REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION, FRUITLESS AND WASTEFUL EXPENDITURE BY THE DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES, IN CONNECTION WITH THE FARMER REGISTER PROJECT.
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Executive Summary

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

(ii) The report communicates the findings and appropriate remedial action taken in terms of section 182(1)(c) of the Constitution following an investigation into allegations of maladministration, fruitless and wasteful expenditure by the Department of Agriculture, Forestry and Fisheries, in connection with the Farmer Register Project.

(iii) The complaint was lodged on 02 July 2013 alleging that:-

(a) The Department of Agriculture, Forestry and Fisheries (DAFF), currently named the Department of Agriculture, Land Reform and Rural Development, incurred fruitless and wasteful expenditure on the Farmer Register Project (FRP) and as a result, funds had to be redirected from other departments within DAFF to fund the project;

(b) The FRP was established during the 2008/2009 financial year to create a database of all agricultural producers throughout the Republic of South Africa, however, the FRP has to date not produced tangible results; and

(c) During the course of the FRP’s pilot stage in the 2008/2009 financial year, DAFF recruited one hundred and six (106) contract employees from Gauteng Province and transported them to the province of Kwa-Zulu Natal (Natal) for the FRP. It was on this trip that DAFF was required to pay travel and subsistence allowances, as well as accommodation expenses for the 106 employees over and above the payment of their salaries. This amounted to
wasteful expenditure as DAFF could have recruited contract employees from KwaZulu-Natal province in an effort to curtail costs.

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

(a) Whether DAFF incurred irregular, fruitless and wasteful expenditure in implementing the Farmer Register Project; and

(b) Whether DAFF irregularly procured rental vehicles for the Farmer Register Project.

(v) The investigation was conducted in terms of section 182(1) of the Constitution and sections 6 and 7 of the Public Protector Act. It included correspondence with the Director-General of DAFF and implicated DAFF employees, interviews with other officials, the research of information relevant to the investigation, analysis of documentation and information obtained during the investigation and the consideration and application of relevant laws, prescripts and jurisprudence.

(vi) Having considered the evidence and information obtained during the investigation, I make the following findings:-

(a) Regarding whether DAFF incurred irregular, fruitless and wasteful expenditure in implementing the Farmer Register Project:-

(aa) The allegation that DAFF incurred fruitless and wasteful expenditure in implementing the Farmer Register Project, is substantiated.

(bb) The conduct of DAFF in implementing the FRP was improper, as contemplated by section 182(1) of the Constitution and further constituted
maladministration, as contemplated by section 6(4)(a)(i) of the Public Protector Act.

(b) **Regarding whether DAFF irregularly procured rental vehicles for the Farmer Register Project:**

(cc) The allegation that DAFF irregularly procured rental vehicles for the farmer Register Project, is substantiated;

(dd) The procurement of the fifty (50) bakkies for the Farmer Register Project by DAFF during November 2011 amounted to improper conduct as contemplated by section 182(1) of the Constitution and constitutes maladministration, as contemplated by section 6(4)(a)(i) of the Public Protector Act.

(vii) **Observations**

(a) Case law has determined that remedial action contemplated by the Public Protector must be appropriate under the circumstances.

(b) Section 38(1)(g) and (h) of the PFMA are clear that an accounting officer for a department must on discovery of any fruitless and wasteful expenditure, report it to the relevant treasury and must take effective and appropriate disciplinary steps against the officials who made or permit the fruitless and wasteful expenditure to occur.

(c) It could however not have been contemplated by this legislation to take such steps in circumstances where almost ten (10) years has elapsed. Particularly where the issue of discipline is concerned.
(d) The question then becomes, if disciplinary steps are taken as envisaged by subsection (h), would they be appropriate under the circumstances to address the malfeasance discovered.

(e) It is trite that disciplinary action taken against any official must be taken within a reasonable time. In *Department of Public Works, Road and Transport v Motshoso & Others*,¹ the court found it unconscionable and unfair a three (3) year delay in instituting disciplinary action against an employee.

(f) The incident giving rise to this complaint occurred during the year 2009, almost ten (10) years ago and it would be unfair and unreasonable to take disciplinary action against the officials implicated in this report.

(g) These are considerations that must be factored in by the accounting officer of DAFF in determining and taking further steps to remedy the fruitless and wasteful expenditure as contemplated by section 38(1) of the PFMA.

(h) However, a more pertinent issue which is currently relevant within the department is the media reports that DAFF has, together with Statistics South Africa (StatsSA) continued with the FRP, but renamed the Producer/Farmer Register (PFR).

(i) According to the reports, the project commenced in the year 2018 and is expected to run to the year 2021.

(j) It is also reported that StatsSA officials began visiting farms across the country in October 2018, gathering data on the country’s state of commercial agriculture.

¹ *Department of Public Works, Road and Transport v Motshoso & Others* [2005]10 BLLR 957 (LC).
(k) It is further reported that 600 field staff will be visiting the various commercial farms.

(l) What is of concern is that DAFF has initiated a new PFR when the previous FRP was not successful, resulting in fruitless and wasteful expenditure.

(m) DAFF has to ensure that it takes appropriate steps to prevent committing public funds to another futile exercise as was the case with the FRP.

(n) DAFF must also ensure that the control measures that are currently in place when implementing such projects are strictly adhered to and enforced going forward and must address the following:-

(i) Clear reporting lines and separation of responsibilities, and all officials compelled to be accountable for their assigned duties;

(ii) Strict adherence to procedures and processes regulating the requisition of goods and service;

(iii) Adequate and relevant training of staff on adherence to control measures and the department’s supply chain management policies;

(iv) Clearly defined financial delegations of authority;

(v) Clearly defined budget planning and management of expenditure which must be regularly monitored;

(vi) The provision of regular progress reports to the accounting officer or his duly appointed delegate; and

(vii) Sufficient consultation within the farming sector.
(viii) The appropriate remedial action taken in terms of section 182(1)(c) of the Constitution is the following:-

(a) The Director-General of the Department of Agriculture, Forestry and Fisheries to:-

(aa) Take cognisance of the findings relating to maladministration, fruitless and wasteful expenditure contained in this report and ensure that mechanisms are enforced and/or introduced to prevent a recurrence of such conduct in the new Producer/Farmer Register (PFR);

(bb) Advise the Public Protector of the mechanisms that have been put in place to ensure the success of the PFR, within thirty (30) working days from the date of receiving this report.

(cc) No monitoring is contemplated for this report.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION, FRUITLESS AND WASTEFUL EXPENDITURE BY THE DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES, IN CONNECTION WITH THE FARMER REGISTER PROJECT.

1. INTRODUCTION

1.1. This is my report as 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. The report is submitted in terms of section 8(1) and 8(3) of the Public Protector Act to the following persons to inform them of the outcome of my investigation:

1.2.1. Mr MM Mlengana, the Director-General of the Department of Agriculture, Forestry and Fisheries (DAFF); and to

1.2.2. The Complainant.

1.3. This report relates to an investigation into allegations of maladministration, irregular, fruitless and wasteful expenditure by the Department of Agriculture, Forestry and Fisheries in connection with the Farmer Register Project.

2. THE COMPLAINT

2.1. The complaint was lodged on 02 July 2013, in the main alleging that:

2.1.1. The Department of Agriculture, Land Reform and Rural Development (DAFF) incurred fruitless and wasteful expenditure on the Farmer Register Project (FRP)
and as a result, funds had to be redirected from other departments within DAFF to fund the project;

2.1.2. The FRP was established during the 2008/2009 financial year to create a database of all agricultural producers throughout the Republic of South Africa. However, the FRP has to date not produced tangible results; and

2.1.3. During the course of the FRP’s pilot stage in the 2008/2009 financial year, DAFF recruited one hundred and six (106) contract employees from Gauteng Province and transported them to the province of Kwa-Zulu Natal (Natal) for the FRP. It was on this trip that DAFF was required to pay travel and subsistence allowances, as well as accommodation expenses for the 106 employees over and above the payment of their salaries. This amounted to wasteful expenditure as DAFF could have recruited contract employees from Natal in an effort to curtail costs.

