
REPORT NO: 15 of 2019/20

"Allegations of maladministration regarding financial mismanagement, procurement and human resource irregularities by the independent communications authority of South Africa (ICASA)"

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION, PROCUREMENT AND HUMAN RESOURCES IRREGULARITIES BY THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA (ICASA)
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EXECUTIVE SUMMARY

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

(ii) The report communicates my findings and the appropriate remedial action to be taken in terms of the remedial power given by section 182 (1) (c) of the Constitution, following an investigation of complaint, received on 15 July 2016, in connection with maladministration relating to alleged financial mismanagement and irregular procurement levelled against certain officials of the Independent Communications Authority of South Africa (ICASA).

(iii) Section 195 of the Constitution provides, among others, a requirement 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...."

(iv) ICASA is listed as a Constitutional Institution in terms of Schedule 1 of the Public Finance Management Act 1 of 1999 (PFMA).

(v) The Council of ICASA is the highest decision making body for ICASA and consists of 8 (eight) members and a Chairperson. However, according to section 14(1)(a) and 15(2) of the Independent Communications Authority of South Africa Act, 13 of 2000 (ICASA Act), read with section 36(2) of the Public Finance Management Act, 1 of 1999 (PFMA), the Chief Executive Officer of ICASA is its Accounting Officer.

(vi) In essence, the complaints were specifically that:
1. ICASA improperly implemented 23% salary increases for its Executives without proper approval during 2016;

2. ICASA improperly implemented salary increases for its new employees without proper approval during 2016;

3. The Chief Executive Officer of ICASA (CEO) improperly arranged and paid an amount of R133 065.60 for the Regulator’s Strategic Session at the Fairway Hotel SPA and Golf Resort, and spent an additional amount of R20 410.00, during 15 to 17 April 2015, without following proper procurement processes and contrary to the ICASA Supply Chain Management Policy (ICASA SCM Policy) and the PFMA;

4. The CEO improperly arranged and paid an amount of R428 520.00 for the Strategic Session at the Bon Hotel, on 19 to 22 October 2015, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA;

5. The CEO improperly arranged and paid an amount of R14 250.00 for the Strategic Session by Service Line Production during 2015 without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA;

6. The CEO improperly arranged and paid an amount of R500 000.00 for the Strategic Session held in Centurion during 2016, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA;

7. The CEO irregularly spent R316 254.55 in Switzerland at Berne catering for 300 people during February 2016;

8. The Executive Human Resource (Executive HR), Ms Busi Mtsweni paid R700 000.00 for ICASA Value Launch Day during April/May 2016, without
following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA;

9. The Executive HR improperly procured Remunerations Consultants of South Africa for ICASA’s benchmarking and pay-scales reduction during June and July 2015 for the amount of R100 000.00 without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA; and

10. ICASA improperly procured I CAN Consulting for inspirational talk during May 2015 for the amount of R30 000.00 and Paradigm People Solutions in June/July 2015 for the amount of R30 000.00 respectively, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA.

11. The Complainant further alleged that the complaints were also submitted to the Council of ICASA for internal intervention, but no proper action was taken in that regard.

(vii) The following issues were identified in respect of each complaint with a view to focusing the investigation:

1. Whether ICASA improperly implemented 23% salary increases for the Executives without proper approval during 2016, and if so, whether such conduct constitutes maladministration

2. Whether ICASA improperly implemented salary increases for new employees without proper approval during 2016, if so, whether such conduct constitutes maladministration

3. Whether the CEO improperly arranged and paid an amount of R133 065.60 for the Regulator’s Strategic Session held at the Fairway Hotel SPA and Golf Resort and an additional amount of R20 410.00, during 15 to 17 April 2015, without
following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration

4. Whether the CEO improperly arranged and paid an amount of R428 520.00 for the Strategic Session at the Bon Hotel on 19 to 22 October 2015 without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct amounts to maladministration

5. Whether the CEO improperly arranged and paid an amount of R14 250.00 for the Strategic Session to Service Line Production during 2015, without following proper procurement processes and in violation of the ICASA SCM and the PFMA, and if so, whether such conduct constitutes maladministration

6. Whether the CEO improperly arranged and paid an amount of R500 000.00 for the Strategic Session held in Centurion during 2016, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration

7. Whether the CEO irregularly spent R316 254.55 in Switzerland at Berne catering for 300 people during February 2016 without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration

8. Whether ICASA improperly paid R700 000.00 for ICASA Value Launch Day during April/May 2016, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration

9. Whether ICASA improperly procured Remunerations Consultants South Africa for benchmarking and pay-scales reduction during June and July 2015 for the
amount of R100 000.00, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration.

10. Whether ICASA improperly procured I CAN Consulting for inspirational talk during May 2015 for the amount of R 30 000.00 and Paradigm People Solutions in June/July 2015 for the amount of R 30 000.00 respectively, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA; and if so, whether such conduct constitutes maladministration? and

11. Whether the Council of ICASA improperly failed to address the complaint of financial mismanagement by certain officials reported by the Complainant, and if so, whether such conduct constitutes improper conduct and maladministration.

(viii) The investigation included the sourcing and analysis of corporate documents pertaining to the impugned transactions, interviews and meetings with relevant witnesses and research into the regulatory framework, which includes the Constitution, relevant laws, Treasury Regulations and corporate policies of ICASA.

(ix) In arriving at the findings, I have been guided by the standard approach adopted by the Public Protector South Africa as an institution, which simply involves asking: What happened? What should have happened? Is there a discrepancy between what happened and what should have happened? If there is a discrepancy, does the conduct amount to improper conduct or maladministration? If there was indeed improper conduct or maladministration, what would be the appropriate remedial action?

(x) As is customary, the “what happened” enquiry is a factual question settled on the assessment of evidence and making a determination on a balance of probabilities. To arrive at a finding on what happened, the investigation, like all others, relied on oral and documentary submissions by the Complainant and certain Officials.
Interview/meeting primarily to clarify evidence already gathered, were previously held with the erstwhile Chief Executive Officer (CEO) of ICASA, Mr Pakamile Pongwana (former CEO). The question regarding what should have happened on the other hand, relates to the standard that the conduct in question should have complied with.

(xi) In determining the standard that ICASA and its Officials and other functionaries at should have complied with, to avoid improper conduct or maladministration, I was guided, as is customary, by the Constitution, national legislation, applicable policies and guidelines, including corporate policies and related regulatory instruments. Key among corporate policies that informed the investigation was the ICASA Procurement and Supply Chain Management Policy (ICASA SCM Policy) ICASA Performance Management and Development Policy (ICASA PMDS Policy) and ICASA Remuneration Policy as well as the Delegation of Authority corporate document. The approved ICASA SCM Policy is very comprehensive. It commences with defining the supply chain management process and its purposes.

(xii) The SCM Policy affirms and commits to uphold section 217 of the Constitution, setting the vision behind it and standards to be upheld in state procurement or Supply Chain Management (SCM) processes, which vision includes ensuring a fair, equitable, transparent, competitive and cost-effective public procurement system. The SCM Policy is based on Treasury Regulations regulating the procurement of goods and service. The policy also deals with the management of conflict of interest.

(xiii) The investigation was also guided by Human Resources policies, to the extent that some allegations involved the payment of salaries and bonuses to employees. In this regard section 195 of the Constitution, which sets the standard for all conduct in state affairs, was also relied on.

(xiv) The allegations were brought to the attention of ICASA management through the former CEO. All information and evidence gathered during interactions with ICASA management and the Complainant were considered and taken into account in
determining what happened, and if what happened was in line with the rules. Parties implicated by the evidence were sent notices in terms of section 7(9)(a) Notice of the Public Protector Act alerting them of evidence implicating them and the possibility of adverse findings being made against them. In all cases, responses were solicited and the affected parties were given the opportunity to provide information and to engage through meetings.

(xv) Information could not be received on time due the delay on the part of ICASA to provide same. The response only came when ICASA was informed of the Public Protector’s intentions to invoke the provisions of section 7(4)(a) Notice of the Public Protector Act.

(xvi) Section 181 enjoins organs of state to assist, and protect the Public Protector and other institutions supporting constitutional democracy to ensure their effectiveness, among other things.

(xvii) After careful examination of the evidence and information obtained during the investigation and the regulatory framework setting the standard that should have been upheld by ICASA, I make the following findings:

1. **Regarding whether ICASA improperly implemented a salary increase of 23% for Executives and other employees without proper approval during 2016, and if so, whether such conduct constitutes maladministration:**

   a) The allegation that ICASA improperly implemented a salary increase for Executives and other employees without proper approval during 2016, is not substantiated based on the evidence received.

   b) However, the allegation of improper payment of the additional 23% bonus amounting to R3 516 606.00 is substantiated.
c) ICASA’s payment of an additional 23% bonus to three hundred and eleven (311) employees was not in line with paragraph 6.8.8 of the Performance Management Policy and paragraph 7.2.3 of the Remuneration Policy, and was therefore improper based on the evidence received.

d) The conduct referred to herein above constitute maladministration as envisaged in section 6(5) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.

2. Regarding whether the CEO improperly arranged and paid an amount of R133 065.60 for the Regulatory Strategic Session at the Fairway Hotel SPA and Golf Resort and an additional amount of R20 410.00, during 15 to 17 April 2015, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration:

a) The allegation that the CEO improperly arranged and paid an amount of R133 065.60 for the Regulator’s Strategic Session at the Fair Hotel during 15 to 17 April 2015, in violation of the ICASA SCM Policy and the PFMA, is substantiated by the evidence received.

b) However, no evidence was received regarding the additional amount of R20 410.00, alleged by the Complainant.

c) The deviation process allegedly followed by ICASA was not motivated in line with the requirements of the provisions of ICASA SCM Policy and the National Treasury Practice Note described above.

d) The procurement of Fairway Hotel was not in line with paragraphs 2.2.8.2 and 2.2.9 of ICASA’s SCM Policy, paragraph 3.4.3 of the National Treasury Practice Note 8 of 2007/2008 and the relevant case law referred to above and was not
done in a fair, equitable, transparent, competitive and cost-effective manner based on evidence received.

e) The conduct referred to herein above constitute maladministration as envisaged in section 6(5) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.

3. **Regarding whether the CEO improperly arranged and paid an amount of R428 520.00 for the Strategic Session at the Bon Hotel on 19 to 22 October 2015, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct amounts to maladministration**

   a) The allegation that the CEO improperly arranged and paid an amount of R428 520.00 for the Strategic Session at the Bon Hotel on 19 to 22 October 2015, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, is substantiated by the evidence received.

   b) The evidence received indicates that Bon Hotel was not procured from a list of registered service providers from the ICASA’s Supplier Database and was also not procured on an emergency or sole supplier basis and therefore was not procured through a proper deviation process.

   c) The procurement of Bon Hotel was not in line with paragraphs 2.2.8.2 and 2.2.9 of ICASA’s SCM Policy, paragraph 3.4.3 of the National Treasury Practice Note 8 of 2007/2008 and the relevant case law referred to above and was not done in a fair, equitable, transparent, competitive and cost-effective manner based on evidence in my possession.

   d) The conduct referred to herein above constitute maladministration as envisaged in section 6(5) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.
4. Regarding whether the CEO improperly arranged and paid an amount of R14 250.00 for the Strategic Session by Service Line Production during 2015, without following proper procurement processes and in violation of the ICASA SCM policy and the PFMA, and if so, whether such conduct constitutes maladministration

   a) The allegation that the CEO improperly arranged and paid an amount of R14 250.00 for the Strategic Session by Service Line Production during 2015, without following proper procurement processes and in violation of the ICASA SCM and the PFMA, is substantiated by the evidence received.

   b) ICASA’s service provider, FCM procured Service Line Production through the sourcing of one quotation and such procurement may have not been in line with paragraphs 2.2.8.2 and 2.2.9 of the ICASA SCM Policy, paragraph 3.4.3 of the National Treasury Practice Note 8 of 2007/2008 and the relevant case law referred to above and was not done in a fair, equitable, transparent, competitive and cost-effective manner.

   c) The conduct referred to herein above constitute maladministration as envisaged in section 6(5) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.

