



**Address by Public Protector Adv Thuli Madonsela during a media briefing at the CISR Convention Centre in Pretoria on Monday, November 26, 2012**

**Chairperson of the National Press Club, Ms Slabbert;  
CEO of the Public Protector SA, Mr Themba Mthethwa;  
The Public Protector SA Team;  
Members of the media;  
Ladies and gentlemen;**

**Introduction**

Greetings from the Public Protector SA Team and welcome to our third quarterly media briefing for the financial year 2012/13!

I am deeply grateful to the Nation Press Club for hosting my team and I once again, and to the media as a whole for the continued support. Today we are taking another step towards fulfilling the constitutional injunction to accessible to all persons and communities. Thank you for making it happen!

We believe that with every news report on the activities of the Public Protector, somebody somewhere among the 52 million people in this country gets exposed to the work, role and services of this important constitutional institution.

This briefing takes place a day after the national launch of the ***16 Days of Activism for No Violence Against Women and Children campaign*** in Kimberley.

As has been the case in previous years, my office will be throwing its weight behind this critical campaign. We are making an impassionate plea to organs of state everywhere in the country to be considerate when dealing with victims of gender based violence to ensure that people do not suffer injustice, particularly through secondary victimization.

To mark our observation of this campaign, my team and I will be at the Lehurutshe Civic Centre in Zeerust, North West Province tomorrow (Tuesday, 27 November 2012). Our theme for this year is: ***“From Peace in the Home to Peace in the World. Let’s challenge militarism and violence against women and children.”***

That will also be an opportunity to bring the services of my office closer to the doorsteps of

communities in that part of the country. My investigation team will be on site to register complaints. We call on the people of Lehurutshe to come in numbers and make use of this opportunity.

Turning to the business of today, I always cherish the opportunity to appraise the nation of the outcomes of investigations I have conducted with the assistance of the hard-working Public Protector Team.

As I prepared for the release of these reports, I reflected on the following words of former President Nelson Mandela at the International Ombudsman Institute workshop in 1996:

***“We are mindful from the very start of the importance of accountability to democracy; our experience has made us acutely aware of the possible dangers of a government that is neither transparent nor accountable. To this end our constitution contains several mechanisms to ensure that government will not be part of the problem; but part of the solution”.***

Before outlining the outcomes I thought it would be ideal to talk briefly about the Public Protector as a constitutional office to provide context to what I do and why I do it and how I harness the wisdom of the Public Protector Team.

You already know that the Public Protector is established under section 181 of the Constitution of the Republic of South Africa with powers defined under section 182 of the Constitution.

The Constitutional mandate of the Public Protector is to strengthen constitutional democracy through investigating any conduct in state affairs that is alleged or suspected to be improper or to result in any impropriety or prejudice; to report on that conduct and to take appropriate remedial action. This gives a broad mandate, which has been interpreted to incorporate oversight over service failure and conduct failure. This primarily incorporates exacting public accountability with regard to administrative justice, ethical conduct and control over state resources.

It is important to note that the Public Protector and the Auditor General are not Commissions or Boards. The provisions create a context where the titles of Public Protector and the Auditor General refer to both the person and the institution. This is not unique to South Africa. Globally, the Ombudsman refers to both the office and the institution. This is often referred to as a personalised jurisdiction.

It is further worth noting that the Public Protector and the Auditor General have more stringent constitutional guarantees than the commissions. For example the Public Protector needs a 60% vote in the National Assembly to be appointed and a two thirds majority in the National Assembly to be removed from office.

The legislation that supplements the constitutional provisions on the Public Protector and the Auditor General provide for staff, among other things. The staff includes deputies. The relevant legislation clearly provides for them under staff, with the Deputy Public Protector having powers delegated to her by the Public Protector at the Public Protector's sole discretion. In my case I have assigned my deputy the Early Resolution investigation branch, which operates primarily through Appropriate Dispute Resolution (ADR) mechanisms. She or he also participates in what we call Think Tank discussions, which are basically peer review mechanisms, on reports -in addition to other specific delegations. Both the Public Protector and the Auditor General are

accountable to the National Assembly for their activities as are the other Institutions Supporting Constitutional Democracy.

