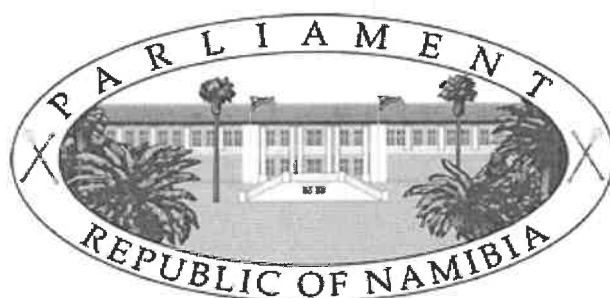


7TH NATIONAL ASSEMBLY



**PARLIAMENTARY STANDING COMMITTEE ON
ECONOMICS AND PUBLIC ADMINISTRATION**

**REPORT ON THE STAKEHOLDER CONSULTATIVE
AND OVERSIGHT WORKSHOP ON THE FINANCIAL
INSTITUTIONS AND MARKETS ACT (FIMA)**

HELD AT

**SWAKOPMUND HOTEL AND ENTERTAINMENT
CENTER**

22 TO 24 MAY 2023

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LIST OF ABBREVIATIONS

FIMA	:	Financial Institutions and Markets Act
FSAP	:	Financial Sector Assessment Program
GIPF	:	Government Institutions Pension Fund
IOSC	:	International Organization of Securities Commission
IMF	:	International Monetary Fund
ITA	:	Income Tax Act
NAMFISA	:	Namibia Financial Institutions Supervisory Authority
NBFI	:	Non-banking financial industry
PFA	:	Pension Fund Act
RFLAUN	:	Retirement Fund for Local Authorities and Utility Services in Namibia
RFS	:	Retirement Fund Solutions
UNAM	:	University of Namibia

1. INTRODUCTION AND BACKGROUND

The Parliamentary Standing Committee on Economics and Public Administration held a consultative workshop with stakeholders from 22 to 24 May 2023 in Swakopmund.

The engagements were prompted by an ongoing series of stakeholders consultations focusing on the Retirement Fund Industry, particularly on the sections of the Financial Institutions and Markets (FIMA) Act, Act No. 2 of 2021 on the pension preservation clause (RF.R.10), compels members retain seventy five (75) percent of their minimum withdrawal benefit until they reach the age of 55. Therefore, before a member attains the prescribed age of 55, he/she will be entitled to withdraw only 25% of the fund credit and the 75% should be saved or preserved for retirement.

FIMA was expected to come into force on 01 October 2022 but due to a wide public outcry demanding the legislative reform of such law, NAMFISA announced the postponement of the enforcement of the aforesaid law.

FIMA was gazetted in 2021 and its aim is to replace the outdated Pension Fund Act of 1956, with the aim to reform, consolidate and harmonize the laws that govern non-bank financial institutions, financial intermediaries and financial markets while addressing flaws identified in the current outdated legislation.

The consultation workshop followed wide public debate and outcry, particularly on Chapter 5, dealing with the preservation of pensions.

The main objectives of the workshop among others; were to:

- (i) Provide a platform for Members of Parliament and stakeholders to share their views, experiences and recommendations on the proposed pension preservation clause (RF.R.10) and other provisions of FIMA;
- (ii) Engage with different stakeholders, discuss and address concerns raised about the clause on pension preservation in the FIMA;
- (iii) Identify potential risks and challenges associated with the implementation of the Financial Institutions and Markets Act (FIMA) and develop strategies to address them as well as
- (iv) Evaluate the effectiveness of the Financial Institutions and Markets Act in promoting financial stability and protecting the interests of consumers

2. PARTICIPANTS

The Parliamentary Standing Committee on Economics and Public Administration was represented by Honourables Natangue Ithete, Dr Tobie Aupindi, Elifas Dingara; Hilaria Mukapuli, Celeste Becker, Bertha Dinyando, Apius Auchab, Maria Elago and Kennedy Shekupakela.

Members were accompanied by the Committee Clerks, Mr Willem H. Isaak (Deputy Director), Ms Agnes N. Mukono (Chief Parliamentary Clerk), Mr Rafeal Hangula (Senior Information Officer) as well Ms Theresia Dimba and Mr Ivan Skrywer (Parliamentary Clerks).

