

**ADVISORY REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b)
OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION
8(1), READ WITH SECTIONS 6(4)(c)(ii), (d)(ii) AND (iii) OF THE PUBLIC PROTECTOR
ACT, 1994**



**PUBLIC PROTECTOR
SOUTH AFRICA**

REPORT No: 79 of 2022/23

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**INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION AND IMPROPER
CONDUCT RELATING TO NEPOTISM REGARDING THE RECRUITMENT AND
APPOINTMENT OF PERSONNEL AND CORRUPTION ASSOCIATED WITH ALLEGED
IRREGULAR PROCUREMENT PROCESSES BY THE FORMER MINISTER OF PUBLIC
WORKS AND INFRASTRUCTURE, MS PATRICIA DE LILLE, MP**

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LIST OF ACRONYMS AND ABBREVIATIONS

Adv	Advocate
CDC	Coega Development Corporation
Complainant	Anonymous Complainant
Constitution	The Constitution of the Republic of South Africa, 1996
CSIR	Council for Scientific and Industrial Research
CV	Curriculum Vitae
Deputy Minister	Deputy Minister of Public Works and Infrastructure Ms Noxolo Kiviet, MP
Director-General	The Director-General of the Department of Public Works and Infrastructure, Adv Sam Vukela
DPWI	The Department of Public Works
Email	Electronic mail correspondence
HRM	Human Resource Management
MANCO	Management Committee
Handbook	Ministerial Handbook: A Handbook for Members of the Executive and Presiding Officers approved by Cabinet on 7 February 2007
Ms Jeffreys	The Minister of Public Works and Infrastructure's sister, Ms Cynthia Barbara Jeffreys
MP	Member of Parliament
NCOP	National Council of Provinces
OECD	Organisation for Economic Co-Operation and Development
OSD	Occupational Specific Dispensation introduced for public sector employees in 2017 to improve government's ability to attract and retain skilled employees, through increased remuneration
PA	Personal Assistant
PMTE	Property Management Trading Entity
PSA	Public Service Act, 1994

PSC	Public Service Commission
Public Protector Act	Public Protector Act, 1994
PSR, 2016	Public Service Regulations issued under Notice No. R.877 published in the Government Gazette No. 40167 dated 29 July 2016
RFP	Request for Proposals
SCA	Supreme Court of Appeal
SCOPA	Parliament Standing Committee on Public Accounts
The Minister	The former Minister of Public Works, Ms Patricia De Lille, MP
The Public Protector	Public Protector of the Republic of South Africa

1. INTRODUCTION

- 1.1 This is the Public Protector's Advisory Report in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and published in terms of section 8(1), read with sections 6(4)(c)(ii), (d)(ii) and (iii) of the Public Protector Act, 1994 (the Public Protector Act).
- 1.2 The report relates to an investigation into allegations of maladministration and improper conduct relating to nepotism in connection with the recruitment and appointment of personnel and corruption associated with alleged irregular procurement processes by the Member of Parliament and erstwhile Minister of Public Works and Infrastructure, Ms Patricia De Lille (Ms De Lille).
- 1.3 The report is submitted in terms of section 8(1) read with sections 6(4)(c)(ii), (d)(ii), (iii) and 8(3) of the Public Protector Act, which empowers the Public Protector to make known the findings and remedial action of an investigation, to implicated and affected parties, including the Complainant, for such persons to note the outcome of the investigation and the Public Protector's recommendations.
- 1.4 A copy of this report is issued in terms of sections 8(1) and (3) of the Public Protector Act to the following persons:
- 1.4.1 Ms Patricia De Lille, erstwhile Minister of Public Works and Infrastructure;
- 1.4.2 Mr Alec Moemi, the Acting Director General (DG) of the Department of Public Works and Infrastructure;
- 1.4.3 Ms Yoliswa Makhasi Director- General of the Department of Public Service and Administration; and
- 1.4.4 The Complainant.

2. THE COMPLAINT

- 2.1. The investigation originates from an anonymous complaint which was lodged with the Public Protector on 19 August 2019.
- 2.2. The anonymous Complainant (the Complainant) alleged that:
- 2.2.1 Ms De Lille facilitated the appointment of her sister, Ms Cynthia Barbara Jeffreys (Ms Jeffreys), to the Department of Public Works and Infrastructure (the DPWI), and in so doing practised nepotism on the basis that the DPWI's Human Resource (the HR) officials were not aware of their relationship as they have different surnames;
- 2.2.2 Ms De Lille initiated the appointment of people who did not have government experience or the requisite qualifications to the DPWI and/or Ministry, e.g. Ms Lee-Anne Jansen (Ms Jansen) who was appointed as the Media Liaison Officer;
- 2.2.3 Ms De Lille made moves to replace the DG, Adv Sam Vukela, with one Mr Ayanda Dakela (Mr Dakela), allegedly a member of the Good Party¹, who was seconded from the Council for Scientific and Industrial Research (the CSIR) despite him (Mr Dakela) having previously failed during an interview for the post of Director in Facilities Maintenance. This, the anonymous Complainant said is tantamount to cadre deployment;
- 2.2.4 Following her appointment as the Minister of Public Works and Infrastructure, Ms De Lille purged two (2) researchers from former Minister Nkosinathi Nhleko's administration, namely, Mr Vusumuzi Vincent Buthelezi (Mr Buthelezi) and Ms

¹ A South African political party formed on 02 December 2018 and led by Ms. Patricia de Lille, the current Minister of Public Works and Infrastructure and former Mayor of Cape Town.

Sibongile Elizabeth Nzimande (Ms Nzimande) who both have Masters degrees and relevant experience, as Ms De Lille wanted money paid as salaries recovered from them;

- 2.2.5 Ms De Lille facilitated the appointment of a Personal Assistant (the PA) to the Deputy Minister of Public Works and Infrastructure, Ms Noxolo Kiviet, MP, notwithstanding the fact that the appointee was not in possession of requisite qualifications but only a Matric certificate and a criminal record which the Public Service Commission² (the PSC) had been requested to investigate;
- 2.2.6 Ms De Lille facilitated the appointment of Mr Deon Viljoen (Mr Viljoen) (ostensibly a friend of Mr Jeremy Cronin (Mr Cronin) in order to ingratiate herself to the South African Communist Party (the SACP) so that they can put in a word for her to be kept as a Minister of Public Works and Infrastructure by the President notwithstanding the fact that Mr Viljoen was not in possession of a Matric certificate;
- 2.2.7 As a result of the instruction by Ms De Lille directing the DG, Adv Vukela to appoint an unspecified company to oversee procurement processes within the DPWI, the CSIR wanted to follow suit by referring all its projects to this company with a view to usurping its SCM's procurement responsibilities;
- 2.2.8 This conduct was similar to what had happened at the Development Bank of South Africa (the DBSA), COEGA Development Corporation (the CDC) and Independent Development Trust (the IDT);
- 2.2.9 According to the Complainant, immediately after her appointment, Ms De Lille stopped the disposal of land (ostensibly owned by the DPWI) as she and her family were not benefitting, and in doing so, Ms De Lille interfered with the procurement processes leaving the DG with no powers, but again resorting to

² Established in terms of section 196 of the Constitution of the Republic of South Africa, 1996.

blaming him for the advertisement for the disposal of land, whereas Mr Jacob Maroga and his cronies were to blame; and

2.2.10 Ms De Lille's conduct regarding the foregoing allegations amounts to abuse of power and constitutes maladministration and improper conduct, and requires investigation by the Public Protector.

3 POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector is an independent constitutional institution established under section 181(1)(a) of the Constitution of the Republic of South Africa, 1996 (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 Section 182(2) directs that the Public Protector has the additional powers and functions prescribed by national legislation.

3.4 The Public Protector's powers are regulated and amplified by the Public Protector Act which states, amongst others, that the Public Protector has the powers to investigate and redress maladministration and related improprieties in state affairs.

3.5 Ms De Lille, as the then Minister of Public Works and Infrastructure, performed a public function and her conduct amounts to conduct in state affairs, and as a result, the Public Protector is satisfied that the complaint falls within her competency to conduct an investigation as envisaged in section 182(1)(a) of the Constitution and section 6(4)(a) of the Public Protector Act.

4. ISSUES IDENTIFIED FOR INVESTIGATION

4.1 Based on the analysis of the complaint, the following issues were identified to inform and focus the investigation:

4.1.1 Whether Ms De Lille exposed herself to a situation involving the risk of a conflict between her official responsibilities and personal interests by facilitating the appointment of her sister, Ms Jeffreys, as an Assistant Appointment Secretary in her Office, if so; whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution, 1996 and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act;

4.1.2 Whether Ms De Lille facilitated the appointment of Ms Jansen to the Ministry notwithstanding the fact that she was not in possession of the requisite qualifications and experience, if so; whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution, 1996 and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act;

4.1.3 Whether the secondment of Mr Dakela from the CSIR to the DPWI was conducted contrary to legislation and any other prescripts regulating the secondment of personnel in the public service, if so; whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution, 1996 and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act;

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- 4.1.4 Whether Ms De Lille purged Mr Buthelezi and Ms Nzimande following her appointment as the Minister of Public Works and Infrastructure, if so; whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution, 1996 and abuse of power as envisaged in section 6(4)(a)(ii) of the Public Protector Act;
- 4.1.5 Whether the appointment of Ms Zakhe as the Private Secretary to the Deputy Minister of Public Works and Infrastructure was conducted contrary to legislation and any other prescripts regulating the appointment of personnel in the public service, if so; whether such conduct constitutes improper conduct as envisaged in section 182(1) of the Constitution, 1996 and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act;
- 4.1.6 Whether Ms De Lille facilitated the appointment of Mr Viljoen as the Deputy Director: Administration in the Office of the Deputy Minister despite the fact that Mr Viljoen had no relevant qualifications other than a matric certificate with a view that the SACP would bid for Ms De Lille to be retained as the Minister when her term of office comes to an end, if so; whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution, 1996 and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act; and
- 4.1.7 Whether Ms De Lille abused her powers by interfering with the SCM processes during the disposal of the land owned by DPWI on the basis that she and her family were not benefitting from the disposal processes, if so; whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution, 1996 and abuse of power as envisaged in section 6(4)(a)(ii) of the Public Protector Act.

5. THE INVESTIGATION

5.1. Methodology

5.1.1. The investigation is conducted in terms of sections 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

5.1.2. The Public Protector Act confers on the Public Protector the sole discretion to determine the format and procedure to be followed in conducting any investigation with due regard to the circumstances of each case.

5.2. Approach to the investigation

5.2.1. The approach to the investigation included the exchange of documents, analysis of the relevant documentation and consideration and application of the relevant laws, regulatory framework and prescripts.

5.2.2. The investigation was approached using an enquiry process that seeks to determine:

- (a) What happened?
- (b) What should have happened?
- (c) Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration, abuse of power or other improper conduct?
- (d) In the event of a violation, what action should be taken?

5.2.3. The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether or not the alleged conduct was inconsistent with the applicable prescripts.

5.2.4. The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by Ms De Lille in the execution of her duties as a Member of the Executive.

5.3. **The Investigation Process**

5.3.1. The investigation process commenced with correspondence to DPWI wherein the department was informed of the investigation, the legislation in terms of which the investigation was conducted, as well what information is required and the format thereof.

5.3.2. The Public Protector has concluded the investigation and based on the information and evidence obtained during the course thereof, is now in a position to make findings.

5.3.3. On 20 March 2023, Notices in terms of section 7(9)(a) of the Public Protector Act were issued to Ms De Lille, the Acting DG of the DPWI, Mr Alec Moemi and the DG of the DPSA, Ms Yoliswa Makhasi giving them an opportunity to make representations on the proposed findings and recommendations made in terms of sections 6(4)(c)(ii), (d)(ii), (iii) of the Public Protector Act, within ten (10) days of delivery of the Notice.

5.3.4. Despite acknowledgement of receipt of the Notices, no responses had been received by close of business, on 30 March 2023 from the above-mentioned

persons, which would have been duly considered by the Public Protector in this report.

5.4. Key sources of information

5.4.1. Documents

- 5.4.1.1. Copy of a letter from Adv Vukela to Dr B Sehlapelo; titled "*termination of the secondment agreement of Mr Ayanda Dakela to the National DPWI*", dated 28 May 2020;
- 5.4.1.2. Copy of agreement between the National DPWI , the CSIR and Mr A Dakela of the secondment of Mr A Dakela to the National DPWI, dated 11, 24 and 31 January 2020, respectively;
- 5.4.1.3. Copy of a letter from Adv Vukela; DG at DPWI to Dr B Sehlapelo; Executive Director at CSIR, titled "*Secondment of Mr A Dakela from CSIR to the National DPWI*", dated 11 December 2019;
- 5.4.1.4. Copy of cancelled tenders and lapsed bids, dated 06 December 2019;
- 5.4.1.5. Copy of Internal Memorandum from R Mostert; Director: Human Resource at DPWI to the DG; Adv Vukela, titled "*Request for approval for the amendment of the MOU for the secondment of Mr A Dakela from CSIR to the National DPWI*", dated 10 October 2019;
- 5.4.1.6. Copy of resignation letter as assistant appointment secretary in the Ministry of DPWI of Ms Cynthia Jeffreys; dated 20 September 2019;

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- 5.4.1.7. Copy of employment contract between DPWI and Mr D Viljoen, dated 10 September 2019;
 - 5.4.1.8. Copy of pre-employment and qualification screening results for the position of assistant appointment secretary in the office of the Ms De Lille for Ms Jeffreys, dated 06 September 2019;
 - 5.4.1.9. Copy of a Sowetan article titled “*Now Busisiwe goes for De Lille*”, dated 28 August 2019;
 - 5.4.1.10. Copy of agreement between DPWI and Mr D Viljoen, dated 03 September 2019;
 - 5.4.1.11. Copy of pre-employment and qualification screening results for the position of Administrative Secretary and Parliamentary and Cabinet Officer in the office of the Minister for Ms Jansen, dated 27 August 2019;
 - 5.4.1.12. Copy of letter to the prospective bidder, dated 13 August 2019;
 - 5.4.1.13. Copy of assumption of duty form for new and transferred employees for Mr Viljoen, dated 06 August 2019;
 - 5.4.1.14. Copy of appointment letter from the DPWI, DG to Mr D Viljoen; dated 31 July 2019;
 - 5.4.1.15. Copy of Internal Memorandum from Director: Mr SC Zaba to the DG; Adv Vukela, titled “*Request for the filing of the position of parliamentary and cabinet coordination on contract linked to term of office of the Deputy Minister, and Deputy Director: Administration in the office of the Deputy Minister on a twelve (12) months contract on higher salary notches, on the establishment of the Department*”, dated 31 July 2019;

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- 5.4.1.16. Copy of a letter of termination of employment contract from the DPWI, DG to Ms S Nzimande, dated 31 July 2019;
- 5.4.1.17. Copy of a letter of termination of employment contract from the DPWI, DG to Mr VV Buthelezi, dated 31 July 2019;
- 5.4.1.18. Copy of a letter from the DG; Adv Vukela to the Executive Director; Dr B Sehlapelo; titled "*Secondment of Mr A Dakela from CSIR to the National DPWI*", dated 28 July 2019;
- 5.4.1.19. Copy of a letter from Ms De Lille to the DG, Adv S Vukela regarding Mr A Dakela, titled "*DPWI: Assigned to the position and functions of DDG: PMO*", dated 25 July 2019;
- 5.4.1.20. Copy of sworn affidavit for Ms Jeffreys, dated 25 July 2019;
- 5.4.1.21. Copy of agreement between the National DPWI and CSIR for secondment of Mr Dakela to the National DPWI, dated 23 July 2019;
- 5.4.1.22. Copy of Affidavit by Dr Bethuel Sehlapelo; the CSIR employee for submission to the office of the Public Protector South Africa, dated 22 July 2022;
- 5.4.1.23. Copy of assumption of duty form for new and transferred employees for Ms Jansen, dated 22 July 2019;
- 5.4.1.24. Copy of Internal Memorandum from Director: Mr SC Zaba to Ms De Lille, titled "*Filing of the advertised positions of two researchers on a twenty four (24) months contract Ref: 2017/06, within the establishment of head-office*", dated 12, 17 and 19 July 2019;

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- 5.4.1.25. Copy of internal Memorandum from the Director: Human resource administration; Ms R Mostert to Ms De Lille, titled "*Request for approval for the secondment of Mr A Dakela from CSIR to the National DPWI*", dated 15, 16 and 17 July 2019;
- 5.4.1.26. Copy of academic transcripts for Ms Jansen, dated 22 July 2019;
- 5.4.1.27. Copy of appointment letter for Ms Jansen, dated 16 July 2019;
- 5.4.1.28. Copy of National DPWI route form, titled "*Request for approval for the exchange of positions between Ms L Jansen, Parliamentary and Cabinet Officer and Mr T Stemele, Community Outreach Officer in the office of the Minister, on contract linked to term office of the Minister, on establishment of the Department*", stamped on 15 and 16 July 2019;
- 5.4.1.29. Copy of internal Memorandum from the Director: HRP & R; Mr Zaba to the DG; Adv Vukela, titled "*Request for the filing of the positions of parliamentary and cabinet officer, community outreach officer and assistant appointment secretary in the office of the minister, through the appointment of Ms L Jansen, Mr T Stemele and Ms CB Jeffreys, on contract linked to term of office of the Minister, on establishment of the Department*", dated 12, 15 and 16 July 2019, respectively;
- 5.4.1.30. Copy of assumption of duty form for new and transferred employees for Ms Nokwanele Vivian Zakhe, dated 01 July 2019;
- 5.4.1.31. Copy of assumption of duty form for new and transferred employees for Ms Jeffreys, dated 01 July 2019;

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- 5.4.1.32. Copy of internal Memorandum from the Director: HRP & R; Mr Zaba to the DG; Adv Vukela, titled “*Request for the filing of the positions of parliamentary and cabinet officer, community outreach officer and assistant appointment secretary in the office of the minister, through the appointment of Ms L Jansen, Mr T Stemele and Ms CB Jeffreys, on contract linked to term of office of the Minister, on establishment of the Department*”, date 28 June 2019;
- 5.4.1.33. Copy of National DPWI route form, titled “*Request for the filing of the positions of parliamentary and cabinet officer, community outreach officer and assistant appointment secretary in the office of the minister, through the appointment of Ms L Jansen, Mr T Stemele and Ms CB Jeffreys, on contract linked to term of office of the Minister, on establishment of the Department*”, stamped on 28 June 2019;
- 5.4.1.34. Copy of a letter of short term appointment of consultancy services from Ms De Lille to the DG; Adv Vukela, dated 28 June 2019;
- 5.4.1.35. Copy of appointment letter for Ms Jeffreys, dated 28 June 2019;
- 5.4.1.36. Copy of Internal Memorandum from Director: HRP & R; Mr Zaba to the DG; Adv Vukela, titled “*Request for approval for the appointment of the interviewing panel for the filing of the positions of Parliamentary and Cabinet officer, community outreach officer, head of office and assistant appointment secretary, within the offices of the Minister and Deputy Minister*”, dated 26 June 2019;
- 5.4.1.37. Copy of certification of confirmation of nomination for the appointments or promotions and/or transfer for the positions of Parliamentary and Cabinet officer, Community Outreach Officer and Assistant Appointment Secretary in the office of the Ms De Lille on establishment of the Department, dated 26 June 2019;