During the Constitution certification judgment, the Constitutional Court was called upon to determine if the Constitutional provisions on the Public Protector adequately captured the spirit of Constitutional Principle XXIX.

The Constitutional Court found these to be inadequate and ordered amendments to improve safeguards. The Constitutional Court's reasoning was revealed in the following extract from the Certification Judgment:

***“The independence and impartiality of the Public Protector will be vital to ensuring effective, accountable and responsible government. The Office inherently entails investigation of sensitive and potentially embarrassing affairs of government. It is our view that the provisions governing removal of the Public Protector from office do not meet the standard demanded by Constitutional Principle XXIX.”***

Current constitutional guarantees on the Public Protector were arrived at in compliance with the constitutional court's observations.

## **Reports**

The reports I am releasing today reflect my personal decisions as the Public Protector. However, the content represents the outcome of various team efforts. At the end of each report I indicate the name of the investigation team that assisted me.

In line with convention, I have decided to provide you with synopses of other reports that I recently concluded and am releasing today before going to the main report. There are five reports that are being released today. They are the following:

### ***False Alarm***, Report No. 14 of 2012/13

This report follows an investigation into an allegation of a breach of the Executive Ethics Code by the Premier of the Northern Cape Province, Ms. H Jenkins, relating alleged irregular sale of municipal land by the Sol Plaatje municipality in Kimberley, to a company called False Pulse said to be lined to Mr J. Block, Member of the Provincial Executive Committee. The complaint was lodged by Mr F Wyngaard, a Member of the Northern Cape Provincial Legislature following a news article in Noseweek. It was alleged that the Premier had been involved in an irregular land deal. During the investigation, additional information was provided by Mr Crawford. At the conclusion of the investigation, I found that Premier Jenkins had not acted improperly regarding the alleged irregular land deal. I found that she was approached by Messrs Van Wyk and Crawford and met with them in connection with the land transaction in July 2009. Except for discussing the land transaction with Messrs Van Wyk and Crawford, Premier Jenkins was not involved. (c) The meeting between Premier Jenkins and Messrs Van Wyk and Crawford and the discussion relating to the land transaction did not constitute conduct in violation of the provisions of the Executive Ethics Code.

### ***Disturbing Rumours***, Report No. 15 of 2012/13

***Disturbing Rumours*** is the outcome of an investigation into the same land deal on which the False Alarm Report was based and the same complaint by Mr F Wyngaard, a Member of the

Northern Cape Provincial Legislature. The specific allegations of unethical conduct in breach of the Executive Ethics Code were made against the Member of the Executive Council responsible for Finance, Economic Affairs and Tourism in the Northern Cape Provincial Government, Mr J Block. Mr F Wyngaard, a Member of the Northern Cape Provincial Legislature Evidence and information obtained during the investigation did not confirm Mr Block's involvement in the deal. No evidence could be found confirming that there is also no evidence that the MEC was connected to Fastpulse. Due to these findings, there was no conduct of the MEC that warranted consideration in respect of compliance with the Executive Ethics Code.

*Procurement Questions, Report No 12 of 2012/13*

Procurement Questions communicates the outcomes of an investigation into allegations of maladministration and improper conduct by the Department of Mineral Resources regarding the procurement of services. The investigation came about following a complaint by a former official of the department, alleging in a report entitled "A REPORT ON IRREGULAR EXPENDITURE, FRAUD AND CORRUPTION AT DMR", irregular expenditure, fraud and corruption. He specifically alleged that the extension of the contract of a company called Nambiti was irregular and informed by a corrupt relationship with the service provider and the Acting CFO.

No evidence or information could be found confirming any improper relationship between the Acting CFO and Nambiti. I found that the extension was in line with Treasury Regulations and that accordingly, there was no maladministration.