Also in attendance were representatives from NAMFISA, UNAM, RFLAUN and GIPF.

3. METHODOLOGY

The workshop involved a series of presentations and panel discussions by:

- (i) Non-bank Financial Institutions Sector (NBFI) Regulator
- (ii) Namibia Financial Institutions Supervisory Authority (NAMFISA)
- (iii) Government Institutions Pension Fund (GIPF)
- (iv) University of Namibia (UNAM)
- (v) Retirement Fund for Local Authorities and Utility Services in Namibia (RFLAUN)
- (vi) Retirement Fund Solutions (RFS)
- (vii) Retirement Funds Institute Namibia (RFIN)

4. PURPOSE OF THE REPORT

The purpose of the report is to inform the National Assembly about the outcome of the consultative workshop including its findings and recommendations in order for the House to, consider and adopt the report.

5. PRESENTATIONS BY STAKEHOLDERS

5.1. NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

The Chief Executive Officer and his team highlighted the mandate of NAMFISA in relation to the regulation and supervision of financial institutions and financial intermediaries with the aim to foster a stable and fair non-banking financial sector as well as to promote consumer protection and provide sound advice to the Minister of Finance and Public Enterprises.

The objective of FIMA is to consolidate and harmonize the laws regulating the non-banking financial institutions, financial intermediaries and financial markets in Namibia.

FIMA takes a wider approach of regulating and supervising by addressing prudential and market conduct issues, including governance of regulated entities.

Chapter 5 of FIMA also affords some benefits to retirement fund members, like increased member representation, surplus distribution and consumer protection.

Therefore, under the new regulations (RF.R.5.10) and when FIMA becomes operational, seventy five percent (75%) of a retirement fund must be preserved until the early retirement date, as provided for.

This is done with the aim to ensure that more income is available to sustain pensioners after they retire or otherwise, their dependents in the event of death.

Members were thus, informed that, this stipulation is opposed to the common practice of withdrawing retirement savings early to meet short-term financial needs, which ultimately, results in many people not having sufficient savings after retirement. In light of this, pensioners mostly end up depending on social grants such as old age pension grants from the State.

The Chief Executive Officer further provided an overview of NAMFISA and key benefits of FIMA as well as the context of key regulatory and supervisory challenges facing NAMFISA and Non-Banking Financial Institution (NBFI) Sector in relation to the following:

- (i) the current legislation does not encourage innovation, adaptation of technology and entrepreneurship; and it does not recognize the inter-linkages within the financial sector both locally, regionally and internationally under the International Organization of Securities Commission (IOSC) application.
- (ii) there is no legal provision to regulate market conduct and consumer protection i.e. 730 complaints were lodged in 2022 and
- (iii) above all, it does not include the mandate of consumer education, financial inclusion i.e. micro insurance and financial stability.
- (iv) there is no support for foster financial market development and deepening as well
- (v) It impacts adversely on principle of good governance and risk management (risk based supervision)

Members were informed that the International Monetary Fund (IMF) has raised concerns about the ineffectiveness of regulation and supervision in the Namibian Financial sector, in particular, the non-banking financial institutions during the 2017 Financial Sector Assessment Program (FSAP) visit.

NAMFISA therefore indicated that the current legislation is outdated, mostly developed in the 1950/60s and are compliance driven. Hence, NAMFISA does not have adequate supervisory and enforcement powers and tools. Some of the challenges highlighted include the following:

- (i) the current regulatory measures are fragmented, inconsistent and exacerbate the cost of regulation;

- (ii) there is inadequate consumer complaints resolution and resource mechanism hence, it is difficult to address consumer concerns.

NAMFISA requested the Standing Committee to assist with the implementation of the Namibia Financial Institutions Supervisory Authority Act No. 3 of 2021 (NAMFISA Act) and the Financial Institutions and Markets Act, No. 2 of 2021 (FIMA).

According to NAMFISA CEO, FIMA is relevant to Namibia, and is not a tool to take people's money. Namfisa is mandated to regulate and supervise financial institutions and financial intermediaries to foster a stable and fair non-banking financial sector, promote consumer protection, and provide sound advice to the Minister responsible for Finance.

FIMA continues to protect members' retirement savings from their estate, bankruptcy/insolvency, and creditors, while the member or their surviving dependants and/or nominees have not received these benefits. Where employers declare bankruptcy, contributions owed to retirement funds must be kept separate and paid to the retirement fund before any other money owed by such employers is paid.