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- 5.4.1.38. Copy of internal memorandum from Director: Mr Zaba to the DG; Adv Vukela, titled "*Request for the filing of the position of private secretary to the Deputy Minister, through the appointment of Ms NV Zakhe, on contract linked to term of office of the Deputy Minister, on the establishment of the Department*", dated 25 and 26 June 2019;
- 5.4.1.39. Copy of letter of appointment from the DG, Adv Vukela to Ms NV Zakhe; dated 26 June 2019;
- 5.4.1.40. Copy of route form, titled "*Request for the filing of the position of private secretary to the Deputy Minister, through the appointment of Ms NV Zakhe, on contract linked to term of office of the Deputy Minister, on the establishment of the Department*", stamped on 25 and 26 June 2019;
- 5.4.1.41. Copy of Internal Memorandum from Director: HRP & R; Mr Zaba to the DG; Adv Vukela, titled "*Request for approval for the appointment of the interviewing panel for the filing of the positions of Parliamentary and Cabinet officer, community outreach officer, head of office and assistant appointment secretary, within the offices of the Minister and Deputy Minister*", dated 25 June 2019;
- 5.4.1.42. Copy of National DPWI route form, titled "*Request for approval for the appointment of the interviewing panel for the filing of the position of parliamentary and cabinet officer, community outreach officer, head of office and assistant appointment secretary, within the offices of the minister and the deputy minister*", stamped on 25 June 2019;
- 5.4.1.43. Copy of letter from Ms De Lille to the DG; Adv Vukela, titled "*Appointment of ministry staff in my office*", dated 21 June 2019;

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- 5.4.1.44. Copy of certification of confirmation of nomination for the appointments or promotions and/or transfer for the position of private secretary in the office of the Deputy Minister on the establishment of the Department dated 21 June 2019;
- 5.4.1.45. Copy of internal memorandum from Director: Mr Zaba to the DG; Adv Vukela, titled “*Request for approval for the appointment of the interviewing panel for the filing of the position of private secretary in the office of the Deputy Minister*”, stamped on 19 June 2019;
- 5.4.1.46. Copy of route form, titled “*Request for approval for the appointment of the interviewing panel for the filing of the position of private secretary in the office of the Deputy Minister*”, stamped on 19 June 2019;
- 5.4.1.47. Copy of letter of appointment of private staff in support of the Deputy Minister of DPWI from Deputy Minister Noxolo Kiviet to Adv Vukela, dated 13 June 2019;
- 5.4.1.48. Copy of request to publish a list of surplus state-owned properties through government tender bulletin and other medium of communication, dated 18 March 2019;
- 5.4.1.49. Copy of withdrawal of invitation to bid: request for proposed (RFP) for letting-out of surplus state owned properties (RFQ No H18/057), dated 28 May 2019;
- 5.4.1.50. Copy of employment contract for a fixed term or a specific project in accordance with chapter 5 of the Public Service Regulations, 2016, for members of the senior management service (entered between Mr Mziwonke Dlabantu in his capacity as former DG and Mr Vincent Vusumuzi Buthelezi as the Researcher: Office of the Minister), dated 15 August 2017;
- 5.4.1.51. Copy of Ministerial Handbook approved by Cabinet on 7 February 2017;

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- 5.4.1.52. Copy of advert for the positions of Legal Specialist (Chief Director Level) and Researcher (Director Level) with the closing dated of 12 June 2017;
 - 5.4.1.53. Copy of Government gazette No. 10621, dated 29 July 2016;
 - 5.4.1.54. Copy of National DPWI functional organisation structure;
 - 5.4.1.55. Copy of National DPWI job description for the position of Assistant Appointment Secretary, office of the Minister;
 - 5.4.1.56. Copy of National DPWI job description for the position of Deputy director: Administration;
 - 5.4.1.57. Copy of National DPWI job description for the position of Appointments/Private Secretary, office of the Deputy Minister;
 - 5.4.1.58. Copy of National DPWI job description for the position of Deputy Director: Community Liaison And Stakeholder Relations;
 - 5.4.1.59. Copy of Curriculum Vitae of Ms Jeffreys;
 - 5.4.1.60. Copy of Curriculum Vitae of Mr Viljoen;
 - 5.4.1.61. Copy of academic transcripts for Mr Viljoen;
 - 5.4.1.62. Copy of Curriculum Vitae of Ms Jansen;
 - 5.4.1.63. Copy of Curriculum Vitae of Ms Zakhe;

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- 5.4.1.64. Copy of matric certificate of Ms Zakhe;
- 5.4.1.65. Copy of academic transcripts from University of Fort Hare for Ms Zakhe;
- 5.4.1.66. Copy of certificates from Damelin Management School, Potchefstroom University for Christian Higher Education and The Business Skills Centre for Ms Nokwanele Vivian Zakhe; and
- 5.4.1.67. Copy of request for proposal for the letting-out of surplus state owned properties for; existing tenants (for continued occupation); applications previously received (backlog) and new applicants for development and/or redevelopment of vacant properties.
- 5.4.2. **Correspondence/E-mails sent and received**
- 5.4.2.1. Copy of a letter from the DPSA Director-General; Ms Yoliswa Makhasi to the Public Protector Chief Investigator; Mr Rodney Mataboge, dated 14 December 2022;
- 5.4.2.2. Copy of request for information letter from the Public Protector's Acting Executive Manager; Mr Vusumuzi Dlamini to the DPWI DG; Adv Vukela, dated 15 November 2022;
- 5.4.2.3. Copy of request for information letter from the Public Protector's Acting Executive Manager; Mr Vusumuzi Dlamini to the DPSA DG; Ms Yoliswa Makhasi, dated 15 November 2022;
- 5.4.2.4. Copy of a letter from the Home Affairs Director- General; Ms N Mokoditsoa to the Public Protector senior investigator; Mr Masekela Maphosa; dated 29 September 2021;

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- 5.4.2.5. Copy of response from the Acting Director- General of the DPWI; Mr Imtiaz Fazel to the Public Protector, dated 10 August 2021;
 - 5.4.2.6. Copy of response from the erstwhile Minister and member of Parliament; Ms De Lille to the Public Protector, dated 21 June 2021;
 - 5.4.2.7. Copy of letter from the Public Protector Executive Manager: CSM; Ms Nthoriseng Motsitsi addressed to the anonymous Complainant, dated 10 January 2020;
 - 5.4.2.8. Copy of response from Ms De Lille, addressed to the Public Protector, dated 11 October 2019;
 - 5.4.2.9. Copy of letter from the Public Protector's Chief Investigator, Mr Rodney Mataboge to the DPWI Chief of Staff; Mr Roger Solomons, dated 26 September 2019;
 - 5.4.2.10. Copy of a response from the DPWI Chief of Staff; Mr Roger Solomons addressed to the Public Protector, dated 17 September 2019;
 - 5.4.2.11. Copy of request for information letter from the Public Protector; Ms Busisiwe Mkhwebane addressed to Ms De Lille, dated 03 September 2019;
 - 5.4.2.12. Copy of complaint document, dated 21 August 2019; and
 - 5.4.2.13. Copy of complaint document dated 10 July 2019.

E-mails:

- 5.4.2.14. E-mail from the Investigation Team addressed to Ms De Lille dated 22 March 2023;
- 5.4.2.15. E-mail from the Investigation Team addressed to the DPSA dated 20 March 2023;
- 5.4.2.16. E-mail from the Investigation Team addressed to the DPWI dated 20 March 2023;
- 5.4.2.17. E-mail from the DPSA to the Investigation Team dated 19 January 2023;
- 5.4.2.18. E-mail from the Investigation Team to the DPSA (Ms Precious Isaac), dated 19 January 2023;
- 5.4.2.19. E-mail from the DPSA to the Investigation Team dated 07 December 2022;
- 5.4.2.20. E-mail from the Public Protector to the DPSA, dated 06 December 2022;
- 5.4.2.21. E-mail from the DPSA to the Investigation Team dated 06 December 2022;
- 5.4.2.22. E-mail from the DPSA (Ms Precious Isaac) to the Public Protector's Chief Investigator, Mr Rodney Mataboge, dated 17 November 2022;
- 5.4.2.23. E-mail from the Investigation Team to the DPSA, Ms Precious Isaac, dated 16 November 2022;
- 5.4.2.24. E-mail from the Investigation Team to the DPSA, Ms Ouma Muthambi, dated 15 November 2022;

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- 5.4.2.25. E-mail from the Investigation Team to the DPSA, Ms Nokhuselo Maku, dated 15 November 2022;
 - 5.4.2.26. E-mail from the Investigation Team to the anonymous Complainant, dated 27 August 2019;
 - 5.4.2.27. E-mail from the Public Protector, Ms Jane Diane to the Public Protector Registry branch, dated 21 August 2019;
 - 5.4.2.28. E-mail from Mr/Ms Chance Zaba to Mr/Ms Maud Shimati, dated 11 July 2019; and
 - 5.4.2.29. E-mail from Mr/Ms Chance Zaba to Mr Lunyawo, dated 03 July 2019.

5.4.3. **Legislation and other prescripts**

- 5.4.3.1. DPWI Immovable Asset Disposal Policy, approved on 30 May 2013;
- 5.4.3.2. DPWI Supply Chain Management Policy, approved on 19 June 2017;
- 5.4.3.3. The Constitution of the Republic of South Africa Act, 1996;
- 5.4.3.4. The Public Protector Act, 1994;
- 5.4.3.5. The Public Service Act, 1994 (as amended) (the PSA); and
- 5.4.3.6. The Public Service Regulations issued under Government Notice No.R.877 of 29 July 2016 (the PSR, 2016).

5.4.4. **Websites**

5.4.4.1. www.publicprotector.org

5.4.5. **Case law**

5.4.5.1. *Lesbian Equality & Others v Minister of Home Affairs* (CCT10/99) [1999] ZACC 17; 2000 (2) SA 1; 2000 (1) BCLR 39 (2 December 1999);

5.4.5.2. *Le Roux v Brits* (4070/2015) [2015] ZAWCHC 133 (18 September 2015);

5.4.5.3. *Letsogo v Department of Economy and Enterprise Development and Others* (JR350/16) [2018] ZALCJHB 48; (2018) 39 (ILJ) (9 January 2018); and

5.4.5.4. *President of the Republic of South Africa v Democratic Alliance and Others* (CCT159/18) [2019] ZACC 35; 2019 (11) BCLR 1403 (CC); 2020 (1) SA 428 (CC) (18 September 2019).

5.4.6 **Notices issued in terms of section 7(9) of the Public Protector Act**

5.4.6.1 A Notice in terms of section 7(9)(a) issued to Ms De Lille, dated 20 March 2023;

5.4.6.2 A Notice in terms of section 7(9)(a) issued to the Acting DG of DPWI, Mr Alec Moemi, dated 20 March 2023; and

5.4.6.3 A Notice in terms of section 7(9)(a) issued to the DG of the DPSA, Ms Yoliswa Makhasi, dated 20 March 2023;

5.4.7 Notice in terms of Rule 41(1) of the Public Protector Rules (Rule 41(1) Notice)

5.4.7.1 Rule 41(1) Notice dated on 18 October 2019 addressed to the anonymous complainant from the Public Protector not issued, as the Complainant is anonymous and could not be reached.

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

6.1 Whether Ms De Lille exposed herself to a situation involving the risk of a conflict between her official responsibilities and personal interests by facilitating the appointment of her sister, Ms Jeffreys, as an Assistant Appointment Secretary in her Office, if so; whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution, 1996 and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act

Common Cause Issues

6.1.1 Ms De Lille was appointed by President Matamela Cyril Ramaphosa (the President) as the Minister of Public Works and Infrastructure (formerly the Ministry of Public Works) on 30 May 2019, following the South African General Elections held in May 2019.

6.1.2 On 28 June 2019, the DG sent a letter to Ms Jeffreys titled “*Appointment Letter*” informing her that her appointment as an Assistant Appointment Secretary in the Office of the Minister on a contract linked to the term of Office of the Minister had been approved.

6.1.3 In addition, Ms Jeffreys was informed, in the aforementioned letter that her appointment was subject to the provisions of the Public Service Act, 1994 (the PSA, 1994)(as amended), the Government Employees Pension Law, 1996 (GEPLA, 1996) as amended, the Regulations promulgated under these Acts, as well as the directives contained in the Collective Agreements, Circulars and the Ministerial Handbook.

Issue in Dispute

6.1.4 The issue for determination is whether Ms De Lille exposed herself to a situation involving the risk of a conflict between her official responsibilities and personal interests by causing the DG to appoint her sister, Ms Jeffreys, as an Assistant Appointment Secretary in her Office.

The anonymous Complainant's version

6.1.5 The anonymous Complainant alleged that Ms De Lille initiated the appointment of her sister, Ms Jeffreys to the DPWI, and in so doing practised nepotism on the basis that the DPWI's Human Resource officials were not aware of their relationship as they have different surnames.

Ms De Lille's Response

6.1.6 On 03 September 2019, an allegations letter was issued to Ms De Lille requesting her to submit a detailed response to the allegations made by the anonymous Complainant, as well as documentation relevant to the matters under investigation by the Public Protector.

6.1.7 On 17 September 2019, Ms De Lille responded to the allegations above through the DPWI's Chief of Staff (the CoS), Mr Roger Solomons (Mr Solomons). In the

response, Mr Solomons began by bringing forward the contents of Rule 5(5) of the *Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018* (the Public Protector Rules) states as follows:

“We noted that Rule 5(5) provides for anonymous complaints. This however only applies if sufficient information is provided about the incident or matter concerned as required in sub-rule (3). In the present instance, there is certainly not enough information regarding many of the complaints raised in the anonymous letter.

The rules can in any event only deal with matters arising from section 7 of the Act. See section 7(11). Whilst on the topic of the Rules, Rule 24(2)(c) provides a 30-day period for a response.”(sic)

- 6.1.8 Mr Solomons also argued that the Rules, in particular, Rule 24(2)(c) provide for a thirty (30) day period for a response. In this regard, Mr Solomons requested the Public Protector for an explanation of why this was truncated to fourteen (14) days. Nevertheless, Mr Solomons submitted that Ms De Lille will in any event not be able to produce responses to the flood of queries directed at her within the truncated time period.
- 6.1.9 In addition, Mr Solomons submitted that Ms De Lille will only be able to respond by 11 October 2019, which date was a week more than what the Rules provide for, with a view to facilitate the response to the allegations made by the anonymous Complainant.
- 6.1.10 On 26 September 2019, the Public Protector sent a letter to Mr Solomons granting Ms De Lille an extension of time to 11 October 2019, for the submission of a detailed response to the allegations made by the anonymous Complainant, as well as information and documents relevant to the issues under investigation.

- 6.1.11 Subsequently, on 11 October 2019, Ms De Lille provided a response refuting the anonymous Complainant's allegations. In the response, Ms De Lille asserted that Ms Jeffreys was appointed as an Assistant Appointment Secretary on a contract linked to the term of office of Ms De Lille.
- 6.1.12 Ms De Lille further stated that, in terms of Regulation 66(2) of the Public Service Regulations published in the Government Gazette No R.877 of 2016 (the PSR, 2016), an executive authority may fill a post in the office of the executive authority or Deputy Minister in that executive authority's portfolio, without advertising the position. Ms De Lille said this was done in this instance.
- 6.1.13 Ms De Lille contended that Ms Jeffreys was in possession of fourteen (14) years' Secretarial, Receptionist and Administrative experience and was appointed with the relaxation of qualifications. It is Ms De Lille's contention that the relaxation of qualifications was done in accordance with Regulation 39 of the PSR, 2016. In addition, Ms De Lille indicated that Ms Jeffreys was identified and recommended by the selection committee based on merit and the experience that she was bringing to the job.
- 6.1.14 Furthermore, Ms De Lille submitted that, Ms Jeffreys' appointment was not based on the existing relations between them. Ms De Lille contended that, the records of her (Ms Jeffreys) appointment bear testimony. She further asserted that, Ms Jeffreys had in any event since resigned, thereby rendering this anonymous complaint moot.

Documentary Evidence received from the DPWI

- 6.1.15 In its response to the Public Protector's letter dated 11 October 2019, Ms De Lille submitted documents and information for consideration by the Investigation Team. It was noted from the documents submitted that, at the time of the

establishment of the private offices in support of the Minister and the Deputy Minister of Public Works and Infrastructure, Ms Jeffreys was unemployed. According to the curriculum vitae submitted in support of her appointment, Ms Jeffreys' employment history was enumerated as follows:

- 6.1.15.1 Receptionist, Administrator and Secretary at Vermer Sun Shades, Brackenfell from 1991 to 1997;
- 6.1.15.2 Receptionist, Administrator and Secretary at Winsor Wire CC, Brackenfell from 1999 to 2000;
- 6.1.15.3 Councillor for the Independent Democrats from 2007 to 2011; and
- 6.1.15.4 Secretary/Personal Assistant to nine (9) Members of Parliament of the Democratic Alliance from June 2013 to December 2018.
- 6.1.16 According to the Memorandum, the DG was requested to approve the appointment of the persons listed thereunder as the Interviewing Panel for the interviews scheduled for 21 June 2019 in respect of the filling of the posts of Parliamentary and Cabinet Officer, Community Outreach Officer and Assistant Appointment Secretary within the offices of the Minister and the Deputy Minister, respectively.
- 6.1.17 In paragraph 4.4 of the Memorandum, Mr Zaba indicated that as a result of the selection committee comprising of Mr Solomons, the Chief Director: HRM, Ms Hlatshwayo, the Director: HR Planning & Recruitment, Mr Zaba and the Assistant Director: Human Resource Planning, Ms Shimati were appointed to make recommendations on the suitability of the candidate for the position of Private Secretary to the Deputy Minister.

- 6.1.18 According to Mr Zaba, an interview of Ms Jansen for the position of Private Secretary to the Deputy Minister of Public Works and Infrastructure was conducted via a video link between the DPWI's DG's office in Cape Town and the National DPWI's Corporate Services office in Pretoria on 21 June 2019.
- 6.1.19 It was also noted from the documents submitted by the National DPWI that, following the submission of the letter, on 25 June 2019, Mr Zaba sent an Internal Memorandum to the DG titled "*Request for approval for the appointment of the interviewing panel for the filling of the positions of Parliamentary and Cabinet Officer, Community Outreach Officer, Head of Office and Assistant Appointment Secretary, within the offices of the Minister and the Deputy Minister*":
- 6.1.19.1 The CoS, Mr Solomons (Chairperson of the Interview Panel);
- 6.1.19.2 The Chief Director: HRM, Ms Thembi Hlatshwayo (Member);
- 6.1.19.3 The Director: HR Planning & Recruitment, Mr Zaba (Member), and
- 6.1.19.4 The Assistant Director: HR Planning, Ms Maud Shimati (HR Representative & Labour Representative).
- 6.1.20 In paragraph 3.4 of the Memorandum referred to above, Mr Zaba indicated that the interview date for the positions of Parliamentary and Cabinet Officer, Community Outreach Officer, Head of Office and Assistant Appointment Secretary within the Offices of the Minister and Deputy Minister would be arranged after the approval of the appointment of panel members was granted and in consultation with the panel.
- 6.1.21 The DG was informed, in the Memorandum referred to above, that in terms of Regulation 67(1) to (9), Part 4 of the Public Service Regulations, 2016 (the PSR), 2016), the Executive Authority shall appoint a selection committee to make a recommendation on the filling of the positions.

