

FOR PSA MEMBERS: **PUBLIC SERVICE COORDINATING BARGAINING COUNCIL (PSCBC)**

06-12-2022

Update: Border Management Authority

Implementation consultation: Border Management Authority

Members are aware that a Proclamation to transfer the following functions to the newly created entity, called Border Management Authority (BMA) was signed:

- Department of Health: Port Health Functions (299)
- Department of Home Affairs: Port Immigration Functions (1 285)
- Department of Forestry, Fisheries, and the Environment (DFFE): Biosecurity (Fauna and Flora) (14)
- Department of Agriculture, Land Reform, and Rural Development (DALRRD): Agriculture/Plants Functions (372)

Members were also informed that a task team was established to oversee this process. The task team insisted that a collective agreement be concluded that will ensure that the interests and rights of employees are protected. Inputs from labour on the draft agreement were considered and concluded and is *attached* for members' mandate.

Shop stewards and Provincial Offices will engage with officials who are performing the identified functions that will be transferred. Employees who are not performing the transferred functions ought not to participate in the mandating process as this is only applicable to affected employees.

Consultations are taking place around the country where the employer must provide transport for affected employees to attend. The consultation schedule is *attached* for ease of reference. Members encountering challenges to attend these sessions owing to several reasons, including employers' failure to provide transportation, must urgently contact their shop stewards. Alternatively, contact your PSA Provincial Offices for assistance.

Members will be updated on developments.

Employees who want to join the PSA can visit the PSA's website (www.psa.co.za), send an email to ask@psa.co.za, or contact PSA Provincial Offices.

GENERAL MANAGER

BORDER MANAGEMENT AUTHORITY



JOINT BMA-PSCBC CONSULTATIONS ON STAFF INTEGRATION

FIRST ROUND OF CONSULTATIONS

DRAFT PROGRAMME

Date	Time	Regions	City
Monday, 5 December 2022	09:00 – 16:00	Southern Region: Western Cape	Cape Town Crystal Towers Hotel
Tuesday, 6 December 2022	09:00 – 16:00	Eastern Region (KZN & Mpumalanga)	Durban Olive Convention Centre
Wednesday, 7 December 2022	09:00 – 16:00	Central Region (Free State & Gauteng)	Benoni The Lakes Hotel
Monday, 12 December 2022	09:00 – 16:00	Northern Region: Limpopo	Polokwane Protea Hotel The Ranch
Wednesday, 14 December 2022	09:00 – 16:00	Southern Region: Northern Cape	Upington (Venue to be confirmed)
Thursday, 15 December 2022	09:00 – 16:00	Southern Region: Eastern Cape	Gqeberha (Venue to be confirmed)
Monday, 9 January 2023	09:00 – 16:00	Northern Region: North West	Mafikeng (Venue to be confirmed)

SECOND ROUND OF CONSULTATIONS (TENTATIVE DATES)

DRAFT PROGRAMME

Date	Time	Regions	City
Tuesday, 10 January 2023	09:00 – 16:00	Southern Region: Western Cape	Cape Town (Venue to be confirmed)
Wednesday, 11 January 2023	09:00 – 16:00	Eastern Region (KZN & Mpumalanga)	Durban (Venue to be confirmed)

Thursday, 12 January 2023	09:00 – 16:00	Central Region (Free State & Gauteng)	Pretoria (Venue to be confirmed)
Friday, 13 January 2023	09:00 – 16:00	Northern Region: Limpopo	Polokwane (Venue to be confirmed)
Monday, 16 January 2023	09:00 – 16:00	Southern Region: Northern Cape	Upington (Venue to be confirmed)
Tuesday, 17 January 2023	09:00 – 16:00	Southern Region: Eastern Cape	Gqeberha (Venue to be confirmed)
Wednesday, 18 January 2023	09:00 – 16:00	Northern Region: North West	Mafikeng (Venue to be confirmed)

