

**REPORT 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**

REPORT NO: 56 OF 2025/2026

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**INVESTIGATION INTO ALLEGATIONS OF CONTRAVENTION OF THE
PRINCIPLES OF SEPARATION OF POWERS AND VIOLATION OF THE
EXECUTIVE ETHICS CODE BY THE PREMIER OF GAUTENG, MR PANYAZA
LESUFI FOR ATTENDING OR BY BEING PART OF THE LEGISLATURE'S
MEETING THAT WAS CONVENED ON 11 OCTOBER 2023**

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LIST OF ACRONYMS AND ABBREVIATIONS

ACRONYMS/ ABBREVIATION	DESCRIPTION
AGSA	Auditor General of South Africa
ANC	African National Congress
Cde	Comrade
Code	Executive Ethics Code 2000, published by proclamation in Government Gazette: No 21399 Notice No 41 Regulation 6853
Constitution	The Constitution of the Republic of South Africa, 1996
COSATU	Congress of the South African Trade Union
DA	Democratic Alliance
EMEA	Executive Members' Ethics Act, 1998
GPL	Gauteng Provincial Legislature
Guide	Guide for Members of the Executive, approved by the President, 2022
ID	Identity Document

EXECUTIVE SUMMARY

- (i) This is a Closing report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution) which empowers the Public Protector to report on any conduct in state affairs that is suspected to be improper or to result in any impropriety or prejudice, and section 8(1) of the Public Protector Act, 1994 (Public Protector Act), which provides that the Public Protector may make known the findings, point of view or recommendation of any matter investigated by her.
- (ii) The complaint investigation emanates from a complaint lodged by Mr Tshepiso Solly Msimanga, the Leader of the Opposition Political Party, Democratic Alliance (DA) at the Gauteng Provincial Legislature (GPL), (the Complainant) on 31 October 2024. In summary, the Complainant alleged that:
- (a) On 11 October 2023, the Chief Whip convened a meeting which was attended by various members of the GPL and the Premier of Gauteng, Mr Panyaza Lesufi to discuss issues between management and the NEHAWU GPL Branch. Key concerns discussed included the lack of consultation on restructuring, an unresolved 13th cheque payment currently in Labour Court, and deteriorating labour relations. The meeting resolved to form a political task team to address the 13th cheque matter, seek legal advice on withdrawing the court case, and lobby for funding from Provincial Treasury.
- (b) Mr Vusimuzi Peter Skosana, the former Secretary of GPL, was recused from part of the meeting due to its sensitive nature. Before leaving, he discussed ongoing disciplinary proceedings against 34 employees accused of fraudulent travel and subsistence claims during COVID-19.

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- (c) The Premier of Gauteng, Mr Panyaza Lesufi violated the provisions of the Code specifically sections 2.1(c) and (d) of the General Standards by attending the above-mentioned meeting in breach of the separation of powers.
- (iii) Considering the above, following issue was identified to inform and focus on the investigation:
- (a) Whether the Premier of Gauteng breached the separation of powers between the Executive and Legislature as well as conflated the state and the political party lines by being a part of the Legislature's meeting convened on 11 October 2023, and if so, whether such conduct constitutes violation of clause 2.1(c) and (d) and clause 2.3(c) of the Executive Ethics Code.
- (iv) On 22 October 2025, the Public Protector issued a notice in terms of Rule 41(1) of the Public Protector Rules to the Complainant to inform him about the preliminary outcome and to provide him with an opportunity to make representations to the provisional findings. On 08 January 2026, The Complainant replied to the Rule 41(1) Notice.
- (v) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, the following findings are made:
- (a) **Whether the Premier of Gauteng breached the separation of powers between the Executive and Legislature as well as conflated the state and the political party lines by being a part of the Legislature's meeting convened on 11 October 2023, and if so, whether such conduct constitutes violation of clause 2.1(c) and (d) and clause 2.3(c) of the Executive Ethics Code.**
- (aa) The allegation that the Premier of Gauteng acted in a manner that is inconsistent with his office by contravening the principle of separation of powers between the Executive and Legislature as well as conflating

the state and the political party lines by being a part of the Legislature's meeting convened on 11 October, **is not substantiated.**

Jurisdictional and Interpretive Findings

- (bb) The Public Protector has jurisdiction under section 3 of the EMEA to investigate complaints alleging breaches of the Code by Members of the Executive, including Premiers.
- (cc) However, Clause 2.1 of the Code, which requires Members of the Executive to discharge obligations "*to the satisfaction of the President or the Premier, as the case may be,*" creates an interpretive constraint when the alleged violator is the Premier himself, as no external assessor is designated to determine "satisfaction" under this provision.
- (dd) By contrast, Clause 2.3 contains no such qualifying language and applies uniformly to all Members of the Executive, including the Premier. The Public Protector retains full competence to investigate and make findings regarding alleged breaches of clause 2.3.

