

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTIONS 8(1) AND 8(2)(b)(i) OF THE PUBLIC PROTECTOR ACT, 1994**



**PUBLIC PROTECTOR  
SOUTH AFRICA**

**Report No: 6 of 2008/9**

**REPORT ON THE INVESTIGATION OF AN ALLEGATION OF IMPROPER CONDUCT BY THE MINISTER OF PUBLIC SERVICE AND ADMINISTRATION, MS G J FRASER-MOLEKETI, RELATING TO THE ACCEPTANCE OF A GIFT.**

## INDEX

Executive summary	3
1. INTRODUCTION	5
2. BACKGROUND	5
3. THE COMPLAINT	6
4. THE POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE ALLEGATIONS AGAINST THE MINISTER	7
5. THE INVESTIGATION	8
6. THE EXPLANATION PROVIDED BY MR DEYSEL	9
7. THE EVIDENCE OF MS FRASER-MOLEKETI IN CONNECTION WITH HER ACCEPTANCE OF THE GIFT	9
8. THE GIFT	11
9. THE PROVISIONS REGULATING ETHICAL CONDUCT BY MEMBERS OF THE EXECUTIVE	11
10. DID MS FRASER-MOLEKETI COMPLY WITH THE RELEVANT PROVISIONS OF THE CODE WHEN SHE ACCEPTED THE GIFT	14
11. OBSERVATIONS	14
12. KEY FINDINGS	16
13. RECOMMENDATIONS	17

## Executive summary

The Office of the Public Protector investigated a complaint by Ms G Fraser-Moleketi, the Minister of Public Service and Administration, in connection with an allegation of impropriety allegedly made against her by the former Chairperson of the Media, Advertising, Publishing, Printing and Packaging Sector Training Authority (MAPPP-Seta) relating to a gift that she received in August 2006.

It was alleged that the Chairperson of MAPPP-Seta informed the Director General of the Department of Labour that the former Chief Executive Officer (CEO) of MAPPP-Seta presented Ms Fraser-Moleketi with an expensive gift, paid for by MAPPP-Seta, in return for the “*favour*” of Ms Fraser-Moleketi forwarding certain documents relating to fraud and corruption to the Minister of Labour.

From the investigation it appeared that Ms Fraser-Moleketi received documents relating to allegations of impropriety in connection with the affairs of MAPPP-Seta from the former CEO, whom she worked with previously, on 15 August 2006. On 24 August 2006, Ms Fraser-Moleketi received a birthday gift, valued at approximately R 2500 from MAPPP-Seta, authorised by the former CEO. She accepted the gift without obtaining the permission of the President and without disclosing it to the Secretary of the Cabinet at the time, as required by the Executive Ethics Code.

On 12 September 2006, Ms Fraser-Moleketi forwarded the documents that she received from the former CEO to the National Director of Public Prosecutions and the Minister of Labour.

The suggestion that Ms Fraser-Moleketi had to be prompted by means of a gift to merely refer documents relating to allegations of impropriety in connection with the affairs of a public entity to the responsible member of the Cabinet and to the prosecuting authorities, appeared to be nonsensical and without foundation.

The key findings made from the investigation are that:

- The allegation that the Minister was presented with a gift by the former CEO in return for the "*favour*" of forwarding documents relating to allegations of impropriety in connection with the affairs of MAPPP-Seta, to the Minister of Labour, was unfounded.
- By accepting the gift without the permission of the President and only disclosing it to the Secretary of the Cabinet a year later, Ms Fraser-Moleketi violated the provisions of paragraphs 4.2 and 6.3 of the Executive Ethics Code.

The Public Protector recommended that:

- The President attends to the violation of the Executive Ethics Code by Ms Fraser-Moleketi in the appropriate manner;
- The Secretary of the Cabinet takes appropriate steps to ensure that Members of the Cabinet and Deputy Ministers are sensitised in respect of the provisions of the Code relating to gifts; and
- The Minister of Labour ensures that the gift is appropriately disposed of.