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 that:-

"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. In *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others*\(^2\), the Constitutional Court per Chief Justice Mogoeng stated the following when confirming the powers of the Public Protector:

3.3.1. Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles;\(^3\)

3.3.2. An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced;\(^4\)

3.3.3. Taking appropriate remedial action is much more significant than making a mere endeavor to address complaints which was the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint;\(^5\)

3.3.4. The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow;\(^6\)

3.3.5. Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the

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\(^2\) CCT 143/15; CCT171/15 [2016] ZACC 11, 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC); 31 March 2016.

\(^3\) Para [65].

\(^4\) Para [67].

\(^5\) Para [68].

\(^6\) Para [69].
demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to;\(^7\)

3.3.6. The Public Protector’s power to take appropriate remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of the investigation and the type of findings made;\(^8\)

3.3.7. Implicit in the words “take action” is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And “action” presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence;\(^9\)

3.3.8. She has the power to determine the appropriate remedy and prescribe the manner of its implementation;\(^{10}\)

3.3.9. “Appropriate” means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case.\(^{11}\)

3.3.10. The remedial action taken by the Public Protector has a binding effect.\(^{12}\) The Constitutional Court further held that: “When remedial action is binding, compliance is not optional, and whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the

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\(^7\) Para [70].
\(^8\) Para [71].
\(^9\) Para [71(c)].
\(^{10}\) Para [71(d)].
\(^{11}\) Para [71(e)].
\(^{12}\) Para [76].
remedial action taken against those under investigation cannot be ignored without any legal consequences.\textsuperscript{13}

3.3.11. In President of the Republic of South Africa v Office of the Public Protector and Others; 2018 (2) SA 100 (GP); [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017), the court held as follows, when confirming the powers of the Public Protector:-

3.3.11.1. The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the constitution;\textsuperscript{14}

3.3.11.2. The Public Protector has the power to take remedial action, which include instructing the President to exercise powers entrusted on them under the constitution if that is required to remedy the harm in question;\textsuperscript{15}

3.3.11.3. Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) affords the Public Protector with the following three separate powers;\textsuperscript{16}:

\begin{itemize}
  \item a) Conduct an investigation;
  \item b) Report on that conduct; and
  \item c) To take remedial action.
\end{itemize}

3.3.11.4. The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or \textit{prima facie} findings;\textsuperscript{17}

\textsuperscript{13} \textit{Ibid} para [73].
\textsuperscript{14} Para [79].
\textsuperscript{15} Para [82].
\textsuperscript{16} Para [100 – 102].
\textsuperscript{17} Para [104].
3.3.11.5. The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court.\footnote{Para [105].}

3.3.11.6. The fact that there is no firm findings of the wrong-doing, this does not prohibit the Public Protector form taking remedial action. The Public Protector’s observations constitute \textit{prima facie} findings that point to serious misconduct.\footnote{Para [107 – 108].}

3.3.11.7. \textit{Prima facie} evidence which point to serious misconduct is a sufficient and appropriate basis for the Public protector to take remedial action.\footnote{Para [112].}

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

3.3.12. The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector is also given power to resolve disputes through conciliation, mediation, negotiation, advising the complainant regarding appropriate remedies or any other means that may be expedient under the circumstances.

3.3.13. DAFF is an organ of state, as contemplated by section 239 of the Constitution and its conduct amounts to conduct in state affairs, as a result, this matter falls within the ambit of the Public Protector’s mandate.

3.4 The jurisdiction of the Public Protector to investigate and take appropriate remedial action in this matter was not disputed by DAFF.
4. THE INVESTIGATION

4.1 Methodology

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

4.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.1.3 The investigation process included an exchange of correspondence with DAFF, through its Director-General, Mr MM Mlengana. Interviews and meetings were conducted with implicated officials of DAFF. An analysis of relevant documentation was undertaken; conducted research; and considered and applied relevant laws, regulatory framework and jurisprudence.

4.1.4 During the investigation process, notices in terms of section 7(9) of the Public Protector Act (section 7(9) notices) dated 23 April 2019, were served on the following implicated individuals respectively on 24 April 2019, to afford them an opportunity to respond to my provisional findings:-

4.1.4.1 The Director-General of DAFF, Mr MM Mlengana;

4.1.4.2 The Chief Financial Officer of DAFF, Mr John Hlatshwayo (Mr Hlatshwayo);

4.1.4.3 The Director: Statistics and Economic Analysis of DAFF, Ms Ellen Matsel (Ms Matsel);

4.1.4.4 The Departmental Transport Officer of DAFF, Mr Victor Mncube (Mr Mncube);
4.1.4.5 The former Chief Director: Economic and Statistical Services of DAFF, Mr Rodney Dalton Dredge (Mr Dredge - retired); and to

4.1.4.6 The former Director: Budgets and Reporting of the Department of DAFF, Mr Johan Barend Venter (Mr Venter - retired).

4.1.5 Responses to the section 7(9) notices were received from Messrs Hlatshwayo, Venter and Mncube on 02, 06 and 17 May 2019 respectively, and from Ms Matsei on 21 May 2019. The submissions contained in the said responses have been considered and factored into this report.

4.2 **Approach to the investigation**

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

4.2.1.1 What happened?
4.2.1.2 What should have happened?
4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to improper conduct or maladministration?

4.2.1.4 In the event of impropriety or maladministration, what would it take to remedy the wrong and what action should be taken?

4.2.2 The question regarding what happened is resolved through a factual enquiry relying on evidence provided by the parties and independently sourced during the investigation. In this case, the factual enquiry focused on whether DAFF incurred irregular, fruitless and wasteful expenditure in the implementation of the Farmer Register Project and whether the conduct of DAFF, through its officials amounted
to maladministration and/or improper conduct as contemplated in section 6(4) of the Public Protector Act.

4.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by DAFF to prevent maladministration and/or improper conduct from occurring.

4.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of the impropriety and/or maladministration where appropriate.

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

4.3.1 Whether DAFF incurred irregular, fruitless and wasteful expenditure in implementing the Farmer Register Project; and

4.3.2 Whether DAFF irregularly procured rental vehicles for the Farmer Register Project.

4.4 The Key Sources of information

4.4.1 Copies (unless otherwise specified) of the following documents and correspondence sent and received

4.4.1.1 “Farmer register pilot study – statistical report 2009”;

4.4.1.2 Email correspondence between Mr Johan Venter and Ms Ellen Matsei, dated 08 and 09 August 2009;
4.4.1.3 General submission to the Acting Director-General from the Chief Director: Economic and Statistical Services titled "To request the Acting Director-General to approve one of the three funding options for the Farmer Register" File Number 5.3.3.3, dated 20 April 2010;

4.4.1.4 "Reprioritisation of Budget: Programme 3 Agriculture Support Services" submission to the Acting Director-General and Acting Chief Financial Officer from the Director: Budgets and Reporting, dated 25 June 2010;

4.4.1.5 "Virement Transfer 2010/11" correspondence to the Director-General: National Treasury, dated 28 June 2010;

4.4.1.6 "Virement: 2010/11 Financial Year" submission to the Acting Director-General and the Minister of Agriculture, Forestry and Fisheries from the Acting Chief Financial Officer, dated 29 June 2010;

4.4.1.7 "Shifting of Funds: 2010/11 Financial Year" File Number 4.5.1.1 (10/11) submission to the Acting Chief Financial Officer from the Director: Budgets and reporting, dated 29 June 2010;

4.4.1.8 "Report by KPMG on Factual Findings Forensic Investigation: Fruitless and Wasteful Expenditure", dated 29 June 2010;

4.4.1.9 Email correspondence from Senior State Accountant: Sub directorate: Budgets, Ms Nita Davidson to Ms Ellen Matsei, 22 July 2010;

4.4.1.10 "To request the Director-General to approve funding for the collection of statistics on smallholder and subsistence farmers, through the Farmer Register system" File Number 5.3.3.3 submission to the Director-General from Directorate: Agricultural Statistics, dated 20 January 2011;
4.4.1.11 BAS Expenditure Report for 2010/11 as at 31 March 2011;

4.4.1.12 "Funds to be rolled over to the 2011/12 financial year" correspondence to the Director-General: National Treasury from the Director-General of DAFF, dated 29 April 2011;

4.4.1.13 "Farmer Register Implementation Plan", dated 05 May 2011;

4.4.1.14 Minutes of management meeting held on 28 June 2011;

4.4.1.15 "Allocation of roll-over funds: 2011/12 financial year" correspondence to the Director-General of DAFF from the Deputy Director-General; Budget Office, Mr Mathew Simmonds, on behalf of the Director-General: National Treasury, dated 19 August 2011;