Preservation rules must be sensitive to a variety of factors, including balancing the legitimate needs of employees for funds upon early withdrawal in certain cases, like re-training, hardship, disability with a shortened life expectancy, treatment of small benefits, as well as the availability of options for preserving benefits.

5.2. GOVERNMENT INSTITUTIONS PENSION FUND

GIPF is a benefit fund that provides benefits to the employees for the Government of the Republic of Namibia, public enterprises and some mission hospitals. There are approximately ninety nine thousand (99 000) active members and forty seven thousand (47 000) pensioners.

Members contribute about seven percent (7%) whereas Government employers contribute sixteen percent (16%). The following are the benefits provided by GIPF:

- (i) Retirement due to age (55 – 60 years)
- (ii) Retirement due to ill-health
- (iii) Retirement due to retrenchment
- (iv) Disability income
- (v) Funeral cover for member, spouse and children

In the event of a passing away of a member, GIPF pays the following:

- (i) Lump sum amount to dependents
- (ii) Additional: pension/annuity to spouses for life
- (iii) Additional: pension/annuity to children until the age of 18 or up to 25 years on condition that the child above 18 years is studying at a tertiary institution.

In terms of the preservation of benefits under GIPF rules, when a member resigns or is dismissed, GIPF pays 100% of the withdrawal benefit (minus income tax) to the member. The member is encouraged but not compelled to preserve his/her benefits.

Furthermore, the member also has a choice to transfer the money to his/her new employer's retirement fund. Thus, if a member has at least ten (10) years of service, such member can opt to preserve his/her benefits in GIPF until he/she turns 60 years of age.

The benefits of FIMA to retirement funds are as follows:

- (i) Duties of trustees have been codified;
- (ii) Fitness and proprietary requirements may lead to quality boards;
- (iii) Integration of corporate governance principles;
- (iv) Employers are compelled to provide the necessary information;
- (v) Employers can be penalized for failing to pay contributions;
- (vi) Members' rights to elect 50% of board members; and
- (vii) Surplus distribution has been legislated

The following were highlighted as some of the issues related to FIMA:

- Dependents - Spouses
- Distribution of death benefits - deduction for maintenance order
- Home Loans to members - penalties
- Personal liabilities - wide powers given to NAMFISA and
- Contradictory and ambiguous provisions due to volume

Members were informed that, the benefits held in a retirement fund is not part of a member's estate and cannot be bequeathed in a will or last testament. Such benefits must be distributed to the member's dependents.

The definition of dependent in relation to a member implies the following:

- a) a person in respect of whom the member is legally liable for maintenance
- b) a person in respect of whom the member is not legally liable for maintenance, if that person
 - (i) was in opinion of the board, at the death of the member in fact, dependent on the member for maintenance
 - (ii) is the spouse of the member or
 - (iii) is a child, who has not attained the age of 18 years, of the member, including a posthumous child, an adopted child and a child born out of marriage and
- c) a person for whom the member would have become legally liable to maintain had the member not died.

FIMA's definition of dependent excludes persons who are above 18 years of age unless they are spouses or were factually dependent on the member. Therefore, this situation may prejudice children of the member that may still be studying at tertiary institutions.

The GIPF defines spouse as:

- (i) a partner in a marriage solemnized in terms of the law of Namibia or any foreign country
- (ii) a common law partner in a union recognized in common law as a life-time cohabitation arrangement
- (iii) a partner in a customary union according to customary law or custom
- (iv) a partner in a union recognized as a marriage under the tenets of any religion or
- (v) a partner in a relationship in which the parties live together in a manner resembling a marital partnership or customary union.

