 - (v) period over which liability will be paid."

Amendment of regulation 20 of the Regulations

8. Subregulation (1) of regulation 20 of the Regulations is hereby amended—

(a) by the—

- (i) deletion of the word "and" after paragraph (g); and
- (ii) substitution for the full stop after paragraph (h) of a semi-colon; and

(b) by the addition of the following subparagraphs:

- "(i) subject to the approval of the executive authority in respect of the information of a head of department or the head of department in respect of the information of any other employee—
 - (i) persons appointed to investigate, initiate or conduct disciplinary proceedings; and
 - (ii) law enforcement agencies charged with investigating or prosecuting an alleged offence; and
- (j) a person or institution authorised by statute."

Amendment of regulation 21 of the Regulations

9. Regulation 21 of the Regulations is hereby amended—

- (a) by the deletion in subregulation (2) of paragraph (d); and
- (b) by the addition of the following subregulation:

"(3) An executive authority, in respect of a head of department, and a head of department, in respect of other designated employees, shall—

- (a) conduct a risk analysis of the disclosed interests and income of the employee;
- (b) in the event that the risk analysis indicates a discrepancy between the disclosed interests and the income of the employee, consult with the employee concerned to obtain an explanation for the discrepancy;
- (c) in the event that the explanation referred to in subregulation (3)(b) does not sufficiently address the discrepancy—
 - (i) investigate whether disciplinary steps must be taken and if so, institute such disciplinary action; and
 - (ii) if there is a reasonable suspicion of a criminal offence, refer the matter to the relevant law enforcement agencies."

Amendment of regulation 22 of the Regulations

10. Regulation 22 of the Regulations is hereby amended—

(a) by the substitution for paragraph (c) of the following paragraph:

"(c) establish a system that encourages and allows employees and citizens to report allegations of corruption and other unethical conduct, and such system shall provide for—

- (i) confidentiality of reporting;
- (ii) the recording of all allegations of corruption and unethical conduct received through the system; and
- (iii) mechanisms to ensure that employees and citizens are made aware of such system;"

(b) by the substitution for paragraph (d) of the following paragraph:

- "(d) establish an information system that—
- (i) records all allegations of corruption and unethical conduct;
 - (ii) monitors the management of the allegations of corruption and unethical conduct;
 - (iii) identifies any systemic weaknesses and recurring risks;
 - (iv) maintains records of the outcomes of the allegations of corruption and unethical conduct; and
 - (v) records all gifts accepted by employees as contemplated in regulation 13(h); and".

Substitution of regulation 23 of the Regulations

11. The following regulation is hereby substituted for regulation 23 of the Regulations:

"Ethics Officer

- (1) An executive authority shall designate or appoint such number of ethics officers as may be appropriate, for the department to-
 - (a) promote integrity and ethical behaviour in the department;
 - (b) advise employees on ethical matters;
 - (c) identify and report unethical behaviour and corrupt activities to the head of department;
 - (d) manage the financial disclosure system; and
 - (e) manage the processes and systems relating to remunerative work performed by employees outside their employment in the relevant department.
- (2) The head of department shall establish an ethics committee or designate an existing committee, chaired by a member of the SMS, preferably a Deputy Director-General, to provide oversight on ethics management in the department."

Amendment of regulation 25 of the Regulations

12. Regulation 25 of the Regulations is hereby amended—

(a) by the substitution for paragraph (b) in subregulation (2) of the following paragraph:

- “(b) define and create the posts necessary to perform the relevant functions of the department while remaining within—
- (i) the current budget;
 - (ii) the Medium-Term Expenditure Framework of the department; and
 - (iii) the norms and standards determined by the Minister for post provisioning for occupations or categories of employees,
- and the posts so defined and created shall constitute the department's approved establishment, which shall be made publicly available on the department's website;” and

(b) by the insertion after subregulation (2) of the following subregulation:

“(2A) If the executive authority approves an organisational structure which is not in accordance with the recommendations emanating from consultations contemplated in subregulation (2)(a)(i) or (ii), the reasons therefor shall be recorded;”.

Substitution of regulation 29 of the Regulations

13. The following regulation is hereby substituted for regulation 29 of the Regulations:

“29 Assessment of efficiency and effectiveness

An executive authority must assess the efficiency and effectiveness of a department in supporting that department's service delivery objectives using the assessment tools as may be directed by the Minister.”.