Substantive Findings on the Allegations

Alleged Breach of Clause 2.1(c) and (d)

- (ee) The Public Protector is unable to make a finding that the Premier breached clauses 2.1(c) (acting in good faith and in the best interests of good governance) or 2.1(d) (acting consistently with the integrity of office) due to the structural limitation within clause 2.1 itself, which assigns the assessment function to the Premier in respect of other Members. This limitation does not reflect on the merits of the allegations but arises from the Code's own architecture.

Alleged Breach of Clause 2.3(c)

- (ff) The allegation that the Premier acted in a manner inconsistent with his position by contravening the principle of separation of powers through attending a GPL meeting on 11 October 2023 is not substantiated on the available evidence.
- (gg) All individuals allegedly present at the meeting, except Mr Skosana, deny that such a meeting occurred or that the Premier attended any GPL meeting in an official capacity.
- (hh) The Chief Whip, Mr Makhubela, confirmed that the meeting was postponed indefinitely. The documentary evidence such as the copy of meeting invitation in possession of the Public Protector indicates that any contemplated meeting was an ANC party caucus meeting, not an official GPL meeting.
- (ii) Furthermore, the site visit by the Investigation Team at Ruth First House Saxonwold on 17 September 2025 indicates that this venue is an ANC office as demonstrated by its visible regalia on the property. Neither Mr Masondo nor Ms Sehalahala could corroborate Mr Skosana's assertions regarding the existence of the meeting on 11 October 2023.
- (jj) No other independent corroboration supports Mr Skosana's version of events and accordingly, there is no factual or evidentiary basis to find that the Premier violated clause 2.3(c) of the Code.

1. INTRODUCTION

1.1 This is a Closing 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 section 8(1) read with section 8(3) of the Public Protector Act and Rule 40(b) of the *Rules Relating to Investigations by the Public Protector and Matters Incidental Thereto*, 2018, as amended (Public Protector Rules), which empower the Public Protector to make known the findings of an investigation, to the following parties, for such persons to note the outcome of the investigation:

1.2.1. Mr Cyril Matamela Ramaphosa, President of the Republic of South;

1.2.2. Mr Andrek Panyaza Lesufu, the Premier of Gauteng; and

1.2.3. The Complainant.

1.3. The report relates to an investigation into allegations that the Premier of Gauteng, Mr Panyaza Lesufu (the Premier) undermined and/or breached the principles of separation of powers between the Executive and Legislature and thus violated the Executive Ethics Code (the Code) by attending or by being a part of a Legislature's meeting that was convened on 11 October 2023, while pursuing a political agenda.

2. THE COMPLAINT

2.1. The investigation emanates from a complaint from Mr Tshepiso Solly Msimanga in his capacity as the Leader of the Opposition Political Party, the DA.

2.2. The Complainant stated, *inter alia*, that:

2.2.1. On 11 October 2023, the Chief Whip convened a meeting attended by:

- (a) Ms Sizakele Nkosi-Malobane (the former GPL Chairperson of Committees and Office Bearer);
- (b) Mr Mpapa Kanyane (the former Deputy Chairperson of Committees);
- (c) Ms Nomvuyo Mhlakaza - Manamela (the former Deputy Speaker);
- (d) Ms Lentheng Mekgwe (the former Executive Authority and the Speaker); and
- (e) Mr Panyaza Lesufi (the Chairperson of the African National Congress (ANC) Gauteng and Premier of Gauteng).

2.2.2. The following issues were raised during the meeting:

- (a) Concerns regarding the engagement between the Chief Whip and National Education, Health and Allied Workers' Union (NEHAWU) GPL Branch, particularly related to restructuring at GPL without proper consultation;
- (b) The ongoing 13th cheque matter which is in the Labour Court; and
- (c) The deteriorating relationship between Management and NEHAWU, which has contributed to a toxic work environment.

2.2.3. The meeting resolved the following actions:

- (a) A political Task Team, led by Chief Whip, the former Speaker, the former Deputy Chairperson of Committees and the leadership of

NEHAWU, would work together to find an amicable solution regarding the payment of the 13th cheque to GPL employees;

- (b) GPL would seek a legal opinion on the financial and legal implications of the political decision to withdraw the 13th cheque case from the Labour Court; and
- (c) Political leadership should exert pressure on the Provincial Treasury to secure funding to settle the 13th cheque issue.

2.2.4. Due to the sensitive nature of the discussions, Mr Vusimuzi Right Peter Skosana (Mr Skosana), the former Secretary of GPL, was recused from the meeting, as leadership was set to meet with NEHAWU and the GPL Branch leadership.

2.2.5. Before his recusal Mr Skosana touched on the disciplinary processes related to the Subsistence and Travel claim (S&T) cases involving approximately thirty-four (34) employees. It was proposed that these processes should be delayed while the 13th cheque issue is being resolved.

2.2.6. Mr Skosana expressed his objections to linking the 13th cheque with the disciplinary processes, stating that management should handle disciplinary matters independently, without politicising them.

2.2.7. These disciplinary processes had been initiated following an investigation into travel and subsistence claims made by some GPL employees during the COVID-19 period. The investigation revealed fraudulent and corrupt claims that had already been paid.

