

**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)  
OF THE PUBLIC PROTECTOR ACT, 1994**



**PUBLIC PROTECTOR  
SOUTH AFRICA**

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**INVESTIGATION INTO ALLEGATIONS OF VIOLATION OF THE EXECUTIVE ETHICS  
CODE PROMULGATED IN TERMS OF SECTION 2(1) OF THE EXECUTIVE  
MEMBERS' ETHICS ACT, 1998, BY THE FORMER PREMIER OF THE NORTH WEST  
PROVINCE, IN PLACING THE FORMER MEMBER OF THE EXECUTIVE COUNCIL OF  
SOCIAL DEVELOPMENT ON SPECIAL LEAVE**

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## LIST OF ACRONYMS AND ABBREVIATIONS

ACRONYM/ABBREVIATION	DESCRIPTION
AGSA	Auditor General of South Africa
Constitution	Constitution of the Republic of South Africa, 1996
DSD	Department of Social Development
EMEA	Executive Members' Ethics Act, 1998
EXCO	Provincial Executive Committee
HoD	Head of Department
MEC	Member of the Executive Council
MPL	Member of the North West Provincial Legislature
Public Protector Act	Public Protector Act, 1994
Public Protector Rules	Rules as promulgated under section 7(11) of the Public Protector Act, 1994 (the Public Protector Act) as amended.

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## EXECUTIVE SUMMARY

- (i) This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution) and section 8(1) of the Public Protector Act, 1994 (Public Protector Act), as well as Rule 40(b) of the Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018 as amended (Public Protector Rules) as promulgated under section 7(11) of the Public Protector Act.
- (ii) The report relates to an investigation into allegations that the former North West Premier, Mr Bushy Maape (Mr Maape) acted in breach of clause 2(1)(a),(c) and (d) of the Executive Ethics Code (the Code), when he placed the then Member of the Executive Council (MEC) for Social Development (DSD), Ms Boitumelo Moiloa (Ms Moiloa) on special leave, whilst he did not have the necessary powers and authority to do so.
- (iii) The investigation originates from a complaint lodged with the Public Protector in terms of section 4(1) of Executive Members' Ethics Act, 1998 (EMEA), on 07 June 2023, by the Chief Whip of the Democratic Alliance, Mr Freddy Sonakile (Mr Sonakile/the Complainant), a Member of the North West Provincial Legislature (MPL).
- (iv) In the main, the Complainant alleged that:
  - (a) On 30 May 2023, Mr Maape placed the then MEC for Social Development, Ms Moiloa, on special leave, in contravention of section 3(1) and 3(2)(a) of the EMEA;
  - (b) The conduct of Mr Maape is in violation of clauses 2(1)(a),(c) and (d) of the Code, which requires Members of the Executive Council, who by implication of the Act, includes the Premier of a province, to always act in good faith and

in the best interest of good governance and to meet all the obligations imposed on them by law. By placing the MEC on special leave, Mr Maape acted in breach of his oath of office. No legislation grants any Premier the power to place MECs on special leave;

- (c) The legal relationship between Premiers and MECs is not like that of an employer/employee, where the Premier has the powers to suspend or place the MEC on leave. The powers of Premiers in respect of their MECs are guided by section 132(2) of the Constitution and are limited to appointing and dismissing them, “*no in-between decisions or suspensions*”;
- (d) The temporary assignment of functions in section 138 of the Constitution, is only limited to when an MEC is absent from office or unable to exercise his/her powers or perform his/her functions. In this case, the MEC who has been placed on suspension is able and not in any way absent from her office but has been forced out of the office by the irregular action of the Premier;
- (e) In taking the decision, Mr Maape acted *ultra vires* and his decision is not guided by any legislation. He acted *mala fide*, as the special leave of the MEC came following the MEC taking action in respect of departmental officials who allegedly took part in the irregular awarding of a multi-million-rand security tender against the advice of the Provincial Internal Audit, by placing them on precautionary suspension; and
- (f) Mr Maape acted in a way that is inconsistent with his office and that may compromise the credibility or integrity of his office or of the provincial government. Where Mr Maape is of the belief that the MEC has acted in any way contrary to her oath of office or legislation, he should launch an investigation.