Insertion of regulation 34A in the Regulations

14. The following regulation is hereby inserted in the Regulations after regulation 34:

“34A Abolition of government components and specialised service delivery units

An executive authority may abolish a government component, as contemplated in section 7(5)(c) or (d) of the Act, or a specialised service delivery unit, as contemplated in section 7B of the Act, after —

- (a) complying with regulation 32 in respect of the transfer of functions; and
- (b) withdrawing a notice issued in terms of sections 7A(5) or 7B(5) of the Act.”.

Substitution of regulation 35 of the Regulations

15. The following regulation is hereby substituted for regulation 35 of the Regulations as follows:

“35 Organisational functionality assessment

An executive authority shall conduct an organisational functionality assessment, as directed by the Minister, to assess the effectiveness of a department’s internal systems and processes.”.

Amendment of regulation 39 of the Regulations

16. Regulation 39 of the Regulations is hereby amended—

- (a) by the substitution for paragraph (a) in subregulation (3) of the following paragraph:

“(a) a system of remuneration for an occupational category; and”;

and

(b) by the substitution for subregulation (4) of the following subregulation:

“(4) An executive authority shall link all posts in his or her department as contained in a remuneration system contemplated in subregulation (3)(a) to an occupation listed in the occupational classification system referred to in subregulation (3)(b).”.

Amendment of regulation 41 of the Regulations

17. Regulation 41 of the Regulations is hereby amended by the substitution for paragraph (d) in subregulation (2) of the following paragraph:

“(d) issue directives that determine the evaluation and grading of any job or category of jobs.”.

Amendment of regulation 44 of the Regulations

18. Regulation 44 of the Regulations is hereby amended —

(a) by the substitution in subregulation (1) for the words preceding paragraph (a) of the following words:

“(1) Except where otherwise provided for in an OSD and subject to subregulation (2) to (4) an executive authority may set the salary of an employee above the minimum notch of the salary level indicated by the job weight-”;

(b) by the substitution for paragraph (c) in subregulation (2) of the following paragraph:

“(c) the counter offer made is limited to the higher salary notch closest to the external offer; and”;

(c) by the substitution for paragraph (d) in subregulation (2) of the following

paragraph:

"(d) the counter offer shall not exceed the salary level of the post occupied by the employee."; and

(d) by the substitution for subregulation (3) of the following subregulation:

"(3) The setting of a higher salary notch, as contemplated in subregulation (1) to recruit a person, shall only take place on the first day of the month following the date of approval if-

- (a) the executive authority has complied with the process contemplated in regulation 64;
- (b) the person was earning a higher salary immediately before the date of appointment;
- (c) the higher salary does not exceed the closest higher salary notch than that of the person immediately prior to the appointment; and
- (d) the higher salary does not exceed the salary level of the post, unless such employee has been awarded a higher salary attached to the grade of the post in terms of any other provision of the Act."

Amendment of regulation 45 of the Regulations

19. Regulation 45 of the Regulations is hereby amended by the substitution for paragraph (b) in subregulation (2) of the following paragraph:

"(b) has received a fully effective rating in his or her most recent annual moderated and approved performance assessment in the post and where the incumbent has not yet been assessed, his or her performance shall first be assessed to determine whether the performance is fully effective;"

Amendment of regulation 49 of the Regulations

20. Regulation 49 is hereby amended by the substitution for subregulation (1) of the following subregulation:

"(1) An executive authority shall, subject to any collective agreement and the Basic Conditions of Employment Act, compensate an employee, other than a member of the SMS, for overtime work if—

- (a) the department has an approved written policy on overtime;
- (b) the executive authority has provided written authorisation in advance for the work;
- (c) the monthly compensation for overtime constitutes less than—
 - (i) 30 percent of the employee's monthly basic salary; or
 - (ii) 30 percent of the monthly salary calculated on the minimum basic annual salary determined by the Minister,whichever is the lesser;
- (d) the approval is not inconsistent with a collective agreement or the Basic Conditions of Employment Act;
- (e) the hours of overtime is in accordance with the Basic Conditions of Employment Act;
- (f) such overtime is in the interest of service delivery; and
- (g) funds are available within the budget of the department."