*Free Money for All, Report No 13 of 2012/2013*

*Free Money for All* is the outcome of an investigation into allegations of maladministration and poor governance by the Ehlanzeni District Municipality in Mpumalanga. The complaint was lodged by the Ehlanzeni District Municipality Local Branch of the South African Municipal Workers Union (SAMWU). Specific allegations, mainly against the Municipal Manager, included an irregular appointment of Mculu Incorporated into a panel of legal advisers, award of a bursary unlawful award of a bursary to a temporary staff member, an irregular permanent appointment of the same staff member, appropriation of public funds while on a trip to Italy following a directive that such funds be transferred to the credit card of a staff member accompanying the municipal manager and later ordering the same staff member to distribute change left on return from Italy, to the tune of R120 000 among members of the delegation. My findings are the following:

**Finding 1: The appointment by the Municipal Manager of Mculu Incorporated to the Panel of Legal Advisers of the Municipality was improper and amounted to maladministration**

The resolution taken by the BEC that the bid of Mculu Incorporated was regarded as unresponsive as no valid Tax Clearance Certificate was submitted, complied with the requirements of the Municipal Supply Chain Management Regulations and the Supply Chain Management Policy of the Municipality. According to the letter of Mr Mculu, the "existing" Tax Clearance Certificate expired in January 2008. However, by 21 July 2008, i.e. seven months later, he was still not in a position to submit a certificate from SARS that the tax affairs of Mculu Incorporated were in order.

The submission of a valid Tax Clearance Certificate is a matter that has to be considered by the BEC, as it relates directly to whether or not a bid qualifies for consideration. By overruling the decision of the BEC in this regard, the BAC placed itself in a position, where it had to evaluate

whether or not Mculu Incorporated complied with the other requirements of the bid and qualified to be considered in terms of the listing criteria. Under the circumstances where the BAC did not agree with the BEC, it should have requested the Municipal Manager to refer the matter back to it in terms of paragraph 29(6) of the Municipality's Supply Chain Management Policy.

No evidence could be found during the investigation that a valid Tax Clearance Certificate was submitted to the Municipality by Mculu Incorporated, before it was listed on the Panel by the Municipal Manager.

There was also no indication in the evidence and information obtained during the investigation that the Municipal Manager verified whether Mculu Incorporated's tax matters were in order before it was listed as an accredited service provider, as contemplated by Regulation 14 of the Municipal Supply Chain Management Regulations.

**Finding 2: The awarding by the Municipal Manager of a bursary to Ms T Hlatswayo was improper and amounted to maladministration.**

Ms Hlatswayo was not an employee of the Municipality at the time when a bursary was awarded to her by the Municipal Manager on 2 February 2010. His awarding of the bursary to her was in violation of Municipality's Bursary Policy, in terms of which only employees of the Municipality qualified.

**Finding 3: The conduct of the Municipal Manager in respect of instructing the transfer of municipal funds to the credit card account of an employee to cover expenses incurred by a delegation that visited Italy, was improper and amounted to maladministration.**

As the accounting officer, the Municipal Manager is compelled by section 61 of the MFMA to act with fidelity, honesty, integrity and in the best interests of the Municipality in managing its financial affairs.

The instruction given by the Municipal Manager during the visit of a delegation to Italy that an amount of Euro 14 000 should be transferred to Mr Makwakwa's credit card account, was reckless and irresponsible as it:

Compromised Mr Makwakwa who was suddenly in possession of a large amount of public funds in his personal account that he was supposed to manage, divide amongst the delegates and account for;

Was not authorized by the MFMA or any policy of the Municipality;

Was not based on any proper calculation of the amount that was required and that could be approved in terms of the Municipality's Policy on Privileges and Allowances in respect of Councilors Travelling on Official Business; and

Did not require of the delegates that received any of the funds to account for their expenditure on their return to South Africa.

**Finding 4: The dividing by the Municipal Manager of the balance of the advance transferred to Mr Makwakwa's credit card account on the return of the delegates from Italy to South Africa was unlawful, improper and amounted to maladministration. It may also have constituted theft of municipal funds.**

Instead of instructing Mr Makwakwa to return the balance of approximately R120 000 from his credit card account to the Municipality on the return of the delegates from their trip to Italy, the Municipal Manager divided it amongst them, including himself. None of the delegates could produce any proof that they were entitled to any portion of the amount divided. There was no justification for any of them to receive any of the money left.

