
PUBLIC PROTECTOR
SOUTH AFRICA

REPORT No of 6 2018/2019


"ALLEGATIONS OF MISUSE OF TELEPHONE PRIVILEGE BY THE DEPUTY SPEAKER OF THE LIMPOPO LEGISLATURE"

REPORT ON AN INVESTIGATION INTO ALLEGATIONS THAT THE DEPUTY SPEAKER OF THE LIMPOPO PROVINCIAL LEGISLATURE, HONOURABLE LEHLOGONOLO MASOGA, INCURRED AN EXORBITANT MOBILE TELEPHONE BILL ON AN OFFICIAL TRIP TO THE UNITED STATES OF AMERICA IN 2014
## INDEX

**Executive summary** 3

1. **INTRODUCTION** 8

2. **THE COMPLAINT** 9

3. **POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR** 9

4. **THE INVESTIGATION** 12

5. **THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS** 19

6. **FINDINGS** 29

7. **REMEDIAL ACTION** 31

8. **MONITORING** 31
Executive Summary

(i) This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 23 of 1994 (the Public Protector Act).

(ii) The report communicates my findings and the appropriate remedial action taken in terms of section 182(1)(c) of the Constitution following an investigation into allegations that the Deputy Speaker of the Limpopo Provincial Legislature (the Legislature), Honourable Lehlogonolo Masoga (Deputy Speaker), incurred an exorbitant mobile telephone bill on an official trip to the United States of America (USA) in 2014.

(iii) This is an own initiative investigation conducted in terms of sections 6 and 7 of the Public Protector Act after my office came across an article in the City Press newspaper of 29 March 2015 on allegations against the Deputy Speaker.

(iv) The article alleged that the Deputy Speaker incurred a bill of up to R125 000.00 whilst on an official trip in the USA in August 2014. It alleged further that the Manager of the Legislature’s Supply Chain Management Unit, Ms Maite Toona (Ms Toona), was suspended because she questioned the bill.

(v) On analysis of the complaint, the following issues were identified and investigated:

(a) Whether the Deputy Speaker incurred an exorbitant or unreasonable mobile telephone bill whilst on an official trip in the USA in August 2014

(b) Whether the amount spent by the Deputy Speaker on his mobile telephone bill was exorbitant or unreasonable in the circumstances
Whether the Manager of the Legislature’s Supply Chain Management Unit, Ms Maite Toona, was suspended as a result of querying the Deputy Speaker’s mobile telephone bill

Key laws, policies, prescripts and relevant documents considered to help me to determine if there has been maladministration are as follows:

(a) Section 195 of the Constitution which prescribes the basic values and principles governing public administration;

(b) Sections 11 and 12 of the Financial Management of Parliament and Provincial Legislatures Act, 2009 (FMPPLA) which regulates the financial management and responsibilities of Parliament and Provincial Legislatures in a manner consistent with their status, to ensure that all revenue, expenditure, assets and liabilities are managed efficiently, effectively and transparently; and

(c) The Members Benefits and Facilities Policy (the Policy) which regulates the mobile telephone and data usage by members of the Legislature.

I issued a section 7(9)(a) notice to the Acting Secretary of the Legislature dated 22 January 2018 and a supplementary section 7(9)(a) notice dated 08 May 2018. The Acting Secretary in his letter of 16 February 2018 accepted my proposed findings and remedial action. The section 7(9)(a) notice was also issued to the Deputy Speaker. The Deputy Speaker did not accept my findings and remedial action.

Having regard to the evidence uncovered during the investigation, measured against the applicable laws, prescripts and policies, I make the following findings against the Deputy Speaker and the Legislature:

(a) Regarding whether the Deputy Speaker incurred an exorbitant or unreasonable mobile telephone bill whilst on an official trip in the USA in August 2014:
(aa) The allegation that the Deputy Speaker incurred an exorbitant or unreasonable mobile telephone bill whilst on an official trip in the USA in August 2014 is substantiated.

(bb) The actual total bill incurred for the month of August 2014 was R138 701.99 which was inclusive of subscription services, roaming data usage, international roaming services, domestic data usage and VAT.

(cc) The Deputy Speaker incurred a total amount of R100 031.45 on roaming data usage whilst in the USA in August 2014.

(dd) The Deputy Speaker violated section 195 of the Constitution and sections 11 and 12 of the FMPPLA which provide that financial resources must be used effectively, efficiently, transparently and economically.