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- (v) On analysis of the complaint, the following issue was identified to inform and focus the investigation:
- (a) Whether the former North West Premier, Mr Bushy Maape, acted in a manner that is inconsistent with his office by placing the then MEC for Social Development, Ms Boitumelo Moiloa, on special leave, if so, whether such conduct is improper in terms of section 182(1) of the Constitution and amounts to a violation of clause 2(1)(a), (c) and (d) of the Executive Ethics Code.
- (vi) On 28 May 2024, a Notice in terms of Rule 41(1) of the Public Protector Rules was issued to the Complainant to provide him an opportunity to make submissions in relation to the proposed closure of the investigation. The Complainant acknowledged receipt of the Notice on the same day, but he did not submit a response.
- (vii) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, the following findings are made:
- (a) **Whether the former North West Premier, Mr Bushy Maape, acted in a manner that is inconsistent with his office by placing the then MEC for Social Development, Ms Boitumelo Moiloa, on special leave, if so, whether such conduct is improper in terms of section 182(1) of the Constitution and amount to a violation of clause 2(1)(a), (c) and (d) of the Executive Ethics Code**
- (aa) The allegation that Mr Maape acted in violation of the Code when he placed the MEC for Social Development, Ms Moiloa, on special leave, **is not substantiated.**
- (bb) The evidence before the Public Protector reveals that Ms Moiloa was appointed by the Premier in 2019 and was assigned the portfolio of DSD.

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During Ms Moilola's tenure as MEC, the Premier initiated an investigation into the management and administration of the Department.

- (cc) On 29 May 2023, Mr Maape placed the MEC on special leave in terms of section 132(2) of the Constitution, pending the final determination of all challenges in the Department. The High Court in *Mpehle v Government of the RSA* confirmed that the power to suspend was a logical and necessary consequence of the powers conferred upon a Premier.
- (dd) The conduct of Mr Maape, in placing the MEC on special leave, neither constitutes improper conduct in terms of section 182(1)(a) of the Constitution, nor amounts to a breach of clause 2(1) of the Executive Ethics Code.
- (viii) The Public Protector considers this matter as finalised and cannot take it further.

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## 1. INTRODUCTION

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

1.2 The report is submitted in terms of sections 8(1) read with section 8(3) of the Public Protector Act, which empowers the Public Protector to make known the findings of an investigation to affected parties (including the Complainant) for such persons to note the outcome of the investigation:

1.2.1 Mr Bushi Maape, the former North West Premier;

1.2.2 Mr Nono Maloyi, the former Acting North West Premier; and

1.2.3 Mr Freddy Sonakile, the Complainant.

1.3 The report relates to an investigation into allegations that the former North West Premier, Mr Bushy Maape (Mr Maape) acted in breach of clause 2(1)(a), (c) and (d) of the Executive Ethics Code (the Code), when he placed the then Member of the Executive Council (MEC) for Social Development (DSD), Ms Boitumelo Moiloa (Ms Moiloa) on special leave, whilst he did not have the necessary powers and authority to do so.

## 2. THE COMPLAINT

2.1 The investigation originates from a complaint lodged with the Public Protector in terms of section 4(1) of the Executive Members' Ethics Act, 1998 (EMEA), on 07 June 2023, by the Chief Whip of the Democratic Alliance, Mr Freddy Sonakile (the Complainant), a Member of the North West Provincial Legislature (MPL).



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- 2.2 In the main, the Complainant alleged, *inter alia*, that:
- 2.2.1 On 30 May 2023, Mr Maape placed the then MEC for Social Development, Ms Moiloa, on special leave, in contravention of section 3(1) and 3(2)(a) of the EMEA;
- 2.2.2 The conduct of Mr Maape is in violation of clauses 2(1)(a), (c) and (d) of the Code, which requires Members of the Executive Council, who by implication of the Act, include the Premier of a province, to always act in good faith and in the best interest of good governance and to meet all the obligations imposed on them by law. By placing the MEC on special leave, Mr Maape acted in breach of his oath of office. No legislation grants any Premier the power to place MECs on special leave;
- 2.2.3 The legal relationship between Premiers and MECs is not like that of an employer/employee, where the Premier has the powers to suspend or place the MEC on leave. The powers of Premiers in respect of their MECs are guided by section 132(2) of the Constitution and are limited to appointing and dismissing them, “*no in-between decisions or suspensions*”;
- 2.2.4 The temporary assignment of functions in section 138 of the Constitution, is only limited to when an MEC is absent from office or unable to exercise his/her powers or perform his/her functions. In this case, the MEC who has been placed on suspension, is able and not in any way absent from her office but has been forced out of the office by the irregular action of the Premier;
- 2.2.5 In taking the decision, Mr Maape acted *ultra vires* and his decision is not guided by any legislation. He acted *mala fide*, as the special leave of the MEC came following the MEC taking action in respect of departmental officials who allegedly took part in the irregular awarding of a multi-million-rand security