5. Regarding whether the CEO improperly arranged and paid an amount of R500 000.00 for the Strategic Session held in Centurion during 2016, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration

   a) The allegation that the CEO improperly arranged and paid an amount of R500 000.00 for the Strategic Session during 2016, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, is substantiated by the evidence received.
b) The information outlined in paragraph 34 of the Notes to the Annual Financial Statements of ICASA’s Annual Report for the financial year ended 31 March 2017 and relating to fruitless and wasteful expenditure incurred by ICASA, indicates that accommodation for the amount of R507 612.00 for Management Strategy Session was procured without following SCM process during the 2016/2017 financial period.

c) The procurement concerned was not in line with paragraph 2.2.8.4 of the ICASA SCM Policy, paragraph 3.4.1 of the National Treasury Practice Note 8 of 2007/2008 and the relevant case law referred to above and was not done in a fair, equitable, transparent, competitive and cost-effective manner.

d) The conduct referred to herein above constitute maladministration as envisaged in section 6(5) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.

6. Regarding whether the CEO irregularly spent R316 254.55 in Switzerland at Berne catering for 300 people during February 2016, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration

a) The allegation that the CEO irregularly incurred expenditure in Switzerland, Berne catering for three hundred (300) people during February 2016, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, is substantiated by the evidence received.

b) The procurement of Ryards Catering for the amount of R311 756.33 through the sourcing of a single quotation was not in line with paragraph 2.2.8.2 of ICASA’s SCM Policy, paragraph 3.4.1 of the National Treasury Practice Note 8 of 2007/2008 and the relevant case law referred to above was not done in a fair, equitable, transparent, competitive and cost-effective manner.
c) The conduct referred to herein above constitute maladministration as envisaged in section 6(5) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.

7. Regarding whether ICASA paid R700 000.00 for the ICASA Value Launch Day during April/May 2016, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration

a) The allegation that ICASA paid an amount of R700 000.00 for the ICASA Value Launch Day during April/May 2016, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, is substantiated by the evidence received.

b) No competitive bidding process or a proper deviation process was followed and such conduct by ICASA was not in line with paragraphs 2.2.8.4, 2.2.8.9 and 2.2.9 of the SCM Policy and the Delegation of Authority as well as the National Treasury Regulation 16A.6.4.

c) Such procurement was also not in line with paragraph 3.4.1 of the National Treasury Practice Note 8 of 2007/2008 which deals with bids above the R500 000.00 thresholds and the relevant case law referred to above was not done in a fair, equitable, transparent, competitive and cost-effective manner based on evidence in my possession.

d) The conduct referred to herein above constitute maladministration as envisaged in section 6(5) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.
8. Regarding whether ICASA improperly procured Remuneration Consultants of South Africa for benchmarking and pay-scales reduction during June and July 2015 for the amount of R100 000.00, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration

a) The allegation that ICASA improperly procured Remuneration Consultants of South Africa for benchmarking and pay-scales reduction during June and July 2015, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, is substantiated by the evidence received.

b) Remuneration Consultants was procured by ICASA through the sourcing of a single quotation during July 2015 for the amount of R48 500.00 which was amended to R60 177.04, and not for R100 000.00 as alleged.

c) The procurement of Remuneration Consultants by ICASA through one quotation during July 2015 for the amount of R48 500.00, which was amended to R60 177.04, may have not been done in line with paragraph 2.2.8.2 of its SCM Policy and the relevant case law referred to above and has not been done in a fair, equitable, transparent, competitive and cost-effective manner based on evidence in my possession.

d) The conduct referred to herein above constitute maladministration as envisaged in section 6(5) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.
9. **Regarding whether the Council of ICASA failed to address the complaint of financial mismanagement by certain officials lodged by the Complainant, and if so, whether such constitutes improper conduct and maladministration?**

   a) The allegation that ICASA failed to address the complaint of financial mismanagement by certain officials, has not been denied by ICASA, and is therefore substantiated by the evidence received.

   b) The ICASA Council and CEO failed to comply with Treasury Regulation 16A9.1.

   c) The apparent failure by the ICASA Council and CEO to take action on the reported allegations of breach of the SCM Policy was not in line with the Treasury Regulation 16A9.1 (a) and (b) and paragraph 7.1.2 of ICASA SCM Policy, as well as sections 38 and 81 of the PFMA.

   d) The conduct referred to herein above constitute maladministration as envisaged in section 6(5) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.

   (xviii) The remedial action I take in terms of section 182(1) (c) of the Constitution is to require:

   (a) **The Minister of Communications to:**

   1) Take cognisance of the findings regarding the improper conduct and maladministration by ICASA relating to the irregularities mentioned in the report.

   2) Include in her oversight role as the government shareholder representative with regard to ICASA, the monitoring of the implementation of remedial action taken in pursuit of the findings in terms of powers conferred under section 182(1)(c) of the Constitution.
(b) The Chairperson of ICASA Council to ensure that:

1) The ICASA Council takes cognisance of the findings on maladministration and improper conduct referred to in this report.

2) The ICASA Council evaluates the effectiveness ICASA’s internal controls on the application of the SCM Policy, the Remuneration Policy and the Performance Management and Development Policy with a view to take corrective action to prevent a recurrence of the improprieties referred to in this report.

3) Institute civil proceedings against the former CEO ICASA for the recovery of expenses incurred irregularly due to his conduct in violation of the PFMA.

4) The ICASA’s EXCO, SCM Officials and Managers involved in procurement to attend a training course in Public Procurement.

5) REMCO’s Terms of Reference Strategy is amended to include a term for compulsory submission of pertinent recommendations made to ICASA Council through ICASA’s Legal Services Unit and the CEO prior to submission to ICASA Council for vetting and further advice.

6) Members of the ICASA Council to attend a training course on public finance management

7) Take appropriate action against officials who breach Policies to avoid a recurrence of the improprieties referred to in the report.

(c) The CEO of ICASA to:

1) Ensure that ICASA management team takes cognisance of the findings of maladministration and improper conduct referred to in this report.
2) Evaluates the effectiveness of ICASA’s internal controls and systems on the application of the SCM Policy, the Remuneration Policy and the Performance Management and Development Policy with a view to take corrective action to prevent a recurrence of the improprieties referred to in this report.

3) Ensure that ICASA EXCO, SCM Officials and Managers and Officials involved in procurement attend a training course Public Procurement to prevent a recurrence of the improprieties referred to in this report.

4) Assists the Council to review the REMCO’s Terms of Reference Strategy to amend it to include a term for compulsory submission of the pertinent recommendations made to A Council through Legal Services Unit and the CEO prior to submission to Council for vetting and further advice.

(d) The Offices of the Chief Procurement Officer of the National Treasury and the Auditor-General to:

1) Take cognisance of the findings on the irregularities and remedial action mentioned in the report.

(e) The Director of Priority Crimes Investigation (DPCI) to:

1) Investigate criminal conduct against implicated officials for financial mismanagement in violation of the PFMA.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION RELATING TO FINANCIAL MISMANAGEMENT CONFLICT OF INTEREST AS WELL AS PROCUREMENT AND HUMAN RESOURCES IRREGULARITIES AGAINST THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA (ICASA)

1. INTRODUCTION

1.1 This is the report of the Public Protector 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, 1994 (the Public Protector Act).

1.2 It is submitted to:

1.2.1 The Minister of Communications; MS Stella Ndabeni-Abrahams
1.2.2 The Acting Chairperson of ICASA, Dr Keabetswe Modimoeng;
1.2.3 The CEO of ICASA, Mr Willington Ngwepe; and
1.2.4 Former CEO of ICASA, Mr Pakamile Pongwana.

1.3 Copies of the report are provided, in terms of section 8(3), to:

1.3.1 The Complainant;
1.3.2 The Auditor General of South Africa, Mr Kimi Makwetu; and
1.3.3 The Acting Chief Procurement Officer: National Treasury, Mr Willie Mathebula.

1.4 The report relates to an investigation into a complaint, lodged by an anonymous complainant (Complainant) on 15 July 2016, in connection with maladministration relating to alleged financial mismanagement and irregular procurement levelled against certain officials of the Independent Communications Authority of South Africa (ICASA).
1.5 The ICASA Council is the highest decision making body of the Authority and consists of eight members and the Chairperson.

1.6 According to section 14(1)(a) and 15(2) of the Independent Communications Authority of South Africa Act, 13 of 2000 (ICASA Act), read with section 36(2) of the Public Finance Management Act, 1 of 1999 (PFMA), the Chief Executive Officer of ICASA is its Accounting Officer.

2. THE COMPLAINT

2.1 In essence, the complaints levelled against ICASA management, in particular its current and erstwhile Chief Executive Officers, pertain to the allegations that:

2.1.1 ICASA improperly implemented 23% salary increases for its Executives without proper approval during 2016;

2.1.2 ICASA improperly implemented salary increases for its new employees without proper approval during 2016;

2.1.3 The Chief Executive Officer of ICASA (CEO) improperly arranged and paid an amount of R133 065.60 for the Regulator’s Strategic Session at the Fairway Hotel SPA and Golf Resort, and spent an additional amount of R20 410.00, during 15 to 17 April 2015, without following proper procurement processes, and contrary to the Supply Chain Management Policy (ICASA SCM Policy) and the PFMA;

2.1.4 The CEO improperly arranged and paid an amount of R428 520.00 for the Strategic Session at the Bon Hotel, on 19 to 22 October 2015, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA;
2.1.5 The CEO improperly arranged and paid an amount of R14 250.00 for the Strategic Session by Service Line Production during 2015 without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA;

2.1.6 The CEO improperly arranged and paid an amount of R500 000.00 for the Strategic Session held in Centurion during 2016, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA;

2.1.7 The CEO irregularly spent R316 254.55 in Switzerland at Berne catering for 300 people during February 2016;

2.1.8 The Executive Human Resource (Executive HR), Ms Busi Mtsweni paid R700 000.00 for ICASA Value Launch Day during April/May 2016, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA;

2.1.9 The Executive HR improperly procured Remunerations Consultants of South Africa for ICASA’s benchmarking and pay-scales reduction during June and July 2015 for the amount of R100 000.00 without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA; and

2.1.10 ICASA improperly procured I CAN Consulting for inspirational talk during May 2015 for the amount of R30 000.00 and Paradigm People Solutions in June/July 2015 for the amount of R30 000.00 respectively, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA.

2.1.11 The Complainant further alleged that the complaints were also submitted to the Council of ICASA for internal intervention, but no proper action was taken in that regard.
2.2 The complaints were lodged in terms of the provisions of section 182 of the Constitution and section 6(5) of the Public Protector Act.

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) of the Constitution provides:

> "The Public Protector has the power as regulated by national legislation-

(a) 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;

(b) to report on that conduct; and

(c) to take appropriate remedial action".