By dividing the balance of R120 000 amongst the delegates, the Municipal Manager misappropriated municipal funds. He did not act with honesty, fidelity and in the best interest of the Municipality, as is required of him by the provisions of the MFMA.

Furthermore, the expenditure so incurred for the Municipality was made in vain and would (and should) have been avoided, had reasonable care been taken. It therefore constituted fruitless and wasteful expenditure.

**Finding 5: The failure by the Municipal Manager to obtain the approval of the Municipal Council for the official trip of Councilors and officials to Brazil in March 2009 was improper and amounted to maladministration.**

The delegation that visited Brazil in March 2009 included former Councilors and officials of the Municipality. The expenditure was approved by the Municipal Manager, without the approval of the Municipal Council, which was required in advance, in terms of the Policy on Privileges and Allowances in respect of Councilors Travelling on Official Business.

No reasonable explanation was provided during the investigation as to why the matter was only brought before the Council in August 2009.

I now proceed to the main report. The title of the report is **Costly Moves**. This is the third report I have done on the use of executive privileges since I took office three years ago. Other reports include **The Ethics of Staying in Comfort** and **In the Extreme**. They have all called upon me to determine when does a member of the executive cross the line when enjoying privileges accorded to him or her by the Executive Handbook and other regulatory frameworks.

I have been called upon to make that determination in the context of powers conferred by the Executive Ethics Act No. 82 of 1998, which nominates the Public Protector as the sole agency to assist the President and Premiers in enforcing the Executive Ethics Code.

**The Costly Moves** report emanates from an investigation conducted following a complaint lodged in October 2011 alleging a breach of the Executive Ethics Code by the Minister of Agriculture, Forestry and Fisheries, Ms Tina Joemat-Pettersson, MP. The complaint was lodged by a Member of Parliament, Dr L Bosman, MP of the Democratic Alliance.

I must state upfront that that the root of many of the trauma, human dignity and fiscal prudence challenges dealt with in this report is the tardiness and incompetence of the Department of Public Works (DPW)

**The allegations**

The investigation was initiated at the request of Dr Bosman who alleged that the Minister of Agriculture, Forestry and Fisheries, Ms Tina Joemat-Pettersson, acted in violation of paragraph 2 of the Executive Ethics Code and Section 96(2)(b) of the Constitution by recklessly using

public funds in occupying expensive accommodation at hotels and guest houses while she was awaiting the allocation of official residences in Pretoria and Cape Town to her.

The specific allegations were that the Minister stayed at 4–and 5–Star hotels virtually every night for the first 9 months of her tenure, until the end of February 2010, with the total cost of her hotel stays during these 9 months was R900 795, or R100 000 per month, or R3 336 per day. Describing this as a “reckless use of public funds” as the Minister has “many cheaper options”, Dr Bosman stated the Minister’s explanation was that she had spent that money on hotels because she did not have an official ministerial residence when she took office in May 2009.

He complained that the Minister stayed at the 5-Star Peermont D’ Oreale Grande Emperors Palace in Johannesburg from 16 September 2009 to 21 October 2009 (35 days), spending R289 352, which amounted to R8 267 per night. Dr Bosman also complained that the Minister later spent R420 000 (R15 000 per night) at a Johannesburg establishment listed as Pure One Toys CC, from 13 June 2010 to 11 July 2010 (28 days).

Dr Bosman stated that he believed the Minister’s “insistence on staying at luxurious hotels both before and after she moved into her official ministerial residence –constitutes a breach of paragraph 2.3 of the Executive Ethics Code and Section 96 (2) of the Constitution.”

He was of the view that the Minister had acted inconsistently with the financial prudence required of her position, especially regarding matters of expenditure on personal comfort. Dr Bosman said the Minister could have rented houses in Pretoria and Cape Town for less, costing the taxpayer way less than the R900 000 had allegedly she incurred.

A further complaint from Dr Bosman in connection with Minister Joemat-Pettersson’ s visit to Sweden in December 2009 was received. In that complaint, Dr Bosman alleged that the Minister undertook a pretext official trip at state expense, which in fact was a holiday aimed at visiting her family with her children, around Christmas that year.