**REPORT ON THE INVESTIGATION OF AN ALLEGATION OF IMPROPER CONDUCT BY THE MINISTER OF PUBLIC SERVICE AND ADMINISTRATION, MS G J FRASER-MOLEKETI, RELATING TO THE ACCEPTANCE OF A GIFT.**

**1. INTRODUCTION**

This report is submitted to the President of the Republic of South Africa, the National Assembly, the Minister of Labour and the Secretary of the Cabinet, in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and sections 8(1) and 8(2)(b)(i) of the Public Protector Act, 1994. It relates to the investigation of a complaint of improper conduct by the Minister of Public Service and Administration, Ms G J Fraser-Moleketi (the Minister), pertaining to the acceptance of a gift.

**2. BACKGROUND**

- 2.1 On 6 August 2007, Mr M Deysel, the former Chairperson of the Media, Advertising, Publishing, Printing and Packaging Sector Education Training Authority (MAPPP-Seta) addressed a letter to the Director General of the Department of Labour, in connection with some of its affairs.
- 2.2 In his letter, Mr Deysel, *inter alia*, referred to the suspension and ultimate termination of the services of the Chief Executive Officer (CEO) of MAPPP-Seta, Ms M Bernard-Fryer. According to him, Ms Bernard-Fryer was suspended on charges of financial mismanagement, which had caused considerable overspending by MAPPP-Seta during the previous financial year.
- 2.3 In this regard Mr Deysel stated that Ms Bernard-Fryer had *"always indicated to the Authority that it was a mere formality to ask the Minister for condonation of*

*the overspend and that due to her past service in Government she had all the contacts with Ministers and would receive a sympathetic hearing."*

- 2.4 With reference to allegations of impropriety made against MAPPP-Seta, Mr Deysel stated that:

*"We also have proof that the ex-CEO handed a file on the alleged fraud and corruption to a Minister with whom she had a friendly relationship to hand to the Minister of Labour. The Minister to whom the file was given received a "gift" worth approximately R 10 000 for this favour."*

### **3. THE COMPLAINT**

- 3.1 Ms Fraser- Moleketi lodged a complaint in connection with the statement by Mr Deysel referred to in paragraph 2.4 above, with the Public Protector on 16 August 2007.

- 3.2 According to her, she was named as the Minister in question at a meeting of MAPPP-Seta's Accounting Authority, held on 2 August 2007.

- 3.3 The Minister further stated that:

*"Prior to her appointment as CEO of the MAPPP-Seta, Ms Bernard-Fryer was a Deputy Director-General of SAMDI, a department in my portfolio, and also an acting Head of my Ministry. I did meet with her in August 2006. She handed the file in question to my office whereupon I referred the matter to the Minister of Labour and the Scorpions. This I did after seeking legal advice on the most appropriate authorities for such referral. I did not receive any gift in this regard for fulfilling my role not only as a Cabinet Minister and a Member of Parliament,*

*but in particular my responsibilities with respect to preventing and combating corruption in the public and private sector.*

*The only gift I have received from the MAPPP-Seta, was for my birthday on 24 August 2006. No indication was given that it is in return for the so-called favour of referring the matter to the Minister of Labour. I doubt whether the value of this birthday gift is remotely close to the value of the alleged gift to the value of R 10 000. However, I'm having the birthday gift valued and will thereupon return it to the MAPPP-Seta.*

*I hereby request that your Office as a matter of urgency investigate the allegation made in the mentioned letter to the Director General: Labour as well as the statement allegedly made at the mentioned meeting of the MAPPP-Seta on 2 August 2007 which named me as the Minister in question. I informed the President, Deputy President and the Minister of Labour that I will be requesting your Office to investigate this matter."*

#### **4. THE POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE ALLEGATIONS AGAINST THE MINISTER**

4.1 Section 182(1) of the Constitution provides that the Public Protector has the power to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice.