AGREEMENT ON THE TRANSFER AND INTEGRATION OF STAFF INTO THE BORDER MANAGEMENT AUTHORITY

1. OBJECTIVE

- 1.1. To give effect to the implementation of the provisions of proclamation 89 of 2002 giving effect to the transfer of administrative functions and applicable legislation to the Border Management Authority (BMA) in as far as it is necessary for purposes of this agreement;
- 1.2. To transfer staff within the identified occupational categories from the listed National Departments to the Border Management Authority (BMA) to perform functions within the border law enforcement area and at ports of entry, as provided for in section 4(2) of the Border Management Authority Act, 2020 (Act no 2 of 2020);
- 1.3. To ensure compliance to the provisions of the Labour Relations Act 66 of 1995, as amended in as far as it is required to transfer staff in terms of section 197 read with section 189 where applicable.

2. SCOPE

This agreement binds the State as employer and those employees who:

- 2.1.1. Are employed by the State; and
- 2.1.2. Fall within the registered scope of the Council.

3. NOTING THAT

- 3.1. In terms of Section 97 of the Constitution, the President may by proclamation, transfer to a member of Cabinet, the administration of legislation entrusted to another member;

- 3.2. The BMA Act no 2 of 2020 in section 4 (2) requires that border law enforcement functions within the border law enforcement area and at ports of entry must be performed exclusively by the officers of the BMA;
- 3.3. The BMA in section 13 (2) requires that with the filling of any post on the staff establishment, whether by appointment or transfer, must be done in accordance with the Constitution, labour legislation and the BMA Act;
- 3.4. The Labour Relations Act 66 of 1995 as amended (LRA) in section 197 allows for the transfer of a contract of employment by agreement between parties as contemplated in section 197(6)(a) read with section 189 (1)(a)(ii); and
- 3.5. This agreement is therefore concluded between the old employer and the trade unions party to Council whose members are likely to be affected as per the provisions of section 189(1)(b)(ii).

4. PARTIES THEREFORE AGREE THAT

- 4.1. The relevant provisions of the LRA shall be applied during this process of transfer and any other relevant legislation that may have an impact on the transfer of the employees;
- 4.2. Employment security is a priority, in terms of which the parties agree that no employee shall lose his/her employment or be negatively affected as a result of the transfer;
- 4.3. Fairness and transparency in terms of the decision-making process on the transfer of employees as well as the implementation of the provisions listed in this agreement should underpin the process of transfer;
- 4.4. Employees identified for the purposes of transfer will retain their current conditions of service as a minimum and will not be worse off after the transfer;
- 4.5. Parties during the transfer process should strive to reach consensus in decision making;
- 4.6. Consultation should be in the spirit of goodwill between the relinquishing departments, the BMA, as well as the affected employees and their representatives from the trade unions;

- 4.7. The principle that staff follows function based on validated job content shall be applicable;
- 4.8. Affected employees in acting positions shall have no right to permanent appointment within those positions;
- 4.9. All affected employees will be transferred to the BMA on the same salary level and condition of service as the post they currently occupy;
- 4.10. No automatic upgrades to higher level posts during the ring fencing and transfer process will apply;
- 4.11. Voluntary severance packages (VSPs) shall not be considered in light of the principle that the transfer process is founded upon a non-retrenchment guarantee and reasonable accommodation;
- 4.12. Where an employee during the transfer process does not meet the requirements for security clearance as per section 13(3) of the BMA Act, such employee must be transferred back to the relinquishing department, to a post that the employee could function in, considering that such will be within reason and without the loss of benefits;
- 4.13. Where employees are placed back with the relinquishing department in a post that requires different skills from the employee, the employer will skill and reskill such an employee to meet the requirements of the post;
- 4.14. Employees to be transferred will retain their current pension benefits as per the provisions of the Government Employees Pension Fund (GEPF) as outlined in section 16(2) of the BMA Act;
- 4.15. The transfer does not interrupt an employee's continuity of employment and the contract of employment will continue with the BMA as if with the Department releasing the function;

5. TRANSFER OF FUNCTIONS

- 5.1. Only the following functions will be transferred from the following departments;

- 5.1.1. Port Immigration Functions from the Department of Home Affairs (DHA);

- 5.1.2. Port Health Function from the Department of Health (DOH);
- 5.1.3. Biosecurity Function from the Department of Forestry, Fisheries and the Environment (DFFE); and
- 5.1.4. Agriculture/ plants Functions from the Department of Agriculture, Land Reform and Rural Development (DALRRD).