4.4.1.16 "Adjustment estimates of national expenditure" correspondence to the Director-General of DAFF from the Deputy Director-General; Budget Office, Mr Mathew Simmonds, on behalf of the Director-General: National Treasury, dated 05 October 2011;

4.4.1.17 Minutes of management meeting held on 23 November 2011;

4.4.1.18 "Project Manager for the Farmer Register Project – Operational Report", dated 22 December 2011;

4.4.1.19 Sample of completed and signed FRP questionnaire, dated 17 January 2012;

4.4.1.21 Undated "Farmer Register Project Report – North West Province 16/01/12 – 16/02/02";

4.4.1.22 "Department of Agriculture, Forestry and Fisheries Salary Reports for contract employees of the Farmer Register Project" from September 2011 to March 2012;

4.4.1.23 BAS Expenditure Report for 2011/12 as at 31 March 2012;

4.4.1.24 "Closing Report of the Farmer Register", dated September 2011 to April 2012;

4.4.1.25 "Project Manager for the Farmer Register Project – Operational Report", dated 29 May 2012;

4.4.1.26 BAS Expenditure Report for 2012/13 as at 31 March 2013;

4.4.1.27 Original written complaint of the Complainant, dated 02 July 2013;

4.4.1.28 Written correspondence addressed to the then Acting Director-General of the Department of Agriculture, Forestry and Fisheries (DAFF), dated 12 September 2013 from the office of the Public Protector;

4.4.1.29 Acknowledgement letter, dated 22 October 2013 from the then Director-General of DAFF, Professor EV Vries in response to the correspondence dated 12 September 2013;

4.4.1.30 "Farmer Register Task team" document, dated 27 September 2013;

4.4.1.31 Written correspondence addressed to the Chief Director of DAFF, dated 12 September 2013 from the office of the Public Protector;
4.4.1.32  "Condonation of irregular, fruitless and wasteful expenditure as identified during an (sic) forensic investigation by KPMG procurement of computer and GPS equipment by the Directorate: Agricultural Statistics: R389 806.50 for computer equipment and R539 166.50 for GPS equipment" File Number 4/4/P submission to the Director-General of DAFF, the Chief Financial Officer and the Chief Director: Financial Management from the Director: Supply Chain Management, dated 28 March 2014;

4.4.1.33  "Fruitless expenditure: KPMG forensic investigation" File Number: FA 4.5.6.2.2014/15 memorandum to the Director-General of DAFF from the Chief Financial Officer, dated 09 June 2014;

4.4.1.34  "Written warning" correspondence to the Director: Statistics and Economic Analysis, Ms Ellen Matsei, dated 31 March 2015;


4.4.1.36  Subpoena, dated 25 May 2018, issued in terms of section 7(4) and (5) of the Public Protector Act, to Mr Mooketsa Ramasodi, the then Acting Director-General of DAFF;

4.4.1.37  Subpoena, dated 25 May 2018, issued in terms of section 7(4) and (5) of the Public Protector Act, to Mr Kenneth Ratshihali, in his capacity as the former Director: Risk Management and Investigations at DAFF;

4.4.1.38  Subpoena, dated 25 May 2018, issued in terms of section 7(4) and (5) of the Public Protector Act, to Mr Johan Venter, in his capacity as the former Director: Budgets and Reporting at DAFF;
4.4.1.39 Subpoena, dated 25 May 2018, issued in terms of section 7(4) and (5) of the Public Protector Act, to Ms Linda Pike, the Director: Risk Management and Investigations at DAFF;

4.4.1.40 "Access To Forensic Reports" Correspondence from Mr Dawie Fouche (Director) of KPMG to the Public Protector, dated 19 June 2018;

4.4.1.41 Correspondence to Ms Ellen Matsei, the Director: Statistics and Economic Analysis, dated 29 August 2018;

4.4.1.42 Email correspondence to Ms Ellen Matsei, the Director: Statistics and Economic Analysis, dated 25 September 2018;

4.4.1.43 Email correspondence to Ms Ellen Matsei, the Director: Statistics and Economic Analysis, dated 25 September 2018;

4.4.1.44 Correspondence to Mr Jacob Hlatshwayo, the Chief Financial Officer of DAFF, dated 23 January 2019;

4.4.1.45 Email correspondence to Ms Karen Swanepoel, Personal Assistant: Chief Financial Officer, dated 20 February 2019;

4.4.1.46 Email correspondence to Ms Karen Swanepoel, Personal Assistant: Chief Financial Officer, dated 27 February 2019;

4.4.1.47 Email correspondence to Ms Ellen Matsei, the Director: Statistics and Economic Analysis, dated 27 February 2019;

4.4.1.48 Undated "Terms of Reference: Farmer Register Populating and Data Collection Project";
4.4.1.49 Undated “Comprehensive report on the history of the Farmer Register project implementation by Directorate: Statistics and Economic Analysis”;


4.4.1.51 Sundry Payment requests with invoice numbers 0000920, 0000933, 0001004, 0001021, 0001066 and 0001078;

4.4.1.52 Supply chain management documents relating to the purchasing of Global Positioning System (GPS) devices for the Farmer Register Project;

4.4.1.53 Supply chain management documents relating to the appointment of the SIQ Pulawarona Consortium as project managers for the Farmer Register Project for a period of seven (7) months;

4.4.1.54 Supply chain management documents relating to the procurement of 30 Dell OptiPlex GX755 computers for the Farmer Register Project; and

4.4.1.55 Undated “Terms of Reference: Farmer Register Populating and data Collection project”.

4.4.2 Notices in terms of section 7(9) of the Public Protector Act to:-

4.4.2.1 Mr Mlengana, The Director-General of DAFF, dated 23 April 2019;

4.4.2.2 Mr Jacob Hlatshwayo, the Chief Financial Officer of DAFF, dated 23 April 2019; and to
4.4.2.3 Ms Ellen Matsei, the Director: Statistics and Economic Analysis, dated 23 April 2019;

4.4.2.4 Mr Victor Mncube, the Departmental Transport Officer, dated 23 April 2019;

4.4.2.5 Mr Johan Venter, in his capacity as the former Director: Budgets and Reporting (retired), dated 23 April 2019; and

4.4.2.6 Mr Rodney Dalton Dredge, in his capacity as the former Chief Director: Economic and Statistical Services (retired), dated 23 April 2019.

4.4.3 **Responses to notice in terms of section 7(9) of the Public Protector Act received from:-**

4.4.3.1 Mr Jacob Hlatshwayo, the Chief Financial Officer of DAFF on 02 May 2019 with the following annexures:-

4.4.3.1.1 "Shifting of Funds: Financial Year 2011/2012" signed by Mr Johan Venter and dated 06 June 2011;

4.4.3.1.2 Email correspondence to Ms Helen Molefe, the Personal Assistant for Ms Ellen Matsei, from Johan Venter, the Director: Budgets and Reporting, dated 06 June 2011;

4.4.3.1.3 Correspondence with annexures to the Director-General of DAFF "Allocation of Roll-Over Funds: 2011/12 Financial Year" from Mr Mathew Simmonds, the Deputy Director-General: Budget Office for Director-General: National Treasury, dated 19 August 2011;
4.4.3.1.4 Correspondence from Mr Johan Venter, in his capacity as the former Director: Budgets and Reporting “Virement Transfer 2011/12 Financial Year”, dated 17 May 2012;

4.4.3.1.5 Correspondence with annexures from Financial Management: Budgets and Reporting to the Chief Financial Officer “Final Virement: 2011/12 Financial Year”, dated 17 May 2012;

4.4.3.1.6 Undated “State of Expenditure as at 31 March 2012, Policy, Planning & Monitoring & Evaluation”;

4.4.3.1.7 Submission with annexures, to the Chief Financial Officer, the Director-General, the Deputy Minister and to the Minister, from the Director: Budgets (File Number DBR-4.5.1.1/3 (11/12) “Virement:2012/13 Financial Year”, dated 09 June 2012;

4.4.3.1.8 Submission with annexures, to the Chief Financial Officer from the Director: Budgets (File Number 4.5.1.1/3 (12/13) “Virement:2012/13 Financial Year”, dated 23 January 2013; and

4.4.3.1.9 Undated “Breakdown of Funds for Farmer Register Project”.

4.4.3.2 Mr Johan Venter, in his capacity as the former Director: Budgets and Reporting (retired) on 06 May 2019 with the following annexures:-