(ee) The conduct of the Deputy Speaker constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

(b) Regarding whether the amount spent by the Deputy Speaker on his mobile telephone bill was exorbitant or unreasonable in the circumstances:

(aa) The allegation that the amount spent by the Deputy Speaker whilst on an official trip to the USA was exorbitant or unreasonable is substantiated.

(bb) The amount spent by the Deputy Speaker was unreasonably high as compared to other members of the Legislature who travelled with him during the same trip to the USA. The Legislature, upon receipt of the bill, wanted to create a debt upon realising that the amount was too high. The Legislature immediately informed the Deputy Speaker of the anomaly through a letter dated the 19 June 2015.
(cc) Based on the above, the Deputy Speaker failed to exercise a high standard of professional ethics and to ensure that state resources were used efficiently and effectively when using his mobile telephone during his official international trip in the USA in 2014 as contemplated in section 195 of the Constitution and sections 11 and 12 of the FMPPLA.

(dd) Section 6.6 of the Policy provides that the Legislature shall cover the mobile phone and data expenses of a member incurred during an official international trip. It, however, does not provide a capped amount when members travel abroad on official business which is susceptible to abuse.

(ee) The conduct of the Deputy Speaker constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

(c) Regarding whether the Manager of the Legislature’s Supply Chain Management Unit, Ms Maite Toona, was suspended as a result of querying the Deputy Speaker’s mobile telephone bill:

(aa) The allegation that Ms Maite Toona was suspended as a result of querying the Deputy Speaker’s telephone bill is not substantiated. The Legislature informed my office that she was suspended for misconduct because she had violated the Supply Chain and Treasury Regulations which resulted in the Legislature incurring irregular expenditure.

(bb) My office contacted Ms Toona with a view of obtaining reasons for her suspension, but she elected not to cooperate.

(cc) There was no evidence to determine improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.
(xi) The appropriate remedial action the Public Protector takes in pursuit of section 182(1)(c) of the Constitution is the following:

(a) The Speaker of the Legislature must, within 60 working days from the date of this report, ensure that the Legislature review section 6.5 and 6.6 of the Policy, specifically to provide for the total allowance on combined mobile telephone (voice), the mobile tablet and laptop (data) for members of the Legislature per official international trip; and

(b) The Acting Secretary of the Legislature must, in consultation with the Speaker of the Legislature, take appropriate action and recover a reasonable portion of the amount spent from the Deputy Speaker incurred whilst in the USA, within 60 working days from the date of this report.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS THAT THE DEPUTY SPEAKER OF THE LIMPOPO PROVINCIAL LEGISLATURE, HONOURABLE LEHLOGONOLO MASOGA, INCURRED AN EXORBITANT MOBILE TELEPHONE BILL ON AN OFFICIAL TRIP TO THE UNITED STATES OF AMERICA IN 2014

1. INTRODUCTION

1.1 Overview

1.1.1 This is my report issued in terms of section 182(1)(b) of the Constitution, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 23 of 1994 (the Public Protector Act).

1.1.2 The report is submitted in terms of section 8(1) of the Public Protector Act, to the following persons:

1.1.2.1 The Premier of the Limpopo Provincial Government, Honourable Stanley Chupu Mathabatha;

1.1.2.2 The Speaker of the Limpopo Provincial Legislature, Honourable Polly Boshiele; and

1.1.2.3 The Acting Secretary of the Limpopo Legislature, Mr Simon Mothoa.

1.1.3 A copy of the report is also provided to the following:

1.1.3.1 The Deputy Speaker of the Limpopo Provincial Legislature, Honourable Lehlogonolo Masoga; and

1.1.3.2 The Head of Department of the Limpopo Provincial Treasury, Mr Gavin Pratt.
1.1.4 The report relates to an investigation into allegations that the Deputy Speaker of the Limpopo Provincial Legislature, Honourable Lehlogonolo Masoga (Deputy Speaker), incurred an exorbitant mobile telephone bill whilst on an official trip to the USA in 2014.

2. THE COMPLAINT

2.1 My office came across an article in the City Press newspaper of 29 March 2015 on allegations against the Deputy Speaker.

2.2 In the main, the article alleged the following:

2.2.1 The Deputy Speaker incurred a telephone bill of up to R125 000.00 whilst on an official trip in the USA in August 2014; and

2.2.2 The Manager of the Provincial Legislature Supply Chain Management Unit, Ms Maite Toona, was suspended because she queried the bill.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector is an independent constitutional body established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2 Section 182(1)(a) 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, to report on that conduct and take appropriate remedial action. Section 182(2) directs that the Public Protector has additional powers prescribed in legislation.
3.3 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs and to resolve the disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.4 The Legislature is an organ of state and its conduct amounts to conduct in state affairs, as a result the matter falls within the ambit of the Public Protector’s mandate.