Dr Bosman’s specific allegations in this regard were that the Minister revealed in a reply to a DA parliamentary question that she had gone overseas multiple times in her capacity as Minister since taking office in May 2009. This included a trip to Sweden from 20-22 December 2009, which cost R58, 743.

In the reply, according to Dr Bosman, the Minister described the trip as a “working visit to get counterparts and discuss possible investment opportunities.” However, he stated that the trip appeared suspicious for the following reasons:

This first was that, according to the Parliamentary register of members’ interests, the Minister owned a flat and summer house in Sweden, where she also has family. Dr Bosman stated that they wondered if the Minister took her children with her on the trip and if the state paid for them.

Secondly, according to Dr Bosman, unlike every other trip the Minister took, where she attended an official conference or met with a contactable individual, she offered no details about where she went or whom she met in Sweden. He charged that this was highly irregular.

The third reason was that the Minister went on that trip a few days before Christmas, which according to him, was strange timing for a business trip, considering that government business winds down at that time of year.

Lastly, Dr Bosman stated that, in her department's 2009/10 Annual Report, the Minister provided a list of international trips she took in her capacity as Minister, but the report allegedly did not mention the trip to Sweden.

"We strongly suspect that Minister Joemat-Pettersson has also travelled to Sweden under false pretenses and at state expense, violating the Executive Ethics Code. We wonder if this was not a family vacation, taken close to Christmas-time. Considering that she has never made any public statements on the outcomes of this trip, it is hard not to reach such a conclusion," said Dr Bosman.

### **More information**

During the course of the investigation information surfaced, requiring an investigation into whether Minister Joemat-Pettersson caused her Department to incur expenditure related to double bookings at expensive hotels resulting in fruitless and wasteful expenditure, amounting to R64 882.55.

### **The delays**

In compliance with Section 3(3) of the Executive Members' Ethics Act, 1998 I informed President Jacob Zuma on 11 January 2012 that it was not possible to conclude the investigation of the complaint within 30 days, as is required by the Act, and that her report would be submitted to him as soon as the investigation was completed. The investigation was conducted over a period of 9 months due to the reasons advanced, including requested extensions to deadlines on the return dates for comments on the provisional report.

### **The investigation process**

and included interviews of current and former officials of the Department, the Ministry of Agriculture Forestry and Fisheries, its former and current Chief of Staff, South African Embassy in Sweden, management of hotels and guest houses that accommodated the Minister, including the 28 A *On Oxford* guest house and the *Peermont D' Oreale Grande Hotel* and officials of *Travel with Flair*, the Department's authorized travel agency. We also acquired, studied and analysed voluminous documentation.

On analysis of the complaint, the issues I investigated were the following:

- a. **Did Minister Joemat-Pettersson violate the Executive Ethics Code by recklessly using public funds in occupying expensive accommodation at hotels and guest houses while she was awaiting the allocation of her official residences in Cape Town and Pretoria?**
- b. **Did Minister Joemat-Pettersson violate the Executive Ethics Code by staying in expensive hotels at state expense after the allocation of official residences to her?**
- c. **Did Minister Joemat-Pettersson violate the Executive Ethics Code by undertaking a pretext official trip to Sweden, which was in fact a family holiday at state expense?**
- d. **Did Minister Joemat-Pettersson violate the Executive Ethics Code by causing her Department to incur fruitless and wasteful expenditure through double bookings of accommodation at expensive hotels?**
- e. **Did the Department of Agriculture Forestry and Fisheries (the Department), particularly the Chief of Staff in the Minister's private office, fail to meet the**

**requirements of the Public Finance Management Act, 1999 (PFMA) regarding prudent management of public finances in the manner in which hotel and travel accommodation for the Minister was handled?**

On 28 September 2012, I issued a Provisional Report on the investigation and Dr Bosman, Minister Joemat-Pettersson, Ms B Bopape (the former Chief of Staff in the Ministry) and the Acting Director-General of the Department were afforded an opportunity to respond to the contents thereof. Comprehensive responses were received and, where applicable, considered and incorporated into this report.