4.4.3.2.1 “Shifting of funds: Financial Year 2011/2012” dated 06 June 2011;

4.4.3.2.2 Email correspondence to Ms Helen Molefe, the Personal Assistant for Ms Ellen Matsei, from Johan Venter, the Director: Budgets and Reporting, dated 06 June 2011;
4.4.3.2.3 Undated "Breakdown of Funds for Farmer Register Project";

4.4.3.2.4 Correspondence from Mr Johan Venter, in his capacity as the former Director: Budgets and Reporting "Virement Transfer 2011/12 Financial Year", dated 17 May 2012;

4.4.3.2.5 Submission with annexures, to the Chief Financial Officer, the Director-General, the Deputy Minister and to the Minister, from the Director: Budgets (File Number DBR-4.5.1.1/3 (11/12) "Virement:2012/13 Financial Year", dated 09 June 2012;

4.4.3.2.6 Correspondence to Mr Venter, in his capacity as the former Director: Budgets and Reporting "Appointment as Acting Chief Director: Financial Management" dated 07 May 2012;

4.4.3.2.7 Submission with an annexure to the Chief Financial Officer (File Number 4.5.1.1/3 (11/12) "Final Virement:2011/12 Financial Year", dated 17 May 2012;

4.4.3.3 Mr Victor Mncube, the Departmental Transport Officer on 17 May 2019 with the following annexures:-

4.4.3.3.1 Tax invoice: 0604977 from Travel With Flair, dated 09 November 2011;

4.4.3.3.2 Tax invoice: IN119083 from Kwela Fleet Management, dated 19 September 2011;

4.4.3.3.3 Rental agreement with handwritten number 044412, dated 19 September 2011;
4.4.3.4.4 Conference/workshop/Lekgotla Reservation request with handwritten number 025/11/13927, dated 19 September 2011;

4.4.3.4.5 Unsigned Shuttle Service Voucher: 044412;

4.4.3.4.6 Email correspondence from Rebecca Maphai of Europcar to Mr Victor Mncube, dated 17 May 2019;

4.4.3.4.7 Email correspondence from Lungi Makalaka of Avis Budget to Mr Victor Mncube, dated 17 May 2019; and

4.4.3.4 Ms Ellen Matsei, the Director: Statistics and Economic Analysis on 21 May 2019 with the following annexure:-

4.4.3.4.1 Submission to the Chairperson: Organisational and Development Committee from the Director: Statistical and Economic Analysis (File Number AS 5.3.3.6) "Appointment of 100 more contract workers additional to the structure of the Directorate Statistical and Economic Analysis", dated 10 May 2011.

4.4.4 Interviews, meetings and in loco inspections

4.4.4.1 Meeting on 17 August 2017 with the Complainant;

4.4.4.2 Meeting on 20 June 2018 with the following DAFF officials:-

4.4.4.2.1 Mr M Kgobokoe, the Deputy Director-General: PPME on behalf of the Director-General of DAFF,

4.4.4.2.2 Ms Liunda Pike, the Director: Risk Management and Investigations,
4.4.4.3 Ms Ellen Matsei, the Director: Statistics and Economic Analysis; and

4.4.4.4 Mr Johan Venter, in his capacity as the former Director: Budgets and Reporting.

4.4.4.3 Follow up interview on 18 September 2018 with Ms Ellen Matsei, the Director: Statistics and Economic Analysis;

4.4.4.4 Follow up interview on 17 October 2018 with Mr Johan Venter, in his capacity as the former Director: Budgets and Reporting;

4.4.4.5 Interview on 20 February 2019 with Mr Jacob Hlatshwayo, the Chief Financial Officer of DAFF;

4.4.4.6 Further interview on 07 March 2019 with Ms Ellen Matsei, the Director: Statistics and Economic Analysis;

4.4.4.7 Interview on 11 March 2019 with the following DAFF officials:-

4.4.4.7.1 Mr Roewyn Danster, the Director: Supply Chain Management,

4.4.4.7.2 BAS System Controller,

4.4.4.7.3 Deputy Director: Financial Reporting, and

4.4.4.7.4 Mr Daan Liebenberg, the Acting Director: Financial Accounting.

4.4.4.8 Follow up interview with Mr Jacob Hlatshwayo, the Chief Financial Officer of DAFF on 16 May 2019;
4.4.5 Legislation and other prescripts

4.4.5.1 Public Protector Act, 1994;

4.4.5.2 Constitution of the Republic of South Africa, 1996;

4.4.5.3 Public Finance Management Act, 1996;

4.4.5.4 National Treasury “Accounting manual for Department: Appropriation Statement” 2015;

4.4.5.5 National Treasury “Regulations for Departments, Constitutional Institutions and Public Entities” issued in terms of the Public Finance Management Act, 1999, April 2001;

4.4.5.6 National Treasury “Guidelines on Fruitless and Wasteful Expenditure”, May 2014;

4.4.5.7 Departmental Financial Instructions for the Department of Agriculture, revised in September 2009;

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 Regarding whether DAFF incurred irregular, fruitless and wasteful expenditure in implementing the Farmer Register Project:-
Common cause or undisputed facts

5.1.1 It is not in dispute that during the 2008/2009 financial year, DAFF initiated a Farmer Register Project (FRP) which was to be administered by the Directorate: Statistics and Economic Analysis (D: SEA), previously referred to as the Directorate: Agricultural Statistics (D: AS).

Issues in dispute

5.1.2 The issue for determination is whether DAFF incurred unauthorised, irregular, fruitless and wasteful expenditure in implementing the FRP.

5.1.3 According to the records obtained from DAFF, the intention of the FRP was to establish up-to-date statistics of all agricultural producers in South Africa.

5.1.4 The Farmer Register would enable DAFF and other institutions to have accurate statistics of both existing commercial and emerging agricultural producers in the country. The Farmer Register was expected to contribute to informed policy development and improved planning, decision making and service delivery by DAFF and the entire agricultural sector.

5.1.5 A pilot study of the FRP was undertaken in the Capricorn District of Limpopo province (Capricorn District) during the year 2008.

5.1.6 The purpose of the pilot study was to test the logistics of a project of this nature and to collect statistical information prior to the national roll-out of the FRP, using the Farmer Register Questionnaire developed by DAFF, in order to improve the efficiency of running a project of this nature.
5.1.7 Ms Ellen Matsei, the Director: Statistics and Economic Analysis (Ms Matsei) indicated in an interview conducted on 18 September 2018 with the investigation team that following the pilot study of the FRP conducted in the Capricorn District during 2008/2009, a submission for the approval of a national roll-out of the FRP was prepared in 2010 for the erstwhile Acting Director-General (ADG).

5.1.8 The submission was prepared by the erstwhile Chief Director: Economic and Statistical Services, Mr RD Dredge (Mr Dredge) to the then ADG, titled “To request the Acting Director-General to approve one of the three funding options for the Farmer Register” on 15 March 2010 and approved on 20 April 2010.

5.1.9 The submission also contained a note from the Director: Budgets and Reporting, Mr JB Venter (Mr Venter), dated 01 March 2010, stating that funds in the amount of R13.9 million were available in the 2010/11 financial year (FY) budget for the FRP.

5.1.10 On 24 May 2010 a submission was made to the ADG by Mr Venter, the purpose of which was to “obtain approval that the funds allocated in Programme 3 under goods and services for AgriBEE be reprioritised to fund the Farmer register Project...” The submission was approved by the then ADG on 25 May 2010.

5.1.11 The then Minister of Agriculture, Forestry and Fisheries, Ms Joemat-Peterson was advised of the transfer of these funds in terms of section 43(3) of the PFMA. The Director-General of National Treasury was also advised of the transfer during June 2010.
5.1.12 The funds made available for the FRP were accordingly increased from R13.9 million to R20 million during the 2010/2011 FY. Ms Matsei was advised of the availability of the funds in an email dated 22 July 2010.

5.1.13 On 20 January 2011, Mr Langa Zita (Mr Zita) the then Director-General of DAFF approved a strategy and work schedule for the FRP prepared by Ms Matsei.

5.1.14 In terms of the approved work schedule, the project would be carried out over a six (6) month period; the Directorate would appoint two (2) project managers as consultants to manage the data collection activities; the data collection would be done by approximately one hundred (100) contract employees; the data would be collected in a pattern, by attending to a province or two per month once a month, each district per province would be expected to work with approximately ten (10) data collectors per month.