3.5 The Public Protector’s power and jurisdiction to investigate and take appropriate remedial action was not disputed by any of the parties.

3.6 In the Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect. The Constitutional Court further held that:

"When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences." 

3.7 In the above-mentioned Constitutional matter, the Chief Justice, Mogoeng, stated the following, when confirming the powers of the Public Protector:

3.7.1 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (paragraph 65);

3.7.2 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced (paragraph 67);

1 [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].
2 Supra at para [73].
3.7.3 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has the effect, if it is the best attempt at curing the root cause of the complaint (paragraph 68);

3.7.4 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow (paragraph 69);

3.7.5 Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to (paragraph 70);

3.7.6 The Public Protector’s power to take remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made (paragraph 71);

3.7.7 Implicit in the words “take action” is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And “action” presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in the words suggests that she has to leave the exercise of the power to take remedial action to other institutions or that it is the power that is by its nature of no consequence (paragraph 71(a));

3.7.8 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (paragraph 71(d)); and
3.7.9 "Appropriate" means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (paragraph 71(e)).

4. THE INVESTIGATION

4.1 Methodology

4.1.1 The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

4.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration. Section 7 of the Public Protector Act gives the Public Protector the authority to, on his her own initiative, or on receipt of a complaint or an allegation, or on the ground of information that has come to his or her knowledge and which points to conduct such as referred to in section 6(4) or (5) of the Public Protector Act, conduct a preliminary investigation for the purpose of determining the merits of the complaint, allegation or information and the manner in which the matter concerned should be dealt with.

4.2 Approach to the investigation

4.2.1 The investigation was approached using an enquiry process that seeks to find out:

4.2.1.1 What happened?

4.2.1.2 What should have happened?

4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration?
4.2.1.4 In the event of maladministration what would it take to remedy the wrong or to place the Complainant as close as possible to where they would have been but for the maladministration or improper conduct?

4.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, factual enquiry principally focused on whether or not the Deputy Speaker travelled to the USA during August 2014 and incurred a mobile telephone bill of R125 000.

4.2.3 The enquiry further looked at whether the amount spent was reasonable.

4.2.4 The enquiry regarding what should have happened, focuses on the law and rules that regulate the standard that should have been met by the organ of state to prevent maladministration and prejudice.

4.2.5 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration. Where a Complainant has suffered prejudice the idea is to place him or her as close as possible to where they would have been had the organ of state complied with the regulatory framework setting the applicable standards for good administration.

4.3 On analysis of the complaint, the following were issues considered and investigated:

4.3.1 Whether the Deputy Speaker incurred an exorbitant or unreasonable mobile telephone bill whilst on an official trip in the USA in August 2014:

4.3.2 Whether the amount spent by the Deputy Speaker on his mobile telephone bill was exorbitant or unreasonable in the circumstances:
4.3.3 Whether the Manager of the Legislature’s Supply Chain Management Unit, Ms Maite Toona, was suspended as a result of querying the Deputy Speaker’s mobile telephone bill:

4.4 The key sources of information

4.4.1 Documents

4.4.1.1 City Press article dated 29 March 2015

4.4.2 Correspondence sent and received

4.4.2.1 Letter sent to the Deputy Speaker by the Acting Secretary of the Limpopo Provincial Legislature (Legislature), Mr Simon Mothoa, dated 19 June 2015.

4.4.2.2 Letter sent to the Office of the Secretary by the Deputy Speaker dated 02 July 2015.

4.4.2.3 Letter sent to the Speaker of the Legislature, Ms M M Ramadwa Limpopo Legislature dated 26 June 2015.

4.4.2.4 Letter sent to the Speaker of the Limpopo Legislature, Ms M M Ramadwa dated 21 September 2015.

4.4.2.5 Letter received from the Office of the Secretary of the Provincial Legislature Mr Simon Mothoa dated 08 October 2015.

4.4.2.6 Letter sent to the Office of the Secretary, Limpopo Legislature, Mr Simon Mothoa dated 15 February 2016.

4.4.2.7 Letter sent to the Office of the Speaker of the Provincial Legislature, Mrs Polly Boshielo dated 10 May 2016.
4.4.2.8 Email sent to the Speaker of the Provincial Legislature dated 13 May 2016.