tender against the advice of the Provincial Internal Audit, by placing them on precautionary suspension; and

2.2.6 Mr Maape acted in a way that is inconsistent with his office and that may compromise the credibility or integrity of his office or of the provincial government. Where Mr Maape is of the belief that the MEC has acted in any way contrary to her oath of her office or legislation, he should launch an investigation.

### 3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

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

3.2 Section 182(1) of the Constitution provides that: -

*“The Public Protector has the power as regulated by national legislation –*

- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*
- (b) to report on that conduct; and*
- (c) to take appropriate remedial action”.*

3.3 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by national legislation. The Public Protector’s powers are regulated and amplified by the Public Protector Act which states, amongst others, that the Public Protector has the power to investigate and redress maladministration and related improprieties in the conduct of state affairs.

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3.4 Mr Sonakile is a member of the North West Provincial Legislature and the complaint was investigated in terms of EMEA.

3.5 Section 3(1) of the EMEA directs that *“the Public Protector must investigate any alleged breach of the code of ethics on receipt of a complaint contemplated in section 4”*.

3.6 Section 4(1)(a) of EMEA provides that, *“the Public Protector must investigate, in accordance with section 3, an alleged breach of the code of ethics on receipt of a complaint by the President, a member of the National Assembly or a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet member or Deputy Minister.”*

3.7 In the matter at hand, the complaint, while lodged in terms of section 4(1)(a) of EMEA referred to alleged violations of the Act, particularly, section 3(1) and 3(2)(a), the Public Protector considered the dictum in the matter of *Public Protector and Others v President of the Republic of South Africa and Others*<sup>1</sup>

*“Section 3 empowers the Public Protector to investigate any breach of the code. The scheme that emerges from the reading of this provision is that the Public Protector’s power to investigate is subject to a formal complaint. This suggests that **the scope of an investigation is determined by the breach of the code contained in the complaint**. It is important to note that section 3 does not authorise the Public Protector **to investigate a violation of the Act itself but limits her authority to investigating a breach of the code.**”*  
*(emphasis added)*

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<sup>1</sup> [2021] ZACC [19]

- 3.8 Since the complaint fell within the ambit of section 4(1) of the EMEA, being a complaint lodged by a Member of the North West Provincial Legislature against the North West Premier, it was resolved that it fell within the purview and jurisdiction of matters that should be investigated by the Public Protector. Although Mr Sonakile alleged breaches of section 3(1) and 3(2)(a) of EMEA, the scope of the investigation primarily focused on the potential breach of clauses 2(1)(a), (c) and (d) of the Code, as mentioned in the complaint.
- 3.9 On 10 October 2023, the Public Protector addressed a letter to Mr MC Ramaphosa, the President of the Republic of South Africa, (Mr Ramaphosa) in terms of section 3(2)(a) of EMEA, to note the allegations raised against the former North West Premier and to advise him that the investigation would not be finalised within the prescribed thirty (30) day period. On 11 October 2023, Mr Robert Hlongwane, from the Private Office of the President, acknowledged receipt of the Public Protector's correspondence.

#### **4. ISSUES IDENTIFIED FOR INVESTIGATION**

- 4.1 Based on the analysis of the complaint, the following issue was identified to inform and focus the investigation:
- 4.1.1 Whether the former North West Premier, Mr Bushy Maape, acted in a manner that is inconsistent with his office by placing the then MEC for Social Development, Ms Boitumelo Moiloa, on special leave, if so, whether such conduct is improper as envisaged in section 182(1) of the Constitution and amounts to a violation of clause 2(1)(a), (c) and (d) of the Executive Ethics Code.