3.3 Section 182(2) of the Constitution directs that the Public Protector has additional powers and functions prescribed by legislation.

3.4 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and abuse or unjustifiable exercise of power in the conduct of state affairs.

3.5 Section 6(5) (a) and (b) of the Public Protector Act specifically empowers the Public Protector to investigate any maladministration in connection with the affairs of any public entity as defined in section 1 of the PFMA.
3.6 The Public Protector’s powers are regulated and amplified by the Public Protector Act, 23 of 1994 which states, among others, that the Public Protector has the power to investigate and redress maladministration and related improprieties in the conduct of state affairs.

3.7 ICASA is a schedule 1 state-owned entity and its conduct falls within the jurisdiction of the Public Protector.

3.8 Regarding the exercise of my discretion in terms of section 6(9) to entertain matters which arose more than two (2) years from the occurrence of the incident, and in deciding what constitute ‘special circumstances’, some of the special circumstances that I took into account to exercise my discretion favourably to accept this complaint, includes the nature of the complaint and the seriousness of the allegations; whether the outcome could rectify systemic problems in state administration; whether I would be able to successfully investigate the matter with due consideration to the availability of evidence and/or records relating to the incident(s); whether there are any competent alternative remedies available to the Complainants and the overall impact of the investigation; whether the prejudice suffered by the complainants persists; whether my refusal to investigate perpetuates the violation of section 195 of Constitution; whether my remedial action will redress the imbalances of the past. What constitute ‘special circumstances’ depends on the merits of each case.

3.9

4. THE INVESTIGATION

4.1 The Investigation Process

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 conduct a preliminary investigation for the purpose of determining the merits of the complaint, allegation or information received.

4.1.3 A preliminary investigation was conducted in terms of section 7(1)(a) of the Public Protector Act, to determine the merits of the complaints and allegations raised, and to establish whether any action was taken by ICASA pursuant to the alleged earlier submission of the relevant complaints.

4.1.4 A formal investigation was subsequently conducted through the exchange of correspondence and telephonic conversations with the relevant officials of ICASA, and the inspection and perusal of the relevant documents as well as the analysis and application of the relevant laws, policies and related prescripts.

4.2 Approach to the investigation

4.2.1 Like every Public Protector investigation, 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 amounts 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?

4.2.1.5 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, the factual enquiry principally focused on whether or not the Accounting Authority /Officer of ICASA acted improperly.

4.2.1.6 The sources of evidence principally included institutional documents such as bid documents, memoranda, minutes and copies of correspondence, ICASA management, including the erstwhile CEO and other officials of ICASA. Evidence was evaluated and a determination made on what happened based on a balance of probabilities.

4.2.1.7 In the Public Protector versus Mail and Guardian, 2011(4) SA 420 (SCA), the Supreme Court of Appeal (SCA) made it clear that it is the Public Protector’s duty to actively search for the truth and not to wait for parties to provide all of the evidence as judicial officers do.

4.2.1.8 However, the Public Protector was hampered in this investigation by the delay of ICASA in providing the required information.

4.2.1.9 The enquiry regarding what should have happened, focused on the law or rules that regulate the standard that should have been complied with by ICASA management to prevent maladministration and prejudice. In this case, key reliance was placed on ICASA’s comprehensive Supply Chain Management Policy (ICASA SCM Policy), the Performance Management Development Policy (ICASA PMDS Policy) and the Remuneration Policy, in addition to national laws, policies and guidelines. The Public Protector’s institutional touchstones, being principles from previous reports, were also taken into account.

4.2.1.10 The enquiry regarding remedial or corrective action seeks to explore options for redressing the consequences of maladministration or improper conduct. Where a Complainant has suffered prejudice, the idea is to place him or her as close as possible to where he/she would have been had the organ of state complied with the regulatory framework setting the applicable standards for good administration.
4.2.1.11 In the case of conduct failure as was the case in the current matter, remedial action sought to right or correct identified wrongs while addressing any systemic administrative deficiencies that could be enabling or exacerbating identified maladministration or improper conduct.

4.2.1.12 Jurisprudence and touchstones from previous Public Protector Reports were also considered and applied.

4.2.1.13 The substantive scope of the investigation focused on compliance with the law and prescripts regarding the awarding of tenders/contracts, financial managements and performance management and reward as well as generally accepted accountability practices for the period alleged in the complaints.

4.2.1.14 As a result of lack of sufficient resources and the difficulty in obtaining the requested information and evidence timeously, it was not possible to finalise the investigation earlier.

4.3 Having analysed the complaints, the following issues were considered and investigated:

4.3.1 Whether ICASA improperly implemented 23% salary increases for the Executives without proper approval during 2016, and if so, whether such conduct constitutes maladministration

4.3.2 Whether ICASA improperly implemented salary increases for new employees without proper approval during 2016, if so, whether such conduct constitutes maladministration

4.3.3 Whether the CEO improperly arranged and paid an amount of R133 065.60 for the Regulator’s Strategic Session held at the Fairway Hotel SPA and Golf Resort and
an additional amount of R20 410.00, during 15 to 17 April 2015, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration

4.3.4 Whether the CEO improperly arranged and paid an amount of R428 520.00 for the Strategic Session at the Bon Hotel on 19 to 22 October 2015 without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct amounts to maladministration

4.3.5 Whether the CEO improperly arranged and paid an amount of R14 250.00 for the Strategic Session to Service Line Production during 2015, without following proper procurement processes and in violation of the ICASA SCM and the PFMA, and if so, whether such conduct constitutes maladministration

4.3.6 Whether the CEO improperly arranged and paid an amount of R500 000.00 for the Strategic Session held in Centurion during 2016, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration

4.3.7 Whether the CEO irregularly spent R316 254.55 in Switzerland at Berne catering for 300 people during February 2016 without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration

4.3.8 Whether ICASA improperly paid R700 000.00 for ICASA Value Launch Day during April/May 2016, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration

4.3.9 Whether ICASA improperly procured Remunerations Consultants South Africa for benchmarking and pay-scales reduction during June and July 2015 for the amount
of R100 000.00, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration

4.3.10 Whether ICASA improperly procured ICAN Consulting for inspirational talk during May 2015 for the amount of R 30 000.00 and Paradigm People Solutions in June/July 2015 for the amount of R 30 000.00 respectively, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA; and if so, whether such conduct constitutes maladministration; and

4.3.11 Whether the Council of ICASA improperly failed to address the complaint of financial mismanagement by certain officials reported by the Complainant, and if so, whether such conduct constitutes improper conduct and maladministration.

4.4 Key Sources of information

4.4.1 Documents considered

4.4.1.1 Minutes of the ICASA Council Meeting, dated 03 September 2015;

4.4.1.2 Minutes of an ordinary Council meeting on Salary Increases, dated 19 September 2017;

4.4.1.3 Human Resources Management (HRM) presentation to REMCO on 07 August 2015 and to ICASA Council on 03 September 2015, titled “proposed ICASA 2015/2016 pay scales and salary increase methodology on: the updating of ICASA pay scales and actions to manage guaranteed pay anomalies and annual increase allocation methodology”;

4.4.1.4 REMCO’s Terms of Reference dated 26 May 2015;
4.4.1.5 Council Submission to REMCO regarding approval of the 2015/2016 performance bonus;

4.4.1.6 Annual Financial Statements of ICASA’s Annual Report for the financial year ended 31 March 2017;

4.4.1.7 ICASA’s Remuneration Policy dated 31 March 2015;

4.4.1.8 ICASA’s Performance Management Development Policy (PMDP) dated 31 March 2015;

4.4.1.9 Feedback on REMCO’s resolution on the proposal to revise the 2015/2016 bonus payment methodology;

4.4.1.10 Extract from Council Minutes of a meeting of 19 September 2017;

4.4.1.11 Invoice and contract for the appointment of Fairway Hotel SPA and Golf Resort (Fairway Hotel) for the amount of R133 065.60, for the Regulator’s Strategic Session of ICASA held from 15 to 17 April 2015;

4.4.1.12 ICASA’s Purchase Order, Number 15000037 (Fairway Hotel) dated 14 April 2015;

4.4.1.13 Service Agreement (Fairway Hotel) dated 30 March 2015;

4.4.1.14 Invoice in respect of the Fairway Hotel dated 31 March 2015;

4.4.1.15 ICASA’s proof of payment dated 16 April 2015;

4.4.1.16 Purchase Order for the amount of R133 065.60 dated 13 April 2015;

4.4.1.17 Service Contract (Contract) from Fairway Hotel dated 28 March 2015;
4.4.1.18 Contract from Bon Hotel dated 06 October 2015;

4.4.1.19 ICASA’s Deviation from Procurement Process Approval Form (Deviation Form), dated 26 October 2015;

4.4.1.20 Group and Conference Contract from Bon Hotel signed on 06 October 2015;

4.4.1.21 The Bon Hotel Tax Invoice for the amount of R268 050.00 approved and paid by ICASA’s Finance Section on 12 October 2015;

4.4.1.22 The Quotation dated 06 October 2015;

4.4.1.23 Deviation Form dated 26 October 2015;

4.4.1.24 ICASA’s Supplier Database;

4.4.1.25 Service Line Productions’ Tax Invoice for the amount of R14 250.00 approved and settled by ICASA on 04 May 2015;

4.4.1.26 The Purchase Order dated 04 May 2015;

4.4.1.27 Tax Invoice from Serious Fun Factory;

4.4.1.28 Synergy Deviation Form dated 08 February 2016;

4.4.1.29 Quotation for Values Launch dated 08 April 2016;

4.4.1.30 Tax Invoice Glenburn Lodge dated 03 November 2016;
4.4.1.31 Request from the Department of Telecommunications and Postal Services (DTPS), dated 11 February 2016;

4.4.1.32 The voucher Journal Report dated 17 May 2016;

4.4.1.33 The ICASA Travel Requisition Order no. 2827 dated 08 April 2016;

4.4.1.34 Minutes of the Executive Committee Meeting (EXCO) of 30 September 2015;
4.4.1.35 ICASA’s internal email correspondence of 07 April 2016;
4.4.1.36 ICASA’s final costing for Values Event issued on 25 April 2016;
4.4.1.37 The Deviation Form dated 02 July 2015;
4.4.1.38 A submission compiled by the Executive: Human Resources (Executive HR), on 02 July 2015, recommended by the SCM Manager and approved by then Acting CFO, Mr Michael, on 03 July 2015;

4.4.1.39 Letter to DTPS on Switzerland Catering dated 12 February 2016;
4.4.1.40 Revised ICASA Remuneration Policy of 2018; and
4.4.1.41 Appointment Letter of Ms Jacobs dated 27 May 2015.