- 6.1.22 Furthermore, Regulation 66(1) to (3) of the PSR, which provides for the terms and procedure of appointment in filling of positions in the Offices of Executive Authorities and Deputy Minister was brought to the attention of the DG. The DG was also informed that the appointment of staff in the Office of the Minister was done in accordance with Chapter Three (3) of the Guide for Members of the Executive as approved by Cabinet on 07 February 2007.
- 6.1.23 Additionally, the DG was informed that in terms of the approved Human Resources Delegations, the authority to approve the filling of the positions on salary levels eleven (11) to twelve (12) was delegated to him (the DG of the DPWI), whilst the filling of positions on salary levels nine (9) to ten (10) was delegated to the Deputy Director-General: Corporate Services.
- 6.1.24 It was also noted from the documents submitted by the National DPWI that, following the above submission dated 25 June 2019, interviews were conducted on 26 June 2019 by the interview panel referred to above, which culminated in mandating Ms M Shimati to prepare a submission on 26 June 2019 for approval by the DG of Ms Jansen; Mr I Stemmel and Ms Jeffreys as being suitable for the filling of the positions listed hereunder.
- 6.1.25 Consequently, Mr Zaba sent an Internal Memorandum to the DG titled *“Request for approval for the appointment of the interviewing panel for the filling of the positions of Parliamentary and Cabinet Officer, Community Outreach Officer, Head of Office and Assistant Appointment Secretary, within the offices of the Minister and the Deputy Minister”*.
- 6.1.26 On 26 June 2019, Ms Hlatshwayo and the Deputy Director-General: Corporate Services, Mr Clive Mtshisa (Mr Mtshisa) supported the recommendation, followed by the approval of the recommendation by the DG on 28 June 2019.

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- 6.1.27 It was also noted from the documents submitted by the National DPWI for the Public Protector’s consideration that, on 28 June 2019, a further Internal Memorandum was sent by Mr Zaba to the DG titled *“Request for the filling of the positions of Parliamentary and Cabinet Officer, Community Outreach Officer and Assistant Appointment Secretary in the office of the Minister through the appointments of Ms L Jansen, Mr T Stemele and Ms CB Jeffreys, on contract linked to the term of office of the Minister, on the establishment of the Department.”*
- 6.1.28 According to the Memorandum, the DG was requested, in line with the Human Resources Delegations, to approve and authorise, amongst others, the following:
- 6.1.28.1 The appointment of Ms Jeffreys on a contract linked to the term of office of the Minister on the establishment of the Department; and
- 6.1.28.2 The appointment of Ms Jeffreys, be done with relaxed qualifications, as well as in accordance with Chapter Three (3) of the Guide for Members of the Executive as approved by Cabinet on 7 February 2007 read with section 9 of the Public Service Act, 1994 (as amended) and Regulation 66(1) to (3) of the PSR, 2016.
- 6.1.29 In paragraph 4, sub-paragraph 4.2 of the Memorandum, Mr Zaba averred that, Ms De Lille had identified and communicated her intentions to appoint Ms Jeffreys as an Assistant Appointment Secretary, on a contract linked to hers.
- 6.1.30 The Selection Panel found Ms Jeffreys as the most suitable candidate for appointment for the position of Assistant Appointment Secretary in the Office of the Minister on a contract linked to the term of office of Ms De Lille.
- 6.1.31 In paragraph 5(5.3) of the Memorandum, Mr Zaba averred as follows in respect of Ms Jeffrey’s candidature:

“Ms Jeffreys is a coloured female, who at the time of the interview, was unemployed. She previously worked for the Democratic Alliance (the DA) as a Secretary/Personal Assistant to nine (9) Members of Parliament. She is in possession of a Senior Certificate (Grade 12);

Ms Jeffreys shared with the panel her understanding of the position of Assistant Appointment Secretary and talked about managing the Diary of the Minister. Ensuring the scheduling of appointments and being hands-on at all times. Ms Jeffreys brings her experience and skills to add value to the Office of the Minister;

She struggled to explain how she would ensure synergy, integration and collaboration between the Office of the Minister, Deputy Minister and Office of the Director-General. She only mentioned the importance of ensuring “that there was an understanding between the Offices; and

She was able to demonstrate her abilities with regard to the prioritising of competing engagements, and emphasised prioritising from the most important to the least.” (sic)

6.1.32 Mr Zaba continued to state in the Memorandum that, the selection committee found Ms Jeffreys suitable and recommended her for appointment into the position of Assistant Appointment Secretary in the Office of the Minister, on a contract linked to the term of Office of the Minister of Public Works and Infrastructure.

6.1.33 In paragraph 5.4 (erroneously captured as paragraph 5.2) of the Memorandum, Mr Zaba submitted to the DG, in line with section 39(1) of the PSA, 1994, as amended read with Chapter 4, Part 1 of the PSR, 2016, the minimum requirements for the Deputy Director and Assistant Director positions are a three (3) year tertiary qualification plus relevant working experience.

6.1.34 In this regard, Mr Zaba advised the DG that Ms Jeffreys was not in possession of the required three (3) year tertiary qualification, hence the request to appoint her with relaxed qualifications.

6.1.35 It was further noted from the documents received from the National DPWI that, notwithstanding the fact that the position of Assistant Appointment Secretary was not advertised, the learning indicators to be met by the successful candidate, included but were not limited to, *inter alia*:

6.1.35.1 tertiary qualification in social/commercial sciences;

6.1.35.2 extensive experience in executive office management; and

6.1.35.3 extensive experience in management and supervisory function.

6.1.36 Subsequently, Ms Jeffreys was issued with an appointment letter signed by the DG on 28 June 2019. According to the records availed to the Public Protector, the assumption of duty form for Ms Jeffreys issued by the HRP and D division to the Chief of Staff and signed by her, confirms her commencement date as 01 July 2019.

Independently sourced information

6.1.37 The Public Protector noted from independently sourced information that, on 13 September 2019, the DA's, Ms Samantha Graham-Maré (Ms Graham-Maré), MP posed a Parliamentary Question (Question number [NW2121E]) to Ms De Lille.

6.1.38 In terms of the Parliamentary Question, Ms Graham-Maré sought to obtain clarity/response on whether the Minister appointed a certain person (ostensibly

Ms Jeffreys) to a position within her department; if so, whether proper processes were followed in the appointment.

- 6.1.39 In addition, Ms Graham-Maré, sought to obtain clarity/response on the total number of other applications received for the position; what was the specified person's job title; whether the specified person has the requisite skills and competencies for the position and what was the nature of the relationship between the Minister and the specified person.
- 6.1.40 On 27 September 2019, Ms De Lille provided a written reply and stated that proper processes were followed in accordance with the Public Service Regulation of 2016.
- 6.1.41 Ms De Lille further stated that no applications were received for the position as the appointment of the specified person was done without advertising as provided for in Regulation 66, sub-regulation (2) of the PSR 2016. She, however, contended that the specified person was subjected to an interview process to determine suitability for the position and that she was appointed as Assistant Appointment Secretary.
- 6.1.42 She also stated that the specified person had 14 years of Secretary, Receptionist and Administrative experience at the time of appointment, and she was appointed with the relaxation of qualifications, in accordance with Regulation 39 of the PSR.
- 6.1.43 Furthermore, she indicated that Regulation 39 of the PSR provides that an Executive Authority shall establish a job description and job title that indicate, with appropriate emphasis on service delivery, the main objectives, activities and functions of the post or posts in question and the inherent requirements of the job. She further stated that the delegation to approve lies with the DG and relaxation of the inherent requirements (qualifications) is a standard practice in the public service.

- 6.1.44 She also stated that recruitment of personnel is based on merit and the experience that they bring to the job. It is not a requirement for HR recruitment to establish whether candidates are related to any of those already in employment. She acknowledged that Ms Jeffreys is related to her. She indicated that Ms Jeffreys has since resigned from her position stating ethical reasons.

Request for further information and additional response by DPWI

- 6.1.45 On 01 July 2021, an additional letter was issued by the Investigation Team to the then Acting Director-General (the ADG) of the National DPWI, Mr Imtiaz Fazel (Mr Fazel), requesting him to provide the Public Protector with a copy of Ms Jeffreys' resignation letter as an Assistant Appointment Secretary in the Ministry of Public Works and Infrastructure.
- 6.1.46 On 10 August 2021, Mr Fazel submitted a response and a copy of Ms Jeffreys' resignation letter dated 20 September 2019, addressed to Mr Solomons titled "*Resignation letter as Assistant Appointment Secretary in the Ministry of Public Works and Infrastructure*".
- 6.1.47 In the letter, Ms Jeffreys indicated that she was tendering her resignation as Assistant Appointment Secretary in the Office of the Minister with immediate effect citing ethical concerns as the reason for the resignation. In addition, Ms Jeffreys indicated that 20 September 2019 would be her last day of work.

Department of Home Affairs' response

- 6.1.48 On 16 September 2021, the Investigation Team issued a letter to the Department of Home Affairs (the DHA) with a view to verify the relationship between the Minister and Ms Jeffreys.

- 6.1.49 On 29 September 2021, the DHA submitted a response in which it was confirmed that Ms De Lille and Ms Jeffreys were indeed biological sisters, as information contained in their birth records, proves that they share both parents.

Department of Public Service and Administration's response

- 6.1.50 On 15 November 2022, the Investigation Team issued a letter to the Director General of the DPSA, requesting them to provide an explanation and/or clarity on whether the Minister of Public Service and Administration (MPSA) was approached for approval of the appointment of Ms Jeffreys by the DPWI in terms of relaxed qualifications, in accordance with Regulation 39 of the PSR, 2016.
- 6.1.51 Furthermore, whether Ms De Lille would have been required to disclose her relationship in order to prevent exposing herself to a situation involving the risk of a conflict between her official responsibilities and personal interests.
- 6.1.52 The DG of the DPSA, Ms Yoliswa Makhasi (Ms Makhasi) responded on 19 January 2023, stating that the DPSA does not have information purporting to show that the MPSA was approached by the Minister of the DPWI in relation to the relaxation of qualifications of the employee in question or alternatively, a deviation for relaxed appointment conditions as provided in the Public Protector's letter.
- 6.1.53 Ms Makhasi further stated that the Public Service Act and its resultant PSR are silent on the aspect of requiring Ministers to declare or disclose relationships with appointees in the private office.

Applicable Legal Prescripts

The Constitution of the Republic of South Africa Act, 1996 (the Constitution)

6.1.54 Section 2 of the Constitution provides that, *“The Constitution is the supreme law of the Republic, law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled”*.

6.1.55 Section 96(2) of the Constitution provides that:

(b) *“Members of the Cabinet and Deputy Ministers may not act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests.*

(d) *Use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person”*.

6.1.56 Section 195 of the Constitution provides that public administration in every sphere of government must be underpinned by amongst others, the following democratic values and principles-

(1) *Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:*

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

(b) *...;*

(c) *...;*

(d) ...;

(e) ...;

(f) *Public administration must be accountable; and*

(g) *Transparency must be fostered by providing the public with timely, accessible and accurate information.”*

6.1.57 Section 195(1) of the Constitution is understood to enjoin public functionaries, including Ministers maintain a high standard of professional ethics at all times and to foster transparency when discharging their public duties.

The Ministerial Handbook: A Handbook for Members of the Executive and Presiding Officers approved by Cabinet on 07 February 2007 (the Handbook)

6.1.58 In terms of Chapter 8 (1)(1.1) of the Handbook, the following core staff may be utilised by Executing Authorities as a guideline for establishing Private Offices in support of Members:

MINISTERS/PREMIERS	DEPUTY MINISTERS/MEC
Chief of Staff of the Ministry	Head
Administrative Secretary	
Media Liaison Officer	Media Liaison Officer Private Secretary /Appointments Secretary
Private Secretary/Appointments Secretary	
Assistant Appointments Secretary and Administrative Secretary	-
Parliamentary Officer	-
Secretary/Receptionist	Secretary/Receptionist
Registry Clerk	Registry Clerk

Aide or Driver/Messenger	Aide or Driver/Messenger
TOTAL POSTS 10	TOTAL POSTS 6

*An additional post may be provided for Ministers whose portfolios relate to the activities of more than one executive institution/department (i.e. Portfolio)

Executing Authorities may utilise the above-mentioned guideline for the Private Offices of Members provided that staff be appointed either:

- 1.1.1. *on a contract linked to the political term of office of the Executing Authority or Deputy Minister concerned, as well as the contracts envisaged in section 12A(3)(a) of the Public Service Act and conditions laid down by Cabinet.”*

The Public Service Act, 1994, as amended (the PSA)³

6.1.59 In terms of section 1 of the PSA, 1994 “**executive authority**”, in relation to a national department or national government component within a Cabinet portfolio, means the Minister responsible for such portfolio”.

6.1.60 Section 3(7) of the PSA states that subject to the provisions of this Act, an Executive Authority shall have all those powers and duties necessary for:

(a) *the internal organisation of the office or department concerned, including the organisational structure and the transfer of functions within that office or department...;*

(b) *the recruitment, appointment, performance management, transfer, dismissal and other career incidents of employees of that department...;*

³ Amended by the Public Service Amendment Act, 2007.

6.1.61 Section 9 of the PSA, provides that an executive authority may appoint any person in his or her department in accordance with this Act and in such manner and on such conditions as may be prescribed.

The Public Service Regulations 2016 (the PSR, 2016)⁴

6.1.62 Regulation 4 of the PSR, 2016 provides that the MPSA may—

*(a) “under justifiable circumstances, authorise a deviation from any regulation;
and*

*(b) if necessary, authorise a deviation contemplated in paragraph (a) with
retrospective effect for purposes of ensuring equality.”*

6.1.63 Regulations 65(1) and (2) of the PSR, 2016 prescribes that:

(1) “An executive authority shall ensure that vacant posts in the department are advertised, as efficiently and effectively as possible, to reach the entire pool of potential applicants, including designated groups.

(2) An advertisement for a post shall as a minimum specify the job title, salary scale, core functions, place of work, inherent requirements of the job, including any other requirements prescribed in these Regulations.

6.1.64 Regulation 66(1) of the PSR stipulates that:

“An executive authority may only fill vacancies in the Office of an executive authority or a Deputy Minister by means of:

⁴ The Public Service Regulations published under Government Notice No.R.877 of 29 July 2016.

(a) *an appointment in terms of section 9 of the Act for—*

(i) *the term of office of the incumbent executive authority or Deputy Minister which will terminate at the end of the first month after the month in which the term of that executive authority or Deputy Minister terminates for any reason; or*

(ii) *a period not exceeding three years;*

(b) *a transfer in terms of section 14 of the Act, provided that the employment status of the transferred employees as permanent or temporary, as the case may be, shall remain unaffected by the transfer.*

6.1.65 Regulation 66(2) of the PSR, 2016 prescribes that:

“Subject to the appointment criteria in regulation 67(5)(b) to (d), an executive authority may fill a post in the office of the executive authority or a Deputy Minister in that executive authority's portfolio, in terms of sub-regulation (1) without complying with Regulations 65(1); (3) and (4)”.

6.1.66 The above PSR, 2016 therefore authorises the Minister or the delegated authority to depart from the dictates of Regulation 65(1), (3) and (4) of the PSA, 2016 subject to the dictates of Regulation 67(5)(b) to (d) of the PSR, 2016.

6.1.67 Regulation 67 of the PSR states *inter alia* that:

67(1) *“An executive authority shall appoint a selection committee to make a recommendation on the appointment to a post.*

67(5) *The selection committee shall make a recommendation on the suitability of a candidate after considering only—*

- (a)
- (b) *the inherent requirements of the post;*
- (c) *the department's employment equity plan as contemplated in regulation 27; and*
- (d) *in respect of candidates applying for posts from salary level 9 and above—*
 - (i) *the level of understanding of the relevant departmental mandates;*
 - (ii) *the ability to identify problems and find innovative solutions; and*
 - (iii) *the ability to work in a team”.*

The Principle of Mootness

6.1.68 In the matter of the *President of the Republic of South Africa v Democratic Alliance and Others*⁵, the Democratic Alliance had launched an urgent application to review and set aside President Zuma's decision to reshuffle his cabinet on 30 March 2017, where several Ministers and Deputy Ministers including the then Minister of Finance, Pravin Gordhan, and his Deputy, Mcebisi Jonas, were relieved of their ministerial duties and replaced with Minister Malusi Gigaba and Deputy Minister Sifiso Buthelezi. The grounds for review were that President Zuma's decision was unlawful, unconstitutional and irrational.

6.1.69 While the matter was still pending, President Jacob Zuma resigned and was replaced by President Cyril Ramaphosa and Minister Gigaba and Deputy Minister

⁵ (CCT159/18) [2019] ZACC 35; 2019 (11) BCLR 1403 (CC); 2020 (1) SA 428 (CC) (18 September 2019) at para 15 to 16.

Buthelezi were removed from the Finance Portfolio, which inferentially seemed to address the source of the Democratic Alliance's dissatisfaction. As a result, the parties withdrew the review application by agreement.⁶

- 6.1.70 The Constitutional Court remarked that in light of the withdrawal of the main proceedings, the matter no longer has any practical effect between the parties and has become moot or academic. It was agreed by the parties that the effect of the withdrawal of the review application is that the interlocutory order "*cannot be enforced and ceases to have any effect*". The Constitutional court remarked that where issues are of such a nature that the decisions sought will have no practical effect or result, the matter may be dismissed on this ground alone, unless it is in the interest of justice to break through the veil of mootness.
- 6.1.71 The Public Protector has noted that on 20 September 2019, Ms Jeffreys tendered her resignation as Assistant Appointment Secretary in the office of the Minister with immediate effect, citing ethical concerns as the reason for the resignation, which was ostensibly voluntary and reached through a mutual agreement with DPWI and Ms De Lille. The resignation of Ms Jeffreys came shortly after one month of her assumption of duty, thereby partially rendering this complaint both moot and academic, since the Complainant's source of dissatisfaction had been eliminated.
- 6.1.72 Furthermore, on 06 March 2023, Ms De Lille and Deputy Minister Noxolo Kiviet were reassigned to other portfolios after the reshuffling of the cabinet and they have since left the DPWI. Their departure from DPWI is likely to affect all appointments linked to their term of office, which are the subject of this investigation.

⁶ President of the Republic of South Africa v Democratic Alliance and Others (CCT159/18) [2019] ZACC 35; 2019 (11) BCLR 1403 (CC); 2020 (1) SA 428 (CC) (18 September 2019) at para 4 to 8.

6.1.73 The principle of mootness was also echoed by the Constitutional Court in *National Coalition for Gay and Lesbian Equality & Others v Minister of Home Affairs*⁷ where the court remarked that a case is motor academic, if it no longer presents an existing or live controversy. Similarly, this matter at hand due to the resignation of Ms Jeffreys may no longer excite a legal or factual interest but a historical one, than that in respect of which the investigation by Public Protector was sought.

Analysis of the evidence

6.1.74 In a response dated 19 January 2023, Ms Makhasi stated that DPSA did not have evidence to indicate that DPWI requested deviation as contemplated in Regulation 4 of the PSR, 2016 in respect of Ms Jeffreys' appointment.