2.2.8. All employees were given an opportunity to substantiate their S&T claims, and those who complied were exempted from the disciplinary process after further verification. The 34 employees charged did not provide additional information.

- 2.2.9. Mr Skosana indicated that the Auditor General of South Africa (AGSA) would follow up on this matter, as it had been highlighted in the 2022/2023 audit report. The Chief Whip informed Mr Skosana that the S&T disciplinary matter was a political instruction. Mr Skosana reminded the Chief Whip that he is accountable to the former Speaker and the Executive Authority, not to him.
- 2.2.10. Mr Skosana briefed the former Speaker about the meeting's outcomes and his discomfort, particularly regarding the proposal to delay the disciplinary hearing, which he believed amounted to political interference, unlawful and unreasonable action.
- 2.2.11. In the meeting, Mr Skosana reiterated that postponing the S&T investigation until the 13th cheque issue is resolved was inappropriate. Mr Skosana emphasised that disciplinary processes are a management responsibility.
- 2.2.12. Furthermore, that once the Presiding Officers are appointed to hear cases, they become custodians of the disciplinary process and must ensure adherence to the Promotion of Administrative Justice Act, 2000 (PAJA), Labour Relations Act, 1995 and GPL Disciplinary Policy. This process should not be politicised, as confirmed by the NEHAWU's awareness of it.
- 2.2.13. It is highly irregular and unethical for the Premier of Gauteng to participate in these Legislature meetings, which seemed aimed at resolving an internal issue involving the ANC and NEHAWU. NEHAWU had threatened to withhold its support in the upcoming election, unless its members received their 13th cheque and the disciplinary proceedings against the 34 staff members accused of fraudulent S&T claims were halted.
- 2.2.14. The Premier of Gauteng has violated the provisions of the Code by contravening specifically sections 2.1(c) and (d) of the General Standards. He has failed to (c) act in good faith and in the best interests of good governance, and (d) act consistently with the integrity of his office or the government by undermining the separation of powers.

- 2.2.15. Furthermore, he has violated section 2.3(c) by acting inconsistently with his position and contravening the separation of powers between the Executive and Legislature while pursuing his political agenda, which has placed undue and unethical pressure on Mr Skosana.

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 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) of the Constitution 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 powers to investigate and redress maladministration and related improprieties in the conduct of state affairs.

- 3.4. Section 3(1) of EMEA states that:

“The Public Protector must investigate any alleged breach of the code of ethics on receipt of a complaint contemplated in section 4.”

3.5. In paragraph 11 of the *Public Protector and Others v President of the Republic of South Africa and Others* [2021] ZACC [19] the court denoted that:

“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.”

3.6. Section 3(4) of EMEA provides that:

“When conducting an investigation in terms of this section, the Public Protector has all the powers vested in the Public Protector in terms of the Public Protector Act, 1994.”

3.7. Section 4(1)(a) of EMEA, provides, *inter alia*, 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...”

3.8. It is also important to note that the investigation, as envisaged in section 4(1) of EMEA must relate to a breach of the Code by Cabinet members, Deputy Ministers and members of Executive Councils.

3.9. Clause 2.1 of the Code encapsulates the general standards which the members of the executive must comply with, to the satisfaction of the President or the Premier, whichever is applicable.

- 3.10. The complaint was lodged by a member of the National Assembly in terms of EMEA against the Premier of Gauteng. Therefore, the complaint falls within the purview and jurisdiction of matters that should be investigated by the Public Protector. The alleged breach of the Code is contained in the complaint and specifically determines the scope of the investigation in relation to Clause 2.1 and 2.3 of the Code.
- 3.11. However, the applicability of Clause 2.1 of the Code imposes apparent limitations on the mandate of the Public Protector to investigate, insofar as it suggests that it is the President or Premier, who determines whether the relevant obligations have been satisfactorily discharged by Members of the Executive.
- 3.12. Taking into account the inherent limitations imposed by Clause 2.1 of the Code, it is submitted that there might be merit in the legal consideration that *“the Public Protector is not empowered to make a judgement”* on whether a Member of the Executive has complied with the requirement of this provision of the Code.
- 3.13. Notwithstanding the limitation imposed by Clause 2.1 of the Code, the Public Protector is nevertheless compelled to investigate all allegations of breach of the Code as required by section 3(1) of the EMEA. EMEA does not allow the Public Protector a discretion to decide whether or not to investigate allegations of breach of the Code, albeit in connection with Clause 2.1 with a limited scope. As a result, this investigation is undertaken in terms of the EMEA, since it was lodged by a Complainant who is a member of the provincial legislature under the EMEA.

4. ISSUE IDENTIFIED FOR INVESTIGATION

- 4.1. Based on the analysis of the complaint, the following issue was identified to inform and focus the investigation:

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- 4.1.1. Whether the Premier of Gauteng breached the separation of powers between the Executive and Legislature as well as conflated the state and the political party lines by being a part of the Legislature's meeting convened on 11 October 2023, and if so, whether such conduct constitutes violation of clause 2.1(c) and (d) and clause 2.3(c) of the Executive Ethics Code.