Meetings and Interviews conducted

4.4.2 An interview was held with the erstwhile CEO of ICASA, Mr Pakamile Pongwana on 19 March 2019.

4.5 Correspondence sent and received

4.5.1 Letter dated 26 February 2018 from the Public Protector to Mr Paris Mashile, former Chairperson of ICASA Council;

4.5.2 Letter to Mr Willington Ngwepe, CEO of ICASA dated 22 August 2018;
Notices issued in terms of section 7(9)(a) of the Public Protector Act, 1994, to:

4.5.3 Mr Willington Ngwepe, CEO of ICASA, dated 07 March 2019; and

4.5.4 Mr Pakamile Pongwana, erstwhile CEO of ICASA.

Responses received to notices issued in terms of section 7(9)(a) of the Public Protector Act, 1994, from:

4.5.5 Mr Pakamile Pongwana, erstwhile CEO of ICASA, dated 18 March 2019;

4.5.6 Mimecast response from ICASA, received on 03 April 2019 containing 17 documents.

4.6 Legislation and other prescripts

4.6.1 Acts

4.6.1.1 The Constitution of the Republic of South Africa, 1996;

4.6.1.2 The Public Protector Act, 1994;

4.6.1.3 The Public Finance Management Act, 1999; and


4.6.2 Regulations

4.6.2.1 National Treasury Regulations, 2005 issued in terms of the PFMA.

4.6.2.2 National Treasury Practice Note 8 of 2007/2008;

4.6.3 Policies
4.6.3.1 The Supply Chain Management Policy of ICASA, dated April 2013;
4.6.3.2 The Supply Chain Management Policy of ICASA, dated July 2015;
4.6.3.3 Performance Management Development Policy of ICASA, dated 31 March 2015;
4.6.3.4 Remuneration Policy of ICASA, dated 31 March 2015; and
4.6.3.5 Revised ICASA Remuneration Policy of 2018.

4.6.4 National Guidelines

4.6.4.1 National Treasury SCM Guidelines issued in February 2004.

4.6.5 Applicable case law

4.6.5.1 Allpay Consolidated Investment Holdings (PTY) Ltd v Chief Executive Officer of the South African Social Security Agency (No 1) (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC);

4.6.5.2 Allpay Consolidated Investment Holdings (PTY)Ltd v Chief Executive Officer of the South African Social Security Agency (No 1) (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC); and

4.6.5.3 Khumalo and Another v Member of the Executive Council for Education: Kwa-Zulu Natal (CCT 10/13) [2013] ZACC 49.

4.6.6 Touch stones from previous Public Protector Reports:

4.6.6.1 “Against the Rules Too”, Report No.33 of 2010/2011 (Volume 2); and

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

5.1 EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION

5.1.1 Regarding whether ICASA improperly implemented 23% salary increases for Executives and other employees without proper approval during 2016, and if so, whether such conduct constitutes maladministration:

5.1.1.1 The two issues relating to the payment of salary increases to Executives and other employees of ICASA have been intertwined as articulated above and are being dealt with below as one issue due to their interrelated nature.

Common cause issues

5.1.1.2 It is common cause that ICASA implemented salary increases for Executives and other employees during 2015/2016 financial year.

Issues in dispute

5.1.1.3 The complainant alleged that ICASA improperly implemented a 23% salary increase for its Executives and new employees without proper approval.

5.1.1.4 The issues for my determination was whether ICASA implemented and paid 23% salary increases to its Executives and other employees during 2015/2016 financial year without proper approval by ICASA Council, and if so, whether such payment was improper.

5.1.1.5 ICASA denied the allegations. In a response dated 31 July 2018, during his tenure as ICASA’s Chief Operations Officer (COO) and currently Chief Executive Officer
(CEO) of ICASA, the CEO, Mr Ngwepe asserted that ICASA’s Remuneration Committee (REMCO), a governance body established in terms of section 17 of the ICASA Act, 2000 (ICASA Act) and the King IV, recommended the salary increases to the Council (ICASA Council) for approval.

5.1.1.6 Minutes of the ICASA Council Meeting, dated 03 September 2015 affirms at item number 10 of the agenda that the 2015/16 pay scales and salary increase allocation was first presented by the Human Resources Management (HRM) to REMCO on 07 August 2015 and to ICASA Council on 03 September 2015, and for Council to approve the “proposed ICASA 2015/2016 pay scales and salary increase methodology on: the updating of ICASA pay scales and actions to manage guaranteed pay anomalies and annual increase allocation methodology”.

5.1.1.7 According to REMCO’s Terms of Reference, dated 26 May 2015, REMCO’s responsibility was, amongst others, to ensure that the remuneration of ICASA employees was based on legislation and was market related, and to provide recommendations to ICASA Council on specific remuneration packages for ICASA employees at all levels.

5.1.1.8 It is noted from the Minutes of ICASA Council Meeting, dated 03 September 2015, that the Council approved the salary increase for 2015/2016 financial period for ICASA employees at “50th percentile, scenario 2”, and approved that a claw-back allowance be introduced for employees that were paid above the maximum of the pay scales, as recommended by REMCO.

5.1.1.9 The erstwhile CEO asserted in his response to Section 7(9)(a) Notice that the employees were on strike protesting against, amongst others, the salary claw back and the proposal by REMCO was finally approved by the Council. The erstwhile CEO alleged to have instituted disciplinary actions against improper payment of salaries and bonuses but such actions were opposed by Council.
5.1.1.10 The allegation of 23% salary increase payment was therefore not supported by the evidence received, as no clear indication of percentage of the approved scales was indicated in the evidence received by the investigation team.

5.1.1.11 However, I have obtained information, outlined in paragraph 33 of the Notes to the Annual Financial Statements of ICASA’s Annual Report for the financial year ended 31 March 2017, relating to fruitless and wasteful expenditure incurred by, which indicates that an additional 23% bonus amounting to R3 516 606.00 was improperly paid to three hundred and eleven (311) employees and was not in line with ICASA’s Remuneration Policy, as it was based on the previous financial period of performance for the 2015/2016 financial year.

5.1.1.12 According to an Extract from the Council Minutes, dated 19 September 2017, received in response to the Section 7(9)(a) Notice, par 7 provides that feedback on REMCO resolution on the proposal to revise the 2015/2016 bonus payment methodology. The purpose of this submission is to share with Council REMCOs resolution on the 2015/16 bonus payment methodology.

5.1.1.13 The following facts were noted: the recommendation by REMCO that bonus payment for the overall organisational performance be limited to 76% was rejected by the Council which approved a 100% performance bonus payment, to the extent that the balance of 24% for 2015/2016 financial period be payable with immediate effect. REMCO’s resolution on the proposal to revise the 2015/2016 bonus payment methodology was rejected and Council resolved to effect payment of the difference of 76.3, which was 23.7% for the 2015/2016 bonus payment.

5.1.1.14 Further evidence indicates that performance management bonus amounting to R731 880.00 was paid during the 2016/2017 financial year to fifty six (56) employees who ordinarily would not have received performance bonuses, as per ICASA’s Performance Management Development Policy (PMDP).
5.1.1.15 The information further indicates that salary increases amounting to R1 124 057.00 were improperly paid to fifty six (56) employees who ordinarily would not have received an increase, as per the ICASA Remuneration Policy.

5.1.1.16 According to Council Submission to REMCO, prepared by Mr Tom Tleane: Acting Senior Manager: Office of the Chairperson and recommended by Acting Chairperson, Councillor Rubben Mohlaloga, provides in paragraph 3 that a proposal that the approved 2015/2016 performance bonus calculations be considered for review was in line with 2015/2016 organisational performance target that was set and approved on the annual performance plan (APP) as follows: 2015/2016: percentage of organisational performance: 50%.

5.1.1.17 It was however noted in par 3.2 that paying 100% bonuses when the organisation had not attained 100% of its strategic objectives would be detrimental as it would not be based on the actual performance, it was a deviation from the approved performance Management Development Policy and the approach was not aligned to best practice based on organisational reward based on actual achieved performance.

5.1.1.18 I have noted from the evidence received that the ICASA Council approved immediate payment of bonuses at 100% bonus payment for 2015/2016 contrary to the recommendation by REMCO that it be paid at 76.7% and that Council approved payment of 23.3% variance (R3,475,537.70) from the 76.7%.

5.1.1.19 The financial implications for bonus payment at 76.7% was R10, 821,083,38 while at 100% was R14,296,621.58.

Applicable legal framework

5.1.1.20 ICASA Remuneration Policy, dated 31 March 2015, provides in paragraph 7.2.2 that a competent and experienced employee who meets the requirements of the
specific job description may be compensated on median market rates (50th percentile).

5.1.1.21 However, paragraph 7.2.3 provides that an employee's pay position within the pay scale concerned is determined by factors such as tenure within the job and the individual's performance.

5.1.1.22 The ICASA Performance Management Policy, dated 31 March 2015, provides in paragraph 6.8.8 that employees may qualify for a performance bonus or salary increase according to performance score as approved by the Organisational Moderation Committee.

5.1.1.23 A further 23% payment of bonuses, which is out of proportion with the predetermined percentage in terms of the ICASA Performance Management Policy, outlined below, was approved by the Council and not the Organisational Moderation Committee, and against the recommendations of REMCO as stated above.

5.1.1.24 Paragraph 6.8.8 further indicates that the reward pay-out for outstanding performance should have been computed as outlined in the table below:

<table>
<thead>
<tr>
<th>Overall Performance Score obtained</th>
<th>Performance bonus pay-out percentage %</th>
<th>Applicable Salary Increase effective from 1 April (Commencement of the financial year)</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.50 – 5.00</td>
<td>16% of all inclusive package</td>
<td>CPI+2 of all inclusive package</td>
</tr>
<tr>
<td>400 – 4.49</td>
<td>13% of all inclusive package</td>
<td>CPI+1.5 of all inclusive package</td>
</tr>
</tbody>
</table>
3.50 – 3.99 | 10% of all inclusive package | CPI+1 of all inclusive package
3.10 – 3.49 | 5% of all inclusive package | CPI+0.5 of all inclusive package

**Conclusion**

5.1.1.25 The Payment of the additional 23% bonus amounting to R3 516 606.00 paid to 311 employees was not in line with paragraph 6.8.8 of the Performance Management Policy and paragraph 7.2.3 of the Remuneration Policy, and therefore was improper based on evidence received.

5.1.1.26 Such conducts are reminiscent of the fruitless, wasteful and/or irregular expenditure incurred by ICASA on salaries and bonuses of its employees during the financial periods referred to above.

5.1.2 Regarding whether the CEO improperly arranged and paid an amount of R133 065.60 for the Regulator’s Strategic Session at the Fairway Hotel SPA and Golf Resort and an additional amount of R20 410.00, during 15 to 17 April 2015, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration:

**Common cause issues**

5.1.2.1 It is common cause that the CEO signed the invoice and contract for the appointment of Fairway Hotel SPA and Golf Resort (Fairway Hotel) for the amount of R133 065.60, for the Regulator’s Strategic Session held from 15 to 17 April 2015.
Issues in dispute

5.1.2.2 The complainant alleged that the procurement of Fairway Hotel, for a workshop by the former CEO did not follow a proper procurement process.

5.1.2.3 The issue for my determination was whether the procurement of Fairway Hotel for the Regulator’s Strategic Session was not done in accordance with the SCM Policy and was improper.

5.1.2.4 The CEO denied the allegation and asserted in his response, that proper procurement processes in terms of the SCM Policy, were followed.

5.1.2.5 The CEO further asserted that the quotation regarding the relevant procurement was sourced by ICASA’s Travel Agent, FCM and approved by the former CEO, Mr Pakamile Pongwana (former CEO).

5.1.2.6 ICASA’s Purchase Order, Number 15000037, dated 14 April 2015, the Service Agreement, dated 30 March 2015 and the Invoice in respect of the Fairway Hotel, dated 31 March 2015, affirm that the service was procured for the amount of R133 065.60, which was authorised by the CEO and paid to the Fairway Hotel.

5.1.2.7 However, I have noted that no information was submitted on the additional payment of the amount of R20 410.00, as alleged by the Complainant.