6.1.75 The minimum requirements/learning indicators for the post of Assistant Appointment Secretary are a tertiary qualification in social/commercial sciences, extensive experience in executive office management and extensive experience in management and supervisory function.

6.1.76 At the time of her appointment on 28 June 2019, Ms Jeffreys was only in possession of a matric certificate, computer related course and fourteen (14) years' experience in office administration. Ms Jeffreys did not have the requisite academic requirements set out in the job description for the post of Assistant Appointment Secretary, especially the requirement that the successful candidate must be in possession of a three (3) years' tertiary qualification in social sciences/communication sciences. It follows, therefore, that DPWI had to comply with regulation 4 of the PSR, 2016 before appointing Ms Jeffreys on relaxed criteria.

⁷ (CCT10/99) [1999] ZACC 17; 2000 (2) SA 1; 2000 (1) BCLR 39 (2 December 1999) at para 21.

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- 6.1.77 The evidence gathered during the investigation revealed that the post of Assistant Appointment Secretary was filled without advertisement as envisaged in Regulations 65(1), (3) and (4) of the PSR, 2016, on relaxed criteria. However, the applicable legal prescripts require that a deviation should be sought from MPSA in terms of regulation 4, in order to not follow the requirements of the post. In this instance, there is no evidence that a deviation was sought.
- 6.1.78 Further evidence before the Public Protector reveals that Ms De Lille furnished the then DG, Adv Vukela with a list of candidates to be appointed in the private office, which included her sister Ms Jeffreys. Ms De Lille did not disclose her relationship with Ms Jeffreys, however, the PSA, its regulations as well as the Ministerial Handbook do not make provision(s) for members of the executive to declare conflict of interest or a relationship when appointing persons related to them.
- 6.1.79 The Constitution as the supreme law in the Republic requires, in terms of section 96(2)(b), that Members of the Executive may not act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests or use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.
- 6.1.80 On 28 June 2019, Mr Zaba sent an internal Memorandum to the DG of the DPWI requesting approval for the filling of the post of Assistant Appointment Secretary in the office of the Minister, *without advertisement and on relaxed qualifications*, subject to the dictates of Regulation 67(5)(b) to (d) of the PSR, 2016. However, a similar request was not sent to MPSA as required by regulation 4 of PSR, 2016.

Conclusion

- 6.1.81 Based on the evidence in possession of the Public Protector, it is concluded that following her appointment as the Minister on 21 June 2019, Ms De Lille sent a letter titled “*Re: Appointment of Ministry Staff in my Office*” to the Director-General of the DPWI requesting the Director-General to process the appointment of amongst other people, Ms Jeffreys, as an Assistant Appointment Secretary in her private office.
- 6.1.82 Evidence received by the Investigation Team reveals that on 28 June 2019, the then DG of DPWI appointed Ms Jeffreys to the position of Assistant Appointment Secretary in the Office of the Minister on a contract linked with the term of Office of the Minister on relaxed criteria and in terms of regulation 67(5) of the PSR,2016.
- 6.1.83 On 29 September 2021, the DHA confirmed to the Public Protector that Ms De Lille and Ms Jeffreys are indeed biological sisters. This relationship was not disclosed by Ms De Lille to the then DG of DPWI when she requested him to facilitate the appointment, however, the PSA and its regulations do not make provision(s) on a declaration under the circumstances.
- 6.1.84 The Public Protector also noted that on 20 September 2019, Ms Jeffreys tendered her resignation as Assistant Appointment Secretary in the Office of the Minister with immediate effect.

6.2 Whether Ms De Lille facilitated the appointment of Ms Jansen to the Ministry notwithstanding the fact that she was not in possession of the requisite qualifications and experience, if so; whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution, 1996 and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act

Common Cause Issue

6.2.1 Following the appointment of Ms De Lille as the Minister of Public Works and Infrastructure, Ms Jansen was appointed as the Community Outreach Officer in the Ministry of Public Works and Infrastructure on a contract linked to the Minister's term of office with effect from 22 July 2019.

Issues in Dispute

6.2.2 The issue for the Public Protector's determination is whether Ms De Lille caused the DG of the DPWI to appoint Ms Jansen notwithstanding the fact that she was not in possession of the requisite qualifications and experience in government.

The Anonymous Complainant's version

6.2.3 As indicated above, the anonymous Complainant alleged that, Ms De Lille caused people who did not have government experience or the requisite qualifications to be appointed in the National DPWI and/or Ministry, in particular Ms Jansen who was appointed as the Media Liaison Officer.

The Minister's Response

6.2.4 On 11 October 2019, Ms De Lille submitted a detailed response and documentation refuting the anonymous Complainant's allegations and stated that:

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- 6.2.4.1 The anonymous Complainant had the facts wrong in relation to Ms Jansen, as Ms Jansen was appointed as Community Outreach Officer as opposed to the Media Liaison Officer as alleged by the anonymous Complainant.
- 6.2.4.2 The appointment of Ms Jansen was done in a similar manner as that of Ms Jeffreys. Ms Jansen had fifteen (15) years of working experience accumulated whilst working for a number of private institutions/organisations and had a strong background in dealing with community issues related to government and service delivery.
- 6.2.4.3 Ms Jansen was appointed with the relaxed qualifications in accordance with Regulation 39 of the PSR, 2016, which provides that an executive authority shall establish a job description and job title that indicates, with appropriate emphasis on service delivery, the main objectives, activities and functions of the post or posts in question and the inherent requirements of the job.
- 6.2.4.4 The relaxation of inherent requirements (qualifications) was standard practice in public service. She also contended that having “*Government*” experience is not a prerequisite for positions in Public Service. The government remains an equal opportunity employer and recruits persons from different backgrounds including private sector organisations. Ms Jansen’s working experience relevant to the job was the basis upon which the decision to appoint her was made.

Documentary evidence received from National DPWI

- 6.2.5 It was noted from the job profile for the post of a Community Outreach Officer that, the learning indicators which were expected to be met by the successful candidate, included but not limited to, a tertiary qualification in communications, three (3) to five (5) years’ experience in community liaison or a relevant qualification in built environment.

6.2.6 Additionally, in terms of the job description, the successful candidate was expected and/or required to, *inter alia*, effectively co-ordinate liaison/interaction between the Minister's office, stakeholders and the community, as well as to provide effective management of overall community liaison and stakeholder relations and effective co-ordination of IMBIZOs.

6.2.7 Consistent with Ms De Lille's response, it was noted from Ms Jansen's *curriculum vitae* that, at the time of her appointment as Community Outreach Officer in the Office of the Minister, Ms Jansen was possession of the following qualifications:

Table 3: Ms Jansen's Qualifications		
Qualification	Institution	Year
Matric Certificate	The Settlers High School	2002
Certificates/Seminars/Internal Training (Short Courses)		
National Diploma: Journalism	Cape Peninsula University of Technology	Incomplete (3 rd Year Level)

6.2.8 It was also noted from Ms Jansen's *curriculum vitae* that, she possessed fifteen (15) years' working experience in the communications field, accumulated whilst working for the following institutions/organisations:

Table 5: Ms Jansen's Employment History			
Position	Institution	Period	
News Reporter, Anchor, On-Air Field Producer	eNews Channel Africa (eNCA)	March 2009 to date	
News Reporter	Primedia Broadcasting	April 2008 to March 2009	
News Reporter, Anchor	Heart 104.9 FM	June 2004 to April 2008	

6.2.9 It was further noted from the documents submitted by the National DPWI that, on 03 July 2019, Mr Solomons sent an email titled "*Request to swap Ms. Jansen and Mr. Stemele for respective position/PLO and COO*" to Mr. Zaba.

- 6.2.10 According to the email, Mr Solomons indicated that Ms De Lille had re-evaluated the posts of Community Outreach Officer and Parliamentary & Cabinet Officer and requested that the appointees to the post be swapped, i.e. Ms Jansen be appointed as the Community Outreach Officer and Mr Stemele be appointed as Parliamentary & Cabinet Officer. In addition, Mr Solomons indicated that he had engaged both Ms Jansen and Mr Stemele in respect of the intended swap and they both agreed to same.
- 6.2.11 It was also noted that, following Mr Solomons' email on 11 July 2019, Mr Zaba sent an email to Ms Shimati and copied Ms Hlatshwayo informing them to implement the swap as per Mr Solomons' email.
- 6.2.12 On 12 July 2019, Mr Zaba sent an internal Memorandum to the DG titled *"Request for the exchange of positions between Ms L Jansen, Parliamentary & Cabinet Officer and Mr T Stemele, Community Outreach Officer in the office of the Minister, on the establishment of the Department"*.
- 6.2.13 According to the memorandum, the DG was requested to approve the exchange of positions between Ms Jansen and Mr Stemele on a contract linked to the term of office of the Minister on the establishment of the Department.
- 6.2.14 In addition, the DG was requested to approve the exchange of the positions on relaxed qualifications, in particular, Ms Jansen and Mr Stemele's positions in accordance with Chapter Three (3) of the Guide for Members of the Executive read with section 9 of the PSA and Regulation 66(1) to (3) of the PSR.
- 6.2.15 It was further noted from the memorandum that, the exchange of Ms Jansen and Mr Stemele's positions was the result of the re-evaluation of the profiles for the filling of the positions of Parliamentary and Cabinet Officer and Community Outreach Officer by the Office of the Minister, which resulted in the request that Ms Jansen be appointed as a Community Outreach Officer and Mr Stemele as

Parliamentary and Cabinet Officer following consultations with the parties, who agreed to the exchange.

6.2.16 Consequently, on 12 July 2019, Ms Hlatshwayo supported the recommendation. On 13 July 2019, the DDG: Corporate Services, Mr Mtshisa supported the recommendation, followed by the DG's approval of the recommendation on 16 September 2019, giving effect to the swapping of Ms Jansen and Mr Stemele's positions.

6.2.17 It was noted from the documents received from the National DPWI that, following the approval of the exchange of Ms Jansen and Mr Stemele's positions, on 16 July 2019, the DG sent a letter to Ms Jansen titled "*Appointment Letter*" informing her that her appointment as the Community Outreach Officer in the Office of the Minister on a contract linked with the term of Office of the Minister had been approved.

6.2.18 Furthermore, Ms Jansen was informed, in the letter referred to above, that her appointment was subject to the provisions of the PSA, the Government Employees Pension Law, 1996, as amended, the Regulations promulgated under these Acts, as well as the directives contained in the Collective Agreements, Circulars and the Ministerial Handbook. Furthermore, Ms Jansen was informed that her appointment was also subject to the receipt of both positive security clearance and reference checks.

Applicable legal prescripts

The Public Service Act, 1994 as amended

6.2.19 The PSA is the key legislation regulating the recruitment, selection and the filling of posts within the public service.

- 6.2.20 Section 9 of the PSA, 1994 provides that, “*An executive authority may appoint any person in his or her department in accordance with this Act and in such manner and on such conditions as may be prescribed*”.

The Public Service Regulations

- 6.2.21 Regulation 39(1) of the PSR, 2016 prescribes that, “*For each post or group of posts, an executive authority shall establish a job description and job title that indicate, with appropriate emphasis on service delivery—*

*(a) the main objectives, activities and functions of the post or posts in question;
and*

(b) the inherent requirements of the job”.

Case law

- 6.2.22 The issue on the varying and/or changing the requirements of a post by the Minister was enunciated in the case of ***Letsogo v Department of Economy and Enterprise Development and Others***⁸ where the court held that, “*The Public Service Act defines “executing authority” in section 1 as follows: “the member of the Executive Council responsible for such portfolio.” In short this means that the MEC is the only person who has the authority to determine and/or vary and/or change the requirements for a post.*

Analysis of the evidence

- 6.2.23 The minimum requirements for the post of Community Outreach Officer within the DPWI is a three (3) year tertiary qualification in communications, three (3) to

⁸ (JR350/16) [2018] ZALCJHB 48; (2018) 39 (ILJ) (9 January 2018) at paragraph 44.

five (5) years' experience in community liaison or a relevant qualification in built environment.

6.2.24 At the time of her appointment, Ms Jansen was not in possession of a three (3) year qualification in communications or a relevant qualification in built environment. However, based on the recommendations made by the Selection Committee on the suitability of Ms Jansen after considering the inherent requirements of the post of Community Outreach Officer, as well as the directive by Ms De Lille that the requirements in respect of the post be relaxed, Ms Jansen was appointed to the post (Community Outreach Officer) in line with Regulation 39(1) of the PSR, 2016.

6.2.25 However, no evidence of authorisation was furnished to the Public Protector by the National DPWI to prove that a deviation was sought from MPSA as contemplated by Regulation 4 of the PSR, 2016.

Conclusion

6.2.26 Having regard to the evidence gathered and information obtained during the investigation, the Public Protector concludes that Ms Jansen had no relevant qualifications to the post of Community Outreach Officer. The appointment of Ms Jansen as Community Outreach Officer therefore, was not done in accordance with the PSR and in particular Regulation 4 of the PSR, 2016.

6.3 Whether the secondment of Mr Dakela from the CSIR to the DPWI was conducted contrary to legislation and any other prescripts regulating the secondment of personnel in the public service, if so, whether such conduct constitutes improper conduct as envisaged by section 182(1)(a) of the Constitution, 1996 and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act

Common Cause Issues

6.3.1 The secondment of employees is an employment practice in South Africa, and may take place on account of an agreement between the employee, his/her employer and the entity/institution of the State to which he/she will be seconded.

6.3.2 Following the appointment of Ms De Lille as the Minister of Public Works and Infrastructure, Mr Dakela was seconded from the CSIR to the DPWI with effect from 01 August 2019 to 31 July 2020.

Issue in Dispute

6.3.3 The issue for Public Protector's determination is whether the secondment of Mr Dakela from the CSIR to the DPWI was conducted contrary to legislation and prescripts regulating the secondment of personnel in the public service, and with the sole intention of removing the DG from his position.

The anonymous Complainant's version

6.3.4 The anonymous Complainant alleged that, Ms De Lille made moves to replace the DG with Mr Dakela, allegedly a member of the Good Party, who was seconded from the CSIR, despite him having previously failed during an interview

for the post of Director in Facilities Maintenance. According to the anonymous Complainant, this was tantamount to cadre deployment.

Ms De Lille's response

- 6.3.5 On 11 October 2019, Ms De Lille responded to the allegations letter and submitted a detailed response and documentation in rebuttal of the anonymous Complainant's allegations.
- 6.3.6 In the response, Ms De Lille disputed the allegation that she made moves to replace the DG with Mr Dakela, who is alleged to be a member of the Good Party. Ms De Lille asserted that the fact of the matter is that the DG is appointed on a five (5) year fixed term contract (in this particular instance, the current DG's appointment will come to an end 06 December 2022).
- 6.3.7 It is the contention of Ms De Lille that, besides the fact that the authority to appoint, transfer and discipline the DG is with the President of the Republic of South Africa, and as a Minister she did not act in any manner that suggests an intention to interfere with the employment contract of the DG.
- 6.3.8 Ms De Lille further contended that, she did not make moves to replace the DG with Mr Dakela or anyone else. Furthermore, Ms De Lille disputed the assertion that Mr Dakela was a member of the Good Party as alleged by the anonymous Complainant.
- 6.3.9 Regarding the secondment of Mr Dakela, Ms De Lille asserted that, Mr Dakela was seconded to the DPWI from the CSIR for a period of twelve (12) months in accordance with section 15(2) of the PSA, 1994 read with Regulation 62(1) and (2) of the PSR, 2016 based on his competencies to, *inter alia*:

6.3.9.1 Assist the DPWI in improving governance, accountability and financial management, as well as to further strengthen and advance the DPWI through the six (6) identified strategic outcome-oriented goals and has also been assigned the functions of the Programme Management Office.

6.3.10 She stated that the DG was central in the secondment of Mr Dakela to the DPWI and as the Minister, she was briefed about the process.

Documentary evidence received from DPWI

6.3.11 It was noted from the documents received from the DPWI for the Public Protector's consideration that, on 15 July 2019, the Director: Human Resources Administration, Ms Ronel Mostert (Ms Mostert) sent an internal Memorandum to Ms De Lille titled "*Request for approval for the secondment of Mr A Dakela from CSIR to the national Department of Public Works*".

6.3.12 In terms of the Memorandum, Ms De Lille was requested to approve the secondment of Mr Dakela from the CSIR to the DPWI, in line with Regulation 62(1) of the PSR, 2016 for a period of twelve (12) months effective from 01 August 2019, as well as to sign the letters addressed to the former Executive Director of the CSIR, Dr Bethuel Sehlapelo (Dr Sehlapelo) in connection with the secondment of Mr Dakela to the DPWI.

6.3.13 Ms Mostert asserted that, the Human Resources Administration received a request from the Office of the DG for the secondment of Mr Dakela from the CSIR to the DPWI to assist with, *inter alia*, the following aspects:

6.3.13.1 The improvement of governance, accountability and financial management, as well as to further strengthen and advance the department through the six (6) specific strategic outcome oriented goals such as:

- (a) to transform the construction and property sectors through the development of policy and legislative prescripts;
- (b) to provide oversight of the public works sector;
- (c) to provide an oversight role in the implementation of PEP's through EPWP standardised frameworks;
- (d) to oversee the effective delivery of identified services to Prestige clients;
- (e) to support service delivery in smart, proactive and business centric manner that is aligned to statutory requirements; and
- (f) to build State capacity in the Built Environment Professions.

6.3.14 In paragraph 5.5 of the Memorandum, Ms Mostert provided the following motivation in support of the secondment of Mr Dakela to the DPWI, stating *inter alia* that:

6.3.14.1 Mr Dakela was identified for his expert knowledge and skills. He matriculated in Cape Town in 1992 from Luhlaza High School. He obtained a National Diploma in Mechanical Engineering, Baccalaureus Technologiae in Mechanical Engineering in 1998 and 2001 respectively, from the Cape Peninsula University of Technology.

6.3.14.2 Mr Dakela was in possession of an Advanced Project Management Certificate obtained from the University of Stellenbosch in 2008. At the time of his secondment, Mr Dakela was in his final year of a Master's degree in Business Administration (Executive).

6.3.14.3 Furthermore, Mr Dakela was an Engineering Council of South Africa's (the ECSA) accredited Mechanical Engineer with more than fifteen (15) years'

experience within the built environment and five (5) years' experience within the oil industry and possessed more than ten (10) years' experience in the following fields:

- (a) senior management, strategic planning, asset management of fixed and non-fixed assets, facilities management, capital projects, operational projects, contract management; and
- (b) partnerships, business planning and annual reports, building capacity with outstanding interpersonal skills, project planning including monitoring and evaluation, budgeting and managing expenditure reports, ability to advise at senior level and develop strong stakeholder relations.

6.3.14.4 In 2006, Mr Dakela was nominated to be part of the Infrastructure Delivery Improvement Programme (the IDIP) Committee. During that time, Mr Dakela drafted the Infrastructure Delivery Management System (the IDMS) framework in order to provide a standard guidance to all government institutions on how to manage their physical (fixed) assets which covered the planning; budgeting; procurement; delivery; maintenance; operation; monitoring; and evaluation of physical (fixed) assets stages.