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## 5. THE INVESTIGATION

### 5.1 Methodology

5.1.1 The Investigation was conducted in terms of section 182 of the Constitution read with sections 3 and 4 of the EMEA and 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 how to resolve a dispute of alleged improper conduct or maladministration.

### 5.2 Approach to the investigation.

5.2.1 The approach to the investigation included the exchange of documentation between the Public Protector, the Complainant and the office of the Premier.

5.2.2 All relevant documents and correspondence were obtained and analysed, relevant laws, policies and related prescripts were considered and applied during the investigation.

5.2.3 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 a violation of section

182(1)(a) of the Constitution and a violation of clause 2(1)(a), (c) and (d) of the Code?

(d) In the event of a violation of the Constitution or the Code, what action should be taken?

5.2.4 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. Evidence is evaluated and a determination is made on what happened based on a balance of probabilities. In this case, the factual enquiry principally focused on whether the alleged conduct of Mr Maape constitutes improper conduct and violated section 182(1)(a) of the Constitution and clause 2(1)(a), (c) and (d) of the Code.

5.2.5 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standards that should have been met by Mr Maape to prevent the violation of the Code.

### 5.3 **Key sources of information**

#### 5.3.1 **Documents and correspondence exchanged**

5.3.1.1 Letter from the former Premier, Mr B Maape to MEC Moilola titled "*Special Leave: yourself*", dated 29 May 2023;

5.3.1.2 Complaint form from Mr Sonakile, dated 06 June 2023;

5.3.1.3 Letter from the former acting Premier, Mr N Maloyi (Mr Maloyi) to MEC Moilola, titled "*Leave of absence: yourself*", dated 29 June 2023;

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- 5.3.1.4 Letter from Mr Maloyi to MEC Moilola, titled “*Termination of your appointment as a Member of the Executive Council in terms of section 132(2) of the Constitution of the Republic of South Africa, 1996*”, dated 11 July 2023;
  - 5.3.1.5 Allegations letter from the Public Protector to Mr Maape, dated 10 October 2023;
  - 5.3.1.6 Allegations letter from the Public Protector to Mr Maloyi, dated 10 October 2023;
  - 5.3.1.7 Letter from Mr Maloyi to the Public Protector titled “*Investigation by the Public Protector and request for information/documentation in re: MEC Social Development*”, dated 31 October 2023;
  - 5.3.1.8 Notice in terms of Rule 41(1) issued to the Complainant, dated 28 May 2024; and
  - 5.3.1.9 Email acknowledgement of receipt of the Notice in terms of Rule 41(1) from the Complainant, dated 28 May 2024.

#### 5.4 **Legal framework**

- 5.4.1 The Constitution of the Republic of South Africa, 1996;
- 5.4.2 The Public Protector Act, 1994;
- 5.4.3 Executive Members’ Ethics Act, 1998; and
- 5.4.4 Executive Ethics Code, 1998.

#### 5.5 **Case Law**

- 5.5.1 *Mphele v Government of the RSA*, 1996 (7) BCLR 921(Ck).

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**5.6 Notice issued in terms of Rule 41(1) of the Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018, as amended**

5.6.1 Rule 41(1) of the Public Protector Rules provides that when the Public Protector intends concluding an investigation by means of a closing report provided for in rule 40(b), the Complainant shall be informed in writing accordingly and be given an opportunity to make representations in connection with the intended closure of the complaint within fourteen (14) days of delivery of the notification.

5.6.2 Rule 41(2) the Public Protector Rules provides that the Public Protector may, if the complainant has not responded within the prescribed time frame of 14 days, proceed with the closing of the file.

5.6.3 On 28 May 2024, a Notice in terms of Rule 41(1) was issued to the Complainant. The Complainant acknowledged receipt of the Notice on the same date, however, he did not make any further submission in respect of the matter. Accordingly, the Public Protector is proceeding to close the matter in terms of Rule 41(2).