Substitution of regulation 51 of the Regulations

21. The following regulation is hereby substituted for regulation 51 of the Regulations:

"51 Working hours

Subject to any collective agreements and the Code of Good Practice on Arrangement of Working Time issued in terms of section 87 of the Basic Conditions of Employment Act, a head of department shall determine—

- (a) the work week and daily hours of work for employees; and
- (b) the opening and closing times of places of work of the department,

taking into account—

- (i) the needs of the public with due regard to the department's service delivery improvement plan; and
- (ii) the needs and circumstances of employees, including family obligations and transport arrangements.”.

Insertion of regulation 56A in the Regulations

22. The following regulation is hereby inserted in the Regulations after regulation 56:

“56A Reasonable accommodation

Subject to any directives issued by the Minister, a head of department shall develop a policy for the reasonable accommodation in the workplace of employees with disabilities, which shall include, as far as possible, measures to—

- (a) make the workplace accessible;
- (b) provide access to information and communication;
- (c) provide assistive devices and technology;
- (d) provide the necessary tools and assistance for the performance of the employee's duties;
- (e) manage safety and well-being; and
- (f) regulate the work arrangements.”.

Amendment of regulation 57 of the Regulations

23. Regulation 57 of the Regulations is hereby amended —

- (a) by the substitution for subregulation (2) of the following subregulation:

“(2) An executive authority may, unless otherwise authorised by the Act, within the available budget and at a salary level linked to a grade determined through job evaluation or as determined in an OSD, employ persons additional to the establishment, where—

- (a) the incumbent of the post is expected to be absent for such a

period that his or her duties cannot be performed by other employees;

- (b) there is a temporary increase in the volume of work for a period not exceeding 12 calendar months;
- (c) an employee's post has been abolished and he or she cannot be transferred into another post;
- (d) an employee is part of a development programme as contemplated in regulation 58;
- (e) the nature of the work for which the employee is employed is of limited or definite duration; or
- (f) it is necessary for any other justifiable reason to temporarily increase the staff of the department for a period not exceeding 12 calendar months."; and

(b) by the deletion of subregulation (4).".

Substitution of regulation 58 of the Regulations

24. The following regulation is hereby substituted for Regulation 58 of the Regulations:

"58 Developmental programmes

An executive authority may appoint persons in a developmental programme, including but not limited to, internships, learnerships and apprenticeships, on such terms and conditions that shall be determined by the Minister."

Amendment of regulation 60 of the Regulations

25. Regulation 60 of the Regulations is hereby amended by the substitution for paragraph (a) in subregulation (3) of the following paragraph:

- "(a) the appointment is made for a period not exceeding 12 calendar months; and"

Amendment of regulation 61 of the Regulations

26. Regulation 61 of the Regulations is hereby amended—

(a) by the substitution for the Table in subregulation (1) of the following Table:

	ACT OF MISCONDUCT	PERIOD OF PROHIBITION
1.	(a) Financial misconduct as contemplated in section 81 or 82 of the Public Finance Management Act.	Ten (10) years
2.	Misconduct involving elements of dishonesty or gross negligence.	Five (5) years
3.	(a) Sexual harassment; (b) Unfair discrimination against others on the basis of race, gender, disability, sexuality or other grounds prohibited by section 9(3) of the Constitution; or (c) Assault with intent to do grievous bodily harm.	Five (5) years
4.	Misconduct resulting from a criminal conviction where an employee has been sentenced to imprisonment without the option of a fine.	Five (5) years
5.	(a) Use of position as a senior manager or confidential information for private gain or improperly benefit another person; or (b) Disclosure of any privileged or confidential information obtained during the course of duty to an unauthorised person or persons.	Five (5) years
6.	Conducting business with the State as contemplated in section 8 of the Public Administration Management Act.	Five (5) years

7.	Receiving, soliciting or accepting directly or indirectly any gratification that may influence the exercise of his or her functions, the performance of his or her duties or other grounds prohibited by the Constitution.	Five (5) years
8.	Any other act of misconduct.	Two (2) years

(b) by the substitution for subregulation (3) of the following subregulation:

“(3) Notwithstanding subregulation (1) an employee who is deemed to have been dismissed in terms of section 17(3)(a) of the Act and who is not re-instated in terms of section 17(3)(b), shall not be re-appointed in the public service for a period of one year after the effective date of his or her deemed dismissal.”.

