

DATE

POSTAL DETAILS OF FISHERIES CONTROL OFFICER/ DAFF

Dear Sir

RE: CONFISCATION OF [DESCRIBE PRODUCT/ ASSETS CONFISCATED]

We refer to the confiscation of [*describe product confiscated, date of confiscation, and details of confiscating officer*].

Should you intend to sell the [*product*] confiscated on [*x date*] we hereby draw your attention to the relevant provisions of the Promotion of Administrative Justice Act 2 of 2000 (PAJA). In terms of PAJA, “administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.”¹ Administrative action is defined in PAJA as:

“any decision taken, or any failure to take a decision, by an organ of state, when...exercising a public power or performing a public function in terms of any legislation...which adversely affects the rights of any person and which has a direct, external legal effect...”

The decision to sell the confiscated [*product*] would be a decision taken by an organ of state exercising a public power in terms of legislation (being the Marine Living Resources Act 18 of 1998). The decision to sell the confiscated [*product*] would have a direct adverse effect on the property rights of the owner. Although the proceeds would be kept in a suspense account, the owner would lose actual ownership of his [*product*] and there would therefore be a clear and direct adverse effect. The provisions relating to procedural fairness in PAJA therefore apply to any proposed sale of the confiscated [*product*].

In terms of PAJA, procedural fairness requires:

- (i) *adequate notice of the nature and purpose of the proposed administrative action;*
- (ii) *a reasonable opportunity to make representations;*

¹ Section 3, Promotion of Administrative Justice Act 2 of 2000.

- (iii) *a clear statement of the administrative action;*
- (iv) *adequate notice of any right of review or internal appeal, where applicable; and*
- (v) *adequate notice of the right to request reasons in terms of section 5.²*

From the above, it is clear that your department is required to give adequate notice of any proposed sale to the owner of the [product]. In consulting commentary on procedural fairness, the right to adequate notice is described as a right to be given information about the proposed action and particulars in respect of the nature and purpose of the proposed action. As the owner of the confiscated [product], we therefore request information on any proposed sale, and specifically require details concerning the proposed date of the sale, the proposed sale price and the details of the proposed purchaser. Should the department wish to sell the confiscated [product], we also request an opportunity to make representations on the proposed sale and we request reasons for the proposed sale.

We trust that the above is in order and we look forward to your response.

Yours sincerely

NAME

DESIGNATION

² Section 3(2)(b), Promotion of Administrative Justice Act 2 of 2000.