5.1.15 The FRP did not commence in January 2011, which resulted in the funds being rolled over to the 2011/2012 FY. A letter addressed to the then Director-General of National Treasury dated 29 April 2011 from Mr Venter indicates that a request for a roll-over of the amount of R19 509 000 was requested to complete the FRP.

5.1.16 The request was approved in a response letter from National Treasury, dated 19 August 2011 and signed by the Deputy Director-General: Budget Office, Mr Mathew Simmonds.

5.1.17 The roll-over of the R19 509 000 was published in the Government Gazette No 1062 dated 14 November 2011.
Accordingly, an amount of R19,509,000 was approved and made available for the FRP during the 2011/2012 FY.

DAFF also provided its BAS Expenditure Reports (BAS reports) for the 2010/2011, 2011/2012 and 2012/2013 FY reflecting all expenditure for the Department including the FRP.21

The BAS Reports reflect that for the 2011/2012 FY as at 31 March 2012, an expenditure of R38,908 million was recorded for the FRP. The total expenditure for Travel and Subsistence for the 2011/2012 FY was R15,880 million.

For the 2012/2013 FY as at 31 March 2013, a further expenditure of R11,579 million was recorded on the BAS for the FRP.

According to the BAS reports, the following expenditure was recorded for the 2011/2012 FY and 2012/2013 FY on the FRP:-

<table>
<thead>
<tr>
<th>Financial year</th>
<th>Compensation of employees (R)</th>
<th>Goods and Services (R)</th>
<th>Machinery and Equipment (R)</th>
<th>Claims Against State Private Entities (R)</th>
<th>Leave Gratuity (R)</th>
<th>Total (R)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011/2012</td>
<td>6,976,376.23</td>
<td>31,412,599.89</td>
<td>518,811.86</td>
<td>767.47</td>
<td>0</td>
<td>38,908,555.45</td>
</tr>
</tbody>
</table>

21 In an interview conducted with Mr Hlatshwayo on 20 February 2019, he indicated that BAS stood for Basic Accounting System and that it was the accounting records where every transaction and expenditure of DAFF is recorded. Mr Hlatshwayo further confirmed that the BAS system could not be manipulated or altered. This BAS system therefore represents an accurate account of the Department’s expenditure on the FRP.
On 18 September 2018 an interview was conducted with Ms Matsei regarding the expenditure associated with the FRP.

Ms Matsei stated in evidence that she had conceptualised a project of this nature during the 2007/2008 FY. She had approached her supervisor, Mr Dredge about the concept, and he had suggested that she should start the project as a pilot study.

She was given a budget of R3 million to start the project in the District of Capricorn in the Province of Limpopo during 2009.

Ms Matsei could not recall making any submission for the approval of the R3 million to fund the pilot project. She stated that she remembered having a meeting with Messrs. Venter and Dredge where it was agreed that the pilot project would proceed.

Ms Matsei did not provide any evidence indicating that the R3 million expenditure on the pilot project in the Capricorn District was in terms of an approved budget.

Ms Matsei indicated that she appointed four (4) data collectors and hired 4x4 vehicles (bakkies) for the pilot project. The data collectors were given GPS systems to collect data.

During the course of the year 2009, they prepared a report reflecting their experiences, costing and challenges in the Capricorn District of Limpopo.
5.1.30 Ms Matsei stated that based on the outcomes of the pilot project, the national roll-out of the FRP was approved. It commenced during September 2011 and ran for a period of seven (7) months until April 2012, in the province of Kwa-Zulu Natal (KZN).

5.1.31 Ms Matsei stated during interviews that through a process of shortlisting and interviews conducted in Pretoria, approximately one hundred (100) data collectors were appointed on a contract basis for data collection in KZN.\(^22\)

5.1.32 Ms Matsei stated that the data collectors were trained on how to use the GPS systems and the questionnaires that were prepared for the farmers during September 2011.\(^23\)

5.1.33 The data collectors were transported to the district of UMgungundlovu (UMgungundlovu), in Pietermaritzburg.

5.1.34 Various requisition request forms provided by DAFF indicate that approximately fifty (50) bakkies were secured through a travel agent for the purpose of travelling to various areas to complete the questionnaires and/ or collect the data.\(^24\)

5.1.35 Ms Matsei further stated that the funds for the FRP were released late by DAFF and as a result, she had to rush the project due to the delay.

\(^{22}\) In an interview with Ms Matsei on 07 March 2019, she stated that due to the fact that the FRP occurred more than five (05) years ago, the employment records of the contract Data Collectors had been destroyed. However on 13 March 2019, Ms Matsei provided salary reports for her Directorate which also reflected the names of the contract employees for the seven months.

\(^{23}\) The procurement of the GPS equipment was the subject of an investigation commissioned by DAFF and conducted by KPMG during 2010. The investigation revealed that DAFF had incurred fruitless expenditure of R389 806.50 for the procurement of computer equipment and R539 166.50 for the GPS equipment as a result of the FRP. Disciplinary action was taken against Ms Matsei on 31 March 2015.

\(^{24}\) The process of procuring the bakkies is considered in paragraph 5.2 (below) of this report.
5.1.36 According to Ms Matsei, there was no time to get important advice on the implementation of the project.

5.1.37 Procurement documentation provided by DAFF indicate that SIQ Pulawarona Consortium (SQ) was appointed as project managers of the FRP after the project had commenced in KZN during September 2011.

5.1.38 It is unclear why the project commenced prior to the appointment of project managers to assist with the management of the project and to provide strategic guidance on logistics concerning the FRP.

5.1.39 Ms Matsei indicated that KZN was difficult to work in as it was during the rainy season and the terrain was muddy and the project managers advised them that they should have started in North West Province (NW), where it was sunny and not much rain.

5.1.40 The evidence provided by DAFF in the form of a memorandum dated 28 March 2011 indicates that one hundred (100) additional data collectors were appointed on a contract basis for a period not exceeding three (3) months. This memorandum was approved by the Chairperson: Organisational and Development Committee on 10 June 2011.

5.1.41 Ms Matsei stated that during December 2011, they decided to start the project in the North West Province (NW) as they were making little progress in KZN. They left the (one-hundred) 100 data collectors in KZN to continue the data collection.

5.1.42 Ms Matsei indicated that DAFF recruited other data collectors in NW through a process of advertising, shortlisting and interviews.
5.1.43 She stated further that in NW, they decided to appoint people from within the province who could speak the language as they had experienced difficulties with language barriers in KZN. She indicated that most of the data collectors who were recruited for the KZN portion of the project came from other provinces and did not know the area of KZN.

5.1.44 Ms Matsei conceded during the interview that even though the scope of the FRP was to roll out the project nationally for a period of seven (7) months, at a budget of R20 million, the funds were exhausted in KZN and in a portion of NW.

5.1.45 She indicated that in KZN, they had captured about 51 000 questionnaires and in NW about 7 000 questionnaires. She also stated that not all the questionnaires have to date been captured and put into the Farmer Register.

5.1.46 Ms Matsei stated that by December 2011, she noticed that the R20 million that was allocated for the project was being depleted, she made a submission to the Finance Department to make them aware of the exhausted funds but she was advised to continue until April 2012.

5.1.47 Ms Matsei also stated that the majority of her budget had been utilised on the hiring of the bakkies, accommodation and payment of salaries.

5.1.48 Ms Matsei stated that she was responsible for budgeting in her Directorate and that by the year 2012, her Directorate was operating on a deficit as a result of the FRP.

5.1.49 Ms Matsei stated further that DAFF did not receive value for money for the FRP because the project was never completed.
Ms Matsei also stated that her Directorate exceeded its approved budget for the FRP.

Evidence presented by Mr Johan Venter during his interview

On 17 October 2018, an interview was conducted with Mr Venter, who was at the time the Director: Budgets and Reporting at DAFF.

He stated that it was the responsibility of his Directorate to monitor expenditure at DAFF and to ensure that funds were available for the FRP.

Mr Venter stated that Ms Matsei could not have exceeded the approved budget on the FRP without a budget allocation or unless the Director: Budgets and Reporting granted an override for that specific expenditure. Otherwise a budget block would have been implemented in the Directorate resulting in the expenditure not being incurred if there were no more funds available for the project.