6.3.14.5 At the time of the intended secondment, Mr Dakela was the Head of Quality Management at the CSIR since 2016; and

6.3.14.6 Mr Dakela was responsible for the definition, implementation and operation of QA Management System to ensure the quality of systems and products produced by various programmes and projects executed through the Programme Office, were accurate, reliable and in an auditable fashion.

6.3.15 It was noted that following the submission of the Memorandum, on an even date (15 July 2019), Ms Hlatshwayo and Mr Mtshisa supported the recommendation, which was noted by the DG with the following note:

“It is not clear why the Department does not recruit a permanent employee for the skills needed as the thirty six (36) months is long enough to motivate for a full time position”. (sic)

6.3.16 On 17 July 2019, following the submission of the Memorandum, Ms Noxolo Kiviet, approved the recommendation which was followed by the approval by Ms De Lille.

6.3.17 Subsequently, on 23 July 2019, the DG sent a letter to the Executive Director of the CSIR, Dr Sehlapelo titled *“Secondment of Mr A Dakela from the Council for Scientific and Industrial Research (CSIR) to the National Department of Public Works and Infrastructure”*.

6.3.18 In the letter referred to above, the DG confirmed the request for the secondment of Mr Dakela from the CSIR to the DPWI for an initial period of twelve (12) months effective from 01 August 2019.

6.3.19 According to the DG, the intention was to request the secondment of Mr Dakela from CSIR for thirty six (36) months, but due to the limitation in terms of the Public Service Regulations, the Department will have to approach the MPSA for approval of secondments beyond twelve (12) months.

6.3.20 Additionally, the DG emphasised that the DPWI will reimburse the CSIR in terms of the salary and other related costs of Mr Dakela as set out in the MoU, which was attached to the letter and requested the Executive Director to sign the MoU in the event he was in agreement with the content.

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- 6.3.21 It was further noted from the documents received from the DPWI that, following the letter referred to above, on 24 January 2020 Dr Sehlapelo and Mr Dakela signed the MoU titled “*Agreement between the National Department of Public Works and Infrastructure and the Council for Scientific and Industrial Research (CSIR) for the secondment of Mr A Dakela to the National Department of Public Works and Infrastructure*”, giving effect to Mr Dakela’ secondment to the DPWI.
- 6.3.22 In terms of the MoU, the secondment of Mr Dakela was projected to be for a period of twelve (12) months commencing from 01 August 2019, with the option to extend the period for a further twenty four (24) months.
- 6.3.23 According to the MoU, Mr Dakela was expected to, *inter alia*, be responsible for the performance of duties as agreed upon, which would form the basis of a Performance Agreement that would be concluded between the him and the DPWI. In addition, in terms of the MoU the CSIR was entitled to claim reimbursement from the DPWI, on the last day of every month, *inter alia*:
- 6.3.23.1 Full remuneration, including contributions to pension, medical aid, risk benefits to which Mr Dakela was entitled in terms of his employment with the CSIR prior to the conclusion of his secondment to the DPWI. The inclusive cost of this remuneration per month plus expenses related to subsistence and travel for the period of secondment as per the DPWI’s policy.
- 6.3.24 Mr Dakela was to be remunerated in line with the responsibilities and functions for which he was assigned in the DPWI for the duration of the secondment, as well as for all the expenses incurred in the performance of his duties (for the DPWI) in accordance with the rates and prescripts applicable to employees of the DPWI.

6.3.25 The MoU further made provision clause 10 subparagraph 10.1 for the premature termination of the secondment, which reads as follows:

“This agreement may be terminated prior to the expiry date referred to in clause 1 if-

(a) Operational circumstances at the Department do not permit the continuation of the agreement; or

(b) As the secondment of the Secondee is no longer feasible and/or practical as a result of the individual’s incapacity to perform the duties or due to misconduct on his behalf or due to his personal circumstances”. (sic)

6.3.26 On 25 July 2019, following the submission of the letter referred to above to the CSIR, as well as the conclusion of the MoU, Ms De Lille sent a letter to Mr Dakela titled *“Department of Public Works and Infrastructure: Assigned to the position and functions of DDG: PMO”*.

6.3.27 In terms of the letter, Mr Dakela was informed, *inter alia* that:

6.3.27.1 He was assigned to the functions and responsibility of the Deputy Director-General: PMO with effect from 1 August 2019, for the duration of his secondment or until advised differently, whichever comes first;

6.3.27.2 During this period (secondment period) he will be responsible for the execution of the duties and delegated authorities allocated in this post and any other responsibilities as he may be assigned by the Accounting Officer. In this regard, Mr Dakela was advised that it was therefore important that he familiarise himself with the contents and conditions of the delegated authorities; and

6.3.27.3 In terms of the conditions of the service applicable in the Public Service, the Deputy Director-General was paid a salary of One Million Five Hundred and Twenty One Thousand Five Hundred and Ninety One Rand (R1 521 591.000) per annum.

6.3.27.4 The Department however, reserved the right to recover any overpayment resulting from error in the relevant directives or application thereof from his salary as soon as detected.

Response from CSIR

6.3.28 On 9 July 2021, a request for information in terms of section 7(4)(b) of the Public Protector Act, 1994 was made to the Executive Director of the CSIR, Dr Dlamini (the Executive Director) requesting him to provide the Public Protector with the following:

6.3.28.1 A sworn statement or affidavit or declaration providing a detailed explanation on the process followed by the CSIR in the secondment of Mr Dakela to the DPWI and in doing so, the Executive Director was requested to indicate whether:

(a) Mr Dakela consented to the secondment; and

(b) Whether the secondment was in the public interest, as well as indicate the period agreed upon between the parties (CSIR and the DPWI).

6.3.28.2 The Executive Director was also requested to provide the Public Protector with a signed copy of the MoU entered into between the CSIR and the DPWI giving effect to the secondment of Mr Dakela, in the event that Mr Dakela consented to the secondment.

- 6.3.29 On 22 July 2021, the Executive Director submitted a sworn statement accompanied by the requested documents. In paragraph 2 of the sworn statement, the Executive Director asserted that, the secondment of Mr Dakela was initiated through a request by the DPWI to which the CSIR positively responded to, which resulted in the parties concluding the Secondment Agreement.
- 6.3.30 In paragraph 3, the Executive Director asserted that, the DPWI and the CSIR had a collaborative relationship which was formalised by the conclusion of a MoU on 01 December 2014, in which the CSIR agreed to assist the DPWI with the provision of solutions through conducting research and development, as well as to drive the *“Socio-economic transformation through the Research, Development and Innovation (the RD&I) which supported the development of a capable state”*.
- 6.3.31 The Executive Director emphasised that collaboration agreements with Government Departments such as the DPWI were therefore in accordance with this strategic objective and public interest.
- 6.3.32 According to the Executive Director, the secondment of Mr Dakela to the DPWI was conducted within the spirit and intent of the MoU between the two (2) organisations and the CSIR had a practice of seconding its employees to government departments at the request of the government departments.
- 6.3.33 In paragraph 4, the Executive Director asserted that, Mr Dakela consented to the secondment to the DPWI for a period of twelve (12) months and accordingly signed the Secondment Agreement on 31 January 2020, which commenced retrospectively on 01 August 2019 and terminating on 31 July 2020.
- 6.3.34 The Executive Director, further indicated that, the DPWI initiated the premature termination of the Secondment Agreement (which the CSIR agreed to under the

circumstances) with effect from 20 May 2020, and with the liability under the secondment agreement terminating on 30 June 2020.

- 6.3.35 Consistent with the Executive Director's assertions, it was noted from the documents received from the DPWI that, on 28 May 2020, the DG sent a letter to the Executive Director of the CSIR titled "*Termination of the Secondment Agreement of Mr Ayanda Dakela to the National Department of Public Works and Infrastructure*".
- 6.3.36 In paragraph 2 of the letter, the DG informed the Executive Director of the CSIR about the decision to terminate the secondment agreement of Mr Dakela to the DPWI within thirty (30) days from date of signature based on his breach of the internal departmental communication protocols in that he had been acting on behalf of the Ministry and issued communication on behalf of the Ministry on ministerial letterheads to various parties without authorisation.
- 6.3.37 In paragraph 3, the DG indicated that, the conduct of Mr Dakela in this regard had compromised the integrity of the Ministry and his conduct was viewed in a serious light taking into account his seniority and his acting capacity in the Department.
- 6.3.38 In closing, the DG indicated that, the DPWI would remain liable for the cost related to the secondment of Mr Dakela for the month of June 2020. However, Mr Dakela was released from the Department with immediate effect.

Applicable legal prescripts

The Public Service Act, 1994 as amended

- 6.3.39 Section 15(2) of the PSA provides that, "*If it is in the public interest and if the prescribed conditions (if any) have been complied with, the executive authority*

of a department may, with the approval of the employer concerned, approve the secondment of a person in the service of an organ of state, another government or any other body to the department-

*(a) for a particular service or period not exceeding the prescribed period (if any);
and*

(b) on the prescribed conditions (if any) and such other conditions as agreed between the relevant functionary of the body concerned and the executive authority”.

The Public Service Regulations, 2016

6.3.40 Regulation 62(1)(a) to (c) of the PSR, 2016 prescribes that:

“The secondment in terms of section 15(2) or (3) of the Act may only take place if the employee or person being seconded has the necessary competency, the period of secondment does not exceed 12 calendar months, unless due to operational reasons determined otherwise by the Minister and an agreement has been concluded between the receiving and seconding department, organ of state, other government or any other body”.

6.3.41 Regulation 62(2) of the PSR, 2016 provides that:

“The recipient department, organ of state, other government or any other body in terms of section 15(2) or (3) of the Act shall bear the inclusive costs of secondment, unless the seconding department, organ of state, other government or any other body agree otherwise”.

Analysis of the evidence

- 6.3.42 On 23 July 2019, the DG (with delegated power of appointment, promotion or transfer conferred to him by the Executive Authority) sent a letter to the CSIR requesting for the secondment of Mr Dakela to the DPWI from the CSIR for a period of twelve (12) months in line with section 15(2) of the PSA and Regulation 62(2) of the PSR, 2016.
- 6.3.43 On 24 January 2020 the DPWI and the CSIR concluded the MoU giving effect to the secondment of Mr Dakela to the DPWI to assist with the improvement of governance, accountability and financial management, as well as to further strengthen and advance the DPWI's through the six (6) specific strategic outcome oriented goals.
- 6.3.44 The DPWI and the CSIR concluded the MoU, wherein the Parties agreed that the CSIR would claim, on the last day of every month from the DPWI, full remuneration including contributions to pension, medical aid, risks benefits, all expenses other than remuneration incurred by the Mr Dakela in the performance of his duties for the DPWI.

Conclusion

- 6.3.45 Having regard to the investigation conducted in the matter, the evidence and information obtained therewith, the Public Protector concludes that the secondment of Mr Dakela by the CSIR to the DPWI was conducted in line with section 15(2)(a) and (b) of the PSA and Regulation 62 of the PSR regulating the secondment of personnel in the public service applicable to the DPWI and the CSIR.

6.4 Whether Ms De Lille purged Mr Buthelezi and Ms Nzimande following her appointment as the Minister of Public Works and Infrastructure, if so; whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution, 1996 and abuse of power as envisaged in section 6(4)(a)(ii) of the Public Protector Act

Common Cause Issues

- 6.4.1 In May 2017, the DPWI published an advertisement in various newspapers inviting suitably qualified candidates to submit applications with a view to be considered for the two (2) positions for researchers; and
- 6.4.2 Following the interviews, Mr Buthelezi was appointed as a researcher on a twenty four (24) months contract commencing on 01 August 2017 and terminating on 31 July 2019, whilst Ms Nzimande was appointed with effect from 01 August 2017 to 01 August 2019.

Issue in Dispute

- 6.4.3 The issue for Public Protector's determination is whether Mr Buthelezi and Ms Nzimande were purged by Ms De Lille, following her appointment as the Minister of DPWI.

The anonymous Complainant's version

- 6.4.4 The anonymous Complainant alleged that following her appointment as the Minister of DPWI, Ms De Lille purged Mr Buthelezi and Ms Nzimande, researchers from former Minister Nkosinathi Nhleko's administration, who both have Masters degrees and relevant experience, and that money paid as salaries be recovered from them.

Ms De Lille's *response*

- 6.4.5 On 3 September 2019, an allegations letter was issued to Ms De Lille requesting her to submit a detailed response to the allegations made by the anonymous Complainant, as well as documentation relevant to the matters under investigation by the Public Protector. On 11 October 2019, Ms De Lille submitted a detailed response and documentation in refuting the anonymous Complainant's allegations.
- 6.4.6 In the response, Ms De Lille asserted that, Ms Nzimande and Mr Buthelezi were not subjected to any disciplinary processes. In addition, Ms De Lille indicated that both Ms Nzimande and Mr Buthelezi were appointed as researchers on twenty-four (24) month fixed-term contracts which expired on 01 August 2019 and 31 July 2019, respectively.

Documentary evidence received from DPWI

- 6.4.7 On 30 May 2017, the DPWI published an advertisement in various newspapers inviting suitably qualified candidates to submit applications with a view to being considered for the two (2) positions of Researchers (Director Level).
- 6.4.8 According to the advertisement, the positions which were available within the DPWI with reference number 2017/06, were for a contract of twenty-four (24) months. The closing date for the submission of applications is set for 12 June 2017.
- 6.4.9 Following the closing date, on an unspecified date the Director: Human Resources Recruitment and Planning, Mr Zaba sent an Internal Memorandum to the former Minister of Public Works, Mr Nkosinathi Nhleko, (the former Minister) titled "*Filling of the advertised positions of two Researchers on a twenty four (24) months contract Ref: 2017/06 within the establishment of Head Office*".

- 6.4.10 In terms of the Internal Memorandum, the purpose was to obtain approval from the former Minister for the recommendations made by the Selection Committee with regard to the appointment of Mr Buthelezi and Ms Nzimande as Researchers within the establishment of the department at Head Office, in accordance with sections 9 and 11 of the PSA read with Part 4 of the PSR, 2016.
- 6.4.11 Following the submission of the Internal Memorandum, the then Deputy Director-General: Corporate Services, Adv Vukela (the DDG and Chairperson of the panel), Mr L Mbangwa (the CoS), Mrs TB Hlatshwayo (Chief Director: HRM), Dr E Museneke (Chief Director: Expanded Public Works Programme) and Ms NP Mudau (Deputy Director: Human Resource: Recruitment) were appointed to the selection committee to make recommendations in connection with the filling of the positions of researchers on the establishment of the DPWI.
- 6.4.12 According to the Internal Memorandum referred to above, the following shortlisted candidates were invited for interviews which were held on 28 June 2017:

Table 7: List of candidates shortlisted for the posts of Researcher (Director Level)		
Name	Race and Gender	Disability Status
Mr VV Buthelezi	African Male	No
Candidate 2	African Male	No
Candidate 3	African Male	No
Ms ES Nzimande	African Female	No
Candidate 5	African Male	No
Candidate 6	African Male	No

- 6.4.13 In paragraph 6 sub-paragraphs 6.1 and 6.2 of the Internal Memorandum referred to above, Mr Zaba averred as follows in respect of Mr Buthelezi and Ms Nzimande's candidature:

6.4.13.1 **Mr Buthelezi's candidature:**

- (a) Mr Buthelezi is an African male employed by Luthuli Museum as a Curator since 2015. He was previously employed as Director at Campbell Collections, University of KwaZulu-Natal from 2013 to 2015.
- (b) He was in possession of a Masters of Arts, a Bachelor of Arts Honours and Bachelor of Arts from the University of Western Cape and several certificates from different institutions;
- (c) Mr Buthelezi shared with the panel his qualifications, experience and the skills that he acquired since he started working as a Museum Curator at Lwandle Migrant Museum;
- (d) He mentioned compiling of comprehensive research, programme proposals, understanding of the dynamics framework as an attribute or qualities of a good researcher. He further explained the good research that he did while he was working at the museum;
- (e) He indicated that he did the comparative analysis of Jewish Museum and Migrant Labour Museum and he collected the data through interviewing people and providing people with the questionnaires. His finding on his research was that it is important to involve the community on each projects as their input was very important; and
- (f) Regarding the management of the interactions between the team members to ensure that the team performs optimally, Mr Buthelezi indicated that he understands that he will be working in the Office of the Minister, but he would have to be a team player as he would be interacting with all the different stakeholders. He mentioned communication as key.

6.4.14 According to Mr Zaba, the technical assessment was conducted on the day of the interview and the panel found Mr Buthelezi as the first suitable candidate for the first advertised position of Researcher, on the establishment of Head-Office.

6.4.15 **Ms Nzimande's candidature:**

- (a) Ms Nzimande is an African Female, she was previously employed by the Department of Arts and Culture (the DAC) as Head of Department (the HoD) from 2002 to 2016. She also worked for the DAC as a General Manager responsible for Archive Libraries and Museum Services from 2007 to 2012;
- (b) She is in possession of a Diploma in Education, a Bachelor of Arts, Bachelor of Arts (Honours), Bachelor of Library Science (Honours), Master of Information Studies obtained from the University of Zululand, as well as other several Certificates from various institutions;
- (c) Ms Nzimande shared with the panel her qualifications, experience and the value she would add in the Office of the Minister. She mentioned her experience while she worked as the Head of Department (the HoD) of the DAC;
- (d) She mentioned analysis of the environment, identity data, evaluation and implementation as the attributes of a good researcher. She also mentioned the research that she conducted and her topic was on how to improve infrastructure at the library and indicated that she collected information through interviews and providing questionnaires; and
- (e) Regarding the management of the interactions between the team members to ensure that the team performs optimally, she indicated, as her strategy,

that she would identify the gap, create good relationships, understands the mandate and communication.

- 6.4.16 According to Mr Zaba, the technical assessment was conducted on the day of the interview. The panel found Ms Nzimande as the first suitable candidate for the second advertised position of Researcher, on the establishment of Head-Office.
- 6.4.17 Subsequently, the panel recommended that the appointments of Mr Buthelezi and Ms Nzimande in the advertised positions of Researchers be approved on the first notch of Salary Level 13.
- 6.4.18 According to the Employment Contracts (in particular clause 1(1.1)), Mr Buthelezi and Ms Nzimande agreed and accepted their appointments as members of the DPWI's SMS in accordance with section 9 of the PSA, 1994(as amended) for a period of twenty four (24) months commencing 01 August 2017 ending on 31 July 2019 in respect of Mr Buthelezi and 01 August 2017 ending on 01 August 2019 in respect of Ms Nzimande.
- 6.4.19 In addition, Mr Buthelezi and Ms Nzimande agreed and accepted to the governing of the employment and conditions of service by the PSA, 1994, the PSR, 2016 and any other legal provisions applicable to them.
- 6.4.20 Furthermore, the DPWI as an employer and Mr Buthelezi and Ms Nzimande as employees agreed and accepted terms of employment that upon the expiry of the term, their services would terminate.
- 6.4.21 It was further noted from the documents received from the DPWI that, on 31 July 2019, the DG sent a letter to Mr Buthelezi titled "*Termination of a contract: Yourself*". In terms of the letter, Mr Buthelezi was made aware that his employment contract was due to expire on 31 July 2019, and regrettably it would

not be extended. As a result, he was advised that the last day of his service was 31 July 2019.

- 6.4.22 Similarly, it was noted that, on 31 July 2019 a similar letter was sent to Ms Nzimande by the DG. However, Ms Nzimande was made aware that her employment contract was due to expire on 01 August 2019, and regrettably it would not be extended. As a result she was advised that the last day of his service would be 01 August 2019.