5.1.2.8 ICASA’s internal email correspondence obtained during the investigation indicates that the relevant amount of R133 065.60 for the workshop concerned was budgeted for under code 1400.83300.

5.1.2.9 The evidence received indicates that only one quotation was provided regarding the Strategic Session referred to above, which was held on 15 to 17 April 2015.
Supply Chain Management Policy of ICASA

5.1.2.17 The Supply Chain Management Policy of ICASA (ICASA SCM Policy) provides in paragraphs 2.2.8.2 that procurements above the transaction value between R10 000.00 and R30 000.00 (vat inclusive) require three (3) written quotations from the list of suppliers registered in ICASA’s Supplier Database and procurements of the transaction value between R30 000.00 and R500 000.00 (vat inclusive) require three (3) or more written quotations from the list of suppliers registered in ICASA’s Supplier Database.

Deviation from procurement in terms of ICASA SCM Policy

5.1.2.18 Paragraph 2.2.8.9 of the ICASA SCM Policy describes urgent and emergency cases as, if early delivery is of practical importance and the invitation of bids is impossible or impractical and where immediate action is necessary to avoid a dangerous or risky situation or misery. It however precludes a lack of proper planning from constituting an urgent case.

5.1.2.19 According to paragraph 2.2.9 of the ICASA SCM Policy, deviation from the procurement process in terms of Treasury Regulation 16A.6.4 must be sufficiently motivated and justified for approval by the CEO/BAC within the Delegated Authority. Reasons for deviation should be recorded and approved by the CEO or BAC (procurements above R500 000.00).

5.1.2.20 In cases of emergency and in the best interest to ICASA, submissions should include time scales applicable at the time of action, attempts to obtain prior authorisation and compliance with conditions and price analysis in comparison with normal prices.
5.1.2.21 The National Treasury Regulation 16A6.4 also provides conditions for procurement by other means, such as price quotations or negotiations.

**National Treasury Practice Note 8 of 2007/2008**

5.1.2.22 Paragraph 3.4.3 of the National Treasury Practice Note 8 of 2007/2008 deals with the issue of urgency or emergency situations and provides that should it be impractical to invite competitive bids for specific procurement, e.g. in urgent or emergency cases or in case of a sole supplier, the Accounting Officer / Authority may procure the required goods or services by other means, such as price quotations or negotiations in accordance with Treasury Regulation 16A6.4. The reasons for deviating from inviting competitive bids should be recorded and approved by the Accounting Officer / Authority or his / her delegate.

*Applicable case law*

5.1.2.23 In his judgment delivered on 29 November 2013, in the case of **Allpay Consolidated Investment Holdings (PTY) Ltd v Chief Executive Officer of the South African Social Security Agency (No 1) (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC)** Justice Froneman held that: “It is because procurement so palpably implicates socio-economic rights that the public has an interest in it being conducted in a fair, equitable, transparent, competitive and cost-effective manner”.

5.1.2.24 The Court further held in that case that: “…deviations from fair process may themselves all too often be symptoms of corruption or malfeasance in the process. In other words, an unfair process may betoken a deliberately skewed process. Hence insistence on compliance with process formalities has a three-fold purpose: (a) it ensures fairness to participants in the bid process; (b) it enhances the likelihood of efficiency and optimality in the outcome; and (c) it serves as a guardian against a process skewed by corrupt influences.”
5.1.2.25 Nevertheless, no evidence was provided to prove that a proper deviation process was followed in terms of ICASA SCM Policy.

Conclusion

5.1.2.26 The evidence received indicates that the procurement of the Fairway Hotel for the strategic plan session was not procured from a list of registered service providers from the ICASA's Supplier Database and was also not procured on an emergency or sole supplier basis and therefore could not have been procured through a proper deviation process.

5.1.2.27 The alleged deviation was not motivated in line with the requirements of the provisions of the SCM Policy and the National Treasury Practice Note described above.

5.1.2.28 The procurement process of Fairway Hotel was not in line with paragraphs 2.2.8.2 and 2.2.9 of the SCM Policy, paragraph 3.4.3 of the National Treasury Practice Note 8 of 2007/2008 and the relevant case law referred to above and was not done in a fair, equitable, transparent, competitive and cost-effective manner based on the evidence received.

5.1.3 Regarding whether the CEO improperly arranged and paid an amount of R428 520.00 for the Strategic Session at the Bon Hotel on 19 to 22 October 2015 without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct amounts to maladministration:
5.1.3.7 The CEO asserted in ICASA’s response that the Strategic Planning Session was planned for a period of three days and that a proper procurement process was followed in line with ICASA’s SCM Policy and further that due to the amount of work that was still incomplete, a deviation was prepared for additional stay at the venue in order to complete the Strategic Planning Session, which was approved in line with paragraph 2.2.9 of the SCM Policy.

5.1.3.8 The Quotation, dated 06 October 2015 and the Deviation Form, dated 26 October 2015, indicates that the normal procurement process in terms of the ICASA SCM Policy was not followed, as one quotation was sourced and used in the procurement of Bon Hotel.

5.1.3.9 The reasons recorded in the Deviation Form are that an additional day was required to complete the exercise and that the ICASA SCM Policy makes provision to deviate from a normal procurement process in cases where it is impractical to invite competitive bids.

5.1.3.10 In order to establish whether a proper deviation process was followed, the process followed by ICASA was measured against the requirements for deviation in terms of the SCM Policy, read with the relevant Treasury Regulations and Prescripts.

5.1.3.11 The CEO asserted that the service was procured by ICASA’s Travel Agency, FCM which was handling ICASA’s internal events at the relevant time, and that a revised quotation was received and approved by the CEO in line with paragraph 2.2.9 of the SCM Policy.

5.1.3.12 The CEO asserted further in ICASA’s response, regarding the allegation of payment of the additional amount of R160 470.00 for the ICASA’s Strategic Session at the Bon Hotel, that the session was planned for a three day period but due to the amount of work that was incomplete, a deviation was approved in line with paragraph 2.2.9 of ICASA SCM Policy.
Applicable prescripts

Deviation from procurement in terms of ICASA SCM Policy

5.1.3.13 Paragraph 2.2.8.9 of the ICASA SCM Policy describes urgent and emergency cases as, if early delivery is of practical importance and the invitation of bids is impossible or impractical and where immediate action is necessary to avoid a dangerous or risky situation or misery. It however precludes lack of proper planning from constituting an urgent case.

5.1.3.14 According to paragraph 2.2.9 of the ICASA SCM Policy, deviation from procurement process in terms of section 16A.6.4 of the Treasury Regulations 4 must be sufficiently motivated and justified for approval by the CEO/BAC within the Delegated Authority. Reasons for deviation should be recorded and approved by the CEO or BAC (procurements above R500 000.00).

5.1.3.15 In cases of emergency and in the best interest to ICASA, submissions should include time scales applicable at the time of action, attempts to obtain prior authorisation and compliance with conditions and price analysis in comparison with normal prices.

5.1.3.16 The ICASA SCM Policy further provides in paragraphs 2.2.8.2 that procurements above the transaction value between R10 000.00 and R30 000.00 (vat inclusive) require three (3) written quotations from the list of suppliers registered in ICASA’s Supplier Database and procurements of the transaction value between R30 000.00 and R500 000.00 (vat inclusive) require three (3) or more written quotations from the list of suppliers registered in its Supplier Database.

5.1.3.17 Paragraph 3.4.3 of the National Treasury Practice Note 8 of 2007/2008 deals with the issue of urgency or emergency situations and provides that should it be
impractical to invite competitive bids for specific procurement, e.g. in urgent or emergency cases or in case of a sole supplier, the Accounting Officer / Authority may procure the required goods or services by other means, such as price quotations or negotiations in accordance with Treasury Regulation 16A6.4. The reasons for deviating from inviting competitive bids should be recorded and approved by the Accounting Officer / Authority or his / her delegate.

_Applicable case law_

5.1.3.18 In his judgment delivered on 29 November 2013, in the case of _Allpay Consolidated Investment Holdings (PTY) Ltd v Chief Executive Officer of the South African Social Security Agency (No 1) (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC)_ Justice Froneman held that: "It is because procurement so palpably implicates socio-economic rights that the public has an interest in it being conducted in a fair, equitable, transparent, competitive and cost-effective manner".

5.1.3.19 The Court further held in that case that: "...deviations from fair process may themselves all too often be symptoms of corruption or malfeasance in the process. In other words, an unfair process may betoken a deliberately skewed process. Hence insistence on compliance with process formalities has a three-fold purpose: (a) it ensures fairness to participants in the bid process; (b) it enhances the likelihood of efficiency and optimality in the outcome; and (c) it serves as a guardian against a process skewed by corrupt influences".

5.1.3.20 However, no evidence was provided to prove that a proper deviation process was followed in terms of ICASA SCM Policy.

5.1.3.21 Paragraph 2.2.8.9 of the SCM Policy describes urgent and emergency cases as, if early delivery is of practical importance and the invitation of bids is impossible or impractical and where immediate action is necessary to avoid a dangerous or risky situation or misery.
5.1.3.22 As indicated above, paragraph 2.2.8.9 of its SCM Policy however precludes a lack of proper planning from constituting an urgent or emergency case.

5.1.3.23 The deviation process followed by ICASA in this regard was not done as an exigent exercise to avoid a dangerous or risky situation or misery, but indicates to lack of proper planning and failure to follow due processes. It was also not done on the requirement of a single source basis, as required by paragraph 3.4.3 of the Treasury Regulations Note 8 of 2007/2008.

5.1.3.24 According to paragraph 2.2.9 of the ICASA SCM Policy, deviation from procurement process in terms of Treasury Regulation 16A.6.4 must be sufficiently motivated and justified for approval by the CEO/BAC within the Delegated Authority. Reasons for deviation should be recorded and approved by the CEO or BAC.

5.1.3.25 The Deviation from the normal process regarding this matter was motivated and approved by SCM Manager, on 26 October 2015, and not by the CEO or BAC, as required in terms of ICASA SCM Policy and such procurement may also have not been in line with paragraph 2.2.9 of SCM Policy and Treasury Regulation 16A.6.4.

5.1.3.26 The submissions for deviation do not include time scales applicable at the time of action, attempts to obtain prior authorisation and compliance with conditions and price analysis in comparison with normal prices, as required in terms of ICASA SCM Policy.

Conclusion

5.1.3.27 The evidence received indicates that Bon Hotel was not procured from a list of registered service providers from ICASA’s Supplier Database and was also not
procured on an emergency or sole supplier basis and therefore was not procured through a proper deviation process.

5.1.3.28 The procurement of Bon Hotel was not done in line with paragraphs 2.2.8.2 and 2.2.9 of its SCM Policy, paragraph 3.4.3 of the National Treasury Practice Note 8 of 2007/2008 and the relevant case law referred to above and was not done in a fair, equitable, transparent, competitive and cost-effective manner based on the evidence in my possession.

5.1.4 Regarding whether the CEO improperly arranged and paid an amount of R14 250.00 for the Strategic Session at the Service Line Production during 2015, without following proper procurement processes and in violation of the SCM policy and the PFMA, and if so, whether such conduct constitutes maladministration:

Common cause issues

5.1.4.1 Service Line Productions Tax Invoice for the amount of R14 250.00 was approved by the former CEO and settled on 04 May 2015.