Mr Venter conceded that the FRP went over budget by R38 million for the 2011/2012 FY. He conceded that something had gone wrong in the manner in which the FRP had been implemented, resulting in the budget being affected.

Mr Venter stated that there had been close monitoring of expenditure on the FRP. He had held meetings about this issue with Ms Matsei, the erstwhile CFO (Mr Hlatshwayo) and the DDG on this matter. There was also e-mail communications informing Ms Matsei of the budget and the possibility of overspending on the FRP.
Evidence presented by Mr John Hlatshwayo during his interviews

5.1.56 An interview was also conducted with Mr Hlatshwayo on 20 February 2019 on the expenditure of the FRP.

5.1.57 Mr Hlatshwayo stated that his role as CFO was financial management and ensuring that DAFF does not under/overspend on its budget. He monitors and advises on spending patterns within DAFF.

5.1.58 Regarding the expenditure on the FRP, he indicated that nothing stopped the department from allocating additional funds for an item in addition to the original budget.

5.1.59 Mr Hlatshwayo stated that before the additional funds can be made available, a submission for a virement needs to be approved by the CFO and the Accounting Officer and such approval should also be communicated to the Minister.

5.1.60 Mr Hlatshwayo in essence defined a virement as an act of shifting funds from branch A to branch B in the department, if there are any unspent funds in branch A and there is a need for those funds in branch B.

5.1.61 Mr Hlatshwayo conceded that DAFF did not yield any value from the FRP because to date, DAFF does not have a Farmer Register for the whole country.

Section 7(9) notices sent and responses received

5.1.62 Section 7(9) of the Public Protector Act provides that: "If it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter investigated and that such implication may be to the
detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector shall afford such person an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances."

5.1.63 Section 7(9) notices dated 23 April 2019 were delivered to Mr MM Mlengana in his capacity as DG of DAFF, Ms Ellen Matsei, Mr Johan Venter and Mr Jacob Hlatshwayo respectively on 24 April 2019. The responses provided regarding the section 7(9) notices are considered herein.

Response to the section 7(9) notice received from Ms Ellen Matsei

5.1.64 In her response to the section 7(9) notice, Ms Matsei did not deviate from the evidence she provided during interviews on 18 September 2018.

5.1.65 Ms Matsei stated that as the Director: Statistical and Economic Analysis, she was responsible for budgeting and expenditure on the FRP once it was approved by the then DG, Mr Zita during April 2010.

5.1.66 Ms Matsei did not dispute that the initial approved budget for the FRP was exceeded and further that the excess expenditure on the FRP was not authorised. She stated that:-

"3…myself as the Director of Statistics and Economic analysis I compiled a submission while the project was already running, to request DEXCO to approve additional funds for the project as per the observation with the team at the time. Funds were depleting fast and we were covering little ground as per activities, caused mainly by the delays in KZN given the difficult weather conditions.

4......
5. I never received feedback about the submission; there was not even a mention from the CFO or my immediate supervisor (Mr Rodney Dredge) to discuss the merits/demerits of the submission. To this day, that submission was kept away from me. In January 2012 I inquired about it and even went to DG's office but I was never able to find it."

5.1.67 Ms Matsei did not dispute that the FRP was not successful due to poor planning and ineffective budgeting.

5.1.68 Ms Matsei did not dispute that despite the expenditure on the FRP, it was not completed as questionnaires were only collected in a few districts in KZN and NW provinces.

5.1.69 She is also did not dispute that the FRP did not yield value for money for DAFF, as it currently does not have an operational Farmer Register database for smallholder and subsistence farmers as envisaged in the approved motivation for the FRP.

Responses to section 7(9) notices received from Messrs. Jacob Hlatshwayo and Johan Venter

5.1.70 Messrs. Hlatshwayo and Venter in essence dispute that there was no approval to exceed the initial approved budget for the FRP.

5.1.71 They state that the expenditure reflected on the BAS Reports was approved through a virement transfer between main divisions within votes as contemplated by section 43 of the PFMA and a further shifting of funds for compensation of employees and goods and services for the FRP.
5.1.72 The evidence they provided indicates that notwithstanding the roll-over of funds in the amount of R19 509 000 during the 2011/2012 FY for the FRP, there was also a shifting of funds in the amount of R700, 000 (seven hundred thousand) towards the compensation of employees and R3 million (three million) towards goods and services for the FRP.

5.1.73 They also provided evidence indicating that there was also a virement in terms of section 43 of the PFMA to shift R12, 486 million to defray over expenditure which was approved by Mr Hlatshwayo in his capacity as the CFO of DAFF on 17 May 2012.

5.1.74 The virement contemplated for the amount of R12, 486 million in the 2011/12 FY only indicates that the amount went to the entire Policy, Planning, Monitoring and Evaluation sub-programme/branch. It does not specifically indicate that the purpose of the virement was to approve the use of further funds on the FRP under the Directorate: Statistics and Economic Analysis.

5.1.75 Mr Hlatshwayo indicated in his response that for the 2012/13 FY there was a movement between compensation of employees and goods and services within the same directorate, but was unable to provide evidence indicating how the expenditure of R11, 579 million as reflected on DAFF's BAS report for that FY was budgeted for nor was he able to provide any approval for that expenditure.

5.1.76 No evidence was provided indicating that the excess expenditure that was ultimately incurred on the FRP was budgeted for and approved.
Application of the relevant legal framework


5.1.77 Section 195(1) of the Constitution provides that the efficient, economic and effective use of resources must be promoted in public administration.

5.1.78 Section 195(2) provides that the above principles apply to administration in every sphere of government and organs of state.

5.1.79 Section 239 includes in the definition of "organ of state", any department of state.

5.1.80 DAFF as an organ of state is accordingly required to observe and promote the efficient, economic and effective use of the resources under its administration.

5.1.81 The terms efficient, economic and effective are not defined in the Constitution.

5.1.82 In Cool Ideas 1186 CC v Hubbard and Another25 the Constitutional Court considered the proper approach to statutory interpretation. The court stated the following: -

5.1.83 "[28] A fundamental tenant of statutory interpretation is that the words in a statute must be given their ordinary grammatical meaning, unless to do so would result in an absurdity. There are three important interrelated riders to this general principle, namely:

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25 Cool Ideas 1186 CC v Hubbard and Another 2014 (4) SA 474 (CC) 484.
a) that statutory provisions should always be interpreted purposively;

b) the relevant statutory provision must be properly contextualised; and

c) all statutes must be construed consistently with the Constitution, that is, where reasonably possible, legislative provisions ought to be interpreted to preserve their constitutional validity. This proviso to the general principle is closely related to the purposive approach referred to in (a)."

5.1.84 In accordance with the principles of statutory interpretation, when a statute uses terms that are not defined in the statute, the approach is to consider the ordinary meaning of that term as defined in the dictionary.26

5.1.85 According to the Oxford South African Concise Dictionary the term "efficient" is defined as: "achieving maximum productivity with minimum wasted effort or expense." The term "economic or economical" is defined as: "giving good value or return in relation to the money, time or effort expanded" and "effective" is defined as "successful in producing a desired or intended result."

The Public Finance Management Act, 1999 (PFMA)

5.1.86 The object of the PFMA is to secure transparency, accountability, and sound management of the revenue, expenditure, assets and liabilities of the institutions to which the PFMA applies.

5.1.87 Section 1 of the PFMA defines fruitless and wasteful expenditure as:-

26 See, Iby Capital SA Property Holdings LTD v Chavonnes Badenhorst St Clair Cooper and others 2018(4) SA 71 (SCA) at 81 – 82.
"...expenditure which was made in vain and would have been avoided had reasonable care been exercised;"

5.1.88 The National Treasury Guidelines on Fruitless and Wasteful Expenditure, dated May 2014, define the words in vain and reasonable care as contained in the definition of fruitless and wasteful expenditure as:-

"...a transaction, event or condition which was undertaken without value or substance and which did not yield any desired results or outcome. Reasonable care means applying due diligence (careful application, attentiveness, caution) to ensure that the probability of a transaction, event or condition not being achieved as planned is being managed to an acceptable level."

5.1.89 Section 38 provides for the responsibilities of an accounting officer of a Department. It provides that an accounting officer is responsible for the effective, efficient, economical and transparent use of the resources of the Department.

5.1.90 Section 38 also provides that accounting officers must take effective and appropriate steps to prevent, inter alia, fruitless and wasteful expenditure.