4.2 In terms of section 6(4)(a) of the Public Protector Act, 1994, the Public Protector is competent to investigate, at his or her own initiative or on receipt of a complaint, any alleged improper or unlawful enrichment, or receipt of any improper advantage by a person as a result of an act or omission in the public

administration or in connection with the affairs of government at any level or of a person performing a public function.

- 4.3 Section 6(4)(a) also provides that the Public Protector can investigate any alleged improper conduct by a person performing a public function.
- 4.4 The alleged improper acceptance by the Minister of a gift from MAPPP-Seta authorised by Ms Bernard Fryer, fall under the powers and within the jurisdiction of the Public Protector to investigate.

## **5. THE INVESTIGATION**

The investigation was conducted in terms of sections 6 and 7 of the Public Protector Act, 1994. It comprised:

- 5.1 Correspondence with Ms Fraser-Moleketi;
- 5.2 Correspondence with Mr Deysel;
- 5.3 Consideration of the documentation submitted by Ms Fraser-Moleketi and Mr Deysel; and
- 5.4 Consideration and application of the relevant provisions of the Constitution, the Public Protector Act, 1994, the Executive Members' Ethics Act, 1998 and the Executive Ethics Code promulgated in terms thereof.

## **6. THE EXPLANATION PROVIDED BY MR DEYSEL**

- 6.1 Mr Deysel confirmed the contents of his letter referred to in paragraph 2 above and that his reference to a Minister was indeed to Ms Fraser-Moleketi. He conceded that he had no reason not to accept the explanation of the Minister that the gift was presented to her for her birthday.
- 6.2 From the documentation submitted by Mr Deysel, it is apparent that Ms Bernard-Fryer approved the purchasing of a gift for the Minister. However, Mr Deysel emphasised that Ms Bernard-Fryer had no authority as the CEO of MAPPP-Seta to present the Minister with a gift, purchased with public funds. He also indicated that Ms Bernard-Fryer made *"no secret of the fact that there existed a friendship between her and the Minister."*
- 6.3 According to Mr Deysel, his said letter to the Director General was *"not an attack on the integrity of Ms Fraser-Moleketi. My recordal of the gift having been made is a reference to misconduct on the part of the CEO and can only be interpreted as such."*

## **7. THE EVIDENCE OF MS FRASER-MOLEKETI IN CONNECTION WITH HER ACCEPTANCE OF THE GIFT**

- 7.1 Ms Fraser-Moleketi stated during the investigation that she forwarded the documents provided to her by Ms Bernard-Fryer to the Minister of Labour and to the National Director of Public Prosecutions.
- 7.2 In her letter addressed the National Director of Public Prosecutions on 12 September 2006 in this regard, the Minister stated:

*“Please be advised that the said documentation were supplied to me by Ms M Bernard-Fryer, CEO of MAPPP-SETA on 15 August 2006. Please be advised that I did not lodge these documents as I had been informed by Ms Bernard-Fryer that the report has already been submitted to the Scorpions. However, I do believe that it is important for the record that I do submit them formally for your attention.”*

7.3 During the investigation Ms Fraser-Moleketi was also requested to submit, *inter alia*, the following information:

- “1. Your comments on the allegation that you had friendly relations with Ms Bernard-Fryer at the time;*
- 2. Who presented the birthday gift to you?*
- 3. Was it presented to you by/on behalf of Ms Bernard-Fryer in her personal capacity or by/on behalf of MAPPP-Seta?*
- 4. Were you aware that the gift was paid for by public funds?*
- 5. If you were under the impression that the gift came from MAPPP-Seta, why did you accept it as it came from a public body for which you and your department are not responsible?*
- 6. Why did you decide to return the gift?*

7.4 In her response, Ms Fraser-Moleketi denied that there was a friendship between her and Mr Bernard-Fryer. She explained that the gift was delivered at her

residence. She knew that it came from MAPPP-Seta and therefore assumed that it was paid for by it.