4.4.2.9 Email from the Speaker of the Provincial Legislature, Mrs Polly Boshiero dated 15 May 2016.

4.4.2.10 Email to the Speaker of the Provincial Legislature, Mrs Polly Boshiero dated 14 June 2016.

4.4.2.11 Email received from the Speaker of the Provincial Legislature dated 14 June 2016.

4.4.2.12 Letter received from the Office of the Secretary, Mr Simon Motho, dated 22 June 2016.

4.4.2.13 Letter by email sent to Vodacom dated 30 May 2017.

4.4.2.14 Email received from Vodacom with copy of the itemised billing dated 30 May 2017.

4.4.2.15 Letter sent to Vodacom dated 31 May 2017.

4.4.2.16 Email received from Vodacom dated 31 May 2017.

4.4.2.17 Email sent to Vodacom dated 02 June 2017.

4.4.2.18 Email received from Vodacom dated 02 June 2017.

4.2.2.19 Email received from Vodacom dated 12 June 2017.

4.4.2.20 Email sent to the Office of the Secretary, Limpopo Legislature dated 13 June 2017.
4.4.2.21 Email sent to Vodacom dated 15 June 2017.

4.4.2.22 Email received from Vodacom dated 19 June 2017.

4.4.2.23 Letter sent to the Office of the Secretary, Limpopo Legislature dated 11 August 2017

4.4.2.24 Letter received from Office of the Speaker of the Provincial Legislature dated 04 September 2017.

4.4.3 Legislation and other prescripts

4.4.3.1 The Constitution.

4.4.3.2 The Public Protector Act.


4.4.3.4 Limpopo Legislature Member’s Benefits and Facilities Policy of 2014 (Policy).

4.4.4 The Deputy Speaker’s response to the Public Protector’s section 7(9)(a) notices

4.4.4.1 I issued two section 7(9)(a) notices to the Deputy Speaker dated 22 January 2018 and 08 May 2018.

4.4.4.2 With reference to the finding that the Deputy Speaker incurred a mobile telephone bill of up to R125 000.00 whilst on an official trip in the USA in August 2014, the Deputy Speaker responded as follows: “The information provided by Vodacom based on the monthly statement and their technical department is not
in dispute. However, there is an absence of analysis and interpretation of the figures as they appear on the statement of account. 

The conclusion on paragraph 7.2.1.10 that though the article alleged that the Deputy Speaker incurred the bill of R125 000, the investigation revealed that in fact he incurred a mobile telephone bill of R138 701.99 whilst on an official trip in the USA in August 2014 is incorrect. 

The R138 701.99 total figure is based on the phone usage for the entire month of August 2014 and inclusive of subscription services, roaming data usage, international roaming services, domestic data usage and VAT. 

A proper and accurate breakdown of the bill is essential to clear the distortions and wrong perceptions created by the newspaper article."

4.4.4.3 With regard to the finding that the amount he incurred was unreasonable in the circumstances, the Deputy Speaker responded as follows: “The notices acknowledges in paragraphs 7.2.2.14, 7.2.2.15, 7.2.2.16 and 7.2.2.17 that I have not exceeded any set limit and did not necessarily violate the applicable internal policy, however the investigation drew a conclusion that the phone bill was unreasonably too high based on incorrect analysis and interpretation of the statement of account. 

The investigation has ignored the submission of the Accounting Officer of the Legislature who stated that “we would also like to register the fact that it is not unusual to have the telephone bill going high, especially when members and/or officials are out of the country. This largely due to the roaming services and data usage” 

The comparison between my phone bill and three others colleagues who were part of the trip comes across as the only yardstick and non-existent benchmark used to determine unreasonableness yet ignoring the applicable prescript. I respectfully submit that this is unreasonable and unjustified”.

4.4.4.4 With regard to the Deputy Speaker’s response to the second section 7(9)(a) notice , the response was as follows: “I wish to record that my submission made on 22 February 2018 stands.
However, I wish to draw your attention to the following specific issues:
The capped amount of R6000 for domestic use in the policy has nothing whatsoever to do with international trips capping. I find the re-introduction of this issue at this stage of the investigation to justify a narrative of “extremely exorbitant and unreasonable” verdict regrettable as the issue was well clarified in the previous notice. The issue is clarified in paragraphs 3.2.2.13/14/15 of the same correspondence.

In the same paragraph, the issue of R100 031.45 was well clarified in my February correspondence in paragraph 2.1 (h) and 3.1(a). I wish to submit that whatever determination on whether the bill was exorbitant or unreasonable will be subjective one not supported by any benchmark except the comparison of the bills of colleagues who were part of the same trip. I also wish to record once more that the bills of the same colleagues were affected by the non-existence of the cap on data usage for international trips.