**The findings**

My findings on the matter are the following:

**On the question on whether Minister Joemat-Pettersson violated the Executive Ethics Code by recklessly using public funds in occupying expensive accommodation at hotels and guest houses while she was awaiting the allocation of her official residences in Cape Town and Pretoria, I found that:**

- a. The Minister did stay at the *28A On Oxford Guest House* from 13 June 2010 to 11 July 2010 at a total cost to the Department of R420 000. This was during the period when South Africa hosted the FIFA 2010 Soccer World Cup and accommodation costs were inflated. She also stayed at *Peermont D'Oreale Grande Hotel* at a cost to the Department of R8085 per night. Both amounts involved were unconscionably excessive.
- b. The Minister's justification of the costs, i.e. that she needed extra room for her family is reasonable as she was entitled to family sized accommodation considering the length of time she spent in hotels and guest houses, due to inconceivable tardiness of the Department of Public Works.
- c. However, Minister Joemat-Pettersson's defence of ignorance of the costs involved, though accepted, is a cause for serious concern as she displayed a blank cheque attitude towards public funds. Her failure to concern herself with the prudent use of public funds in connection with her accommodation expenses in the said two instances failed to meet the requirements of paragraph 2 the Executive Ethics Code read with Section 96(2) of the Constitution, which required of her to act in good faith, with integrity and in the best interest of good governance. Therefore, the conclusion that her conduct amounted to reckless use of public funds, was improper and unethical, is accordingly justified.

**Regarding whether Minister Joemat-Pettersson violated the Executive Ethics Code by staying in expensive hotels at state expense after the allocation of official residences to her, I found that:**

- a. No evidence could be found indicating that Minister Joemat-Pettersson stayed at expensive hotels and guest houses at the expense of her Department after official residences were allocated to her and were ready for occupation.
- b. According to the information and evidence obtained during the investigation, Minister Joemat-Pettersson's bills for accommodation during this period were in fact for meetings in hotel rooms. If the costs were for accommodation, as invoiced, the amount would be excessive but having accepted evidence that the cost was for official meetings, the cost cannot be said to be unreasonable.

- c. Therefore, the allegation that Minister Joemat-Pettersson stayed at expensive hotels at state expense after the allocation of her official residences is, accordingly not supported by the evidence obtained during the investigation and her conduct in this regard did not constitute a violation of the Executive Ethics Code.

**On whether Minister Joemat-Pettersson violated the Executive Ethics Code by undertaking a pretext official trip to Sweden, which was in fact a family holiday at state expense, my findings are the following:**

- a. The information and evidence obtained during the investigation confirmed that the trip undertaken by Minister Joemat-Pettersson to Sweden in December 2009 was of an official nature, during which she held official meetings on matters relevant to her portfolio. The trip was combined with a family holiday, which commenced at the end of the official trip on 23 December 2009, and was cut short when she was recalled by the Presidency and returned on 1 January 2010. Evidence further confirmed that the return trips of the Minister's children and au pair were paid for by the state in violation of the provisions of paragraph 3.4 of Chapter 6 of the Ministerial Handbook, in the amount of R151 878.
- b. Minister Joemat-Pettersson's justification that she was advised by her Chief of Staff that the Department had to pay as she was recalled by the President at short notice, is upheld. However, the fact that the Department was not supposed to incur such costs remains a reality and the amount paid constitutes fruitless and wasteful expenditure, was unlawful and an act of maladministration by the Department.
- c. The former Chief of Staff of the Ministry, Ms B Bopape, provided Minister Joemat-Pettersson with incorrect advice in respect of the Department's responsibility to pay for the return air tickets of the Minister's children and au pair when she was recalled from Sweden in January 2010. Since Minister Joemat-Pettersson was not aware that she was being misled into accepting a benefit she was not entitled to, her conduct did not constitute a violation of the Executive Ethics Code.