Applicable legal prescripts

The Public Service Regulations, 2016

- 6.4.23 Regulation 87(2) of the PSR, 2016 prescribes that, *“Any other person appointed to the SMS shall within one month of his or her date of appointment conclude a contract of employment, which shall be based on the provisions set out in Annexure 3 or 4, as the case may be”*.

- 6.4.24 A contract of employment is a vital document as it regulates the terms and conditions of employment between the employer and the employee. It was therefore apposite for the parties (the DPWI, Mr Buthelezi and Ms Nzimande) to enter into Contracts of Employment with a view to regulate the relationship between them and the employer.

Case Law

- 6.4.25 The issue on the interpretation of a written contract or agreement was dealt with in the matter between ***Le Roux v Brits***⁹ where the court held:

⁹ (4070/2015) [2015] ZAWCHC 133 (18 September 2015).

“The evidence or integration rule provides that ‘where the parties have decided that their contract should be recorded in writing, their decision will be respected, and the resulting document or documents will be accepted as the sole evidence of the terms of the contract’. See The Law of Contract in South Africa, 6th ed Christie and Bradfield p. 200.

In Johnston v Leal 1980(3) SA 927(A) Corbett JA as he then was expressed the rule thus at 943B: “... the aim and effect of this rule is to prevent a party to a contract which has been integrated into a single and complete written memorial from seeking to contradict, add to or modify the writing by reference to extrinsic evidence and in that way to redefine the terms of the contract ...

To sum up, therefore, the integration rule prevents a party from altering, by the production of extrinsic evidence, the recorded terms of an integrated contract in order to rely upon the contract as altered . . .” See also Lowrey v Steedman 1914 AD 532 at 543. There can be no doubt that the rule remains part of our law as is aptly illustrated with reference to the following authorities”.

Analysis of evidence

- 6.4.26 On 15 August 2017, the DPWI duly represented by Mr Mziwonke Dlabantu in his capacity as then DG and Mr Buthelezi, as well as Ms Nzimande entered into an Employment Contracts for a fixed-term or specific project in accordance with Regulation 87(2) under Chapter 5 of the PSR, 2016.
- 6.4.27 The Parties entered into written agreements in which they agreed and accepted that the employment relationship between them would terminate following the expiry of the fixed term.

6.4.28 On 31 July 2019, following the expiration term of the contracts, the DG issued letters to both Mr Buthelezi and Ms Nzimande advising that their employment contracts would expire and shall terminate on 31 July 2019 and 01 August 2019 respectively, in line with clause 3(3.1) of their respective employment contracts.

Conclusion

6.4.29 Having regard to the investigation conducted in the matter, the evidence and information obtained, the Public Protector concludes that the termination of Mr Buthelezi and Ms Nzimande's written employment contracts was the result of the effluxion of time or expiration of the term agreed upon between the parties.

6.4.30 The termination of Mr Buthelezi and Ms Nzimande's contracts was in accordance with clause 3(3.1) of their respective employment contracts. Evidence indicating that, Ms De Lille purged both Mr Buthelezi and Ms Nzimande could not be found during the investigation.

6.5 **Whether the appointment of Ms Zakhe as the Private Secretary to the Deputy Minister of Public Works and Infrastructure was conducted contrary to legislation and any other prescripts regulating the appointment of personnel in the public service, if so; whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution, 1996 and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act**

Common Cause Issues

6.5.1 In terms of the Ministerial Handbook, Ministers and Deputy Ministers are entitled to establish core support staff in their respective Private Offices, which include Private Secretaries/Appointments Secretaries.

6.5.2 Ms Nokwanele Zakhe (Ms Zakhe) was appointed on 26 June 2019 as a Private Secretary to the Deputy Minister of Public Works and Infrastructure, Ms Noxolo Kiviet.

Issue in Dispute

6.5.3 The issue for the Public Protector's determination is whether Ms Zakhe was appointed as a Private Secretary to Ms Noxolo Kiviet, notwithstanding the fact that she did not possess the relevant qualifications other than a Matric Certificate.

Anonymous Complainant's version

6.5.4 The anonymous Complainant alleged that Ms De Lille also appointed a Personal Assistant (PA) to Ms Noxolo Kiviet without qualifications but only a Matric Certificate and a criminal record, which the Public Service Commission (the PSC) has been requested to investigate.

Ms De Lille's response

6.5.5 On 3 September 2019, an allegations letter was issued to Ms De Lille requesting her to submit a detailed response to the allegations made by the anonymous Complainant, as well as documentation relevant to the matters under investigation by the Public Protector.

6.5.6 On 11 October 2019, Ms De Lille submitted a detailed response and documentation refuting the anonymous Complainant's allegations. In the response, Ms De Lille asserted that:

6.5.6.1 Ms Zakhe was appointed as a Private Secretary to Ms Kiviet, at her request.

- 6.5.6.2 Ms Zakhe was in possession of a Senior Certificate, certificates in Public Administration, Human Resource Management, Frontline and Public Relations, as well as an Office Administration certificate, which she obtained from various institutions. Ms Zakhe was, at the time of her appointment, studying towards a Bachelor's degree in Public Administration with the University of Fort Hare.
- 6.5.6.3 Ms Zakhe was appointed with the relaxation of qualifications in accordance with Regulation 39 of the PSR, 2016 which provides that an Executive Authority shall establish a job description and job title that indicates, with appropriate emphasis on service delivery, the main objectives, activities and functions of the post or posts in question and the inherent requirements of the job.
- 6.5.6.4 The relaxation of inherent requirements (qualifications) is a standard practice in the public service. Furthermore, the appointment of Ms Zakhe was based on her experience and the knowledge of the job.
- 6.5.6.5 In response to whether the alleged criminal offences against Ms Zakhe posed a risk in relation to the performance of the duties attached to the position, Ms De Lille indicated that the matter was not dealt with by her as the Minister.

Documentary evidence received from DPWI

- 6.5.7 Consistent with Ms De Lille's response, it was noted from the documents received that, on 13 June 2019, Ms Noxolo Kiviet sent a letter to the DG titled "*Appointment of Private Office Staff in support of the Deputy Minister of Public Works and Infrastructure*".
- 6.5.8 In terms of the letter, the DG was made aware that Chapter 8 of the Ministerial Handbook contained guidelines on the core posts that Executive Authorities may utilise for establishing Private Offices in support of Members.

- 6.5.9 In particular, the DG was drawn to paragraph 1.1 of the Ministerial Handbook, which allows for the appointment of Head of Office, Media Liaison Officer, Parliamentary Officer, Private Secretary, Secretary/Receptionist, Registry Clerk and an Aide or Driver/Messenger determined by the relevant Executive Authority.
- 6.5.10 In addition, the DG was requested to facilitate the appointment of Ms Zakhe as Ms Noxolo Kiviet's Private Secretary at Deputy Director Level Twelve (12) post in accordance with the Ministerial Handbook and any other legislative prescripts applicable to the DPWI, as well as in line with the DPWI's guidelines. In closing, Ms Noxolo Kiviet informed the DG that the appointment of additional staff members in her office will be dealt with in due course.
- 6.5.11 It was also noted from the documents received that, following the submission of the letter referred to above, dated 13 June 2019, Mr Zaba sent an Internal Memorandum to the DG titled "*Request for approval for the appointment of the interviewing panel for the filling of the position of Private Secretary in the Office of the Deputy Minister*".
- 6.5.12 According to the Internal Memorandum, Mr Zaba requested the DG to approve the appointment of the interviewing panel for the filling of the position of Private Secretary in the Office of the Deputy Minister, and in so doing, he proposed that Mr Solomons to be appointed as the chairperson of the committee comprising of Ms Hlatshwayo (member), Mr Zaba (member) and Ms Shimati.
- 6.5.13 It was also noted that Ms Hlatshwayo and Mr Mtshisa supported the recommendation for the appointment of the interviewing panel for the filling of the position of Private Secretary in the Office of the Deputy Minister, followed by the approval of the recommendation by DG on 13 June 2019.
- 6.5.14 Additionally, it was noted that on 25 June 2019, a further Internal Memorandum was sent by Mr Zaba to the DG titled "*Request for the filling of the position of*

Private Secretary to the Deputy Minister, through the appointment of Ms NV Zakhe, on contract linked to the term of office of the Deputy Minister, on the establishment of the Department”.

- 6.5.15 According to the Internal Memorandum, the DG was requested by Mr Zaba, to approve and authorise the appointment of Ms Zakhe with relaxed qualifications, as well as in accordance with section 9 of the PSA read with Chapter Three (3) of the Guide for Members of the Executive and Presiding Officers and Regulation 66(1) to (3) of the PSR.
- 6.5.16 In paragraph 4.5 of the Internal Memorandum, Mr Zaba indicated that the interviews were conducted virtually between the Office of the DG in Cape Town and Corporate Services in Pretoria, on 21 June 2019.
- 6.5.17 Following the interviews, the selection panel found Ms Zakhe as the most suitable candidate for appointment for the position of Private Secretary in the Office of the Deputy Minister, on contract linked to the term of Ms Noxolo Kiviet.
- 6.5.18 In paragraph 5(5.1) of the Internal Memorandum, Mr Zaba asserted as follows in respect of the candidature of Ms Zakhe:
- 6.5.18.1 *Ms Zakhe is an African female who was employed by the Eastern Cape Legislature as an Executive Secretary to the Speaker from June 2014 until the time of the interview;*
- 6.5.18.2 *She is in possession of Certificates in Public Administration, Human Resource Management, Frontline and Public Relations, as well as an Office Administration certificate which she obtained from various institutions. Furthermore that, Ms Zakhe was studying towards a Bachelor’s degree in Public Administration at the University of Fort Hare;*

- 6.5.18.3 *Ms Zakhe shared with the panel her understanding of the position of Private Secretary and the value she would add in the Office of the Deputy Minister. She talked about working closely with the Deputy Minister, and liaison with other stakeholders relevant to the Deputy Minister's Office. She also mentioned that she would be dealing with clients on a daily basis and providing assistance;*
- 6.5.18.4 *With regard to how she would add value to the Office of the Deputy Minister, she talked about her integrity, being a hard-worker and ensuring that confidentiality and dignity is maintained in the Office. She has a clear understanding of the core mandate of the Department, and talked about the Department being the custodian of land, Government buildings and infrastructure;*
- 6.5.18.5 *She also mentioned that the Department was responsible for the maintenance and distribution of Government buildings to other Departments and entities;*
- 6.5.18.6 *On how she would ensure synergy, integration and collaboration between the Office of the Deputy Minister, Ministry and the Office of the Director-General, Ms Zakhe emphasised the importance of working as a team, liaison with staff from the Ministry on a daily basis in order to be up to date with their programmes, and*
- 6.5.18.7 *She mentioned that she would also liaise a lot with the Office of the Director-General as most instructions will be going through that Office. She was able to answer the scenario type question where she was required to display her abilities of prioritising different arrangements. (sic)*
- 6.5.19 In paragraph 5.2 of the Memorandum, Mr Zaba submitted to the DG that the minimum requirements for the Deputy Director and Assistant Director posts were, *inter alia*, a three (3) year tertiary qualification plus relevant working experience.
- 6.5.20 In this regard, Mr Zaba advised the DG that, Ms Zakhe was not in possession of the required three (3) year tertiary qualification, hence the request to appoint her

with relaxed qualifications. Mr Zaba further reiterated that Ms Zakhe was studying towards a Bachelor's degree in Public Administration at the University of Fort Hare and had extensive experience working in the office of the Executives.

6.5.21 It was further noted that Ms Hlatshwayo and Mr Mtshisa supported the recommendations with the DG approving same on 13 June 2019.

6.5.22 It was also noted from the job description submitted that, notwithstanding the fact that the post of Private Secretary to the Deputy Minister of Public Works and Infrastructure was not advertised, the learning indicators which were expected to be met by the successful candidate, included but not limited to, *inter alia*:

6.5.22.1 a tertiary qualification in social/commercial sciences;

6.5.22.2 extensive experience in executive office management; and

6.5.22.3 extensive experience in management and supervisory function.

6.5.23 In addition, it was noted that the objectives of the post of Appointments/Private Secretary in the Office of the Deputy Minister, included but were not limited to:

6.5.23.1 effectively manage the flow of information in and out of the Deputy Minister's office and manage the Deputy Minister's office diary at Head Office;

6.5.23.2 as well as to co-ordinate meetings and perform secretariat functions related to the Office of the Deputy Minister;

6.5.23.3 interact with stakeholders involved in the Office of the Deputy Minister; and

6.5.23.4 effective and efficient management and administration of the Office of the Deputy Minister.

6.5.24 It was further noted that Ms Zakhe was, at the time of her appointment as the Secretary to Ms Noxolo Kiviet is in possession of the following educational qualifications:

6.5.24.1 Matric Certificate;

6.5.24.2 Certificates in Office Administration, Frontline and Public Relations; and

6.5.24.3 Certificate in Human Resource Management; and she was enrolled with the University of Fort Hare for a Bachelor's degree in Public Administration.

6.5.25 In addition, Ms Zakhe's curriculum vitae indicated that, at the time of her appointment to this position she was in possession of twenty (20) years' working experience accumulated whilst working at the following institutions:

Position	Institution	Period
Executive Secretary to the Speaker	Eastern Cape Provincial Legislature	June 2014 to June 2019
Personal Assistant to the Premier	Eastern Cape Province Office of the Premier	September 2011 to June 2014
Human Resource Officer	Eastern Cape Socio-Economic Consultative Council	2009 to 2011
Events Coordinator	Eastern Cape Socio-Economic Consultative Council	2004 to 2008
Personal Assistant to the Chief Executive Officer	Eastern Cape Socio-Economic Consultative Council	1999 to 2004

6.5.26 It was further noted that on 21 June 2019, the selection panel confirmed that they interviewed and evaluated the candidature of Ms Zakhe and selected her as the most suitable candidate for the filling of the post as advertised.

- 6.5.27 On 26 June 2019, following the confirmation of the suitability of Ms Zakhe to the post, DG approved the appointment and sent a letter to Ms Zakhe titled “*Appointment Letter*”.
- 6.5.28 In terms of the letter referred to above, Ms Zakhe was informed that her appointment as Private Secretary was approved and will be linked to Ms Noxolo Kiviet’s term of office.
- 6.5.29 The letter to Ms Zakhe also informed her that her appointment was subject to the provisions of the PSA, 1994, the GEPLA, 1996, the Regulations promulgated under these Acts, as well as the directives contained in the Collective Agreements, Circulars and the Ministerial Handbook. Furthermore that her appointment was subject to receipt of both positive security clearance and reference checks.

Independently sourced evidence

- 6.5.30 Regarding Ms Zakhe’s criminal record, it was noted from an independently sourced evidence that, on 09 November 2010 Ms Zakhe was convicted and sentenced under King Williams Town South African Police Service’s Crime Administration System (SAPS CAS) Number 166/8/2009 for contravening the provisions of section 65(1)(b) of the National Road Traffic Act, 1996 ¹⁰as follows:
- 6.5.30.1 A fine of Three Thousand Rand (R3000.00) of which Two Thousand Rand (R2000.00) was suspended for three (3) years with an alternative of six (6) months imprisonment of which four (4) months suspended for three (3) years.

¹⁰ Section 65(10)(b) National Road Traffic Act, 1996 [Act No. 93 of 1996] which provides that “No person shall on a public road occupy the driver’s seat of a motor vehicle the engine of which is running, while under the influence of intoxicating liquor or a drug having a narcotic effect”.

Applicable legal prescripts

The Public Service Act, 1994

6.5.31 The Public Service Act is the key legislation regulating the recruitment, selection and the filling of posts within the public service.

6.5.32 Section 9 of the PSA provides that, *“An executive authority may appoint any person in his or her department in accordance with this Act and in such manner and on such conditions as may be prescribed”*.

The Public Service Regulations, 2016

6.5.33 Regulation 39(1)(a) and (b) of the PSR, 2016 prescribes that for each post or group of posts, an executive authority shall establish a job description and job title that indicate, with appropriate emphasis on service delivery, the main objectives, activities and functions of the post or posts in question and the inherent requirements of the job.

The Ministerial Handbook: A Handbook for Members of the Executive and Presiding Officers approved by Cabinet on 07 February 2007 (the Handbook)

6.5.34 In terms of Chapter 8 (1)(1.1.) of the Handbook, the following core staff may be utilised by Executing Authorities as a guideline for establishing Private Offices in support of Members:

MINISTERS/PREMIERS	DEPUTY MINISTERS/MEC
Chief of Staff of the Ministry	Head
Administrative Secretary	
Media Liaison Officer	Media Liaison Officer Private Secretary/Appointments Secretary

Private Secretary/Appointments Secretary	
Assistant Appointments Secretary and Administrative Secretary	-
Parliamentary Officer	-
Secretary/Receptionist	Secretary/Receptionist
Registry Clerk	Registry Clerk
Aide or Driver/Messenger	Aide or Driver/Messenger
TOTAL POSTS 10	TOTAL POSTS 6

***An additional post may be provided for Ministers whose portfolios relate to the activities of more than one executive institution/department (i.e. Portfolio)**

Executing Authorities may utilise the above-mentioned guideline for the Private Offices of Members provided that staff be appointed either:

1.1.1 on a contract linked to the political term of office of the Executing Authority or Deputy Minister concerned, as well as the contracts envisaged in section 12A(3)(a) of the Public Service Act and conditions laid down by Cabinet; or

1.1.2 ...;

2.3 ...;

2.4 ...;

2.5 ...”

Analysis of evidence

6.5.35 The minimum requirements for the Deputy Director and Assistant Director's posts were, *inter alia*, a three (3) year tertiary qualification plus relevant working experience. At the time of her appointment on 13 June 2019, Ms Zakhe was not in possession of the required three (3) year tertiary qualification.

6.5.36 Nevertheless, on 25 June 2019, Mr Zaba submitted a request for appointment of Ms Zakhe on relaxed qualifications as contemplated by Regulation 39(1)(a) and (b) of the PSR to the DG in line with the delegations conferred upon Director-General by the DPWI's Human Resources Delegations.

6.5.37 However, no evidence was furnished to the Public Protector to prove that a deviation was sought from the MPSA as contemplated by Regulation 4 of the PSR, 2016.

Conclusion

6.5.38 Having regard to the evidence and information obtained during the investigation, the Public Protector concludes that on 13 June 2019, Ms Zakhe was appointed by DPWI to the post of Secretary in the office of the Deputy Minister to, *inter alia*, provide effective and efficient secretarial and administrative duties on a contract linked to the term of Office of the Deputy Minister.

6.5.39 From the factual evidence at hand and having applied the relevant legal framework, the Public Protector concludes that the appointment of Ms Zakhe as the Private Secretary in the Office of the Deputy Minister was not done in accordance with the relevant legal prescripts.

6.6 Whether Ms De Lille facilitated the appointment of Mr Viljoen as the Deputy Director: Administration in the Office of the Deputy Minister despite the fact that Mr Viljoen had no relevant qualifications other than a matric certificate with a view that SACP would bid for Ms De Lille to be retained as the Minister when her term of office comes to an end, if so, whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution, 1996 and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act

Common Cause Issues

6.6.1 In terms of the Ministerial Handbook, Ministers and Deputy Ministers are entitled to establish core support staff in their respective Private Offices.