I have made a substantial submission in my 22 February correspondence in paragraph 4.2 regarding the above matter. Once more, I wish to record that the recovery of the portion of the costs incurred on an official trip as in this matter is not supported by any policy instrument. Furthermore, that indeed the Deputy Speaker is guilty of incurring an unreasonable bill the same verdict must apply to all Members who were affected of which you mentioned in your report. Similarly, the Secretary of the Legislature will be placed on an awkward position to determine a portion of the money to be recovered without the support of any policy or legal instruments but to use his personal opinion which could be legally challenged.

For the purpose of consistency and fairness, the Secretary of the Legislature will be obliged to recover monies from the affected persons in the institution before and after the 2014 incident and failure to do so will amount to a witch-hunt targeted at my person of which I reserve my right to challenge such a decision legally. I wish to record that despite the matter of the bill being reported in the
media, it is my strong view that the conclusion of the investigation that my conduct constitute improper conduct and maladministration is not supported by facts, unreasonable and unjustified.

The verdict which suggest that I violated the Constitution and FMPLA is equally not supported by facts and effectively unfair, unreasonable and unjustified.

I have now come to a full appreciation that there appears to be political undertones characterising this matter and therefore reserve my right to treat it as such going forward.”

4.4.4.5 With regard to the allegation that Ms Maite Toona was suspended as a result of querying the Deputy Speaker’s mobile telephone bill he responded as follows: “As per the conclusion of the notice/report in paragraph 8.3.1, I concur with the conclusion that such an allegation is unsubstantiated and therefore unfounded”

5. DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

5.1 Regarding whether the Deputy Speaker incurred an exorbitant or unreasonable mobile telephone bill whilst on an official trip in the USA in August 2014:

Common cause issues

5.1.1 It is common cause that an article was published in the City Press newspaper of 29 March 2015 alleging that the Deputy Speaker incurred a huge telephone bill of up to R125 000 whilst on an official trip in the USA in August 2014.

5.1.2 It is also common cause that the Deputy Speaker undertook an official trip to the USA in August 2014.
5.1.3 A detailed itemised billing was received from Vodacom indicating the following charges for the month of August 2014:

(a) Roaming in the USA-R19 719.41;
(b) Roaming data Usage-R99 880.66;
(c) Data services-150.79;
(d) Subscription Services-R1 917.55;
(e) VAT-R17 033.58; and
(f) Total-R138 701.99

5.1.4 The figures below illustrate the date, time and amount spent on the mobile telephone by the Deputy Speaker whilst in the USA:

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Amount</th>
</tr>
</thead>
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</tr>
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<tr>
<td>2014-08-19</td>
<td>02:08:23</td>
<td>5181440</td>
</tr>
<tr>
<td>Totals</td>
<td>1,967.323 MB</td>
<td></td>
</tr>
</tbody>
</table>

5.1.5 A request was made by my office to Vodacom Technical Department on 31 May 2017 for a detailed report on roaming data usage and specific sites visited on cell number xxxxxxxxx allocated to the Deputy Speaker in respect of the following sessions:

(a) 19 August 2014 at 02:08:23
(b) 20 August 2014 at 23:54:13
(c) 21 August 2014 at 00:08:41
(d) 22 August 2014 at 00:34:22
(e) 23 August 2014 at 01:35:46
(f) 24 August 2014 at 01:15:51

5.1.6 A response was received from Vodacom on 19 June 2017 indicating that the information requested could not be accessed as the Technical Department could only access information up to a period of the last six months.
5.1.7 The Deputy Speaker did not dispute the total bill for the month of August 2014 as provided by Vodacom and requested that my office should provide a breakdown of the bill.

5.1.8 A breakdown on the phone usage for the entire month of August 2014, inclusive of subscription services, roaming data usage, international roaming services, domestic data usage and VAT is provided for in paragraph 5.1.3 above.

5.1.9 The Legislature conceded in a letter dated 4 September 2017 that no other employee ever incurred such a huge bill before. When the Legislature discovered this anomaly they wrote to the Deputy Speaker expressing the intention to create a debt.

5.1.10 In his reply the Deputy Speaker asked that the matter be kept in abeyance pending my investigation. Both parties conceded that the bill was too high (own emphasis).

5.1.11 In his submission the Deputy Speaker has admitted and accepted the statement as provided by Vodacom, he however requested a breakdown of the statement.

5.1.12 In his further submission, the Deputy Speaker reiterated that the capped amount of R6000.00 for domestic use in the policy has nothing to do with international capping.

5.1.13 Further that a determination on whether the bill was exorbitant or unreasonable will be a subjective one not supported by any benchmark except the comparison of the bills of other colleagues who were part of the same trip.