**On whether Minister Joemat-Pettersson violated the Executive Ethics Code by causing her Department to incur fruitless and wasteful expenditure through double bookings of accommodation at expensive hotels, my findings are as follows:**

- a. According to the information and evidence obtained during the investigation, Minister Joemat-Pettersson's costs for accommodation, which appeared to be double bookings, were in fact in respect of official meetings held in hotel rooms. If the costs were for accommodation, as invoiced, the amounts would be excessive, but having accepted evidence that the cost was for official meetings, the cost cannot be said to be unreasonable.
- b. The allegation that Minister Joemat-Pettersson incurred fruitless and wasteful expenditure for the Department through double bookings of accommodation is accordingly not upheld and her conduct did not constitute a violation of the Executive Ethics Code.

**The last question was whether the Department, particularly the Chief of Staff in the Minister's private office, failed to meet the requirements of the PFMA, regarding prudent management of public finances in the manner in which hotel and travel accommodation for the Minister was handled and my findings are that:**

- a. The former Chief of Staff of the Ministry, Ms B Bopape, was at all material times relevant to this report, in terms of the provisions of the Ministerial Handbook, the conditions of her appointment and sections 44 or 45 of the PFMA, responsible for the management of the expenditure related to Minister Joemat-Pettersson's travels and accommodation. She was compelled by the provisions of the PFMA to manage the expenditure with care to ensure that the resources of the Department were used effectively, efficiently and economically.
- b. The information and evidence obtained during the investigation indicate that the Department, in particular the former Chief of Staff of the Ministry, Ms B Bopape did not exercise the necessary due diligence and prudence in handling state finances as envisaged in the PFMA, pertaining to the travel and accommodation expenses of Minister Joemat-Pettersson.
- c. In wrongly advising Minister Joemat-Pettersson that she was entitled to state paid return tickets for her children and au pair when she was not, Minister Joemat-Pettersson's Chief of Staff, Ms B Bopape, was reckless and accordingly acted in an improper manner. Her improper conduct resulted in fruitless, wasteful and unlawful expenditure, amounting to R151 878.
- d. She also violated the bounds of reasonableness and the provisions of section 45 of the PFMA in her approach to the Minister's accommodation and travel costs, specifically in allowing the unconscionable expenditure of R420 000 to accommodate Minister Joemat-Pettersson at the 28 A On Oxford guest house for a month during the period 13 June 2010 to 11 July 2010. The Department's conduct, and specifically the conduct of the Chief of Staff, was accordingly improper and amounted to maladministration.
- e. Ms Bopape was clearly reckless in regard to the expenditure of R420 000 incurred by the Department for Minister Joemat-Pettersson's accommodation. However, in her mitigation the fact that her relationship with Minister Joemat-Pettersson was new, the particular circumstances relating to the availability of reasonably priced accommodation during the duration of the World Cup and the gross incompetence of the DPW which caused anomalous circumstances in regard to the accommodation of the Minister and might have impaired her judgement, have to be taken into account.

### **Remedial action**

Remedial action to be taken as envisaged by section 182(1)(c) of the Constitution, is the following:

- a. The President to consider reprimanding Minister Joemat-Pettersson, for her violation of the Executive Ethics Code referred to in this report.
- b. The Acting Director-General of the Department:
  - (aa) To take appropriate action to recover from Minister Joemat-Pettersson the amount of R151 858 being the amount unlawfully incurred in respect of the return flights of her two children and their au pair from Sweden to South Africa in January 2010;
  - (bb) To take appropriate action in terms of section 38 of the PFMA and the Treasury Regulations against the former Chief of Staff of the Ministry, Ms B Bopape (who is still employed by the Department):

- In respect of her failure to take reasonable care to avoid the fruitless and wasteful expenditure incurred by the Department pertaining to Minister Joemat-Pettersson's accommodation at the 28 A On Oxford guest house during the period 13 June 2010 and 11 July 2010; and
- In respect of her failure to provide Minister Joemat-Pettersson with correct advice pertaining to the provisions of the Ministerial Handbook, which resulted in fruitless and wasteful expenditure for the Department; and

(cc) To conduct an audit of the controls and record keeping by the Ministry in respect of all expenditure incurred by the Minister relating to domestic and international travels and accommodation with a view to improve the relevant systems.