Issues in dispute

5.1.4.2 The complainant alleged that the appointment of Service Line Production was irregular.

5.1.4.3 The issue for my determination was whether such procurement was not done in line with the SCM Policy and was improper.

5.1.4.4 The CEO denied the allegation of improper procurement process followed by ICASA and stated in ICASA’s response that, the service was procured by ICASA's
Travel Agent, FCM and approved by the CEO in line with paragraph 2.2.9 of ICASA SCM Policy.

5.1.4.5 However, in order to establish whether a proper deviation process was followed, the process followed by ICASA was measured against the requirements for deviation in terms of ICASA SCM Policy.

5.1.4.6 The Purchase Order, dated 04 May 2015 and the Tax Invoice from Serious Fun Factory, apparently a member of the Service Line Production Group, approved by the former CEO, indicates that ICASA SCM Policy has not been followed, as only a single quotation was sourced.

5.1.4.7 The evidence received indicates that payment was approved by the former CEO and effectuated to Service Line Productions bank account. However, no quotation was provided in that regard during the initial response as well as the response to Section 7(9)(a) Notice except a Tax Invoice from Serious Fun Factory.

5.1.4.8 The CEO subsequently indicated in the supplementary information contained in his response that ICASA does not have records of the Strategic Session that took place through Service Line Productions in 2015. This assertion contradicts the earlier version stated above.

5.1.4.9 The CEO conceded in his response that FCM procured Service Line Production through the sourcing of one quotation. The process followed in that regard has not been in line with the ICASA SCM Policy and the relevant prescripts based on the evidence in my possession.

**Applicable legal framework**

5.1.4.10 According to paragraph 2.2.9 of the ICASA SCM Policy, deviation from the procurement process in terms of Treasury Regulation 16A.6.4 must be sufficiently
motivated and justified for approval by the CEO/BAC within the Delegated Authority. Reasons for deviation should be recorded and approved by the CEO or BAC (procurements above R500 000.00).

5.1.4.11 The Supply Chain Management Policy of ICASA (ICASA SCM Policy) provides in paragraphs 2.2.8.2 that procurements above the transaction value between R10 000.00 and R30 000.00 (vat inclusive) require three (3) written quotations from the list of suppliers registered in its Supplier Database.

Conclusion

5.1.4.12 The procurement of Service Line Production has not been done in line with the SCM Policy, which provides in paragraph 2.2.8.2 that procurements above the transaction value between R10 000.00 and R30 000.00 (vat inclusive), require three (3) written quotations from the list of suppliers registered in ICASA’s Supplier Database.

5.1.4.13 The procurement of Service Line Production was also not in line with paragraphs 2.2.8.2 and 2.2.9 of the ICASA SCM Policy, paragraph 3.4.3 of the National Treasury Practice Note 8 of 2007/2008 and the relevant case law referred to above and was not done in a fair, equitable, transparent, competitive and cost-effective manner.

5.1.5 Regarding whether the CEO improperly arranged and paid an amount of R500 000.00 for the Strategic Session in Centurion during 2016, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration:
Common cause issues

5.1.5.1 The information outlined in paragraph 34 of the Notes to the Annual Financial Statements of Regulator's Annual Report for the financial year ended 31 March 2017, relating to fruitless and wasteful expenditure incurred by ICASA, indicates that accommodation for the amount of R507 612.00 for the Management Strategic Session was procured without following the SCM processes during the 2016/2017 financial period.

Issue in dispute

5.1.5.2 The allegation regarding the above issue was not disputed. However, the CEO indicated in his response that he required further information in this regard to enable him to respond to the issue.

5.1.5.3 The information contained in ICASA's Annual Report for the financial year ended 31 March 2017 is sufficient to enable ICASA to respond accordingly to the allegation.

Applicable legal framework

5.1.5.4 Paragraph 2.2.8.4 of ICASA SCM Policy provides that goods or services above the transaction value above R500 000 (vat inclusive) and long term contracts may only be procured through a competitive bidding process.

5.1.5.5 Paragraph 3.4.1 of the National Treasury Practice Note 8 of 2007/2008 deals with bids above the R500 000 thresholds. It provides that Accounting Officers / Authorities should invite competitive bids for all procurement above R 500 000.

Conclusion
5.1.5.6 The procurement process followed was not in line with paragraph 2.2.8.4 of ICASA SCM Policy, paragraph 3.4.1 of the National Treasury Practice Note 8 of 2007/2008 and the relevant case law referred to above and was not done in a fair, equitable, transparent, competitive and cost-effective manner based on evidence received.

5.1.6 Regarding whether the CEO irregularly spent R316 254.55 in Switzerland at Berne catering for 300 people during February 2016, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration:

Common cause issues

5.1.6.1 It is common cause that ICASA catered for 300 people in Switzerland during February 2016.

5.1.6.2 A memorandum for the approval of the recommendation by the former CEO, to consider the request from the Department of Telecommunications and Postal Services (DTPS), dated 11 February 2016, was submitted by the Executive Corporate Affairs, Ms Portia Mngomezulu.

Issues in dispute

5.1.6.3 The Complainant alleged that the service provider, apparently Riyads Catering according to the information received, was procured for the catering for 300 people in Berne, Switzerland, during February 2016, for the amount of R 316 254.55.

5.1.6.4 The issue for my determination was whether the procurement of Riyards Catering by ICASA did not follow a proper procurement process outlined in ICASA SCM Policy and was improper.

5.1.6.5 The CEO stated in his response that ICASA, as a Regulator of the postal sector as well as a member of the Council of Administration and Universal Postal Union
(UPU), an organisation formed to develop a uniformed postal standards, received a request, dated 08 February 2016, from Mr Joe Mjwara, the then Acting Director-General of the DTPS.

5.1.6.6 The CEO further asserted that due to budgetary constraints experienced by the DTPS, ICASA was requested to sponsor the South African reception in Berne, Switzerland, that was scheduled for 16 February 2016, to position the SA agenda at the conference to members of the UPU with a view to lobby member countries to support South Africa for re-election to the Council of Administration for the period 2017-2020.

5.1.6.7 The voucher Journal report, dated 17 May 2016, indicates that Riyards Catering invoiced ICASA for an amount of R311 756.33 on 05 March 2016 for catering in Switzerland.

Applicable legal framework

5.1.6.8 The Supply Chain Management Policy of ICASA provides in paragraph 2.2.8.2 that procurements of the transaction value between R30 000 and R500 000 (vat inclusive) require three (3) or more written quotations from the list of suppliers registered in ICASA’s Supplier Database.

5.1.6.9 ICASA did not provide three quotations regarding the relevant procurement for catering in Switzerland for the South African Reception.

Conclusion

5.1.6.10 The procurement of Riyards Catering for the amount of R311 756.33 through the sourcing of a single quotation has not been in line with paragraph 2.2.8.2 of ICASA’s SCM Policy, paragraph 3.4.1 of the National Treasury Practice Note 8 of 2007/2008 and the relevant case law referred to above and has not been done in a fair,
equitable, transparent, competitive and cost-effective manner based on evidence in my possession.

5.1.7 Regarding whether ICASA paid R700 000.00 for the ICASA Value Launch Day during April/May 2016, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration:

Common cause issues

5.1.7.1 It is common cause that ICASA Value Launch day was held on 22 April 2016 for the total amount of R824 450.03, approved by the former CEO.

Issues in dispute

5.1.7.2 The allegation is that a proper procurement process was not followed in the procurement of a service provider for the Value Launch.

5.1.7.3 The issue for my determination was whether the procurement concerned did not comply with the ICASA SCM Policy, and was improper.

5.1.7.4 The erstwhile CEO conceded in his response to the Section 7(9)(a) Notice that he failed in exercising due diligence as he put much trust on the person who was in charge of procurement processes and he expected that procurement was done properly and due process followed.

5.1.7.5 The CEO asserted in his response that a Request For Quotation no. 001/2016 (RFQ) process, facilitated by ICASA SCM Business Unit, was followed in the procurement of Values, Posters and Banners (RFQ: 001/2016 on HR Media Requirements), resulting in the appointment of a company called Synergy.
5.1.7.6 The CEO further asserted that the launching of the values' gifts, catering and hosting of the event at ICASA, as well as the team building activities was arranged through its previous Travel Agency, FCM.

5.1.7.7 The ICASA Travel Requisition Order no. 2827, dated 08 April 2016, regarding the Launching of ICASA Values on 22 April 2016, affirms that the procurement was done by FCM through a request for quotation process for the amount of R720 320.15, plus an additional amount of R104 129.88 (excluding vat), and was authorised by former CEO on 08 April 2016.

5.1.7.8 Minutes of the Executive Committee Meeting (EXCO) of 30 September 2015 provides at item 5.2 that EXCO resolved to approve the Launching of ICASA Values and the administration of the 360 Degree Feedback Survey.

5.1.7.9 However, I have observed that the Value Launch proposed budget was estimated at R168 000 (one hundred and sixty eight thousand rands) and R68 000 (sixty eight thousand rands) for the administering of the 360 Degree Feedback Survey, respectively.

5.1.7.10 Nevertheless, I have also noted that HR confirmed a budget roll-over from the previous year of R2.3 million to be utilised for the initiatives concerned.

5.1.7.11 EXCO approved the proposed budget estimated at R168 000.00 for the Launching of ICASA Values and a further budget estimated at R68 000.00 to administer the 360 Degree Feedback Survey.

5.1.7.12 ICASA's internal email correspondence of 07 April 2016 confirms a request for the allocation of a budget for an amount of R720 320.15 (seven hundred and twenty thousand three hundred and twenty rand fifteen cents) for the Value Launch and its availability under code 2300.83350.
5.1.7.13 The grand total (inclusive of vat) for the Values Launch was R1 049,023.60 (one million forty nine thousand and twenty three rands sixty cents) according to ICASA’s final costing for Values Event, issued on 25 April 2016.

5.1.7.14 ICASA did not provide the alleged three quotations regarding the relevant RFQ during the investigation and no competitive bidding process was followed. It however, in response to the Section 7(9)(a) Notice provided a purported deviation document for Synergy, dated 08 February 2016.

5.1.7.15 However, the reasons indicated in the Deviation Form affirm that competitive bidding process was not followed.

_Attributable legal framework_

5.1.7.16 In terms of paragraph 2.2.8.4 of the ICASA SCM Policy, procurement of goods or services for the transaction value of above R500 000.00 (vat inclusive) and long term contracts may only be procured through a competitive bidding process.

5.1.7.17 It further provides that no requirements for goods or services of the transaction value above R500 000.00 (vat inclusive) may be split into parts or items of lesser value for the sake of procuring the goods or services otherwise than through a competitive bidding process.

5.1.7.18 Paragraph 2.2.8.9 of the ICASA SCM Policy describes urgent and emergency cases as, if early delivery is of practical importance and the invitation of bids is impossible or impractical and where immediate action is necessary to avoid a dangerous or risky situation or misery. It however precludes a lack of proper planning from constituting an urgent or emergency case.
5.1.7.19 The deviation process followed by ICASA in this regard was not done as an exigent exercise to avoid a dangerous or risky situation or misery, but may indicate to a lack of proper procurement planning and failure to follow due process.

5.1.7.20 According to paragraph 2.2.9 of the ICASA SCM Policy, deviation from the procurement process in terms of Treasury Regulation 16A.6.4 must be sufficiently motivated and justified for approval by the CEO/BAC within the Delegated Authority. Reasons for deviation should be recorded and approved by the CEO or BAC. However, the deviation in this regard was not approved by the CEO or BAC.