**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 the former North West Premier, Mr Bushy Maape, acted in a manner that is inconsistent with his office by placing the then MEC for Social Development, Ms Boitumelo Moiloa, on special leave, if so, whether such conduct is improper in terms of section 182(1)(a) of the Constitution and amounts to violation of clause 2(1)(a), (c) and (d) of the Executive Ethics Code**



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*Common cause*

- 6.1.1 On 28 May 2019, Mr Maape, in his capacity as the then Premier of the North West Province, appointed and assigned the portfolio of DSD to Ms Moiloa.
- 6.1.2 On 29 May 2023, Mr Maape issued a letter to Ms Moiloa, communicating his decision to place her on special leave for a period of one (01) month.

*Issue in dispute*

- 6.1.3 The issue for the Public Protector's determination is whether Mr Maape acted within his powers when he placed the MEC on special leave.

*The Complainant's version*

- 6.1.4 The Complainant contended that in taking the decision to place Ms Moiloa on special leave, Mr Maape acted *ultra vires* and his decision was not guided by any legislation. He alleged that Mr Maape acted in a way that is inconsistent with his office and may compromise the credibility or integrity of his office or of the provincial government. He further alleged that where the Premier is of the belief that the MEC has acted in any way contrary to her oath of office or legislation, he should launch an investigation.

*Version of the North West Premier's Office*

- 6.1.5 At the time of the complaint, Mr Maape was on sick leave and Mr Maloyi was appointed as the acting Premier. On 10 October 2023, the Public Protector sent an allegations letter to both Mr Maape and Mr Maloyi.

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- 6.1.6 Mr Maape did not respond to the allegations, however, on 31 October 2023, the Public Protector’s Investigation Team (Investigation Team) received a response from Mr Maloyi wherein he indicated *inter alia*, that:
- 6.1.6.1 The MEC was indeed placed on special leave because the relationship between the MEC and the Head of Department (HoD) had become toxic and had polarised employees and other stakeholders of the Department. It became evident that unless drastic steps were taken, the Department would collapse. Despite repeated directives to the MEC to provide leadership on departmental challenges, no progress was registered;
- 6.1.6.2 The legal basis for placing the MEC on special leave is derived from section 132(2) of the Constitution. This section empowers the Premier to appoint, assign duties and even dismiss the MEC. The decision is further based on the principles of sound and good governance which by extension required Mr Maape to provide supervision, guidance, coaching, and mentoring support to the MEC;
- 6.1.6.3 There is no Provincial EXCO resolution recommending or approving the Premier’s decision. There is no requirement in law for such a decision to be supported or recommended by EXCO;
- 6.1.6.4 The Premier initiated an investigation into the allegations that were made by both the MEC and the HoD against each other. The purpose of such investigation was not necessarily meant to be a precursor to placing the MEC on special leave, but to establish the truth of the allegations. There was no written response from the MEC to the Premier’s letter;
- 6.1.6.5 There is ample authority for Mr Maape to place the MEC on special leave as part of his supervisory responsibility. Special precedence had been set in the country for the President or Premier to reprimand or take other steps other

than dismissals of Ministers, Deputy Ministers and MECs as a corrective measure;

6.1.6.6 There is no special legislation that provides for such action by the President or the Premier, but it is based on good governance practices. The Office of the Public Protector issued several reports recommending such similar steps by the President. There is nothing wrong in the Premier taking steps to preserve, promote, protect and advance good governance within the province and prevent government collapse by placing an MEC on special leave;

6.1.6.7 The MEC received a letter dated 29 May 2023, from Mr Maape informing her that he decided to put her on special leave with immediate effect pending a final determination of all challenges in the Department;

6.1.6.8 On 29 June 2023, Mr Maloyi wrote a letter to the MEC, informing her that he had received a report and briefing from the Acting MEC and Acting HoD for Social Development regarding the state of affairs at the Department;

6.1.6.9 On 11 July 2023, Mr Maloyi wrote a letter to the then MEC informing her that her appointment as a Member of the Executive Council is terminated with immediate effect; and

6.1.6.10 The Public Protector had previously recommended similar steps to the President and issued the following reports:

*“(a) In the Extreme”, Report No. 11 of 2011/2012 at para 16.1 the then Public Protector stated, “The President to consider taking serious action against Mr. Shiceka for his violation of the Executive Ethics Code, referred to in this report”;*

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- (b) *Costly Moves*”, Report No. 3 of 2012/2013 at para 13.1 the then Public Protector stated, “The President to consider reprimanding Minister Joemat Pettersson, for her violation of the Executive Ethic Code referred to in this report”; and
- (c) *Secure in Comfort*”, Report No. 25 of 2013/2014 at para 11.1.3 the then Public Protector stated that the President must “Reprimand the Ministers involved for the appalling manner in which the Nkandla Project was handled, and state funds were abused”.