7.5 She further explained that:

*"The portfolio of the Minister for the Public Service and Administration is broad and I have interaction with a range of public institutions which do not fall under my direct responsibility. In my view the receipt by a Cabinet Minister of gifts should not be considered as inappropriate merely because they are from public institutions for which that Minister is not responsible."*

7.6 Ms Fraser-Moleketi decided to return the gift to MAPPP-Seta when she became aware of the allegation of impropriety made in regard thereto. She denied that the gift was presented to her in return for any action that she had taken in her capacity as a member of the Cabinet.

## **8. THE GIFT**

The gift presented to Ms Fraser-Moleketi is described as a *framed silhouette* and was valued at approximately R 2500.

## **9. THE PROVISIONS REGULATING ETHICAL CONDUCT BY MEMBERS OF THE EXECUTIVE**

### **9.1 The Constitution**

9.1.1 Section 96(1) provides that Members of the Cabinet must act in accordance with a code of ethics prescribed by national legislation.

9.1.2 In terms of section 92(2), Members of the Cabinet may not act in a way that is inconsistent with their office or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests. They are further prohibited from using their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.

## **9.2 The Executive Members' Ethics Act, 1998**

9.2.1 This Act provides for a code of ethics governing the conduct of members of the Cabinet.

9.2.2 In terms of section 2(2), the code of ethics must include provisions requiring Cabinet Members at all times to act in good faith and in the best interest of good governance.

9.2.3 The said provisions must also include prohibitions on Cabinet Members to act in a way that is inconsistent with their office, exposing themselves to the risk of a conflict between their official responsibilities and private interests, and acting in a way that may compromise the credibility or integrity of their office or of government.

9.2.4 The code of ethics must further require, *inter alia*, that members of the Cabinet disclose gifts received by them.

## **9.3 The Executive Ethics Code**

9.3.1 The Executive Ethics Code (the Code) was promulgated on 28 July 2000.

9.3.2 Paragraph 4 that regulates gifts, provides that:

"4.1 A member may not solicit or accept a gift or benefit which-

- (a) is in return for any benefit received from the member's official capacity,
- (b) constitutes improper influence on the member, or
- (c) constitutes an attempt to influence the member in the performance of the member's duties.

4.2 When a member, in the course of the member's duties, has received or has been offered a gift with a value of more than R 1000, the member may request permission from the President or Premier, as the case may be, to retain or accept the gift. If the permission is granted the member may retain or accept the gift, but must disclose particulars thereof in terms of paragraph 6.5 (sic)(should read 6.3) of this Code. Where such permission has not been requested or granted the member must either-

- (a) return the gift or decline the offer; or
- (b) donate the gift to the state."

9.3.3 In terms of paragraph 6.3, Cabinet Members must disclose to the Secretary of the Cabinet, all gifts, other than that received from a spouse, permanent companion or family member, with a value of more than R 350.

**10. DID MS FRASER-MOLEKETI COMPLY WITH THE RELEVANT PROVISIONS OF THE CODE WHEN SHE ACCEPTED THE GIFT?**

10.1 During the investigation, Ms Fraser-Moleketi was requested to indicate whether she had complied with the provisions of the Code referred to in paragraph 11.3 above.

10.2 In her response she stated that:

*"I was not aware of the value of the gift when I received it. I only had the gift valued after the allegation arose at which time I also referred the matter for your investigation. At that time I also realised that I have not declare (sic) the gift as provided for in the Executive Code of Ethics and thereupon has done so. Since I have returned the gift I did not consider it necessary to obtain the President's permission."(Emphasis added)*

**11. OBSERVATIONS**

11.1 From the investigation it appeared that the following is not in dispute:

11.1.1 On 15 August 2006, Ms Bernard-Fryer, who was at the time the CEO of MAPPP-Seta provided Ms Fraser-Moleketi with documentation that related to allegations of impropriety in connection with the affairs of MAPPP-Seta.

11.1.2 Mesdames Fraser-Moleketi and Bernard-Fryer previously worked closely together, *inter alia* in the Ministry of Public Service and Administration.