5.2. The employer will provide a list of the specific posts within the functions listed in clause 5.1 and those being ring fenced on PERSAL for transfer from the specific department to the BMA.

6. STRUCTURE AND PROCEDURE OF FACILITATING THE PROCESS

- 6.1. At National Level, the process shall be monitored by the Border Management Authority Task Team (BMATT) comprising of the Employer and Organised Labour under the auspices of the PSCBC;
- 6.2. The PSCBC will collaborate with the General Public Service Sector Bargaining Council (GPSSBC) and the Public Health and Social Development Sector Bargaining Council (PHSDSBC) to establish Regional Task Teams to oversee the transfer at local/ regional level with representation from the shop stewards of the trade unions whose members stand to be effected by the transfer;
- 6.3. The PSCBC will provide secretarial services to the task team on National Level and the sector councils will provide secretariat services for the RTT's;
- 6.4. The BMATT/ RTT must meet as and when required but at least on a monthly basis until the transfer process is completed;
- 6.5. The RTT through the office of the General Secretary of the applicable sector council will report bi-weekly to the BMATT secretariat on the progress made with the transfer per region;
- 6.6. The BMATT will brief the PSCBC after every meeting on the progress made with the transfer of staff and functions;
- 6.7. The terms of reference for the BMATT will be to ensure the transfer of the staff is conducted in terms of section 197 of the LRA and within the provision listed in this agreement;

- 6.8. The BMATT will instruct the RTT on the functions to be performed in ensuring the transfer is implemented fairly and transparently.
- 6.9. The BMATT must identify and list all of the collective agreements of the PSCBC and the applicable sectoral council that will be applicable to the transfer and that will be binding on the BMA as per section 197(b)(ii) of the LRA;
- 6.10. Where parties differ if an agreement should be transferred to the BMA, such agreement will be automatically included in the list of transferred agreements as per the provisions of section 197(b)(ii) of the LRA;
- 6.11. Irrespective the date of signing of this agreement all collective agreements entered into by parties in the PSCBC before the 1 April 2023 will be binding on the BMA as per the provisions of section 197(5) of the LRA and Section 16(1) (b) of the BMA Act and be regarded as part of the transfer process;
- 6.12. The employer will disclose as required by section 197(7)(c) of the LRA in the BMATT and thereafter to every employee affected by the transfer the information contained in the agreement to be entered into between the departments and the BMA on those issues listed in section 197(7)(a) and section 197 (7)(b) of the LRA;
- 6.13. Trade unions representing members that will be affected by the transfer will retain their organisational rights in the BMA. Parties will enter into a new organisational rights agreement before the conclusion of the transfer period on 1 April 2023.

7. DISPUTE RESOLUTION

If there is a dispute about the interpretation or application of this agreement, any party may refer the matter to the Council for resolution in terms of the dispute resolution procedure of the Council.

8 IMPLEMENTATION OF THE AGREEMENT

- 8.1 This agreement shall come into effect on the date it enjoys majority support and will remain in force unless terminated or amended by agreement.

8.2 In the implementation, interpretation and application of this agreement, words used in the agreement and defined within the constitution of Council will have the meaning as defined in the constitution.

8.3 The Council will monitor the implementation of this agreement.

THIS DONE AND SIGNED AT _____ OF THIS _____ DAY OF _____ 2022.

ON BEHALF OF THE EMPLOYER

	Name	Signature
State as Employer		

ON BEHALF OF TRADE UNION PARTIES

Trade Union	Name	Signature
DENOSA		
HOSPERSA		
NAPTOSA		
NEHAWU		
POPCRU		
PSA		
SADTU		
SAPU		