Amendment of regulation 62 of the Regulations

27. Regulation 62 of the Regulations is hereby amended by the substitution for paragraph (b) in subregulation (1) of the following paragraph:

“(b) the period of secondment does not exceed 12 calendar months, which period shall not be extended or renewed unless due to operational reasons determined otherwise by the Minister; and.”.

Insertion of regulation 62A in the Regulations

28. The following regulation is hereby inserted in the Regulations after regulation 62:

“62A Transfers

The transfer of an employee in terms of section 14 of the Act shall only take place if—

- (a) in respect of a transfer to another department, the executive authorities of the two relevant departments have agreed in writing to such a transfer;
- (b) due regard has been had to the inherent requirements of the job and the employee has the competencies to perform the functions of the post to which he or she is being transferred; and
- (c) the employee is not transferred into a post in the Office of an executive authority, Deputy President or Deputy Minister.”.

Amendment of regulation 65 of the Regulations

29. Regulation 65 of the Regulations is hereby amended —

- (a) by the deletion of subregulation (3);
- (b) by the substitution for subregulation (4) of the following subregulation:
 - “(4) An executive authority shall advertise a vacant post, as a minimum, in the public service vacancy circular issued by the Department of Public Service and Administration, but may also advertise such post—
 - (a) within the department;
 - (b) locally; or
 - (c) nationwide.”;
- (c) by the deletion of subregulation (5);
- (d) by the substitution for subregulation (7) of the following subregulation:
 - “(7) A funded vacant post shall be filled within eight months after becoming vacant.”;
- (e) by the substitution in subregulation (8) for the words preceding paragraph (a) of the following words:

"An advertisement contemplated in subregulation (4) may be utilised to create a pool of potential candidates for a period of not more than three calendar months from the date of advertisement to fill any vacancy in the relevant department if—"; and

- (f) by the substitution in subregulation (9) for the words preceding paragraph (a) of the following words:

"With due regard to the criteria in regulation 67(5)(b) to (d), an executive authority may fill a vacant post without complying with subregulations (3) and (4) if—".

Substitution of regulation 66 of the Regulations

30. The following regulation is hereby substituted for regulation 66 of the Regulations:

"66 Filling of posts in Offices of executive authorities, the Deputy President and Deputy Ministers

(1) An executive authority may only fill vacancies in the Office of an executive authority, Deputy President, or a Deputy Minister by means of an appointment in terms of section 9 of the Act for the term of office of the incumbent executive authority, Deputy President or Deputy Minister which will terminate at the end of the month after the month in which the term of that executive authority, Deputy President or Deputy Minister terminates for any reason.

(2) Subject to the appointment criteria in regulation 67(5)(b) to (d), an executive authority may fill a post in the Office of the executive authority, Deputy President or a Deputy Minister in terms of subregulation (1) without advertising the post and without convening a selection panel as contemplated in regulations 65 and 67 respectively.

(3) Subregulation (1) shall not be construed as preventing the secondment in terms of section 15(2) or (3) of the Act of a person or

an employee or an assignment in terms of section 32 of the Act of an employee to perform the functions of a post in the office of an executive authority, a Deputy President or a Deputy Minister.

(4) An employee employed in terms of subregulation (1) shall not be transferred within the department or to another department.”.

Amendment of regulation 67 of the Regulations

31. Regulation 67 of the Regulations is hereby amended-

(a) by the insertion in subregulation (2) after paragraph (f) of the following paragraph:

“(fA) a Deputy Director-General in the Presidency, shall be chaired by a Minister in the Presidency and include at least two Deputy Ministers and a head of department;”;

(b) by the substitution for subregulation (7) of the following subregulation:

“(7) If the selection committee is unable to recommend a suitable person for appointment from those who applied in terms of subregulation (5), the executive authority may, after that selection process has been completed approve—

(a) the headhunting of one or more persons with the requisite competencies and subject such person or persons to the same selection process as those who applied; or

(b) re-advertise the post.”;

(c) by the substitution for subregulation (8) of the following subregulation:

“(8) If an executive authority does not approve a recommendation of a selection committee, he or she shall record the reasons for his or her decision in writing and may approve—

(a) the headhunting of one or more persons with the requisite competencies and subject such person or persons to the same selection process as those who applied; or

(b) re-advertise the post.”; and

(d) by the substitution for paragraph (a) in subregulation (9) of the following paragraph:

“(a) satisfy himself or herself that due processes have been complied with, the candidate qualifies in all respects for the post and that his or her claims in his or her application for the post have been verified as directed by the Minister; and”.