6.6.2 Mr Viljoen was appointed as the Deputy Director: Administration additional to the establishment of the DPWI and seconded to the Office of the Deputy Minister of Public Works and Infrastructure, Ms Noxolo Kiviet, on a one (1) year contract linked to the term of Office of the Deputy Minister.

Issue in Dispute

6.6.3 The issue for the Public Protector's determination is whether Ms De Lille facilitated the appointment of Mr Viljoen as the Deputy Director: Administration additional to the establishment of the DPWI, with a view that SACP would bid for her to be retained as the Minister when her term of office comes to an end, notwithstanding the fact that Mr Viljoen was not in possession of the relevant qualifications other than a Matric Certificate.

The anonymous Complainant's version

- 6.6.4 The anonymous Complainant alleged that, Ms De Lille appointed Mr Viljoen without a matric certificate, who, according to the anonymous Complainant is a friend of Mr Jeremy Cronin, in order to ingratiate herself to the South African Communist Party (the SACP) so that the SACP can put in word for Ms De Lille to be kept as a Minister by the President when her term of office comes to an end.

The Minister's response

- 6.6.5 On 11 October 2019, Ms De Lille submitted a response and documentation requested, refuting the anonymous Complainant's allegations. In the response, Ms De Lille indicated that, Mr Viljoen was appointed as a Deputy Director: Administration on a one (1) year contract additional to the establishment of the DPWI and seconded to the Office of the Deputy Minister of Public Works and Infrastructure at her request.
- 6.6.6 In addition, Ms De Lille disputed the anonymous Complainant's allegation that she wanted to appoint Mr Viljoen in order to ingratiate herself to the SACP so that the SACP can put in word for her to be kept as a Minister by the President and stated that the allegation was nonsensical.
- 6.6.7 Ms De Lille maintained that, Mr Viljoen was appointed in accordance with Regulation 57 of the PSR, 2016. Furthermore, she indicated that Mr Viljoen was the Head of Office in the office of the former Deputy Minister of Public Works and Infrastructure for a number of years at a Director's Level. Ms De Lille also stated that, she was not involved in the appointment of Mr Viljoen on the basis that the appointment was facilitated and authorised by the DG for this specific appointment.

Documentary evidence received from DPWI

- 6.6.8 Consistent with Ms De Lille response, it was noted that, on 03 July 2019, Mr Zaba sent an email titled “*Appointment of Mr D Viljoen*” to the Head of Office in the Deputy Minister’s Office, Mr Siphon Lunyawo (Mr Lunyawo), and copied Mr Mtshisa, Messd Hlatshwayo, Ouma Muthambi, Shimati and Maggie Masango.
- 6.6.9 In terms of the contents of the email referred to above, Mr Zaba indicated that the Ms Noxolo Kiviet communicated her intentions to appoint Mr Viljoen as a Technical Specialist, a newly created position in terms of Guide for Members of the Executive graded at Salary Level Thirteen (13), who was serving notice of termination of service until 30 June 2019 in line with his previous contract of employment.
- 6.6.10 In addition, Mr Zaba indicated that in terms of the DPSA directive, the minimum entry requirements into the SMS was a National Qualification Framework (the NQF) level seven (7) qualification and Mr Viljoen was in possession of a matric certificate.
- 6.6.11 Furthermore, Mr Zaba indicated that there was still no clarity on the actual functions of the position, pending the finalisation of the job description by the DPSA. However, the DPSA’s directive provided for a deviation mechanism at the approval of the MPSA.
- 6.6.12 As a consequence, Mr Zaba recommended that the appointment of Mr Viljoen to the position of Technical Specialist be delayed until such time that there was clarity on the functions of the post. Furthermore, Mr Zaba recommended that in order to manage expectations it was also not advisable for Mr Viljoen to report for work, noting that his contract expired 30 June 2019.

- 6.6.13 Notwithstanding the above, it was noted from the documents submitted that, on 31 July 2019 Mr Zaba sent an Internal Memorandum to the Director-General titled *“Request for the filling of the positions of Parliamentary and Cabinet Coordination on contract linked to term of Office of the Deputy Minister, and Deputy Director: Administration in the Office of the Deputy Minister on twelve (12) months contract on higher salary notches, on the establishment of the Department”*.
- 6.6.14 According to the Memorandum, the DG was requested to approve the appointment of Mr Viljoen to the establishment of the department, and seconded to the Office of the Deputy Minister on a twelve (12) months contract.
- 6.6.15 Furthermore, Mr Zaba requested the DG to appointment Mr Viljoen with relaxed qualifications in accordance with section 9 of the Public Service Act, 1994 read with Chapter Three (3) of the Guide for Members of the Executive and Presiding Officer, as well as with Regulation 57(2) to (6) and Regulation 66(1) to (3) of the PSR, 2016.
- 6.6.16 It was noted from the documents submitted that, Mr Viljoen was, at the time of his appointment as the Deputy Director: Administration, in possession of the following qualifications:

Qualification	Institution	Year
Matric Certificate	Brandwag High School	1976
Certificates/Seminars/Internal Training (Short Courses)		
South African Railways-Duties of Station Foreman	Railway College	1980
Introduction to Computing (Windows and Microsoft Office)	Cape Technikon	2001
Practical Management	Cape Technikon	2002
isiXhosa for Beginners	Cape Technikon	2002
Stakeholder Management	Masimu Marketing Solutions	2008
Leadership, Coaching and Staff Motivation Skills Workshop	Camblish Training Institute	2017

6.6.17 In addition, it was noted from Mr Viljoen's *curriculum Vitae* that, Mr Viljoen was in possession of forty three (43) years' experience in the administration field, which he accumulated whilst working for the following institutions:

Position	Institution	Period
Head: Office of the Deputy Minister	Ministry of Public Works and Infrastructure	12/06/2012- date
Head: Office of the Deputy Minister	Ministry of Transport	10/05/2009- 11/06/2012
Deputy Director: Parliamentary Services and Stakeholders Management	National Department of Transport	19/08/2004-09/05/2009
Assistant Manager (secondment)	Transnet SOC Limited	01/05/1995-31/07/2004
Assistant Superintendent (secondment)	Transnet SOC Limited	01/10/1990-30/04/1995
Senior Clerk: Office of the Regional Manager	South African Transport Services (now Transnet SOC Limited)	11/08/1981-01/03/ 1988
Clerk Grade 2: Office of the Regional Manager	South African Transport Services (now Transnet SOC Limited)	03/11/1980-10/08/1981
Clerk Grade 2: Office of the Regional Manager	South African Railways and Harbours (now Transnet SOC Limited)	29/09/1979-02/11/1980
Clerk Grade 2: Dispatch Station	South African Railways and Harbours (now Transnet SOC Limited)	08/12/1976-28/09/1979

6.6.18 Furthermore, it was noted from the documents that, on 31 July 2019, following the approval of the Internal Memorandum referred to above, the DG sent a letter to Mr Viljoen titled "*Appointment Letter*" informing him that his appointment as the Deputy Director: Administration, additional to the establishment of the Department and seconded to the Office of the Deputy Minister on a twelve (12) months contract was approved.

6.6.19 Mr Viljoen was further informed that, his appointment was subject to the provisions of the PSA, the GEPLA, the Regulations promulgated under these Acts, as well as the directives contained in the Collective Agreements, Circulars and the Ministerial Handbook.

Application of legal prescripts

The Public Service Regulations

6.6.20 Regulation 39 of the PSR, 2016 issued by the MPSA in terms of section 41 of the PSA, 1994 prescribes that, *“For each post or group of posts in a department, the executive authority shall establish a job description and job title that indicate, with appropriate emphasis on service delivery-*

- (a) the main objectives, activities and functions of the post; and*
- (b) the inherent requirements of the job”.*

Analysis of the evidence

6.6.21 At the time of the appointment of Mr Viljoen as the Deputy Director: Administration, Mr Viljoen was in possession of a matric certificate, and forty three (43) years' experience in the administration field. He was not in possession of the required Diploma as per the job advertisement.

6.6.22 On 31 July 2019, following the approval of the Internal Memorandum, the DG sent a letter to Mr Viljoen titled *“Appointment Letter”* informing him that his appointment as the Deputy Director: Administration, additional to the establishment of the Department and seconded to the Office of the Deputy Minister on a twelve (12) months contract was approved based on relaxed qualifications in accordance with section 9 of the Public Service Act, 1994, read

with Chapter Three (3) of the Guide for Members of the Executive and Presiding Officer, as well as with Regulation 57(2) to (6) and Regulation 66(1) to (3) of the PSR, 2016.

- 6.6.23 However, no evidence was furnished to the Public Protector to prove that a deviation was sought and approved by MPSA as contemplated by Regulation 4 of the PSR, 2016.

Conclusion

- 6.6.24 Based on the evidence canvassed above, the Public Protector concludes that the appointment of Mr Viljoen as the Deputy Director: Administration in the Office of the Deputy Minister was not done in accordance with prescripts regulating the appointment of personnel in the public service applicable to the DPWI.

- 6.7 **Whether Ms De Lille abused her powers by interfering with the SCM processes during the disposal of the land owned by the Department on the basis that she and her family were not benefitting from the disposal processes, if so, whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution, 1996 and abuse of power as envisaged in section 6(4)(a)(ii) of the Public Protector Act**

Common Cause Issues

- 6.7.1 The DPWI is the custodian of the properties which are vested in the national sphere of government and has the responsibility to act as a caretaker of immovable properties, which it is the custodian of. This includes the acquisition, leasing, maintenance and disposal of immovable assets held by the state.¹¹

¹¹ <http://www.publicworks.gov.za/mandate.html>.

6.7.2 An advertisement was published by the DPWI in the Government Tender Bulletin No. 3054 dated 5 April 2019 under Tender No. H18/057, inviting interested investors to submit applications (Business Proposal) on rental of state owned superfluous properties within the borders of South Africa, as well as unlisted superfluous properties that tenant/investors might be interested in.

Issue in Dispute

6.7.3 The issue for the Public Protector's determination is whether the Ms De Lille interfered in the SCM processes during the disposal of the land owned by the Department on the basis that she and her family were not benefitting from the disposal processes.

The anonymous Complainant's version

6.7.4 The anonymous Complainant alleged that, immediately after her appointment, Ms De Lille stopped the disposal of land (ostensibly owned by the DPWI) as she and her family were not benefitting, and in so doing, she abused her DG with no powers, resorting to blaming him for the advertisement of the disposal of land, whereas Mr Jacob Maroga and his cronies were to blame.

Ms De Lille's response

6.7.5 On 11 October 2019, Ms De Lille submitted a response and documentation refuting the anonymous Complainant's allegations. In her response, Ms De Lille asserted as follows:

"3.2.1. Bosasa like company to be appointed

I am needless to say not in a position to deal with a vague allegations such as that I instructed the Director-General to appoint a company (no name provided),

*another sort of Bosasa, to “look at many things” in the Department. The only request to the Director-General I can think of is in the letter attached as **Annexure G**, which does not mention or suggest any company. In any event, no procurement followed from the request (sic).*

3.2.2. CSIR, DBSA, COEGA and the IDT

The complaint about CSIR, DBSA, COEGA and the IDT is also far too vague and I am unable to respond thereto. I simply have no knowledge of whether the CSIR or any other entities intend to take their projects to the unidentified company.

3.2.3. Disposal of land

I cannot respond to the allegation that my family and I benefitted somehow from the cancellation of this tender. Who benefitted and how? The Public Protector should try to engage the anonymous complainant in order to obtain the details, failing which the complaint should be dismissed. I frankly cannot understand how my family or I could possibly have benefitted from cancellation and same is categorically denied. In any event, by the time I queried this tender, the tender had already been stopped but was erroneously still posted on the Department’s website as an active tender. At the same time, the advert was also listed on the Department’s website underneath the “cancelled tenders” tab.

In a WhatsApp group message sent to Top Management in the Department including the Director-General, the Department’s Head of Supply Chain Management (SCM), Raymond Naidoo stated: I can verify that upon request from the Head of Property Management Trading Entity (Mr Jacob Maroga), SCM cancelled the tender advert for disposal of properties.

This cancellation was published in the government tender bulletin, National Treasury eTender Portal and our Department's website. The cancellation on our website is reflected under the tab "cancelled tenders" but the original tender advert is not removed from the advertised tenders listing. Furthermore the tender was cancelled before the closing date for bids and consequently no bid evaluation took place through the committee system". (sic)

Documentary Evidence received from DPWI

- 6.7.6 It was noted from the documents received that, on 18 March 2019, the Acting Chief Director: Disposal and Letting-Out, Mr Solly Ncoane (Mr Ncoane), sent an Internal Memorandum to the Acting Divisional Head: Real Estate Management Services, Mr M Govender (Mr Govender) titled *"Request to publish a list of surplus State owned properties through Government Tender Bulletin and other mediums of communications"*.
- 6.7.7 In the Internal Memorandum referred to above, Mr Ncoane, indicated that the surplus state owned properties were under-utilised and neglected which led to numerous properties left vacant and susceptible to theft, vandalism, vagrant and illegal occupation. Furthermore that, the illegal occupation of the vacant surplus properties was on the rise with minimal efforts to evict the occupants and the properties were being used by illegal occupants to conduct illegal activities.
- 6.7.8 Mr Ncoane indicated that, as a measure to contain and remedy the anomalies, the letting-out of surplus state owned properties would afford the department the opportunity to contain and correct the bad conditions on the administration and management of the surplus state owned properties. He stated that as a consequence, he requested the Mr Govender to approve the recommendation.

- 6.7.9 Subsequent to the Internal Memorandum, on 05 April 2019, the DPWI published an advertisement in the *Government Tender Bulletin No. 3054 dated 05 April 2019 under Tender No. H18/057*, inviting interested investors to submit applications (Business Proposal) on rental of state owned superfluous properties within the borders of South Africa, as well as unlisted superfluous properties that tenant/investors might be interested in with the closing date for the submission of business proposals set for 30 June 2019 at 11:00.
- 6.7.10 In terms of the advertisement, the services were required at the Gauteng Provincial Department of Public Works. In addition, the advertisement indicated that any property that had been identified may be withdrawn by the department at any stage. Furthermore that, any property published in error may also be withdrawn.
- 6.7.11 Additionally, it was noted from the documents received that, on 28 May 2019, subsequent to the publication of the tender (H18/057) in the Government Tender Bulletin, Mr Maroga sent a letter to the Acting Head: Supply Chain Management, Mr Naidoo and copied Mr Govender titled “*Withdrawal of Invitation to Bid: Request for Proposal (RFP) for the Letting-Out of Surplus State Owned Properties (RFQ No. H18/057)*”.
- 6.7.12 In the letter, Mr Maroga informed Mr Naidoo that, on 17 May 2019, the Property Management Trading Entity Management Committee (the MANCO) held a meeting wherein the *RFP for the Letting-Out Surplus State Owned Properties* and an *Interim Circular on Procedure of Letting-Out of Surplus State Owned Properties, Review, Renegotiate and Renewal of Existing Leases* issued by the Real Estate Management Services were discussed and a resolution taken and the PMTE MANCO raised the following concerns:
- 6.7.12.1 “*The letting out RFP was not adequately integrated, aligned and processed through the PMTE to ensure proper communication, consultation and*

governance. Affected divisions and units were not consulted and/or made aware of the RFP and its associated list of properties until the matter was raised at MANCO. To this extent, numerous sites that have already been identified and/or earmarked for precincts, restitution, small harbours and/or various other uses were incorrectly included on the list. The investment strategy that informed the actual listings, the market engagement process and the potential revenue could not be established;

6.7.12.2 *An interim circular entitled Interim Circular on Procedure of Letting-Out of Surplus State Owned Properties, Review, Renegotiate and Renewal of Existing Leases issued has also been issued on 11 February 2019 to the regional offices by the Divisional Head REMS without the PMTE and/or MANCO having sight of such. To this extent, MANCO questioned the delegated authority that the Divisional Head REMS had to issue such a circular and that it was unclear whether it had been approved by the requisite authority;*

6.7.12.3 *Enquiries from various potential market participants indicated general concerns regarding the onerous conditions of the RFP and general confusion on what is required in terms of the RFP, and*

6.7.12.4 *MANCO further questioned the PMTE's ability and capacity to proactively engage, process and respond to the potential proposals, taking the number of properties, land parcels and resources to deal with this into consideration." (sic)*

6.7.13 Mr Maroga continued by indicating that, *in lieu* of the above, the MANCO of 17 May 2019 resolved that:

6.7.13.1 *The RFP issued on 5 April 2019 entitled Request for Proposal (RFP) for the Letting-Out of Surplus State Owned Properties must be withdrawn from the market with immediate effect, to allow due process of consultation and integration through the PMTR;*

- 6.7.13.2 *The process of letting out State property should be clearly articulated in the motivation to withdraw to address any lack of clarity that might arise;*
- 6.7.13.3 *The Executive Authority and Accounting Authority must be briefed on the decision by MANCO as a matter of urgency; and*
- 6.7.13.4 *The withdrawal will be with immediate effect (Tuesday 28 May 2019) and from SCM to process. (sic)*
- 6.7.14 In closing, Mr Maroga informed Mr Naidoo that, in line with the above, SCM was requested to urgently withdraw the RFP for the *Letting-Out Surplus State Owned Properties* with immediate effect, following due process and clearly indicating due justification of such.
- 6.7.15 It was further noted from the documents received that, on 07 June 2019, subsequent to Mr Maroga's letter, the DPWI through Mr Ncoane published a notice in the *Government Tender Bulletin No. 3063* and the DPWI's website withdrawing tender number H18/057 advertised on 05 April 2019.

Applicable legal prescripts

The National Department of Public Works' Immovable Asset Disposal Policy dated 30 May 2013 (the Policy)¹²

- 6.7.16 The Policy gives effect to section 76(1)(k) of the PFMA which provides that, "*The National Treasury must make regulations or issue instructions applicable to departments, concerning the alienation, letting or other disposal of state assets*".

¹² The National Department of Public Works' Immovable Asset Disposal Policy (the Policy) approved by the Minister of Public Works, Mr Thulas Nxesi, MP on 30 May 2013.

6.7.17 In terms of the Policy, the disposal of immovable assets must primarily contribute to the fulfilment of socio-economic objectives of the broader government. Disposal in furtherance of socio-economic objectives of government should take priority over disposals for commercial purpose.¹³

6.7.18 Paragraph 11.1(a) and (b) of the Policy prescribes that:

“Other than in exceptional circumstances, the sale or letting of immovable assets should be conducted by means of a public (open) tender, unless:

- (a) The direct sale of an asset to another organ of state is deemed necessary in furtherance of socio-economic objectives; or*
- (b) The potential buyers are all known and limited in number due to the nature and/or locality of the asset. In such circumstances, a closed tender may well be the most cost effective method of disposal”.*

Analysis of evidence

6.7.19 On 05 April 2019, the DPWI published an advertisement in the *Government Tender Bulletin No. 3054 under Tender No. H18/057*, inviting interested investors to submit applications (Business Proposal) on rental of state owned superfluous properties within the borders of South Africa, as well as unlisted superfluous properties that tenant/investors might be interested in with the closing date for the submission of business proposals set for 30 June 2019. The RFP for the Letting-Out Surplus State Owned Properties was subsequently withdrawn and cancelled on 28 May 2019, to allow due process of consultation and integration through the PMTE to take place.