5.1.7.21 The submissions for deviation do not include time scales applicable at the time of action, attempts to obtain prior authorisation and compliance with conditions and price analysis in comparison with normal prices, as required in terms of the SCM Policy.

ICASA’s Delegation of Authority in terms of the ICASA SCM Policy

5.1.7.22 The Delegation of Authority for the approval of a quotation from three (3) written quotations is as follows:

(a) For the mount above R10 000.00 but less than R50 000.00, the SCM Manager is delegated to approve;
(b) For the amount above R50 000.00 but not exceeding R200 000.00, the SCM Manager is delegated to approve;
(c) For the amount of R200 000.00 but not exceeding R500 000.00, Senior Manager / CFO is authorised to approve; and
(d) For the amount above R500 000.00, the Bid Adjudication Committee (BAC) is delegated to approve.

Conclusion
5.1.7.23 The purported deviation from a competitive bidding process by ICASA was not in line with paragraphs 2.2.8.4, 2.2.8.9 and 2.2.9 of its SCM Policy as well as the Delegation of Authority.

5.1.7.24 Such procurement was not in line with paragraph 3.4.1 of the National Treasury Practice Note 8 of 2007/2008 which deals with bids above the R500 000 thresholds and the relevant case law referred to above and has also not been done in a fair, equitable, transparent, competitive and cost-effective manner based on the evidence in my possession.

5.1.8 Regarding whether ICASA improperly procured Remunerations Consultants of South Africa for benchmarking and pay-scales reduction during June and July 2015 for the amount of R100 000.00, without following proper procurement processes and in violation of the SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration:

Common cause issues

5.1.8.1 It is common cause that ICASA appointed Remunerations Consultants through a purported deviation from the normal procurement process, by means of one quotation.

Issues in dispute

5.1.8.2 The complainant alleged that the appointment of Remunerations Consultants was irregular.

5.1.8.3 The issue for my determination was whether the procurement of Remunerations Consultants through a single quotation did not follow a proper procurement in terms of the ICASA SCM Policy.
5.1.8.4 The CEO asserted in his response that Remunerations Consultants of South Africa was procured in line with the SCM Policy.

5.1.8.5 The CEO further asserted that the approval for deviation from the normal procurement process was approved by the CFO in line with the requirements of the SCM Policy.

5.1.8.6 In order to establish whether a proper deviation process was followed, the process followed by ICASA was measured against the requirements for deviation in terms of ICASA SCM Policy read with the relevant Treasury Regulations and Prescripts.

5.1.8.7 The Deviation Form, dated 02 July 2015, provides that the reasons for the appointment of Remuneration Consultants through deviation from the normal process, were based on urgency or emergency.

5.1.8.8 Further reasons considered were Ms Jacobs’ decline of the appointment within ICASA on 15 June 2015, which position was to perform the speciality role of the remuneration and benefits of employees, relating to the envisaged salary increase and pay scale adjustment processes, for national and competitor labour market benchmarking to ensure attraction of talent from the market.

5.1.8.9 The CEO further asserted in his response that the urgency basis for the deviation from normal procurement process was to avoid a possible strike action, if salaries were not paid out.

5.1.8.10 The argument raised above does not provide cogent reasons for the deviation in terms of the relevant prescripts referred to above, as Remuneration Consultants were not procured to pay salaries but to benchmark and determine pay scale increases and the reasons could therefore not be classified under the requirement of urgency or emergency or sole source but rather as lack of proper planning.
5.1.8.11 Only one company, Remuneration Consultants was contacted on 26 June 2015, which provided a quotation for R48 500.00 (forty-eight thousand five hundred rand).

5.1.8.12 The submission was compiled by the Executive: Human Resources (Executive HR), on 02 July 2015, recommended by the SCM Manager and approved by then Acting CFO, Mr Michael, on 03 July 2015.

5.1.8.13 The Appointment Letter of Ms Jacobs, dated 27 May 2015, indicates that she was appointed to the position of Remuneration and Benefits Specialist D3 Band with a probation period of six months, and one of the conditions of her continued appointment was on satisfactory performance, and that ICASA could consider terminating her employment, should it be found that she was not suitable for the position concerned. This requirement or condition of employment is indicative that the output was not required on an urgent or emergency basis, as alleged in the Deviation Form referred to above.

Applicable legal framework

5.1.8.14 According to Regulation 16A6.4 of the National Treasury Regulations of March 2005 (National Treasury Regulations), if in a specific case it is impractical to invite competitive bids, the Accounting Officer or Accounting Authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the Accounting Officer or Accounting Authority.

5.1.8.15 Paragraph 3.4.3 of the National Treasury Practice Note 8 of 2007/2008 deals with the issue of urgency or emergency situations and provides that should it be impractical to invite competitive bids for specific procurement, e.g. in urgent or emergency cases or in case of a sole supplier, the Accounting Officer / Authority may procure the required goods or services by other means, such as price quotations or negotiations in accordance with Treasury Regulation 16A6.4. The
reasons for deviating from inviting competitive bids should be recorded and approved by the Accounting Officer / Authority or his / her delegate.

5.1.8.16 The Supply Chain Management Policy of ICASA (ICASA SCM Policy) provides in paragraph 2.2.8.2 that procurements of the transaction value between R30 000 and R500 000 (vat inclusive) require three (3) or more written quotations from the list of suppliers registered in its Supplier Database.

5.1.8.17 Paragraph 2.2.8.9 of ICASA SCM Policy describes urgent and emergency cases as, if early delivery is of practical importance and the invitation of bids is impossible or impractical and where immediate action is necessary to avoid a dangerous or risky situation or misery. It however precludes a lack of proper procurement planning from constituting an urgent case.

Conclusion

5.1.8.18 The deviation process followed by ICASA in this regard has not been on an exigent basis to avoid a dangerous or risky situation or misery, but indicates to lack of proper planning and a blatant failure to follow due processes.

5.1.8.19 The procurement of Remunerations Consultants through one quotation during July 2015 for the amount of R48 500.00, which was amended to R60 177.04, was not done in line with paragraph 2.2.8.2 of the ICASA SCM Policy and the relevant case law referred to above and was also not done in a fair, equitable, transparent, competitive and cost-effective manner based on evidence in my possession.

5.1.9 Regarding whether the Council of ICASA failed to address the complaint of financial mismanagement by certain officials lodged by the Complainant, and if so, whether such constitutes improper conduct and maladministration:

Common cause issue
5.1.9.1 The Investigation Team raised in a letter, dated 26 February 2018, addressed to Mr Paris Mashile, the then Acting Chairperson of the ICASA Council, the allegation of failure of the Council to take action on the allegations of financial mismanagement by certain officials which, amongst others, refer to the allegations mentioned herein above.

**Issues in dispute**

5.1.9.2 The question for my determination was whether the ICASA Council failed to take action on the allegations concerned and whether such failure was improper.

5.1.9.3 Unfortunately, no response was provided in ICASA’s response relating to the allegation on this issue. As the issue stands, there is no denial of the allegation and in the absence of evidence to the contrary, it is found that the allegations were indeed referred to the Council, as alleged and that no action was taken to address such allegations.

5.1.9.4 The allegations contained in ICASA’s Annual Report referred to above, amongst others, relating to increased salaries, procurement without following proper SCM processes as well as payment of bonuses, affirms that the allegations were indeed brought to the attention of the CEO / ICASA Council or ICASA as they were aware of these irregularities.

5.1.9.5 The erstwhile CEO stated in his response to the Section 7(9)(a) Notice that he initiated disciplinary actions against Officials involved in the inappropriate increases but such actions were opposed by the Council.

5.1.9.6 ICASA failed to indicate the actions taken against officials implicated in the allegations concerned and has further failed to provide the necessary action report
relating thereto, as requested by the Investigation Team in a letter dated 26 February 2018.

**Applicable legal framework**

5.1.9.7 Paragraph 7.1.2 of the ICASA SCM Policy makes provisions for the monitoring and reporting of any incident to the CEO where ICASA SCM Policy has been breached through improper incidents of deviations and procedures.

5.1.9.8 Treasury Regulation 16A9.1 provides that the accounting officer or accounting authority must –

(a) Take all reasonable steps to prevent abuse the of the supply chain management system;

(b) Investigate any allegations against an official or other role player of corruption, improper conduct or failure to comply with the supply chain management system, and when justified – (i) take steps against such official or other role player and inform the relevant treasury of such steps.

5.1.9.9 Section 38 of the PFMA provides, among others, that:

"The accounting officer for a department, trading entity or constitutional institution—
(a) must ensure that that department, trading entity or constitutional institution has and maintains: (i) effective, efficient and transparent systems of financial and risk management and internal control; (ii) ... (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective; (iv) a system for properly evaluating all major capital projects prior to a final decision on the project; (b) is responsible for the effective, efficient, economical and transparent use of the resources of the department, trading entity or constitutional institution; (c) must take effective and appropriate steps to: (i) collect all money due to the department, trading entity or constitutional institution;
(ii) prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct; and (iii) manage available working capital efficiently and economically; (d) is responsible for the management, including the safe-guarding and the maintenance of the assets, and for the management of the liabilities, of the department, trading entity or constitutional institution; (e) ... (g) on discovery of any unauthorised, irregular or fruitless and wasteful expenditure, must immediately report, in writing, (h) must take effective and appropriate disciplinary steps against any official in the service of the department, trading entity or constitutional institution who: (i) contravenes or fails to comply with a provision of this Act; (ii) commits an act which undermines the financial management and internal control system of the department, trading entity or constitutional institution; or (iii) makes or permits an unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure"

5.1.9.10 **Section 81 of the PFMA provides that:** (1) An accounting officer for a department or a constitutional institution commits an act of financial misconduct if that accounting officer wilfully or negligently—(a) fails to comply with a requirement of section 38... or (b) makes or permits an unauthorised expenditure, an irregular expenditure or a fruitless and wasteful expenditure.

**Conclusion**

5.1.9.11 The apparent failure by the ICASA Council and the CEO to take action on the reported allegations of breach of the SCM Policy have not been in line with the Treasury Regulation 16A9.1 (a) and (b) and paragraph 7.1.2 of the ICASA SCM Policy, as well as sections 38 and 81 of the PFMA.

**6. FINDINGS**

Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:
6.1  Regarding whether ICASA improperly implemented a salary increase of 23% for Executives and other employees without proper approval during 2016, and if so, whether such conduct constitutes maladministration:

Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:

6.1.1. The allegation that ICASA improperly implemented salary increase for the Executives and other employees without proper approval during 2016, is not substantiated based on evidence received.

6.1.2. However, the allegation of improper payment of the additional 23% bonus amounting to R3 516 606.00 is substantiated.

6.1.3. ICASA’s payment of an additional 23% bonus to 311 employees was not in line with paragraph 6.8.8 of the Performance Management Policy and paragraph 7.2.3 of the Remuneration Policy, and was therefore improper based on the evidence received.

6.1.4. The conduct referred to herein above constitute maladministration as envisaged in section 6(5) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.

6.2. Regarding whether the CEO improperly arranged and paid an amount of R133 065.60 for the Regulator’s Strategic Session at the Fairway Hotel SPA and Golf Resort and an additional amount of R20 410.00, during 15 to 17 April 2015, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration:

6.2.1. The allegation that the CEO improperly arranged and paid an amount of R133 065.60 for the Regulator’s Strategic Session at the Fair Hotel during 15 to 17 April
2015, in violation of the ICASA SCM Policy and the PFMA, is substantiated by the evidence received.