Amendment of regulation 71 of the Regulations

32. Regulation 71 of the Regulations is hereby amended—

(a) by the substitution for paragraph (c) in subregulation (5) of the following paragraph:

“(c) monitoring the employee’s performance on a continuous basis with oral feedback on his or her performance at least quarterly if the employee’s performance is fully effective and in writing if the employee’s performance is not fully effective;”; and

(b) by the substitution for paragraph (f) in subregulation (5) of the following paragraph:

“(f) approval of the annual moderated performance assessments referred to in paragraph (e) by 30 November of the financial year following the year of the assessments.”.

Amendment of regulation 72 of the Regulations

33. Regulation 72 of the Regulations is hereby amended—

(a) by the substitution for subregulation (1) of the following subregulation:

"(1) An employee shall enter into a performance agreement or an agreement of similar nature within three calendar months of his or her date of appointment and thereafter within two calendar months of the beginning of each financial year. This agreement may be reviewed from time to time."; and

(b) by the substitution for subregulation (12) of the following subregulation:

"(12) If an employee is absent with permission for a continuous period of three months or longer, the affected employee shall be regarded as having performed fully effective as contemplated in regulation 71(5)(c) for that period of absence within the performance cycle."

Insertion of regulation 87A in the Regulations

34. The following regulation is hereby inserted in the Regulations after regulation 87:

" 87A Extension of term of head of department

(1) 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 that term for a period of not more than five years at a time if the head of department—

- (a) achieved an overall average performance rating of fully effective in relation to his or her duties over that term;
- (b) continues to meet the inherent requirements of the post; and
- (c) remains a fit and proper person.

(2) The relevant executive authority and head of department may agree on an extension not more than six calendar months before the expiry of the term of the contract."

Substitution of regulation 93 of the Regulations

35. The following regulation is hereby substituted for regulation 93 of the Regulations:

“93 Information management and use of information and communication technology

- (1) The head of department shall ensure—
 - (a) that information of the department is collected, processed, stored and disseminated appropriately; and
 - (b) improved knowledge management practices.
- (2) The head of department shall ensure that the acquisition, management and use of information and communication technologies by the department—
 - (a) enhances direct or indirect service delivery to the public, including, but not limited to, equal access by the public to services delivered by the department;
 - (b) improves the productivity of the department;
 - (c) promotes an environmentally friendly public service;
 - (d) ensures cost-efficiency for the department; and
 - (e) promotes public access to information and encourages public participation.”.

Insertion of regulation 97A in the Regulations

36. The following regulation is hereby inserted in the Regulations after regulation 97:

“97A Government Information Technology Council and Officers

- (1) The Minister may establish a Government Information Technology Officers Council (hereinafter referred to as “the GITOC”) as an inter-departmental forum to improve electronic government and information management in the public service.
- (2) The GITOC shall, amongst others,-

- (a) advise on measures to improve integrated information and communication technology systems across the public service;
- (b) propose and advise on appropriate information and communication technology solutions and practices;
- (c) support information and communication technology monitoring and planning in the public service; and
- (d) collaborate to improve the use of information and communication technology in the public service.

(3) A head of department shall nominate an employee of the relevant department as a Government Information Technology Officer who shall be a member of the GITOC, which shall be chaired by an employee of the Department of Public Service and Administration designated by the Minister.

(4) The Government Information Technology Officer shall advise and support the head of department on—

- (a) Information and Communication Technology strategies;
- (b) innovative methods to digitalise Information and Communication Technology within the department;
- (c) establishing reliable and secure Information and Communication Technology systems, services and infrastructure;
- (d) optimising expenditure, reducing duplication and increasing interoperability of Information and Communication Technology systems; and
- (e) the management of Information and Communication Technology assets.”.

Short title and commencement

37. These Regulations shall be called the Public Service Amendment Regulations, 2023, and shall come into operation on 01 November 2023.

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