*Letter dated 29 May 2023 from Mr Maape to MEC Moiloa*

- 6.1.7 Mr Maloyi submitted a letter dated 29 May 2023, from Mr Maape to MEC Moiloa with his response. The letter states that:
- 6.1.7.1 He had on several occasions tried to engage her on matters relating to the effective functioning of the DSD with no progress or positive response from her;
- 6.1.7.2 The situation in the DSD had reached an unbearable situation which had a potential to reverse the gains of the section 100 intervention and creating challenges for the audit process by the Auditor General South Africa (AGSA);
- 6.1.7.3 In order to maintain an environment conducive to both the audit by the AGSA and effective service delivery, he had decided to put the MEC on special leave with immediate effect for a period of a month, pending a final determination of all challenges in the DSD; and
- 6.1.7.4 The decision was in line with section 132(2) of the Constitution which empowered the Premier of a Province to appoint the Members of the Executive Council as well as assigning their powers and functions and may dismiss them.

*Applicable law*

**Constitution of the Republic of South Africa, 1996**

6.1.8 Section 125 of the Constitution provides that:

*“(1) The executive authority of the province is vested in the Premier of that Province.*

*“(2) The Premier exercises the executive authority, together with the other members of the Executive Council...”*

6.1.9 Section 132(2) of the Constitution provides that *“the Premier of a Province appoints the members of the Executive Council, assigns their powers and functions, and may dismiss them”*.

6.1.10 Section 136 of the Constitution provides for the *“Conduct of members of Executive Councils”* as follows:

*“(1) Members of the Executive Council of a province must act in accordance with a code of ethics prescribed by national legislation.*

*“(2) ....”*

6.1.11 Paragraph 2 of Annexure C of the Constitution further provides for the following subsections of section 136:

*“(3) Members of Executive Councils are accountable individually to the Premier and to the provincial legislature for the administration of their portfolios, and all members of the Executive Council are correspondingly*

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*accountable collectively for the performance of the functions of the provincial government and for its policies.*

(4) ...

(5) *If a member of an Executive Council fails to administer the portfolio in accordance with the policy of the Council, the Premier may require the member concerned to bring the administration of the portfolio into conformity with that policy.*

(6) *If the member concerned fails to comply with a requirement of the Premier under subsection (5), the Premier may remove the member from office after consultation with the member...”.*

### **Executive Ethics Code, 1998**

6.1.12 Clause 2.1 of the Code provides, *inter alia* that:

*“2.1 Member of the Executive must, to the satisfaction of the President or the Premier:*

- (a) perform their duties and exercise their powers diligently and honestly.*
- (b) fulfil all the obligations imposed upon them by the Constitution and the law; and*
- (c) act in good faith and in the best interest of good governance, and*
- (d) act in all respects in a manner that is consistent with the integrity of their office or the government.*

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## Case Law

6.1.13 In *Mpehle v Government of the RSA* 1996 (7) BCLR 921 (Ck), the High Court held that a Premier's power to dismiss includes the power to suspend an MEC and that a Premier is not obliged to follow a fair procedure and give the MEC a hearing before suspending him or her. The Court held that<sup>2</sup> –

*“... a suspension is a well-known interim position or a step or phase leading to a termination or dismissal and a suspension in the present instance is clearly a logical and necessary consequence of the powers conferred on the premier. The logic of the greater including the lesser therefore applies. The premier is entrusted with the power and duty to ensure good government and the interests of the people.... Furthermore, the premier is given the responsibility to ensure that the Constitution and all other laws are observed by the executive of the province which would in particular include the members of the executive council.”*

### *Analysis*

6.1.14 The evidence before the Public Protector reveals that MEC Moiloa was appointed by the Premier in 2019 and assigned the portfolio of Social Development. During her tenure of office, the Premier initiated investigations concerning the management and administration of the Department. On 29 May 2023, the MEC was placed on special leave pending a final determination of all challenges in the Department.