5. THE INVESTIGATION

5.1. Methodology

- 5.1.1. 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.

- 5.1.2. The investigation is conducted in terms of section 182 of the Constitution, read with sections 3 and 4 of the EMEA and sections 6 and 7 of the Public Protector Act.

5.2. Approach to the investigation

- 5.2.1. The approach to the investigation included an exchange of documentation between the Public Protector, the Complainant, the Premier of Gauteng, the Speaker of the GPL, other Office Bearers of the GPL, NEHAWU, Mr Skosana and Ms Keoratile Sehalahala.

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

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

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- (a) What happened?
 - (b) What should have happened?
 - (c) Is there a discrepancy between what happened and what should have happened?
 - (d) In the event of a breach of the Code, what remedial 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 Premier of Gauteng attended and/or participated in a meeting convened on 11 October 2023 in breach of the Constitution and the Code; thus, contravening the principles of separation of powers.

5.2.5. The enquiry regarding what should have happened focuses on the law or rules that regulate the standard that should have been met by the Premier of Gauteng and whether his conduct constitutes improper conduct, a violation of the Constitution and a breach of the Code.

5.3. Key sources of information

5.3.1. Correspondence exchanged

5.3.1.1. Complaint letter received by the Public Protector Investigation Team (Investigation Team) from the Complainant, dated 31 October 2024;

5.3.1.2. A letter from the Investigation Team to the Complainant confirming issue identified for investigation, dated 07 November 2024;

5.3.1.3. A notice issued in terms of Rule 23(1) of the Public Protector Rules from the Public Protector to Ms Morakane Mosupyoe, the Speaker of the GPL (the Speaker), inviting her reply to the allegations, dated 28 January 2025;

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- 5.3.1.4. A notice issued in terms of Rule 23(1) of the Public Protector Rules from the Public Protector to the Premier of Gauteng, Mr Lesufi, inviting his reply to the allegations, dated 28 January 2025;
 - 5.3.1.5. A response letter from the Speaker to the Investigation Team replying to the notice issued in terms of Rule 23(1) of the Public Protector Rules, dated 17 February 2025;
 - 5.3.1.6. A response letter from the Premier of Gauteng, Mr Lesufi to the Investigation Team replying to the notice issued in terms of Rule 23(1) of the Public Protector Rules, dated 01 March 2025;
 - 5.3.1.7. A further request letter from Investigation Team to the Speaker of the GPL requesting responses from the persons who allegedly attended the meeting on 11 October 2023, dated 14 March 2025;
 - 5.3.1.8. A response letter from Ms Ntombi Mekgwe, the former Speaker to the Investigation Team replying to the above-mentioned further request letter of 14 March 2025, dated 27 March 2025;
 - 5.3.1.9. A response letter from Ms Nomvuyo Mhlakaza-Manamela (Ms Mhlakaza-Manamela) to the Investigation Team replying to the above-mentioned further request letter of 14 March 2025, dated 30 March 2025;
 - 5.3.1.10. A response email from Mpapa Kanyane (Mr Kanyane) replying to the Investigation Team to the above-mentioned further request letter of 14 March 2025, dated 04 April 2025;
 - 5.3.1.11. An undated response letter from Ms Sizakele Nkosi-Malobane (Ms Nkosi Malobane) to the Investigation Team replying to the above-mentioned further request letter of 14 March 2025;
 - 5.3.1.12. An undated response letter from the Chief Whip replying to the Investigation Team to the above-mentioned further request letter of 14 March 2025;

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- 5.3.1.13. A notice issued in terms of Rule 23(1) of the Public Protector Rules by the Investigation Team to the Provincial Secretary of NEHAWU, Mr Mzikayise Tshontshi (Mr Tshontshi), dated 08 May 2025;
 - 5.3.1.14. A response letter to the notice issued in terms of Rule 23(1) of the Public Protector Rules from Ms Raashida Malatji (Ms Malatji), a Paralegal at NEHAWU, to the Investigation Team, dated 03 June 2025;
 - 5.3.1.15. A further request letter from the Investigation Team to the Chief Whip requesting clarity, dated 01 August 2025;
 - 5.3.1.16. A response email from the Chief Whip to the Investigation Team replying to the above-mentioned further request letter of 01 August 2025, dated 12 August 2025;
 - 5.3.1.17. A notice issued in terms of Rule 23(1) of the Public Protector Rules from the Investigation Team to Mr Vusumuzi Peter Skosana (Mr Skosana) inviting his response to the allegations, dated 22 August 2025;
 - 5.3.1.18. A response letter to the notice issued in terms of Rule 23(1) of the Public Protector Rules, along with supporting documents from Mr Skosana to the Investigation Team, dated 03 September 2025;
 - 5.3.1.19. An email from the Investigation Team to Mr Skosana requesting further information to support his response, dated 09 September 2025;
 - 5.3.1.20. The Investigation Team sent a follow up email to Mr Skosana regarding the request for supporting evidence and/or information, dated 18 September 2025;
 - 5.3.1.21. The Investigation Team sent an email to Ms Keoratile Sehalahala (Ms Sehalahala), the former Secretary/Personal Assistant of Mr Makhubele requesting information or evidence on the allegations, dated 22 September 2025;

