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Please quote our ref: PFA/GA/219151/2007/LN

**RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 (“the Act”): S W VAN HEERDEN (“the complainant”) v AMPLATS OFFICIALS PENSION FUND (“the first respondent”), ALEXANDER FORBES (“the second respondent”)**

1. Introduction

- 1.1 The complaint concerns the payment of the spouse pension to the complainant following the death of Mr. Van Heerden (“the deceased”).
- 1.2 The complaint was received by this office on 11 September 2007. A letter acknowledging receipt thereof was sent to the complainant on 23 January 2008. On 22 January 2008 a letter was dispatched to the second respondent giving them until 21 February 2008 to file their response to the complaint. This office received a response from the first respondent on 21 February 2008. This response was also forwarded to the complainant for further submissions. The complainant replied on 28 March 2008.
- 1.3 Having considered the written submissions filed before this office, it is unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.
- 1.4 As the background facts are well-known to all parties, these shall be repeated only to the extent that they are pertinent to the issues raised herein.

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M Mohlala (Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), R Maharaj (Snr Assistant Adjudicator), M Ndaba (Snr Assistant Adjudicator), M Daki (Snr Assistant Adjudicator), E de la Rey (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), S Mothupi (Assistant Adjudicator), P Mphephu (Assistant Adjudicator), C Seabela (Assistant Adjudicator), P Myokwana (Assistant Adjudicator), L Nevondwe (Assistant Adjudicator), AP Lehana (Assistant Adjudicator), S Mokgara (Assistant adjudicator), L Molete (Assistant Adjudicator), T Nawane (Assistant Adjudicator)

Financial Manager: F Mantsho, Accountant: R Soldaat

## 2. Factual background

2.1 The deceased was a former member of the first respondent. He retired from the first respondent on 1 September 1996. The complainant is the wife of the deceased. On 7 May 2001, the deceased purchased a retirement annuity policy from metropolitan life before his death on 29 July 2007.

## 3. Complaint

3.1 The complainant wants spouse pension from the first respondent. She alleges that she was legally married to the deceased on 14 December 2006.

## 4. Responses

4.1 Mr. Mark de Klerk filed a response on behalf of the first respondent. He confirmed that the deceased's member retired from the fund on 1 September 1996. He further confirmed that on 7 May 2001, the deceased signed an option form in terms of which he instructed the fund to purchase an annuity on his behalf, from metropolitan life (a copy of this option form was sent to our office for reference). The option form signed by the deceased explains that on purchasing the annuity, he ceases to be a pensioner of the fund and that he; alternatively his dependants have no further claims against the fund. By virtue of having signed the document, the deceased also confirmed that he understood the nature of his intention to the fund.

4.2 Mr. Mark de Klerk submitted that the deceased further confirmed his personal information and stated where provision had been made for the personal information pertaining to a spouse, this was not relevant. The deceased signed this declaration on 7 May 2001. The annuity made no provision for a spouse pension.

4.3 He further submitted that the fund receive notification of the fact that the deceased had a spouse in January 2007. The complainant confirms this by annexing a copy of the marriage certificate to her complaint. It is evident from the marriage certificate that the parties entered into the marriage on 14 December 2006, five years after the deceased purchased the annuity.

4.4 It was further submitted that the complainant has furnished the first respondent with a pension payment advice. Whilst the payment of

the monthly pension is facilitated by the second respondent, the monthly pension is received from metropolitan, in terms of the policy entered into between the deceased and metropolitan. This policy regulates the terms and conditions of the arrangement between the deceased and metropolitan. The second respondent has no further involvement in this relationship.

- 4.5 It was finally submitted that in terms of the rules of the fund, the deceased received his pension from the first respondent from the date of his retirement until he elected to purchase an annuity in 2001. The documentation sent to and signed by the deceased was very specific in respect of what the effect of purchasing an annuity would be and specifically requested confirmation of spouse' details if a spouse's pension was to be taken into consideration at the time of the purchase of the annuity. The first respondent and second respondent request that the complaint against them be dismissed since the complainant does not have legal or factual basis for her claim.
5. Determination and reasons therefor
- 5.1 In this matter, the complainant complains about the spouse pension. The respondents on the other hand submitted that the deceased retired on 1 September 2006 and on 7 May 2001, the deceased signed an option form in terms of which he instructed the fund to purchase an annuity on his behalf, from metropolitan.
- 5.2 The question falls for determination is whether the complainant is entitled to a spouse pension or not. In terms of the definition of a complaint, the complainant cause of action must relate to either the administration of a fund, the investment of its funds or the interpretation and application of its rules. A life insurance product, of which the Metropolitan Annuity Policy is, does not relate to a particular fund but rather is an individual contract between the deceased and an insurer. Therefore, this office has no jurisdiction to investigate and determine the dispute.
- 5.3 This office suggests that the complainant contact the Long Term Insurance Ombudsman, Private Bag x 45, CLAREMONT, 7735, telephone (021) 657 5000, who may have jurisdiction to determine this dispute against Metropolitan.
6. In the result, the complainant's complaint is dismissed.