c. The Minister of Public Works to take urgent steps to:

(aa) Expedite the completion of the refurbishment of the official residence allocated to Minister Joemat-Pettersson in Cape Town; and

(bb) Identify the cause for the chronic delay in providing ministerial accommodation and rectify such cause with immediate effect

d. The Secretary of the Cabinet to take urgent steps to ensure that the review of the Ministerial Handbook is finalised expeditiously and to consider incorporating guidelines which will improve the regulation of official trips by members of the executive to ensure that such trips are not combined and/or coincides with private holidays and/or leave of absence, save in exceptional circumstances, to be determined by the Cabinet.

e. The Director-General in the Department of the Presidency to consider taking appropriate steps to have the Prestige Accommodation Portfolio of Ministers removed from the DPW or to arrange for closer supervision of the allocation of official residences to Ministers by the Monitoring Unit in his Department.\

## **Conclusion**

I sincerely call upon the President and Cabinet to take serious the advice that the prestige portfolio be migrated from DPW. On 24 October 2012, I engaged with Cabinet at a session chaired by the President, with the Deputy President and most Ministers in attendance. The President advised that Cabinet had delegated four Ministers led by the Minister of Justice to engage with me. I look forward to that engagement. My team and I will use that opportunity to advise on options for taking forward the prestige portfolio currently sitting with DPW, among other points of discussion.

That discussion will focus on the state of governance in the public sector as a follow up to the presentation I made to Cabinet on 24 October 2012. Key concerns for my team and I is the growing call from communities for a listening state, for responsive service delivery and for integrity in the management of state resources and opportunities.

Just to remind you again regarding why I release these reports publicly, the framers of our constitution elected to establish our democracy as an open and transparent democracy. This is one of the founding values in section 1 of the Constitution. The Constitution and the Public Protector Act specifically lays out the default position for Public Protector reports as that of transparency. This is not surprising considering that democracies are a dialogue and without information, it is not possible to engage in meaningful dialogue. Core to democracy as a dialogue is public accountability where the power giver constantly ensures that those entrusted with public power and control over public resources and opportunities are answerable for their actions to the power giver being the people. For me and my team, we also see open dialogue over our reports as key a factor in the moral suasion. We need to ensure that my findings do not amount to nothing. It is also crucial for fulfilling the Constitutional injunction to be accessible to all persons and communities.

My team and I have gain done our best to find the truth and telling it the best way we can. Scrutinise the reports to enrich dialogue and public accountability and to help us grow as an investigation body. But please tell no lies.

I would like to thank the investigation team for the splendid job that made these reports possible. My gratitude goes to Mr Abongile Madiba was the lead investigator in the report involving Minister Joemat-Pieterse. I am also grateful to Adv. Stoffel Fourie who is the branch executive responsible for the Good Governance and Integrity Branch that produced the reports and who helped with the supervision and quality assurance.

My hop is that government will proceed to implement without hesitation and that where there are implementation challenges I will be approached for dialogue. I also hope that the reports will be discussed meaningful thus strengthening public accountability and democracy as a dialogue. All I ask for is that people tell no lies.

As I conclude I which to share with you an extract from the declaration arrived at the World Ombudsman conference of the International Ombudsman Institute I attended a week ago in New Zealand.

***“It is an expression of democratic maturity and the rule of law that government and parliamentary majorities shall allow criticism voiced by independent Ombudsman institutions. As a consequence, an Ombudsman diligently fulfilling his or her mandate shall not be subject to any form of physical, mental or unjustified coercion.”***

I also wish to share the following words of wisdom uttered by our national icon former President Nelson Mandela during his acceptance of the Nobel Peace Prize in 1993:

***“We live with the hope that as she battles to remake herself, South Africa will be a microcosm of the new world that is striving to be born. Let it never be said by future generations that indifference, cynicism or selfishness made us fail to live up to the ideals of humanism which the Nobel Peace Prize encapsulates.”***

Thank you.

**Adv. Thuli Madonsela**  
**Public Protector of the Republic of South Africa.**