



**Western Cape
Government**

Department of the Premier

Corporate Services Centre
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DIRECTOR-GENERAL: DPSA
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CLARIFICATION OF MATTERS RELATING TO EMPLOYMENT OF HEADS OF DEPARTMENT

Dear Mr Diphofa,

Your letter, dated 9 January 2017, with reference number: 15/R, in response to our letter, dated 17 November 2016, seeking clarification regarding the employment status of Heads of Department, refers.

We wish to thank you for the clarity that you have provided, namely that the retirement age of 65 does not apply to Heads of Department. We trust that you will, in the interest of legal certainty, ensure that any necessary amendments are effected to the statutory provisions as contained in sections 8 and 16 of the Public Service Act, the New Public Service Regulations, as well as the SMS Handbook and any other statutory instruments that have been issued in this regard.

We also trust that your interpretation of the above-mentioned statutory provisions have been agreed with the Government Employees Pension Fund (GEPF) and we confirm that the Western Cape Government will forthwith act on the basis of the clarification that you have provided in your letter under reply.

Yours sincerely,

ADV B GERBER
DIRECTOR-GENERAL

DATE: 11/2/2017



the **dpsa**

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Ref nr: 15/R

Adv B Gerber
Director-General
Department of the Premier
Western Cape Government
PO Box 659
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Dear Colleague

CLARIFICATION OF MATTERS RELATING TO EMPLOYMENT OF HEADS OF DEPARTMENT

1. Your letter dated 17 November 2016 seeking clarification regarding the employment status of Heads of Department, has reference.
2. Section 16(1)(a) of the Public Service Act, 1994 (as amended) states "Subject to the provisions of this section, an officer, other than a member of the services or an educator or a member of the State Security Agency, shall have the right to retire from the public service, and shall be so retired, on the date when he or she attains the age of 65 years." Further, Section 16(7) states "If it is in the public interest to retain an officer, other than a member of the services or an educator or a member of the State Security Agency, in his or her post beyond the age at which he or she is required to be retired in terms of subsection (1), he or she may, with his or her consent and the approval of the relevant executive authority, be so retained from time to time for further periods which shall not, except with the approval of Parliament granted by resolution, exceed in the aggregate two years".
3. Section 8(1) states "The public service shall consist of persons who are employed- (a) in posts on the establishment of departments; and (b) additional to the establishment of departments. Section 8(2) reads- "Subject to the

prescribed conditions, any person referred to in subsection (1) may be employed permanently or temporarily and in a full-time or part-time capacity." Section 8(3) further states "For the purpose of this Act, in relation to employment- (a) the word "permanently" or "permanent", in respect of an employee, means an employee to whom a retirement age referred to in section 16 applies."

4. Based on the above it is commonly accepted that a Head of Department, appointed on a fixed term contract, therefore temporary, is not subject to section 16 of the Public Service Act (PSA) – the retirement age of 65 does not apply.
5. It is trusted that the above information will adequately clarify the matter.

Kind regards



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MR M DIPHOFA
DIRECTOR-GENERAL
DATE: 09/01/2017