Some of the impacts of FIMA highlighted by GIPF include the following:

- (i) Section 276 (1) (The disposition of benefits upon death of a member): This section is ambiguous as it can be interpreted to mean that even monthly pensions or annuities, not usually reserved for the spouse and the children must be shared with other dependents and thus, it will have a negative impact on the current practice of paying specific pensions/annuities to spouses and minor children without considering other dependents.
- (ii) Section 277 (2) (a): With regards to the deductions for child maintenance order, in terms of the Maintenance Act, section 277 (2) (a) which provides that the Board of a fund may deduct from a benefit or interest of a member or from the capital value of the retirement benefit of a former member, the intention is good but the words “benefit, “interest and “capital value” have not been defined and are not easily determinable when dealing with a defined benefit fund.
- (iii) The preservation of benefits Regulation RF.R. 5. 10: This regulation which was postponed by the Minister of Finance and removed or withdrawn from NAMFISA website, has or will have a major impact on the Namibian society. If not addressed urgently in the Act instead of the Regulations, it will allow a situation in some instances of withdrawal of benefits by members such as those who lost employment and did not secure subsequent employment, payment for educational studies, health services and housing purposes.
- (iv) Granting of home loans to members (Section 282 (2): the requirement for home loans to be secured by first mortgages of immovable property can potentially exclude home loans to be granted for houses in un-proclaimed areas.

5.3. RETIREMENT FOR LOCAL AUTHORITIES AND UTILITY SERVICES IN NAMIBIA (RFLAUN) AND OTHER KEY STAKEHOLDERS IN THE INDUSTRY (RFS, EBL CONSULTANCY EXPERTS IN FINANCIAL SERVICES LAW AND PRACTICES. ACTUARIES AND CONSULTANTS)

RFLAUN provided an overview in relation to what the 75% entails. If a member exits employment (whether withdrawal, dismissal or retrenchment) before attaining the age of 55, he/she will be entitled to withdraw only 25% of the fund credit and the 75% should be saved (preserved) for retirement.

The 75% will be transferred to:

- (i) the new employer's fund;
- (ii) an approved preservation fund;
- (iii) retirement annuity policy

The RFLAUN Board of Trustees deliberated on the above matter and decided that the following issues need to be further investigated:

- (i) retirement/dismissal from employment with no other income;
- (ii) the issue of housing loan settlements with 25%;
- (iii) infringement of current rights to take lump sum under the current laws;
- (iv) the Namibian Parliament is more suited to decide on the amount to be preserved as parliamentarians are likely to consider the views of the people that are affected by the decision.

M&G Investment briefed members on FIMA's objectives, International pension experiences, Namibia Pension Fund Eco-System built over the past 30 years, how to match short term financial needs with long term pension fund preservation and the macro socio-economic challenges.

Members were also taken through the South Africa two pot system and the potential impact of the system was explained.

Some of the key concerns highlighted by the key stakeholders include the following:

(i) Relevance of FIMA to Namibia

According to the concerned Industry, FIMA is a product of the Canadian Consultant working in collaboration with NAMFISA and consequently, FIMA has introduced provisions such as compulsory preservation and forced annuitization which have not taken into consideration the unique nature of the Namibian financial sector, its market and social economic practices.

(ii) Risks imposed on Employers and Trustees

Trustees, Principal Officers and regulated service providers will have to measure up to professional standards or face heavy penalties due to lack of undergraduates in the training institutions

(iii) Inconsistency with the Income Tax Act (ITA)

The Pension Fund Act (PFA) broadly defines a pension fund as a pension fund organization and the Income Tax Act (ITA) goes a step further and creates specific pension funds such as a provident fund, provident/preservation and retirement annuity fund whereas; FIMA on the other hand, only makes provision for a retirement fund that is related to an employer and further prohibits the operation of funds such as provident or provident preservation funds, which permit a member to commute their entire benefits into cash and do not require annuitisation of the retirement benefit.

It is therefore unclear how these funds will be governed should FIMA and ITA not aligned.

Proposal by RFLAUN and key stakeholders in the Industry

- (i) Parliament to recall FIMA for proper Review and consultation;
- (ii) Ensure Social Protection by recognizing the insured products;
- (iii) Parliament's direct involvement in the consultation with the Industry;
- (iv) To avoid provisions that discourage industry growth and lead to greater reliance on State grants; and
- (v) Mandatory provisions that have a material impact on the Constitution, the economy, and the social environment to be legislated by Parliament and not provided under subordinate legislation (bylaws) such as regulations and standards.