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- 5.3.1.22. A notice issued in terms Rule 41(1) of the Public Protector Rules was issued to the Complainant by the Investigation Team;, dated 22 October 2025;
- 5.3.1.23. A letter from the Complainant to the Public Protector requesting an extension to respond to Rule 41(1) Notice, dated 06 November 2025;
- 5.3.1.24. Email from the Investigation Team to the Complainant reminding him to respond to the Rule 41(1) Notice, dated 01 December 2025;
- 5.3.1.25. Email from the Investigation Team to the Complainant reminding him to respond, dated 12 December 2025;
- 5.3.1.26. Email from Investigation Team to the Complainant reminding him to respond, dated 08 January 2026; and
- 5.3.1.27. Undated response letter from the Complainant to the Investigation Team, received on 08 January 2026.

5.3.2. Documents

- 5.3.2.1. A copy of the invite titled “ANC caucus of the Gauteng Legislature memorandum titled “Action driven-disciplined-political clarity in building Gauteng together”, dated 05 October 2023.”
- 5.3.2.2. A copy of Mr Skosana’s affidavit to the High Court.

5.3.3. Site Inspection

- 5.3.3.1. On 17 September 2025, the Investigation Team conducted a site visit to Ruth First House, Saxonwold.

5.3.4. Notice issued in terms of Rule 41(1) of the Public Protector Rules

- 5.3.4.1. A notice issued in terms Rule 41(1) of the Public Protector Rules, dated 22 October 2025, addressed to the Complainant, and the Premier of Gauteng.



5.3.4.2. On 08 January 2026, a response letter to the above-mentioned notice was received from the Complainant.

5.3.5. Legislation and other prescripts

5.3.5.1. Constitution of the Republic of South Africa, 1996;

5.3.5.2. Public Protector Act, 1994;

5.3.5.3. Executive Members Ethics Act, 1998;

5.3.5.4. Financial Management of Parliament and Provincial Legislature (Act No. 10 of 2009 as amended);

5.3.5.5. Executive Ethics Code 2000 published by proclamation in Government Gazette: No 21399 Notice No 41 Regulation 6853;

5.3.5.6. Standing Rules of the GPL, Revision 9;

5.3.5.7. Standing Rules of the GPL, 2018;

5.3.5.8. Guide for Members of Executive, 2022; and

5.3.5.9. Draft GPL Governance Framework 2022-2023.

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

6.1. Whether the Premier of Gauteng breached the separation of powers between the Executive and Legislature as well as conflated the state and the political party lines by being a part of the Legislature's meeting convened on 11 October 2023, and if so, whether such conduct constitutes violation of clause 2.1(c) and (d) and clause 2.3(c) of the Executive Ethics Code.

Common cause

- 6.1.1. Mr Lesufi was appointed as the Premier of Gauteng Province from 6 October 2022 and was re-elected in 2024.
- 6.1.2. Mr Lesufi is also a member of the GPL, and the provincial chairperson of the ANC, a political party, registered in terms of the electoral laws of the Republic of South Africa.
- 6.1.3. By virtue of his election as the Premier of Gauteng, Mr Lesufi is the head of the executive authority of the Gauteng province and exercises his authority in consultation with the Members of the Executive Council accountable to the GPL.

Issue in dispute

- 6.1.4. The issue for determination by the Public Protector is whether the Premier of Gauteng, Mr Lesufi, acted in a manner that is inconsistent with the Constitution and the Code by participating in the meeting of the Gauteng Provincial Legislature.

The Complainant's version

- 6.1.5. The Complainant stated that the Premier of Gauteng breached clause 2.1(c) to (d) of the Code as well as clause 2.3(c) of the Code by attending and/or participation in a Legislature meeting convened on 11 October 2023.
- 6.1.6. The Complainant further stated that the Premier of Gauteng breached the principle of separation of powers when he attended the above-mentioned meeting at the GPL.

Speaker of GPL's version

- 6.1.7. On 28 January 2025, the Public Protector issued a notice in terms of Rule 23(1) of the Public Protector Rules to the Speaker inviting her response to the allegations.
- 6.1.8. A response dated 17 February 2025, was received by the Investigation Team from the Speaker, wherein she stated that:
- 6.1.8.1. The GPL has no record of the meeting mentioned in the complaint, which the Premier of Gauteng, the former Speaker and other Office Bearers of the GPL allegedly attended.
- 6.1.8.2. The GPL interacts with the Premier of Gauteng and Members of the Executive Council (MEC) within the framework of the Constitution, specifically section 114(2), which requires the provincial legislature amongst others to provide mechanisms:
- (a) To ensure that all provincial executive organs of state in the province are accountable to it; and
 - (b) To maintain oversight of:
 - (i) The exercise of provincial executive authority in the province, including the implementation of legislation; and
 - (ii) Any provincial organ of state.
- 6.1.8.3. GPL does not and would not allow a situation where the Premier of Gauteng acts inconsistently with his office by conflating state and political party matters, or by interfering in legislative issues to exert undue influence.
- 6.1.8.4. Furthermore, the GPL's interactions and meetings with the Premier and/or MEC's are recorded and available for public scrutiny to ensure transparency, as outlined in section 118 of the Constitution.