¹³ Paragraph 6.1 of the National Department of Public Works’ Immovable Asset Disposal Policy approved on 30 May 2013.

6.7.20 The cancellation of the *RFP for the Letting-Out Surplus State Owned Properties*, was published on the Department's website on 07 June 2019, followed by formal letters issued to the prospective bidders on 13 August 2019.

6.7.21 Ms De Lille was appointed as the Minister of Public Works and Infrastructure on 29 May 2019, after the publication of the *RFP for the Letting-Out Surplus State Owned Properties*, as well after the decision by the DPWI's MANCO to cancel the RFP to allow due process of consultation and integration through the PMTE.

Conclusion

6.7.22 Having regard to the evidence and information obtained, it is concluded that the cancellation of the *RFP for the Letting-Out Surplus State Owned Properties* was issued prior to the appointment of Ms De Lille as the Minister of Public Works and Infrastructure.

6.7.23 No evidence could be found indicating that following her appointment as the Minister of Public Works and Infrastructure, Ms De Lille interfered with the SCM processes associated with the letting of state owned superfluous properties within the borders of South Africa.

7 FINDINGS

Having regard to the evidence as well as the regulatory framework determining the standard that should have been complied with by the Minister and/or any other persons that were involved in the matters under investigation, the Public Protector makes the following findings:

7.1 Whether the Minister exposed herself to a situation involving the risk of a conflict between her official responsibilities and personal interests by

facilitating the appointment of her sister, Ms Jeffreys, as an Assistant Appointment Secretary in her Office, if so; whether such conduct constituted improper conduct as envisaged in section 182(1)(a) of the Constitution, 1996 and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act

- 7.1.1 The issue on whether Ms De Lille exposed herself to a situation involving the risk of a conflict between her official responsibilities and personal interests by facilitating the appointment of her biological sister, Ms Jeffreys as an Assistant Appointment Secretary in her Office on a term linked to her term of office, **is substantiated.**
- 7.1.2 Evidence at the disposal of the Public Protector indicates that following her appointment as the Minister of Public Works and Infrastructure, on 21 June 2019 Ms De Lille sent a letter titled *“Re: Appointment of Ministry Staff in my Office”* to the then DG of the DPWI requesting him to process the appointment of staff in her private office. In this regard, Ms De Lille furnished the then DG with a list of candidates to be appointed in the private office, which included her biological sister Ms Jeffreys.
- 7.1.3 Ms De Lille did not disclose her relationship with Ms Jeffreys, however the PSA and its Regulations are silent on this aspect and do not make provisions for declaration under the circumstances. The Constitution is however the supreme law in the Republic and it requires, in terms of section 96(2)(b), that Members of the Executive may not expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests or use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.
- 7.1.4 Evidence before the Public Protector reveals that on 28 June 2019, the then DG, Adv Vukela subsequently sent a letter to Ms Jeffreys titled *“Appointment Letter”*

informing her that her appointment as an Assistant Appointment Secretary in the Office of the Minister De Lille on a contract linked with the term of Office of the Minister had been approved.

- 7.1.5 On 29 September 2021, the DHA confirmed to the Public Protector that Ms De Lille and Ms Jeffreys are indeed biological sisters.
- 7.1.6 Further evidence before the Public Protector indicates that the post of Assistant Appointment Secretary was filled by DPWI without advertisement as envisaged in Regulations 65(1), (3) and (4) of the PSR, 2016, on relaxed criteria and no deviation was sought from MPSA as contemplated by Regulation 4 of the PSR, 2016.
- 7.1.7 Notwithstanding her appointment, the Public Protector has noted that on 20 September 2019, Ms Jeffreys tendered her resignation as Assistant Appointment Secretary in the office of the Minister with immediate effect, citing ethical concerns as the reason for the resignation, which was ostensibly voluntary and reached through a mutual agreement with DPWI and Ms De Lille.
- 7.1.8 The resignation of Ms Jeffreys came shortly after one month of her assumption of duty, thereby rendering this complaint moot, while at the same time eliminating all ethical concerns and the conflict of interests that may have been occasioned by her appointment. As a result, the main complaint to which the investigation or intervention of the Public Protector was sought had been eliminated by Ms Jeffrey's resignation and mutual or reciprocal acceptance of same by DPWI.
- 7.1.9 The constitutional principle of separation of powers was reiterated in *Economic Freedom Fighters v The Speaker of the National Assembly and Others and*

*Democratic Alliance v The Speaker of the National Assembly and Others*¹⁴ where the court held the following:

“The principle of separation of powers, on the one hand, recognises the functional independence of branches of government. On the other hand, the principles of checks and balances focuses on the desirability of ensuring that the constitutional order, as a totality, prevents the branches of government from usurping power from one another...”

- 7.1.10 Where the state functionary as the DPWI and Ms De Lille did in this matter, by accepting the resignation Ms Jeffreys based on ethical concerns, has eliminated improper conduct and/or conflict of interests raised against the appointment of Ms Jeffreys within the sphere of DPWI’s administration, it would not be prudent for the Public Protector to interfere with the remedial process undertaken in this regard, unless where improper conduct, through an act of commission or omission manifests and persists.
- 7.1.11 As a result, the pursuance of this matter and/or imposing of another remedial action will serve no judicious purpose on the basis that the issue has become moot¹⁵ and academic consequent to Ms Jeffrey’s resignation. The remedial action that may be taken by the Public Protector will have no practical effect or result.¹⁶
- 7.1.12 However, recommendations in terms of section 6(4)(c)(ii), (d)(ii) and (iii) of the Public Protector Act, based on the consideration of section 96(2)(b) of the Constitution and Regulation 4 of the PSR, 2016, are made in this regard, to

¹⁴ CCT 143/15 and CCT 171/15 at para 91.

¹⁵ The principle of mootness was echoed by the Constitutional Court in *National Coalition for Gay and Lesbian Equality & Others v Minister of Home Affairs* 2000 (2) SA 1 (CC) at para 21.

¹⁶ *President of the Republic of South Africa v Democratic Alliance and Others* (CCT159/18) [2019] ZACC 35; 2019 (11) BCLR 1403 (CC); 2020 (1) SA 428 (CC) (18 September 2019) at para 16.

address the noted underlying policy gaps and to provide guidance for future appointments by Members of the Executive in their private offices.

7.1.13 It thus became inescapable that the merits of this matter had to be traversed by the Public Protector in order to do justice to issues relating to the guidance for future cases.

7.2 Whether Ms De Lille facilitated the appointment of Ms Jansen to the Ministry notwithstanding the fact that she was not in possession of the requisite qualifications and experience, if so; whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution, 1996 and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act

7.2.1 The allegation that Ms De Lille facilitated the appointment of Ms Jansen to the Ministry notwithstanding the fact that she was not in possession of the requisite qualifications and experience, **is substantiated.**

7.2.2 The Investigation has revealed that on 16 July 2019, the DG sent a letter to Ms Jansen titled “*Appointment Letter*” informing her that her appointment as the Community Outreach Officer in the Office of the Minister on a contract linked with the term of Office of the Minister had been approved.

7.2.3 With regard to the appointment of Ms Jansen as a Community Outreach Officer in the Office of the Minister, no evidence was furnished to the Public Protector by DPWI to prove that a deviation was sought from MPSA as contemplated by Regulation 4 of the PSR, 2016.

7.2.4 Therefore, the appointment of Ms Jansen as a Community Outreach Officer in the Office of the Minister was not in accordance with the objects of Regulation 4 of the PSR, 2016.

7.2.5 Accordingly, the conduct of the DPWI amounts to improper conduct as envisaged by section 182(1)(a) of the Constitution, 1996 and maladministration as envisaged by section 6(4)(a)(i) of the Public Protector Act.

7.3 Whether the secondment of Mr Dakela from the CSIR to the DPWI was conducted contrary to legislation and any other prescripts regulating the secondment of personnel in the public service, if so, whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution, 1996 and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act

7.3.1 The allegation that the secondment of Mr Dakela from the CSIR to the DPWI was conducted contrary to legislation and any other prescripts regulating the secondment of personnel in the public service, **is not substantiated.**

7.3.2 Evidence gathered during the investigation revealed that, the DG requested for the secondment of Mr Dakela to the DPWI from the Executive Director of the CSIR, Dr Sehlapelo on 23 July 2019.

7.3.3 The secondment of Mr Dakela was approved for a period of twelve (12) months effective from 1 August 2019, with the option to extend the period for a further twenty four (24) months with the conditions that the DPWI would reimburse the CSIR in terms of the salary and other related costs of Mr Dakela.

7.3.4 The evidence and information obtained during the investigation revealed that the secondment of Mr Dakela by the CSIR to the DPWI was conducted in line with section 15(2)(a) and (b) of the PSA, Regulation 62 of the PSR regulating the secondment of personnel in the public service applicable to the DPWI and the CSIR, as well as based on the MoU concluded by the Parties.

7.3.5 Therefore, the conduct of the DPWI could not be regarded as amounting to improper conduct as envisaged in section 182(1)(a) of the Constitution, 1996 and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

7.4 Whether Ms De Lille purged Mr Buthelezi and Ms Nzimande following her appointment as the Minister of Public Works and Infrastructure, if so, whether such conduct constituted improper conduct as envisaged in section 182(1)(a) of the Constitution, 1996 and abuse of power as envisaged in section 6(4)(a)(ii) of the Public Protector Act

7.4.1 The allegation that Ms De Lille purged Mr Buthelezi and Ms. Nzimande subsequent to her appointment as the Minister DPWI, **is not substantiated**.

7.4.2 The evidence obtained during the investigation indicates that, on 15 August 2017, the DPWI duly represented by Mr Dlabantu in his capacity as the then DG entered into employment contracts with Mr Buthelezi and Ms Nzimande for a fixed-term in accordance with Chapter 5 of the PSR, 2016.

7.4.3 On 31 July 2019, subsequent to the expiry of their term of the contracts, the DG issued employment termination letters to both Mr Buthelezi and Ms Nzimande informing them that their employment contracts would not be extended and same would terminate on 31 July 2019 and 01 August 2019 respectively in line with their contracts of employment.

7.4.4 Evidence and information obtained during the course of investigation further indicates that the termination of Mr Buthelezi and Ms Nzimande's written employment contracts was as the result of the effluxion of time or expiration of the terms agreed upon between the Parties.

7.4.5 Therefore, the termination of Mr Buthelezi and Ms Nzimande's contracts was in accordance with clause 3(3.1) of their respective employment contracts.

7.4.6 The Public Protector could not find evidence indicating that, Ms De Lille purged both Mr Buthelezi and Ms Nzimande thereby acting improperly as envisaged in section 182(1)(a) of the Constitution and/or abusing or unjustifiably exercised her power as envisaged by section 6(4)(a)(ii) of the Public Protector Act.

7.5 Whether the appointment of Ms Zakhe as the Private Secretary to the Deputy Minister of Public Works and Infrastructure was conducted contrary to legislation and any other prescripts regulating the appointment of personnel in the public service, if so, whether such conduct constituted improper conduct as envisaged in section 182(1)(a) of the Constitution, 1996 and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act

7.5.1 The allegation that the appointment of Ms Zakhe as the Private Secretary to the Deputy Minister of Public Works and Infrastructure was conducted contrary to legislation and any other prescripts regulating the appointment of personnel in the public service, **is substantiated.**

7.5.2 Available evidence reveals that on 13 June 2019, Ms Zakhe was appointed to the post of Secretary in the office of the Deputy Minister to, *inter alia*, provide effective and efficient secretarial and administrative duties on a contract linked to the term of Ms Noxolo Kiviet.

7.5.3 In addition, the evidence indicates that, at the time of her appointment, Ms Zakhe was not in possession of the requisite three (3) years academic qualification for the post of Private Secretary as require in the job advertisement. However, she was appointed on relaxed qualifications on the strength of her having twenty (20) years' working experience in the executive office management.

- 7.5.4 The appointment of Ms Zakhe as the Private Secretary in the Office of the Deputy Minister was guided and supported by section 9 of the PSA read with Chapter Three (3) of the Handbook and Regulations 39(1)(a) and (b) of the PSR, 2016. However, this was subject to the MPSA authorising the deviation as contemplated in Regulation 4 of the PSR, 2016.
- 7.5.5 No evidence was furnished to the Public Protector by DPWI to prove that a deviation was sought from the MPSA as contemplated by Regulation 4 of the PSR, 2016.
- 7.5.6 Therefore, the conduct of the DPWI amounts to improper conduct as envisaged in section 182(1)(a) of the Constitution, 1996 and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.
- 7.6 Whether Ms De Lille facilitated the appointment of Mr Viljoen as the Deputy Director: Administration in the Office of the Deputy Minister despite the fact that Mr Viljoen had no relevant qualifications other than a matric certificate with a view that the SACP would bid for her to be retained as the Minister when her term of office came to an end, if so, whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution, 1996 and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act**
- 7.6.1 The allegation that Ms De Lille facilitated the appointment of Mr Viljoen as the Deputy Director: Administration in the Office of the Deputy Minister despite the fact that Mr Viljoen had no relevant qualifications other than a matric certificate, **is substantiated.**

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- 7.6.2 However, no evidence could be found to support the allegation that the appointment of Mr Viljoen was done with a view that the SACP would bid for her to be retained as the Minister when her term of office came to an end.
- 7.6.3 On 31 July 2019, following the approval of the Internal Memorandum, the DG sent a letter to Mr Viljoen titled “*Appointment Letter*” informing him that his appointment as the Deputy Director: Administration, additional to the establishment of the Department and seconded to the Office of the Deputy Minister on a twelve (12) months contract was approved.
- 7.6.4 The evidence obtained during the investigation indicates that, at the time of his appointment, Mr Viljoen did not have the requisite academic qualifications for the position of Deputy Director: Administration in the Office of the Deputy Minister of Public Works and Infrastructure as stated in the job advertisement.
- 7.6.5 Nevertheless, the DG exercised the powers conferred upon him in line with the DPWI’s Human Resources Delegations in respect of appointment of personnel at salary levels eleven (11) and twelve (12).
- 7.6.6 In terms of Regulation 39 of the PSR, 2016, the executive authority is authorised to establish a job description and job title that indicate the main objectives, activities and functions of the post and the inherent requirements of the job.
- 7.6.7 Available evidence indicates that Mr Viljoen was appointed by the DG as the Deputy Director: Administration in the Office of the Deputy Minister of Public Works and Infrastructure on the strength of him possessing forty three (43) years’ working experience in the administration field, as well as for the purposes of retaining critical and scarce skills as envisaged by Regulation 44(1) to (4) of the PSR, 2016. However, this was subject to the MPSA authorising the deviation as contemplated in Regulation 4 of the PSR, 2016.

- 7.6.8 With regard to the appointment of Mr Viljoen as the Deputy Director: Administration in the Office of the Deputy Minister of Public Works and Infrastructure, no evidence was furnished to the Public Protector to prove that a deviation was sought from MPSA as contemplated by Regulation 4 of the PSR, 2016.
- 7.6.9 Therefore, the appointment of Mr Viljoen as the Deputy Director: Administration in the Office of the Deputy Minister was not done in accordance with legislation and prescripts regulating the appointment of personnel in the public service.
- 7.6.10 The conduct of the DPWI amounts to improper conduct as envisaged in section 182(1)(a) of the Constitution, 1996 and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.
- 7.7 Whether Ms De Lille abused her powers by interfering with the SCM processes during the disposal of the land owned by the Department on the basis that she and her family were not benefitting from the disposal processes, if so, whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution, 1996 and abuse of power as envisaged in section 6(4)(a)(ii) of the Public Protector Act**
- 7.7.1 The allegation that Ms De Lille abused her powers by interfering with the SCM processes during the disposal of the land owned by the DPWI on the basis that she and her family were not benefitting from the disposal processes, **is not substantiated.**
- 7.7.2 The evidence obtained during the investigation indicates that, on 05 April 2019, the DPWI published an advertisement in the *Government Tender Bulletin No. 3054 dated 05 April 2019 under Tender No. H18/057*, inviting interested investors to submit applications (Business Proposal) on rental of state owned superfluous

properties within the borders of South Africa, as well as unlisted superfluous properties that tenant/investors might be interested in with the closing date for the submission of business proposals set for 30 June 2019.

- 7.7.3 The evidence also indicates that the *RFP for the Letting-Out Surplus State Owned Properties* was subsequently withdrawn and cancelled on 28 May 2019, to allow due process of consultation and integration through the PMTE to take place. The cancellation of the *RFP for the Letting-Out Surplus State Owned Properties* was published on the department's website on 07 June 2019, followed by formal letters of cancellation issued to the prospective bidders on 13 August 2019.
- 7.7.4 Evidence to the contrary indicates that Ms De Lille was appointed as the Minister of Public Works and Infrastructure on 29 May 2019, after the publication of the *RFP for the Letting-Out Surplus State Owned Properties* was issued on 05 April 2019.
- 7.7.5 Ms De Lille was appointed on 29 May 2019, and by that time the DPWI's MANCO had already taken the decision to cancel the *RFP for the Letting-Out Surplus State Owned Properties*, to allow due process of consultation and integration through the PMTE. It therefore, would have been impossible for Ms De Lille to influence the disposal process of the DPWI's state owned superfluous properties within the borders of South Africa, because the entire SCM process and the decision to withdraw preceded her appointment to the DPWI.
- 7.7.6 Therefore, the conduct of the DPWI and Ms De Lille could not be regarded to have been improper as envisaged in section 182(1)(a) of the Constitution, 1996 and abuse of power as envisaged in section 6(4)(a)(ii) of the Public Protector Act.

8. RECOMMENDATIONS

8.1 The Public Protector has completed the investigation on this matter, and is making recommendations in terms of section 6(4)(c)(ii), (d)(ii) and (iii) of the Public Protector Act, based on the consideration of the following prescripts:

8.1.1 Section 96(2)(b) of the Constitution which requires that Members of the Executive may not expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests or use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.

8.1.2 Regulation 4 of the PSR, 2016 which requires that a permission or authority for deviation must be sought from the Minister of Public Service Administration (MPSA) before an appointment can be made on the relaxed criteria.

The former Minister of DPWI, Ms De Lille

8.1.3 Ensure that future private office appointments are facilitated in line with applicable legal prescripts including compliance with the Constitution, Ministerial Handbook, PSA and PSR.

The Director-General of the DPWI

8.1.4 Take the necessary steps to ensure that all future appointments within the DPWI which are made on a relaxed criteria or based on deviation from the normal recruitment procedure, are authorised by the MPSA, as contemplated by Regulation 4(a) and (b) of the PSR, 2016.

The Director-General of the DPSA

- 8.1.5 Conduct workshop(s) with the Members of the Executive on the Ministerial Hand Book, PSA and PSR applicable in the appointments.

9. CONCLUSION

- 9.1 The Public Protector considers this matter finalised and cannot take it further. Should any party wish to challenge this decision, they are at liberty to explore legal remedies at their disposal.



ADV KHOLEKA GCALEKA
ACTING PUBLIC PROTECTOR OF
THE REPUBLIC OF SOUTH AFRICA
DATE: 31 MARCH 2023

Assisted by: Mr Vusumuzi Xolani Dlamini
Acting Executive Manager: Investigations Branch