5.4. UNIVERSITY OF NAMIBIA

UNAM representative was of the view that the preservation clause was introduced taking into account the following considerations, among others:

- (i) The Namibian Constitution
- (ii) The Income Tax Act, 24 of 1981 as amended
- (iii) The Pension Fund Act, Act 24 of 1956
- (iv) The Financial Institutions and Markets Act, Act 2 of 2021 (FIMA)
- (v) The Draft Regulation (the Preservation of Retirement Benefits, Regulation No. RF.R.5.10
- (vi) Comments on the standards published in Gazettes 7713 and 7784 dated June 2022 as compiled by the Retirement Fund Institute of Namibia (RFIN)

The Pension Funds Act granted members a choice of preservation with no minimum prescription of preservation, meaning that, a member decided how much he/she wanted to withdraw from his/her total pension capital.

In this regard, the regulation seeks to make it compulsory for all members who exit a retirement fund, to preserve a minimum of 75% of the benefit, the member would have been entitled under the provisions of the previous Pension Funds Act, 24 of 1956.

Furthermore, when exiting the fund, members will only have access to 25% of the accumulated benefits and not full access to accumulated benefits, hence, the remaining 75% can only be accessed once a member attains the age of 55 years. This means, even if a member would be in a dire need of funds to cater for their day-to-day living expenses, they cannot be allowed to access these funds. This limitation seems to be in contradiction with the Pension Fund Act, which allowed members to withdraw 1/3 or all of their pension benefits upon retirement.

Notably, if the proposed regulation will apply to all members exiting retirement funds following the operational date of FIMA, it will mean that, the normal three year withdrawal window in preservation funds will be removed by the Regulation under discussion.

The aim of the retirement fund is to put aside funds during a person's working life to plan for the time when out of work, either by choice or reaching the retirement age.

During the consultative meetings with the Standing Committee, industry players also raised several concerns regarding FIMA and its implementation process. Firstly, the industry felt that the legislation may be creating operational and implementation challenges, increasing costs of regulation and provide too much power to the Minister and the Authority. Some of the concerns included the following:

- (i) The Industry perceived FIMA as foreign legislation which is not implementable in Namibia;
- (ii) Fines within such legislation are excessive for Boards of Trustees, Principal Officers and Regulated Service providers, while these members may not have the broad and sufficient knowledge to govern and manage the pension funds;
- (iii) FIMA is inconsistent with the Income Tax Act regarding the existence of Provident Funds, as FIMA under the new definitions excludes provident funds which provides for lump sum payments at retirement;
- (iv) The Minister of Finance is empowered to issue Regulations and NAMFISA issues standards which the industry felt gives too much power to the Minister and the Authority;
- (v) There were not sufficient public consultations on the legislation; and
- (vi) In addition, there were questions on how the 75% preservation was determined.

5.5 Some of the questions posed by the Industry representatives

- (i) Does the compulsory preservation breach the fundamental rights contained in the Namibian Constitution?
- (ii) How the 75% / 25% split was derived at, and what informed the split?
- (iii) How will the misalignment between the proposed Regulation and existing legislations be addressed?
- (iv) Was a benchmarking made to compare how the preservation issue is treated in other countries, especially in SADC region?

- (v) Were alternative approaches considered on preservation funds in the proposed regulations? For instance; the consideration of different categories (young employees/workforce including, non-skilled, semi-skilled and skilled workforce, artisans, technicians, professionals, middle aged group employees and close to retirement group employees)?
- (vi) Do the Ministry of Finance and NAMFISA have any empirical evidence that shows that members that have withdrawn their full pension funds do not have income to sustain them during their retirement period to justify that such members do really become a burden on the limited State resources?

6. CONCLUSION

The Committee was grateful for the frank discussions and in particular needed specific responses, particularly from the NAMFISA team in respect of their views on the Pension Preservation Draft Regulation and what the current stance of NAMFISA is on the matter.

NAMFISA indicated that they have called for the separation of the controversial pension preservation clause from FIMA hence, the regulation is part of FIMA and allows the Minister of Finance and Public Enterprises to issue a directive aimed at preserving certain aspects of financial institutions or markets.

However, separating this from FIMA would enable the Minister to act within a degree of autonomy while also ensuring that the implementation of FIMA is not delayed or complicated by matters, specifically related to the preservation regulation.

Therefore, the Minister of Finance and Public Enterprises has constituted a committee that will deal with Pension Preservation Draft Regulation and whether a revised version will be implemented or whether the regulation will not be issued.

They further indicated that the process does not need to delay the implementation of FIMA and the NAMFISA Act as FIMA is not only dealing with the preservation alone but other important aspects of supervision for the entire NBFi sector.