- 6.1.8.5. To clarify the implication in the complaint regarding Chief Whip organising the 11 October 2023 meeting, it is important to note that, while the GPL is composed of members from various political parties, as defined in section 105 of the Constitution and meetings organised by political parties should not be confused with official legislative meetings.
- 6.1.8.6. Lastly, as previously noted, the GPL has no record, attendance register, minutes, resolutions, or hansard record of a meeting held on 11 October 2023, where the Premier of Gauteng allegedly sought to unduly interfere and/ or contravene the EMEA, clause 2.2(c) and (d) and clause 2.3(c) of the Code or principle of separation of powers.

Premier of Gauteng's version

- 6.1.9. On 28 January 2025, the Public Protector issued a notice in terms of Rule 23(1) of the Public Protector Rules to the Premier of Gauteng, Mr Lesufi inviting his response to the allegations. A response letter dated 01 March 2025, was received from the Premier of Gauteng, Mr Lesufi wherein he stated that:
- 6.1.9.1. He has consistently conducted himself in accordance with the standards and rules outlined in the Code.
- 6.1.9.2. He is unaware of any meeting called by the Speaker for 11 October 2023. He believes that the interactions and meetings between the GPL and the Premier and/or MECs should be recorded, and these records are part of the public record.
- 6.1.9.3. According to his knowledge, there is no record of the GPL meeting allegedly convened on 11 October 2023. Moreover, if such a meeting did take place, he was not present and therefore cannot provide any information related to it.

- 6.1.9.4. He reviewed an invitation to a meeting organised by Chief Whip at the GPL. The invitation was sent to six members of the ANC in their political capacity and stated that "*ANC, through the office of Chief Whip, invite the Presiding Officers and Secretary of GPL, Cde Peter Skosana, to a follow-up meeting with NEHAWU.*" It also specified that the meeting would be held at Ruth First, a venue commonly used by ANC for political gatherings. Additionally, the invitation indicated that the Secretary of the ANC caucus could be contacted for more information.
- 6.1.9.5. Upon checking his diary for 11 October 2023, he found no record of the political meeting mentioned. If he had attended a meeting called by ANC's Chief Whip, it would have been in his capacity as Chairperson of the ANC and as such, the meeting did not qualify as a meeting of the GPL. He denies the allegation that the meeting of 11 October 2023 was legislative in nature. Furthermore, the Complainant would have been invited had it been a meeting of the GPL.
- 6.1.9.6. It is important to note that his role as Premier and Member of the Executive Council does not prevent him from being active and participating in his political party. He pointed out that NEHAWU is a union affiliated with Congress of the South African Trade Union (COSATU), which is part of the Tripartite Alliance between ANC, COSATU, and the South African Communist Party.
- 6.1.9.7. Meetings between members of the Tripartite Alliance are common to address various issues, including disputes. Therefore, meetings between ANC leadership and NEHAWU are political and not legislative, as alleged by the Complainant.
- 6.1.9.8. Moreover, as Chairperson of ANC in Gauteng, nothing precludes him from engaging any stakeholders on any important issues within the province.

6.1.9.9. Nonetheless, he acknowledges that his dual role necessitates caution in engagements with stakeholders to avoid violating the principle of separation of powers.

6.1.9.10. He has not violated clause 2.1(c), 2.1(d), and 2.3(c) of the Code and has acted in accordance with the principles of separation of powers and never conflated state and political party matters.

6.1.10. The Premier of Gauteng submitted the following documentary evidence to substantiate his response:

“ANC caucus of the Gauteng Legislature memorandum titled “Action driven-disciplined-political clarity in building Gauteng together”, dated 05 October 2023.”

6.1.10.1. The memorandum from the Chief Whip of the GPL addressed to all Presiding Officers and the Secretary of the GPL states, *inter alia*, that “The ANC through the office Chief Whip, invite the Presiding Officers and Secretary of GPL, Cde Peter Skosana, to a follow up meeting with NEHAWU. The meeting has been postponed numerous times due to unavailability of Cde Speaker and the Cde Premier”.

6.1.10.2. *The meeting will be held under the following details:*

(a) Date: 11 October 2023 (Wednesday)

(b) Time: 12:00 PM

(c) Venue: Ruth First

Further request to the Speaker

6.1.11. On 14 March 2025, the Public Protector issued a letter to the Speaker of the GPL requesting responses from the persons who allegedly attended the meeting on 11 October 2023, as stated by Complainant.

6.1.12. On 27 March 2025 to 17 April 2025, responses were received from persons said to have been in attendance at the alleged meeting of 11 October 2023.

Ms Ntombi Mekgwe, the former Speaker's version

6.1.13. In her response dated 27 March 2025, the former Speaker stated that:

6.1.13.1. She served as the Executive Authority during the 6th administrative term, which includes date of 11 October 2023.