11.1.3 On or about 24 August 2006, Ms Fraser-Moleketi received a gift for her birthday from MAPPP-Seta. The gift was authorised by Ms Bernard-Fryer and paid for

with the funds of MAPPP-Seta. Ms Fraser-Moleketi accepted the gift as presented to her in her capacity as the Minister of Public Service and Administration.

11.1.4 Ms Bernard-Fryer had no authority to approve the purchasing of a birthday gift for Ms Fraser-Moleketi with the funds of MAPPP-Seta, a public entity.

11.1.5 The value of the gift is approximately R 2500.

11.1.6 Ms Fraser-Moleketi accepted the gift without obtaining the permission of the President and without disclosing it to the Secretary of the Cabinet, at the time, as required by the Code.

11.1.7 On 12 September 2006, Ms Fraser-Moleketi forwarded the documents that she received from Ms Bernard-Fryer to the National Director of Public Prosecutions. She also sent it to the Minister of Labour.

11.1.8 In August 2007, i.e. a year after Ms Fraser-Moleketi accepted the said gift, she became aware that the former Chairperson of MAPPP-Seta had alleged that she was presented with the gift in return for the "*favour*" of forwarding the documents given to her by Ms Bernard-Fryer, to the Minister of Labour.

11.1.9 On becoming aware of the said allegation of impropriety relating to her acceptance of the gift, Ms Fraser Moleketi had it valued, returned it to MAPPP-Seta and reported the matter to the Public Protector.

11.2 At the time that Mr Deysel made the allegation of impropriety relating to Ms Fraser-Moleketi's acceptance of the gift, he was not aware that it was presented to her for her birthday.

- 11.3 The suggestion that Ms Fraser-Moleketi had to be prompted by means of a gift to merely refer documents relating to allegations of impropriety in connection with the affairs of a public entity to the responsible member of the Cabinet and to the prosecuting authorities, is nonsensical and without foundation. No indication that Ms Fraser-Moleketi had to be influenced to do so or that her doing so constituted any benefit for anyone, as contemplated by paragraph 4 of the Code, could be found.
- 11.4 As a senior Member of the Cabinet, it was however expected of Ms Fraser-Moleketi to ensure that she complied in all respects with the relevant provisions of the Code before and after she accepted the gift. Her explanation that she was not aware that the value of the gift exceeded R1000 cannot be regarded as reasonable in the light of the uncontested value thereof and as she should have taken reasonable care to establish its value before accepting it. By not doing so, a perception of impropriety could have been created, having an impact on the integrity of the office that Ms Fraser-Moleketi occupies and of government.
- 11.5 It cannot be regarded as proper practice for a Minister to accept a birthday gift from a public entity, purchased with public funds.

## **12. KEY FINDINGS**

From the investigation it was found that:

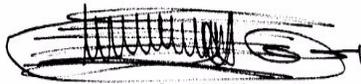
- 12.1 The allegation that the Minister was presented with a gift by Ms Bernard-Fryer in return for the "*favour*" of forwarding documents relating to allegations of impropriety in connection with the affairs of MAPPP-Seta, to the Minister of Labour, was unfounded.

12.2 By accepting the gift without the permission of the President and only disclosing it to the Secretary of the Cabinet a year later, Ms Fraser-Moleketi violated the provisions of paragraphs 4.2 and 6.3 of the Code.

### **13. RECOMMENDATIONS**

In terms of the provisions of section 182(1)(c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, it is recommended that:

- 13.1 The President attends to the violation of the Code by Ms Fraser-Moleketi in the appropriate manner;
- 13.2 The Secretary of the Cabinet takes appropriate steps to ensure that Members of the Cabinet and Deputy Ministers are sensitised in respect of the provisions of the Code relating to gifts; and
- 13.3 The Minister of Labour ensures that the gift is appropriately disposed of.



**ADV M L MUSHWANA**  
**PUBLIC PROTECTOR OF THE**  
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Date: 16 May 2008

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