The challenges and concerns raised by the stakeholders are significant and needs to be considered, holistically in the interest of Namibia and its people. The constitutionality of introducing a compulsory preservation clause of this nature in legislation, needs further review.

7. RECOMMENDATIONS

Based on the outcome of the workshop, the Committee recommends the following:

- 7.1. The National Assembly discuss, consider and adopt the report
- 7.2. The Minister of Finance and Public Enterprises should implement the NAMFISA Act, 2021 as promulgated by Parliament.
- 7.3. The implementation of FIMA is staggered, hence holistic amendments should be considered within a one to two-year period after implementation (reflecting the implementation challenges)
- 7.4. The Minister of Finance and Public Enterprises must put on hold all controversial clauses in FIMA such as the pension preservation clause when implementing FIMA.
- 7.5. The Minister of Finance and Public Enterprises in collaboration with the Office Attorney-General must clarify the constitutionality of introducing a mandatory pension preservation clause of this nature, in legislation.
- 7.6. The Ministry of Finance and Public Enterprises and NAMFISA must consider the concerns and challenges stated in this report by stakeholders that attended the workshop.
- 7.7. Although the word spouse is being defined in the Namibian retirement fund law for the first time, the definition is overly broad and has a potential of draining retirement funds, especially the defined benefit as it includes people who are not married e.g. cohabitees to be members of funds. Also, cohabitation is currently not a recognized legal relationship in Namibia. It is therefore recommended that:
 - (a) the definition of spouse be revised by excluding common law partners recognized in common law as (i) lifetime cohabitation arrangement (ii) a partner in a relationship in which the parties live together in a manner resembling a marital partnership or customary union. This is to ensure that defined benefit funds do not have too many dependents.
- 7.8. The death benefits (lump-sum) be distributed under section 276 (1) so that they will be paid under the rules of the retirement funds as is the case in South Africa since 13 September 2007.

- 7.9 Section 282 (2) (the requirement for home loans) be aligned with the provisions of Regulation RF.R.5.5 and should be specified in that, home loans can be secured by a pledge of benefits.
- 7.10 The compulsory preservation requirement by members (75%) should be revisited to consider conditions to access funding such as in instances of unemployment, dismissal/loss of income and dire financial needs.
- 7.11 Parliament should decide on the amount to be preserved to consider the views of the people who are affected by the decision.
- 7.12 There is a great need for the separation of the controversial pension preservation clause from the Financial Institutions and Markets Act (FIMA).
- 7.13 The outdated Pension Fund Act of 1956 should be revised since it no longer suits the current economic situation.
- 7.14 NAMFISA should hold annual briefings and consultations with the National Assembly through its Parliamentary Standing Committee on Economics and Public Administration with the view to update members on the development in the non-banking financial institutions sector and to ensure that members are equipped with the necessary information (opportunities and challenges) in the financing sector
- 7.15 The preservation of benefits Regulation (RF.R.5.10) which was removed from the NAMFISA's website must be addressed in the Act (FIMA) because it has a major impact on the Namibian society.

8. SIGNATURES



Hon. Ithefe Natangue
(CHAIRPERSON)



Hon. Mathias Mbundu
Deputy Chairperson

Hon. Apus !Auchab

6.3.2024

DATE



Hon. Nico Smit



Hon. Dr. Tobie Aupindi



Hon. Bertha Dinyando



Hon. Maria Elago



Hon. Hamunyera Hambyuka



Hon. Maria Kamutali

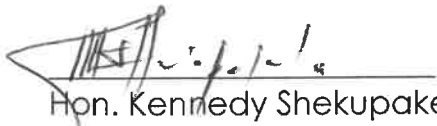


Hon. Joseph Kauandenge

Hon. Patience Masua



Hon. Jan Mukwiilongo



Hon. Kennedy Shekupakela



Hon. Elifas Dingara



Hon. Reginald Diergaardt



Hon. Gotthard Kasuto



Hon. Johanna Kandjimi



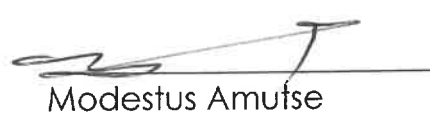
Hon. Sebastiaan Karupu



Hon. Helalia Mukapuli



Hon. Fenni Nanyeni



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