6.2.2. However, no evidence was received regarding the payment of the additional amount of R20 410.00, as alleged by the Complainant.

6.2.3. The deviation process allegedly followed by ICASA was not motivated in line with the requirements of the provisions of the A SCM Policy and the National Treasury Practice Note described above.

6.2.4. The procurement of Fairway Hotel was not in line with paragraphs 2.2.8.2 and 2.2.9 of the ICASA’s SCM Policy, paragraph 3.4.3 of the National Treasury Practice Note 8 of 2007/2008 and the relevant case law referred to above and was not done in a fair, equitable, transparent, competitive and cost-effective manner based on evidence received.

6.2.5. The conduct referred to herein above constitute maladministration as envisaged in section 6(5) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.

6.3. Regarding whether the CEO improperly arranged and paid an amount of R428 520.00 for the Strategic Session at the Bon Hotel on 19 to 22 October 2015, without following proper procurement processes and in violation of the A SCM Policy and the PFMA, and if so, whether such conduct amounts to maladministration?

6.3.1. The allegation that the CEO improperly arranged and paid an amount of R428 520.00 for the Strategic Session at the Bon Hotel on 19 to 22 October 2015, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, is substantiated by the evidence received.
6.3.2. The evidence received indicates that Bon Hotel was not procured from a list of registered service providers from ICASA’s Supplier Database and was also not procured on an emergency or sole supplier basis and therefore was not procured through a proper deviation process.

6.3.3. The procurement of Bon Hotel was not in line with paragraphs 2.2.8.2 and 2.2.9 of ICASA’s SCM Policy, paragraph 3.4.3 of the National Treasury Practice Note 8 of 2007/2008 and the relevant case law referred to above and was not done in a fair, equitable, transparent, competitive and cost-effective manner based on evidence in my possession.

6.3.4. The conduct referred to herein above constitute maladministration as envisaged in section 6(5) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.

6.4. Regarding whether the CEO improperly arranged and paid an amount of R14 250.00 for the Strategic Session by Service Line Production during 2015, without following proper procurement processes and in violation of the ICASA SCM policy and the PFMA, and if so, whether such conduct constitutes maladministration?

6.4.1. The allegation that the CEO improperly arranged and paid an amount of R14 250.00 for the Strategic Session by Service Line Production during 2015, without following proper procurement processes and in violation of the ICASA SCM and the PFMA, is substantiated by the evidence received.

6.4.2. ICASA’s service provider, FCM procured Service Line Production through the sourcing of one quotation and such procurement may have not been done in line with paragraphs 2.2.8.2 and 2.2.9 of ICASA SCM Policy, paragraph 3.4.3 of the National Treasury Practice Note 8 of 2007/2008 and the relevant case law referred
to above and was not done in a fair, equitable, transparent, competitive and cost-effective manner.

6.4.3. The conduct referred to herein above constitute maladministration as envisaged in section 6(5) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.

6.5. Regarding whether the CEO improperly arranged and paid an amount of R500 000.00 for the Strategic Session held in Centurion during 2016, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration

6.5.1. The allegation that the CEO improperly arranged and paid an amount of R500 000.00 for the Strategic Session during 2016, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, is substantiated by the evidence received.

6.5.2. The information outlined in paragraph 34 of the Notes to the Annual Financial Statements of ICASA’s Annual Report for the financial year ended 31 March 2017 and relating to fruitless and wasteful expenditure incurred by ICASA, indicates that accommodation for the amount of R507 612.00 for Management Strategy Session was procured without following SCM process during the 2016/2017 financial period.

6.5.3. The procurement concerned was not in line with paragraph 2.2.8.4 of the SCM Policy, paragraph 3.4.1 of the National Treasury Practice Note 8 of 2007/2008 and the relevant case law referred to above and was not done in a fair, equitable, transparent, competitive and cost-effective manner.
6.5.4. The conducts referred to herein above constitute maladministration as envisaged in section 6(5) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.

6.6. Regarding whether the CEO irregularly spent R316 254.55 in Berne, Switzerland at Berne catering for 300 people during February 2016, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration?

6.6.1. The allegation that the CEO irregularly incurred expenditure in Switzerland on Berne catering for 300 people during February 2016, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, is substantiated by the evidence received.

6.6.2. The procurement of Riyards Catering for the amount of R311 756.33 through the sourcing of a single quotation was not in line with paragraph 2.2.8.2 of ICASA's SCM Policy, paragraph 3.4.1 of the National Treasury Practice Note 8 of 2007/2008 and the relevant case law referred to above was not done in a fair, equitable, transparent, competitive and cost-effective manner.

6.6.3. The conduct referred to herein above constitute maladministration as envisaged in section 6(5) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.

6.7. Regarding whether ICASA paid R700 000.00 for its Value Launch Day during April/May 2016, without following proper procurement processes and in violation of the SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration.
6.7.1. The allegation that ICASA paid an amount of R700 000.00 for the Value Launch Day during April/May 2016, without following proper procurement processes and in violation of the ICASA SCM Policy and the PFMA, is substantiated by the evidence received.

6.7.2. No competitive bidding process or a proper deviation process was followed and such conduct by ICASA were not in line with paragraphs 2.2.8.4, 2.2.8.9 and 2.2.9 of the SCM Policy and the Delegation of Authority as well as the National Treasury Regulation 16A.6.4.

6.7.3. Such procurement was also not in line with paragraph 3.4.1 of the National Treasury Practice Note 8 of 2007/2008 which deals with bids above the R500 000.00 thresholds and the relevant case law referred to above was not done in a fair, equitable, transparent, competitive and cost-effective manner based on evidence in my possession.

6.7.4. The conduct referred to herein above constitute maladministration as envisaged in section 6(5) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.

6.8. Regarding whether ICASA improperly procured Remuneration Consultants of South Africa for benchmarking and pay-scales reduction during June and July 2015 for the amount of R100 000.00, without following proper procurement processes and in violation of the SCM Policy and the PFMA, and if so, whether such conduct constitutes maladministration

6.8.1. The allegation that ICASA improperly procured Remuneration Consultants of South Africa for benchmarking and pay-scales reduction during June and July 2015, without following proper procurement processes and in violation of the SCM Policy and the PFMA, is substantiated by the evidence received.
6.8.2. Remuneration Consultants was procured through the sourcing of a single quotation during July 2015 for the amount of R48 500.00 which was amended to R60 177.04, and not for R100 000.00 as alleged.

6.8.3. The procurement of Remuneration Consultants by ICASA through one quotation during July 2015 for the amount of R48 500.00, which was amended to R60 177.04, may not have been done in line with paragraph 2.2.8.2 of the SCM Policy and the relevant case law referred to above and has not been done in a fair, equitable, transparent, competitive and cost-effective manner based on evidence in my possession.

6.8.4. The conduct referred to herein above constitute maladministration as envisaged in section 6(5) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.

6.9. Regarding whether the Council of ICASA failed to address the complaint of financial mismanagement by certain officials lodged by the Complainant, and if so, whether such conduct constitutes improper conduct and maladministration

6.9.1. The allegation that the ICASA Council failed to address the complaint of financial mismanagement by certain officials, has not been denied by ICASA, and is therefore substantiated by the evidence received.

6.9.2. The ICASA Council and CEO failed to comply with Treasury Regulation 16A9.1.

6.9.3. The apparent failure by the ICASA Council and CEO to take action on the reported allegations of breach of the SCM Policy was not in line with the Treasury Regulation 16A9.1 (a) and (b) and paragraph 7.1.2 of the SCM Policy, as well as sections 38 and 81 of the PFMA.
6.9.4. The conduct referred to herein above constitute maladministration as envisaged in section 6(5) of the Public Protector Act and improper conduct as envisaged in section 182(1) of the Constitution.

7. REMEDIAL ACTION

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

7.1. The Minister of Communications to:

7.1.1. Take cognisance of the findings regarding the improper conduct and maladministration by ICASA relating to the irregularities mentioned in the report.

7.1.2. Include in her oversight role as the government shareholder representative with regard to ICASA, monitor the implementation of remedial action taken in pursuit of the findings in terms of powers conferred under section 182(1)(c) of the Constitution.

7.2. The Chairperson of ICASA Council to ensure that:

7.2.1. The ICASA Council takes cognisance of the findings of maladministration and improper conduct referred to in this report.

7.2.2. The ICASA Council evaluates the effectiveness ICASA’s internal controls and systems on the application of the policies with a view to take corrective action to prevent a recurrence of the improprieties referred to in this report.

7.2.3. Civil proceedings are instituted against the former CEO ICASA for the recovery of expenses incurred irregularly due to his conduct in violation of the PFMA.
7.2.4 The ICASA CEO, EXCO, SCM Officials and Managers involved in the procurement of goods and services attend a training course in Public Procurement.

7.2.5 Reviews the REMCO’s Terms of Reference Strategy is amended to include a term for compulsory submission of pertinent recommendations made to the Council through the Legal Services Unit and the CEO prior to submission to the Council for vetting and further advice.

7.2.6 Ensure that Members of the ICASA Council attend a training course on public procurement to enhance their oversight capacity

7.2.7 Take appropriate action against officials who breach Policies to avoid a recurrence of the improprieties referred to in the report.

7.3. The CEO of ICASA to:

7.3.1. Ensure that ICASA EXCO takes cognisance of the findings of maladministration and improper conduct referred to in this report.

7.3.2. Evaluate the effectiveness of ICASA’s internal controls and systems on the application of the SCM Policy, the Remuneration Policy and the Performance Management and Development Policy with a view to take corrective action to prevent a recurrence of the improprieties referred to in this report.

7.3.3. Ensure that the CEO, EXCO and SCM Officials involved in procurement attend a training course in Public Procurement to prevent a recurrence of the improprieties referred to in this report.

7.3.4. Assist the Council in reviewing that the REMCO’s Terms of Reference Strategy to amend it to include a term for compulsory submission of the pertinent recommendations made to Council through the Legal Services Unit and the CEO prior to submission to the Council for vetting and further advice.
7.4. The Offices of the Chief Procurement Officer of the National Treasury and the Auditor-General to:

7.4.1. Take cognisance of the findings of the irregularities and remedial action mentioned in the report.

7.5 The Director of Priority Crimes Investigation (DPCI) to:

7.5.1 Investigate apparent criminal conduct against implicated officials for financial mismanagement in violation of the PFMA.

8. MONITORING

8.1 The Minister of Communications to submit an implementation plan indicating how the monitoring of implementation of remedial action, taken in pursuit of the findings in terms of powers conferred under section 182(1)(c) of the Constitution, referred to in paragraph 7.1 above will be implemented, within 30 days from the date of my final report.

8.2 The Chairman of the ICASA Council to submit an implementation plan indicating how the remedial action referred to in paragraph 7.2 above will be implemented, within 30 days from the date of my final report.

8.3 The CEO of ICASA to submit an implementation plan indicating how the remedial action referred to in paragraph 7.3 above will be implemented, within 30 days from the date of my final report.
8.4 All actions requested in the report as part of the remedial action taken in terms of the Public Protector’s powers under section 182(1) (c) of the Constitution to be finalised within three months and a final report presented to the Public Protector.

8.5 Unless the remedial actions taken by the Public Protector are reviewed and set aside by the Court of law, compliance is not optional and same must be complied within the stated period.

[Signature]

ADV. BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 05/06/2019