6.1.13.2. She consulted her diary to confirm her schedule for that day. According to her records, she was attending an Identity Document (ID) campaign and Voter Education event at Bernato Secondary School in the morning until lunchtime. Notably, the Premier of Gauteng, Mr Lesufi was neither invited to nor attended this session.

6.1.13.3. In the afternoon, there was supposed to be a regular meeting of the GPL's Presiding Officers, but that meeting was postponed due to the unavailability of the Presiding Officers. Once again, the Premier of Gauteng was not invited to this meeting.

6.1.13.4. If there was any other meeting she attended on 11 October 2023 with the Premier of Gauteng, Mr Lesufi, it was not a GPL meeting and was never convened by her.

Ms Nomvuyo Mhlakaza-Manamela's version

6.1.14. In her response dated 30 March 2025, Ms Mhlakaza-Manamela stated that she is neither aware of such a meeting nor was she part of it.

Mpapa Kanyane's version

6.1.15. In his response dated 04 April 2025, Mr Kanyane indicated that he has no recollection of the Premier of Gauteng, Mr Lesufi ever attending a GPL meeting, except when invited to respond during House sittings.

Ms Sizakele Nkosi-Malobane's version

- 6.1.16. In her undated response, Ms Nkosi Malobane stated that, in her capacity as Chairperson of Committees at the GPL, she has never participated in a formal or informal meeting with the Premier of Gauteng, Mr Lesufi to discuss the fate of the then Secretary of the GPL, Mr Peter Skosana's tenure or contract within the institution.
- 6.1.17. Furthermore, she clarified that she has attended both political and legislative meetings with the Premier of Gauteng, Mr Lesufi either during caucus or oversight engagements during the relevant period. These interactions were professional engagements related to their work as politicians.

Chief Whip's version

- 6.1.18. In his undated response, the Chief Whip emphasised that as a member of the GPL, he has taken an oath of office to be truthful, faithful, ethical, and loyal to the people of the province and the country. He believes he has conducted himself accordingly, in line with the responsibilities of his position.
- 6.1.19. He further stated that he is making this statement in response to the letter that implies that he has violated the GPL Code of Conduct and the law of the country. He asserts that it is untrue that he convened a meeting on 11 October 2023, as Chief Whip, attended by the Presiding Officers of the GPL and the Premier of Gauteng, Mr Lesufi.
- 6.1.20. He contends that these allegations are incorrect, as no such meeting took place on that day or any other day. He has double-checked with his office and his diary regarding the activities of that day and confirms that he never had a meeting of that nature with the Premier of Gauteng, Mr Lesufi and the Presiding Officers.

NEHAWU's version

- 6.1.21. On 08 May 2025, the Public Protector issued a notice in terms of Rule 23(1) of the Public Protector Rules to Mr Tshontshi soliciting a response to the allegations.
- 6.1.22. In a response letter dated 03 June 2025, from Ms Malatji stated that NEHAWU has no knowledge of the meeting referred to in the Public Protector's correspondence.

Additional response from the Speaker GPL, dated 15 August 2025

- 6.1.23. On 01 August 2025, the Public Protector issued further correspondence to the Speaker of the GPL requesting clarity from the Chief Whip regarding the memorandum and/or invitation he sent to all Presiding Officers and the Secretary of the GPL, inviting them to a meeting scheduled for 11 October 2023.
- 6.1.24. A copy of the same memorandum and/or meeting invitation was furnished by the Premier of Gauteng, Mr Lesufi in his response to the Public Protector dated 01 March 2025. The request for further clarity sought to establish if the meeting took place as stipulated in the memorandum and/or invitation.
- 6.1.25. On 15 August 2025, a response was received from the Chief Whip via email stating, *inter alia*, that:
- 6.1.25.1. The meeting never took place, instead it was postponed indefinitely as all matters, he wanted to address as the Chief Whip of the majority party were addressed with the former Speaker regarding the disruption of house and committee meetings by employees of the Legislature.
- 6.1.25.2. The purpose of the meeting was informed by a memorandum that was written by the striking employees of the GPL as well as the subsequent embarrassing events which disrupted house and committee meetings, thereby impeding the work of the GPL. Furthermore, the letter by the striking workers was not only addressed to him as the Chief Whip of the majority party but also to all the leaders of other political parties.

- 6.1.25.3. In his capacity as the Chief Whip of the majority party in the GPL, he attempted to convene the meeting, however, the Premier of Gauteng, Mr Lesufi advised him that he was unavailable and could not attend a meeting about the disruption of the house proceedings.
- 6.1.25.4. The Premier indicated that it would not bode well for him to attend the meeting as the letter of the striking workers was not addressed to him, but to the Chief Whip and other political leaders. This is despite the Premier being an elected member of the GPL, who enjoys all rights and duties vested to him by the Constitution to be concerned about the well-being of the GPL.
- 6.1.25.5. Lastly, it must be noted that there is a distinction between the President of the Republic and the Premier of a province. The Constitution states that the President resigns after being elected by the National Assembly to respect the principle of separation of powers, but the Premier of a province remains a "*member*" of the Legislature for the duration of the term and enjoys all rights and privileges of a member of the Legislature. He is stating this obvious fact that although the Premier of Gauteng, Mr Lesufi recused himself from attending the meeting, he like any member has all the rights and privileges to be concerned about the wellbeing of the Legislature.