5.1.91 Section 45(b) provides for the responsibilities of departmental officials. It provides that an official in a department is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility.

5.1.92 Section 45(c) provides that departmental officials must take effective and appropriate steps to prevent fruitless and wasteful expenditure.
5.1.93  Section 43 of the PFMA provides for a virement between divisions within votes. It provides that an accounting officer for a department may utilise a saving in the amount appropriated under a main division within a vote towards the defrayment of excess expenditure under another main division within the same vote, unless the relevant Treasury directs otherwise.

5.1.94  According to the National Treasury Accounting Manual for Departments: Appropriation Statement, dated 2015, a virement is simply the utilisation of savings or under spending from amounts appropriated under one main division (programme) towards the defrayment of increased expenditure under another main division within the same vote.

**National Treasury Regulations**

5.1.95  Section 76(1) of the PFMA provides that the National Treasury must make Regulations or issue instructions applicable to departments, concerning any matter that must be prescribed for departments in terms of the PFMA.

5.1.96  Regulation 8.2.1 of the National Treasury Regulations provides that:-

> "An official of an institution may not spend or commit public funds except with the approval (either in writing or by duly authorised electronic means) of the accounting officer or a properly delegated or authorised officer."

5.1.97  The regulation is taken to mean that an official in the employ of the department must have sought approval, either in writing or by duly authorised electronic means, from the Director-General or his delegate.
Conclusion

5.1.98 No evidence could be found that the R3 million expenditure for the pilot study in the Capricorn District during 2009 was approved by the erstwhile Accounting Officer of DAFF or his/her duly appointed delegate, as required by Regulation 8.2.1 of the National Treasury Regulations.

5.1.99 Notwithstanding an approved budget of R20 million for the FRP, the evidence indicates that in the 2011/2012 FY, an additional R38,908 million had been utilised and in the 2012/2013 FY, a further R11,579 million was utilised for the project.

5.1.100 No evidence was found during the investigation indicating how this further expenditure was budgeted for.

5.1.101 Nor was any evidence presented during the investigation on the approval of this expenditure, as required by Regulation 8.2.1 of the National Treasury Regulations.

5.1.102 The evidence obtained during the investigation and discussed above indicates that the implementation of the FRP was unsuccessful due to poor planning such as the appointment of project managers to provide strategic guidance on the FRP after the project had already commenced in KZN.

5.1.103 The recruitment of contract data collectors from around South Africa and transporting them to KZN, which resulted in further avoidable expenditure on travel, subsistence and accommodation, when it would have been more financially prudent to recruit the contract data collectors from within the area to further curtail expenditure.
5.1.104 Ms Matsei received little supervision during the course of the FRP, nor was the adequate monitoring of the progress of the project.

5.1.105 The evidence provided also indicates that the project was not completed as questionnaires were only collected in a few districts in KZN and NW.

5.1.106 The FRP did not yield any value for DAFF as it currently does not have a complete Farmer Register database for smallholder and subsistence farmers as envisaged in the approved motivation for the FRP.

5.1.107 No evidence was therefore provided on the FRP indicating that DAFF had achieved maximum productivity with minimum wasted expense or effort, had obtained value in return for the money and time expanded on the project or that the project was successful.

5.1.108 Therefore, DAFF’s failure to complete the FRP within the approved budget fell short of the standard of efficient, economic and effective use of its resources as envisaged in section 195 of the Constitution and sections 38(1)(b) and 45(b) of the PFMA.

5.1.109 DAFF and the officials named in this report further did not take effective and appropriate steps to prevent fruitless and wasteful expenditure on the FRP, as envisaged in section 38(1)(c) and section 45(1)(c) of the PFMA.

5.1.110 The evidence received in interviews during the investigation indicates that Ms Matsei, as the Director of Statistics and Economic Analysis was responsible for the overall budget and expenditure of her Directorate, which included the FRP. It was her responsibility as the project leader of the FRP to ensure that it was implemented within budget once it was approved by the then ADG, during April 2010.
5.1.111 Mr Dredge as the then Chief Director: Economic and Statistical Services, and the immediate supervisor of Ms Matsei was required to exercise due oversight over the actions of Ms Matsei, to ensure that the FRP was implemented within budget once it was approved.

5.1.112 Mr Venter and Mr Hlatshwayo were responsible for monitoring of expenditure within DAFF.

5.1.113 No evidence could however be found indicating that the budget on the FRP was effectively monitored.

5.1.114 If proper and effective monitoring mechanisms had been in place, the expenditure on the FRP would not have been inflated to the levels reflected in this report.

5.1.115 The virement contemplated in section 43 of the PFMA and relied upon by Messrs. Hlatshwayo and Venter in their response to the section 7(9) notice did not constitute approval to incur the additional expenditure on the project.

5.2 **Whether DAFF irregularly procured rental vehicles for the Farmer Register Project.**

**Common cause or undisputed facts**

5.2.1 It is not in dispute that bakkies were rented by DAFF for the collection of data for the FRP.

**Issues in dispute**

5.2.2 The issue for determination is whether there were irregularities in the procurement of the bakkies for the FRP.
The scope of investigation of this issue was limited to an inspection and analysis of limited documentation provided by DAFF.

The documentation included requisition forms for the rental of vehicles, tax invoices from service providers as well as DAFF’s in-house travel agency, Travel With Flair (TWF).

However not all documentation was provided for inspection. Some requisition forms did not have attached tax invoices from the service provider or TWF. The sundry payment requests provided by DAFF did not have any identifiable invoice numbers which could be matched with the tax invoices provided.

From the records that are available, it was determined that on 19 September 2011 and on 15 November 2011 respectively, a request for fifty (50) bakkies for the FRP was made by Ms Matsei.

The requisition form dated 19 September 2011 was approved by the Departmental Transport Officer on the same date for the bakkies to be utilised from 19 September 2011 to 19 October 2011.

The requisition form dated 15 November 2011 which was also approved by the Departmental Transport Officer on the same date reflects that the bakkies would be utilised from 19 October 2011 to 19 November 2011.

The requisition form approved by the Departmental Transport Officer on 15 November 2011 is anomalous because the evidence indicates that Kwela Fleet Management (Kwela) had already commenced rendering the service from 19 October 2011. In essence, the services rendered by Kwela preceded the approval of the requisition by the Departmental Transport Officer.
5.2.10 It is curious how Kwela could have commenced rendering a service on 19 October 2011 without an approved requisition in place.

5.2.11 The requisition forms also only reflected one service provider, being Kwela, without a price quotation reflecting on the forms.

5.2.12 Mr Victor Mncube (Mr Mncube), the Departmental Transport Officer at DAFF confirmed that on both occasions, Kwela was appointed as the service provider for the FRP.

Evidence presented by Mr Mncube and Mr Rasesepa

5.2.13 An interview was conducted with Mr Victor Mncube (Mr Mncube), the Departmental Transport Officer at DAFF and Mr Mike Rasesepa (Mr Rasesepa), a Senior Administration Officer from DAFF on 11 March 2019, regarding the requisition forms.

5.2.14 With regard to the process followed in the submission of these requisition forms for the rental of the 50 Bakkies, they both indicated that ordinarily, the Directorate / Chief User concerned will source three quotations through consultation with Travel With Flair (TWF), being the in-house travel agent.

5.2.15 The three quotations are then attached to an approved submission from the Director-General as well as the requisition form and then sent to the Transport Department. The Transport Department will then check the requisition forms and approve the cheapest quotation, thereafter an order is then placed for the service.
5.2.16 Mr Mncube confirmed in the interview that it was his signature on the requisition forms in question and that he had signed and approved them without three price quotations reflected on the forms.

5.2.17 Mr Rasesepa stated during the interview that he had handled the processing of the requisition forms in question.

5.2.18 He indicated that his Supervisor, Mr Mncube had attempted without success to obtain three (3) quotations from TWF for the provision of 50 bakkies for the FRP during the year 2011.

5.2.19 He stated that Mr Mncube had then requested him to follow up with TWF regarding the three (3) quotations.

5.2.20 When TWF failed to respond to the request and taking into consideration the urgency at which the bakkies were required for the FRP, he had taken it upon himself to contact suppliers who could render the service.

5.2.21 Mr Rasesepa indicated that he had contacted about five (5) suppliers who stated that they could not render the service at short notice, with the exception of Kwela, who was willing to assist.