5.1.14 The Deputy Speaker submitted that the recovery of the portion of the costs incurred on an official trip as it is in this matter is not supported by any policy instrument and that such recovery should apply to all members who were mentioned in the section 7(9)(a) notice.
Issues in dispute

5.1.15 The issue in dispute is whether the Deputy Speaker incurred an exorbitant or unreasonable mobile bill whilst on an official trip in the USA in August 2014?

5.1.16 A letter of enquiry into the matter was sent to the then Speaker of the Legislature, Hon M M Ramadwa, dated 21 September 2015. A response was received from the Acting Secretary of the Legislature, Mr Simon Mothoa, dated 08 October 2015.

5.1.17 In his response he indicated the following: "Whilst it is true that the Deputy Speaker embarked on an official trip to the USA in August 2014, it is incorrect, firstly that such amount was incurred while watching pornographic material. A substantial amount of the bill was towards data usage, but we deny categorically that such usage was as a result of watching pornographic material. We would also like to register the fact that it is not unusual to have the telephone bill going high, especially when Members and/or officials are out of the country. This is largely due to the roaming services and data usage."

Conclusion

5.1.18 Though the article alleged that the Deputy Speaker incurred the bill of R125 000 the investigation revealed that in fact he incurred a mobile telephone bill of R138 701.99 in August 2014.

5.1.19 The R138 701.99 is inclusive of subscription services, roaming data usage, international roaming services, domestic data usage and VAT. The total amount of data usage whilst in the USA was R100 031.45.

5.1.20 The Deputy Speaker's assertion that I have ignored the submission by the Accounting Officer of the Legislature is incorrect. Upon realising by the Limpopo
Provincial Legislature that the Deputy Speaker’s telephone bill was too high for the month of August 2014, the Acting Secretary of the Provincial Legislature, Mr Simon Mothoa wrote a letter to the Deputy Speaker dated the 19th June 2015 notifying him of the intention to create a debt. In the letter he indicated that the Deputy Speaker had exceeded his cell phone limit by R138 701.99 for the month of August 2014.

5.1.21 Upon receipt of the letter from the Acting Secretary, the Deputy Speaker wrote back through a letter dated 02 July 2015 to the Acting Secretary and indicated that the telephone bill was incurred while on official duty. He indicated however that in view of the ensuing investigation of the same matter by my office, the Limpopo Provincial Legislature should put the matter in abeyance until my investigation is concluded.

5.1.22 On 21 September 2015 my office wrote to the Limpopo Provincial Legislature raising the matter. The Acting Secretary of the Limpopo responded through a letter dated 8 October 2015 in which he indicated that it is not unusual to have the telephone bill going high, especially when members and/or officials are out of the country. He said this was largely due to roaming services and data usage.

5.1.23 However, the Acting Secretary of the Provincial Legislature in response to my letter of 21 September 2015 contradicted himself in a letter he wrote to the Deputy Speaker dated 19 June 2015 in which he informed the Deputy Speaker of the Legislature’s intention to create a debt.

5.1.24 It can therefore be concluded that the Legislature and the Deputy Speaker were at all material times aware that the bill was too high hence the intention to create the debt. The Acting Secretary seemed to have forgotten that he once wrote to the Deputy Speaker alerting him of the intention to create a debt in respect of his exorbitant or unreasonable bill of August 2014.
5.1.25 The Deputy Speaker’s assertion that his telephone bill was too high because of the incorrect analysis and interpretation of statement of account is not correct.

5.1.26 A comparison of the telephone bills of three other officials who undertook the same trip with him to the USA was done as illustrated in paragraph 5.2.5 below.

5.2 Regarding whether the amount spent by the Deputy Speaker on his mobile telephone bill was exorbitant or unreasonable in the circumstances:

Common cause issues

5.2.1 It is common cause that an article was published in the City Press newspaper of 29 March 2015 alleging that the Deputy Speaker incurred a huge telephone bill of up to R125 000 whilst on an official trip in the USA in August 2014.

5.2.2 It is also common cause that the Deputy Speaker undertook the official trip to the USA with three (3) other members of the Legislature.

5.2.3 The Legislature, upon receipt of the bill of the Deputy Speaker wanted to create a debt upon realising that the amount was too high. The Legislature immediately informed the Deputy Speaker of the anomaly through the letter dated the 19 June 2015.

5.2.4 In his response through a letter dated 2 July 2015, the Deputy Speaker did not dispute the said amount, but indicated that the telephone bill was incurred whilst on an official international trip to the USA and requested the Legislature to put the issue regarding the debt in abeyance pending my investigation.