6.1.15 In terms of section 125 of the Constitution, the executive authority of the province is vested in the Premier of that Province, who exercises that authority, together with the other members of the Executive Council. At the time of MEC

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<sup>2</sup> At page 928

Moilola's suspension, Mr Maape was the Premier of the North West Province. As the executive authority of the Province Mr Maape had a duty to perform functions assigned to the provincial executive in terms of section 125 of the Constitution.

- 6.1.16 Section 132(2) of the Constitution provides that the Premier of a Province appoints the members of the Executive Council; assigns their powers and functions and may dismiss them.
- 6.1.17 Paragraph 2 of Annexure C of the Constitution further provides additional subsections of section 136 of the Constitution in that Members of Executive Councils are accountable individually to Mr Maape for the administration of their portfolios. In terms of section 136(5), if the member concerned fails to administer the portfolio in accordance with the policy of the executive council, the Premier may require compliance. If the member fails to comply, the Premier may, in terms of section 135(6), remove the member from office.
- 6.1.18 The evidence before the Public Protector indicates that Mr Maape placed the MEC on special leave in terms of section 132(2) of the Constitution. In the matter of *Mpehle v Government of the RSA (supra)*, the High Court confirmed that the Premier's powers to dismiss include the power to suspend an MEC. Accordingly, the then Premier did not act contrary to the provisions of section 132(2) of the Constitution by placing the MEC on special leave.
- 6.1.19 In terms of clause 2.1 of the Code, the Premier as a member of the provincial executive, is required to perform his duties diligently and honestly, to act in good faith and in the interest of good governance and act in all respects in a manner that is consistent with the integrity of his office. The Premier therefore acted within his powers, in the suspension of Ms Moilola, as confirmed in the *Mpehle* matter.



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### *Conclusion*

- 6.1.20 Based on the evidence before the Public Protector, it is concluded that the Premier had powers to place the MEC on special leave in terms of section 132(2) of the Constitution and he therefore did not contravene the relevant clauses of the Code, as alleged.

## **7. FINDINGS**

Having regard to the evidence, the regulatory framework determining the standards that should have been complied with and the impact thereof on good administration, the Public Protector makes the following findings:

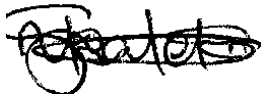
- 7.1 **Whether the former North West Premier, Mr. Bushy Maape, acted in a manner that is inconsistent with his office by placing the then MEC for Social Development, Ms Boitumelo Moiloa, on special leave, if so, whether such conduct is improper in terms of section 182(1) of the Constitution and amounts to a violation of clause 2(1)(a), (c) and (d) of the Executive Ethics Code**
- 7.1.1 The allegation that Mr Maape acted in violation of the Code when he placed the MEC for Social Development, Ms Moiloa, on special leave, **is not substantiated.**
- 7.1.2 The evidence before the Public Protector reveals that Ms Moiloa was appointed by the Premier in 2019 and was assigned the portfolio of DSD. During Ms Moiloa's tenure as MEC, the Premier initiated an investigation into the management and administration of the Department.

7.1.3 On 29 May 2023, Mr Maape placed the MEC on special leave in terms of section 132(2) of the Constitution, pending the final determination of all challenges in the Department. The High Court in *Mpehle v Government of the RSA* confirmed that the power to suspend was a logical and necessary consequence of the powers conferred upon a Premier.

7.1.4 The conduct of Mr Maape, in placing the MEC on special leave, neither constitutes improper conduct in terms of section 182(1)(a) of the Constitution, nor amounts to a breach of clause 2(1) of the Executive Ethics Code.

## 8. CONCLUSION

8.1 The Public Protector considers this matter as finalised and cannot take it further.



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**ADV. KHOLEKA GCALEKA**  
**PUBLIC PROTECTOR**  
**REPUBLIC OF SOUTH AFRICA**  
**DATE: 30 JUNE 2024**

*Assisted by Adv E de Waal*  
*Acting Executive Manager PII: Inland*