5.2.22 Mr Rasesepa stated that at the time of receiving the quotation from Kwela, it did not reflect a price because they charged per kilometre, making it difficult to record a price.

5.2.23 Mr Mncube stated that they had received the requisition forms late on a Friday and the Bakkies were requested for the same day.
Response to the section 7(9) notice received from Mr Victor Mncube.

5.2.24 In his response to the section 7(9) notice, Mr Mncube stated that "five quotations instead of five (sic) were requested from service providers. Under normal circumstances we are required to attach quotations with regret responses from the service providers who are not I (sic) a position to render the required services. In this case, this was not done due to an oversight on the part of Mr. Rasesepa to attach the regret responses to the conference (requisition). There was also an oversight on my part as the approval authority to double check if the regrets were indeed attached when submitted to me for approval."

5.2.25 Mr Mncube disputed that they deviated from proper procurement processes in the appointment of Kwela to render services for the FRP.

Application of the relevant legal framework

Chapter 14 of DAFF's Supply Chain Management Policy, contained in the Departmental Financial Instructions and dated September 2009 (DFI)

5.2.26 Paragraph 14.2.6.2 of the SCM Policy provides that three (03) written quotations must be obtained and attached to the procurement requisition. The particulars of the quotations not accepted must also be recorded on the procurement requisition.

5.2.27 Paragraph 14.2.6.4 provides that if it is not possible to obtain three (03) written quotations, the reasons thereof must be recorded on the procurement requisition.
Paragraph 14.2.6.5 provides that if only one price quotation is obtained, the reasonableness and fairness of price must be determined as per paragraph 14.2.3.

Paragraph 14.2.3 provides that where only one price quotation is received, the reasonableness of the price must be determined by using one of the following methods:

a. “Analysis of prices to establish the profit;”

b. Market price comparisons; and

c. Price history.

Paragraph 15.4.3 further provides that all bookings for car rentals must be done through the in-house travel agent.

Conclusion

The DFI require that three (3) written quotations must have been obtained and attached to the procurement requisition to TWF.

If only one price quotation was obtained, the reasonableness and fairness of the price of that quotation should have been determined using the criteria stated in paragraph 14.2.3 of the DFI.

In this case however, it is clear that in the requisition forms dated 19 September 2011 and 15 November 2011, three quotations were not attached, neither were the rejected quotations, as required by paragraph 14.2.6.2 of the DFI.
5.2.34 By Mr Mncube’s own admission in his response to the section 7(9) notice, they were required to attach quotations from the other service providers but this was not done.

5.2.35 It is also clear that no reasons were recorded on the requisition forms detailing why it was not possible to obtain three (3) written quotations, as required by paragraph 14.2.6.4 of the DFI.

5.2.36 No evidence was found during the investigation indicting that the reasonableness and fairness of the price given by Kwela was determined, in line with the requirements of paragraph 14.2.6.5 read with paragraph 14.2.3 of the DFI.

5.2.37 Both the requisition forms examined did not reflect a price quotation. Mr Rasesepa had indicated during interviews that the reason for this was that Kwela charged per kilometre thus making it difficult to record a price on the document.

5.2.38 The conduct of Mr Rasesepa had the effect of binding DAFF to Kwela without knowing how much it would cost the department to rent the fifty (50) bakkies.

5.2.39 It is also not clear why DAFF allowed Kwela to render a service between 19 October and 19 November 2011 when the evidence indicates that the requisition form was approved by the Department Transport Officer on 15 November 2011.

6. **FINDINGS**

Having considered the evidence uncovered during the investigation against the relevant regulatory framework, the following findings are made:
6.1 Regarding whether DAFF incurred irregular, fruitless and wasteful expenditure in implementing the Farmer Register Project: -

6.1.1 The allegation that DAFF incurred fruitless and wasteful expenditure in implementing the Farmer Register Project, is substantiated.

6.1.2 The conduct of DAFF in implementing the FRP was improper, as contemplated by section 182(1) of the Constitution and further constituted maladministration, as contemplated by section 6(4)(a)(i) of the Public Protector Act.

6.2 Whether DAFF irregularly procured rental vehicles for the Farmer Register Project:-

6.2.1 The allegation that DAFF irregularly procured rental vehicles for the farmer Register Project, is substantiated;

6.2.2 The procurement of the fifty (50) bakkies for the Farmer Register Project by DAFF during November 2011 amounted to improper conduct as contemplated by section 182(1) of the Constitution and constitutes maladministration, as contemplated by section 6(4)(a)(i) of the Public Protector Act.

7. OBSERVATIONS

7.1 Case law has determined that remedial action contemplated by the Public Protector must be appropriate under the circumstances.

7.2 Section 38(1)(g) and (h) of the PFMA are clear that an accounting officer for a department must on discovery of any fruitless and wasteful expenditure,
report it to the relevant treasury and must take effective and appropriate disciplinary steps against the officials who made or permitted the fruitless and wasteful expenditure to occur.

7.3 It could however not have been contemplated by this legislation to take such steps in circumstances where almost ten (10) years have elapsed. Particularly where the issue of discipline is concerned.

7.4 The question then becomes, if disciplinary steps are taken as envisage by subsection (h), would they be appropriate under the circumstances to address the malfeasance discovered.

7.5 It is trite that disciplinary action taken against any official must be taken within a reasonable time. In *Department of Public Works, Road and Transport v Motshoso & Others*, the court found it unconscionable and unfair a three (3) year delay in instituting disciplinary action against an employee.

7.6 The incident giving rise to this complaint occurred during the year 2009, almost ten (10) years ago and it would be unfair and unreasonable to take disciplinary action against the officials implicated in this report.

7.7 These are considerations that must be factored in by the accounting officer of DAFF in determining and taking further steps to remedy the fruitless and wasteful expenditure as contemplated by section 38(1) of the PFMA.

7.8 However, a more pertinent issue which is currently relevant within the department is the media reports that DAFF has, together with Statistics South Africa (StatsSA) continued with the FRP, but currently renamed the Producer/Farmer Register (PFR).

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27 *Department of Public Works, Road and Transport v Motshoso & Others* [2005]10 BLLR 957 (LC).
7.9 According to the reports, the project commenced in the year 2018 and is expected to run until the year 2021.

7.10 It is also reported that StatsSA officials began visiting farms across the country in October 2018, gathering data on the country’s state of commercial agriculture.

7.11 It is further reported that 600 field staff will be visiting the various commercial farms.

7.12 What is of concern is that DAFF has initiated a new PFR when the previous FRP was not successful, resulting in fruitless and wasteful expenditure.

7.13 DAFF has to ensure that it takes appropriate steps to prevent committing public funds to another futile exercise as was the case with the FRP.

7.14 DAFF must also ensure that the control measures that are currently in place when implementing such projects are strictly adhered to and enforced going forward and must address the following:-

7.14.1 Clear reporting lines and separation of responsibilities, and all officials compelled to be accountable for their assigned duties;

7.14.2 Strict adherence to procedures and processes regulating the requisition of goods and service;

7.14.3 Adequate and relevant training of staff on adherence to control measures and the department’s supply chain management policies;

7.14.4 Clearly defined financial delegations of authority;
7.14.5 Clearly defined budget planning and management of expenditure which must be regularly monitored;

7.14.6 The provision of regular progress reports to the accounting officer or his duly appointed delegate; and

7.14.7 Sufficient consultation within the farming sector.

8 REMEDIAL ACTION

8.1 The appropriate remedial action therefore taken in terms of section 182(1)(c) of the Constitution is the following:-

8.1.1 The Director-General of the Department of Agriculture, Forestry and Fisheries to:-

8.1.2 Take cognisance of the findings relating to maladministration, fruitless and wasteful expenditure contained in this report and ensure that mechanisms are enforced and/or introduced to prevent a recurrence of such conduct in the new Producer/Farmer Register (PFR); and to

8.1.3 Advise the Public Protector of the mechanisms that have been put in place to ensure the success of the PFR, within thirty (30) working days from the date of receiving this report.

9 MONITORING

9.1 No monitoring is contemplated for this report.
9.2 In line with the Constitutional Court decision in *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* [2016] ZACC 11, and in order to ensure the effectiveness of the office of the Public Protector, the remedial action prescribed in this Report is legally binding on the President of the Republic of South Africa, unless a court order directs otherwise.

ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 16/09/2019