5.2.5 A comparison of the usage of the data and telephone by members of the Legislature who travelled with the Deputy Speaker on the same trip to the USA was made and is broken down as follows:
(a) Deputy Speaker : R138 701.99;
(b) Member “A” : R25 214.36;
(c) Member “B” : R17 704.25; and
(d) Member “C” : R12 419

Application of relevant legal prescripts

5.2.6 Section 195(1) of the Constitution provides that “Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(a) A high standard of professional ethics must be promoted and maintained.

(b) Efficient economic and effective use of resources must be promoted”.

5.2.7 The Deputy Speaker was expected to exercise high standard of professional ethics and ensure that state resources were used efficiently and effectively when using his mobile telephone during his official international trip in the USA in 2014.

5.2.8 Section 11(1)(c) of the FMPPLA provides that:

“Every official who exercises financial management responsibilities must take all reasonable steps within that official’s area of responsibility to ensure

(ii) that the provincial legislatures financial and other resources are used effectively, efficiently, economically and transparently; and

(iii) that any fruitless and wasteful expenditure is prevented…”

5.2.9 It was expected of the Deputy Speaker to use the mobile telephone effectively, efficiently, transparently and economically during his trip.
5.2.10 Section 12(1) (a) of the FMPPLA provides that "...an official with responsibility under the act must act with fidelity, honesty, integrity and in the best interest of the provincial legislature in managing its financial affairs".

5.2.11 The Deputy Speaker should have acted in the best interest of the Provincial Legislature when he exercised the privilege of the telephone and data allowance.

5.2.12 The Legislature developed and adopted the Policy which regulates the mobile telephones and data expenses by members of the Legislature.

5.2.13 Section 6.5 of the Policy provides that the Legislature shall cover the mobile contract for a member. The monthly limits below reflect the combined mobile phone (voice), the mobile tablet and laptop (data) costs to be covered by the Legislature:

(a) Speaker : As per Ministerial Handbook  
(b) Deputy Speaker : Executive Package and 45Gig (R6000)  
(c) Chief Whip : Executive Package and 35Gig (R4600)  
(d) Leader of Opposition : Executive Package and 35Gig (R4600)  
(e) Chairperson of Committees : Executive Package and 35Gig (R4000)  
(f) Chairpersons of Committees : Executive Package and 25Gig (R4000)  
(g) Whip : Executive Package and 15Gig (R3600)  
(h) Member

5.2.14 Section 6.6 provides further that the Legislature shall cover the mobile phone and data expenses of a member incurred during an official international trip.

5.2.15 In terms of the Policy members have a capped amount for usage of telephone and gadgets, however it does not provide a capped amount when members travel abroad on official business which is susceptible to abuse.
5.2.16 Section 6.6 is silent on whether the capped amounts referred to in section 6.5 are applicable in section 6.6 when members incur mobile and data expenses during official international trips. This *lacuna* could lead to an abuse of the allowance by members of the Legislature.

*Conclusion*

5.2.17 It can be concluded that the Policy is silent on whether capped amounts referred to in section 6.5 are applicable in section 6.6 when members incur mobile and data expenses during official international trips.

5.2.18 However, the mobile telephone bill of R138 701.99, inclusive of subscription services, roaming data usage, international roaming services, domestic data usage and VAT incurred by the Deputy Speaker was exorbitant and or unreasonably too high as compared to other members of the Legislature who travelled with him on the same trip to the USA.

5.2.19 The mobile telephone bill incurred by the Deputy Speaker was in violation of the Constitution and the FMPPLA.

5.3 Regarding whether the Manager of the Legislature’s Supply Chain Management Unit, Ms Maite Toona, was suspended as a result of querying the Deputy Speaker’s mobile telephone bill:

*Common cause issues*

5.3.1 It is common cause that Ms Toona was employed by the Limpopo Legislature as Manager Supply Chain Management and was suspended by the Legislature with effect from February 2015 until 11 November 2016 when she signed a settlement agreement.
Issues in dispute

5.3.2 In dispute is whether Ms Toona was suspended after querying the huge telephone bill incurred by the Deputy Speaker.

5.3.3 My office made an enquiry with the Legislature. A letter was sent to the then Speaker of the Legislature, Honourable M M Ramadwa, dated 21 September 2015.

5.3.4 A response was received from the Acting Secretary of the Legislature, Mr Simon Mothoa, on 08 October 2015 indicating that the allegation that she was suspended because she queried the bill was unfounded. In his response the Acting Secretary indicated the following: “The allegation that Toona was suspended because of the fact that she questioned the bill is unfounded and without basis. From the advice received from our legal services section, Toona was suspended in February 2015, long after the invoice was settled pending further investigations into allegations of misconduct relating to contraventions of Supply Chain Management Policy and Treasury Regulations, which resulted in the Legislature incurring irregular expenditure as reflected in the Auditors Genera Report”

5.3.5 Several attempts were made to contact and interview Ms Toona until my investigation team found her on 01 August 2017. She confirmed that she was no longer working for the Legislature and wanted nothing to do with issues at the Legislature. She asked that my team should never contact her on any issue regarding the Legislature.

Conclusion

5.3.6 From the evidence gathered I cannot conclude that Ms Toona was suspended because she queried the bill of the Deputy Speaker. Ms Toona was afforded an opportunity to shed light on her suspension, but elected not to comment.
6. **FINDINGS**

6.1 Regarding whether the Deputy Speaker incurred an exorbitant or unreasonable mobile telephone bill whilst on an official trip in the USA in August 2014:

6.1.1 The allegation that the Deputy Speaker incurred an exorbitant or unreasonable mobile telephone bill whilst on an official trip in the USA in August 2014 is substantiated.

6.1.2 The actual total bill incurred for the month of August 2014 was R138 701.99 which was inclusive of subscription services, roaming data usage, international roaming services, domestic data usage and VAT.

6.1.3 The Deputy Speaker incurred a total amount of R100 031.45 on roaming data usage whilst in the USA in August 2014.

6.1.4 The Deputy Speaker violated section 195 of the Constitution and sections 11 and 12 of the FMPPLA which provide that financial resources must be used effectively, efficiently, transparently and economically.

6.1.5 The conduct of the Deputy Speaker constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

6.2 Regarding whether the amount spent by the Deputy Speaker on his mobile telephone bill was exorbitant or unreasonable in the circumstances:

6.2.1 The allegation that the amount spent by the Deputy Speaker whilst on an official trip to the USA was exorbitant or unreasonable is substantiated.
6.2.2 The amount spent by the Deputy Speaker was exorbitant or unreasonably high as compared to other members of the Legislature who travelled with him during the same trip to the USA. The Legislature, upon receipt of the bill, wanted to create a debt upon realising that the amount was too high. The Legislature immediately informed the Deputy Speaker of the anomaly through the letter dated the 19 June 2015.

6.2.3 Based on the above, the Deputy Speaker failed to exercise high standard of professional ethics and to ensure that state resources were used efficiently and effectively when using his mobile telephone during his official international trip in the USA in 2014 as contemplated in section 195 of the Constitution and sections 11 and 12 of the FMPPLA.

6.2.4 Section 6.6 of the Policy provides that the Legislature shall cover the mobile phone and data expenses of a member incurred during an official international trip. It, however, does not provide a capped amount when members travel abroad on official business which is susceptible to abuse.

6.2.5 The conduct of the Deputy Speaker constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

6.3 Regarding whether the Manager of the Limpopo Provincial Legislature’s Supply Chain Management Unit/Section, Ms Maite Toona, was suspended as a result of querying the Deputy Speaker’s telephone bill:

6.3.1 The allegation that Ms Toona was suspended as a result of querying the Deputy Speaker’s telephone bill is not substantiated. The Legislature informed my office that she was suspended for misconduct because she had violated Supply Chain and Treasury Regulations which resulted in the Legislature incurring irregular expenditure.
6.3.2 My office contacted Ms Toona with a view of obtaining reasons for her suspension but she elected not to cooperate.

6.3.3 There was no evidence to determine the improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

7. REMEDIAL ACTION

The remedial action I am taking in pursuit of section 182(1)(c) of the Constitution is the following:

7.1 The Speaker of the Legislature must, within 60 working days from the date of this report, ensure that the Legislature review section 6.5 and 6.6 of the Policy, specifically to provide for the total allowance on combined mobile telephone (voice), the mobile tablet and laptop (data) for members of the Legislature per official international trip; and

7.2 The Acting Secretary of the Legislature must, in consultation with the Speaker of the Legislature, take appropriate action and recover a reasonable portion of the amount spent from the Deputy Speaker incurred whilst in the USA, within 60 working days from the date of this report.

8. MONITORING

8.1 The Office of the Secretary of the Legislature must submit an implementation plan to my office within (thirty) 30 working days of receipt of this report on how the remedial action under paragraph 7 will be implemented.
8.2 My office shall monitor progress made in this regard quarterly.

ADV. BUSISWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 11/06/2018