Version of former Secretary of GPL, Mr Vusumuzi Peter Skosana

- 6.1.26. On 22 August 2025, the Public Protector issued a notice in terms of Rule 23(1) of the Public Protector Rules to the former Secretary of GPL, Mr Vusumuzi Peter Skosana (Mr Skosana) inviting his response to the allegations.
- 6.1.27. A response dated 03 September 2025, along with supporting documents was received from Mr Skosana on 08 September 2025, stating *inter alia*, that:
- 6.1.27.1. The meeting of 11 October 2023 did take place, and he was in attendance at the said meeting.

- 6.1.27.2. The Premier also attended the meeting; however, he does not know in what capacity he was invited. Mr Makhubela who convened the meeting referred to Mr Lesufi as Premier, not Chairperson of the ANC, throughout the meeting.
- 6.1.27.3. The above led him to understand that the Premier of Gauteng, Mr Lesufi may have attended as Premier or the Chairperson of the ANC. He assumed it was a GPL meeting based on the GPL's participants, specifically Ms Mekgwe, Ms Mhlakaza-Manamela, Ms Nkosi-Malobane and Mr Kanyane, who were also in attendance in the meeting on 11 October 2023.
- 6.1.27.4. Collectively, the four participants and Mr Makhubela are referred to as Office Bearers of the GPL, as stated in the GPL Standing Rules 19, 20, 21, 22, and 24. This is also stipulated in GPL's Governance and the Constitution of the Republic of South Africa, 1996.
- 6.1.27.5. The Premier did not have much to say in the meeting as he attended virtually, even though it was a physical meeting. It was reported that the Premier had other engagements but decided to join virtually.
- 6.1.27.6. The meeting was held at the ANC Gauteng offices, Ruth First House in Saxonwold and focused on finding a solution to the challenges of the 13th cheque and concerns about the relationship between GPL Management and organised labour, NEHAWU GPL Branch.
- 6.1.27.7. The above were pertinent and contemporary matters, which were of great concern to the former Executive Authority and Speaker of GPL, Ms Mekgwe and other Office Bearers, relevant Oversight Committees of the GPL, such as Standing Committee on Oversight of Office of the Premier and the Legislature, referred to as the Oversight Mechanism, in terms of Section 4 of Financial Management of Parliament and Provincial Legislatures Act, 2009, as amended, Standing Committee of the Chairpersons of Committees, and organised labour, NEHAWU. These matters had the potential to negatively impact the effectiveness of the GPL.



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- 6.1.27.8. The Premier also attended the meeting; however, he does not know in what capacity he was invited. Mr Makhubela who convened the meeting referred to Mr Lesufi as Premier, not Chairperson of the ANC, throughout the meeting.
- 6.1.27.9. The above led him to understand that the Premier of Gauteng, Mr Lesufi may have attended as Premier or the Chairperson of the ANC. He assumed it was a GPL meeting based on the GPL's participants, specifically Ms Mekgwe, Ms Mhlakaza-Manamela, Ms Nkosi-Malobane and Mr Kanyane, who were also in attendance in the meeting on 11 October 2023.
- 6.1.27.10. Collectively, the four participants and Mr Makhubela are referred to as Office Bearers of the GPL, as stated in the GPL Standing Rules 19, 20, 21, 22, and 24. This is also stipulated in GPL's Governance and the Constitution of the Republic of South Africa, 1996.
- 6.1.27.11. The Premier did not have much to say in the meeting as he attended virtually, even though it was a physical meeting. It was reported that the Premier had other engagements but decided to join virtually.
- 6.1.27.12. The meeting was held at the ANC Gauteng offices, Ruth First House in Saxonwold and focused on finding a solution to the challenges of the 13th cheque and concerns about the relationship between GPL Management and organised labour, NEHAWU GPL Branch.
- 6.1.27.13. The above were pertinent and contemporary matters, which were of great concern to the former Executive Authority and Speaker of GPL, Ms Mekgwe and other Office Bearers, relevant Oversight Committees of the GPL, such as Standing Committee on Oversight of Office of the Premier and the Legislature, referred to as the Oversight Mechanism, in terms of Section 4 of Financial Management of Parliament and Provincial Legislatures Act, 2009, as amended, Standing Committee of the Chairpersons of Committees, and organised labour, NEHAWU. These matters had the potential to negatively impact the effectiveness of the GPL.
- 6.1.27.14. Mr Skosana attached to his response the following supporting documents:

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- (a) His affidavit to the High Court
 - (b) GPL Standing Rules 2018
 - (c) Financial Management of Parliament and Provincial Legislature (Act No. 10 of 2009 as amended)
 - (d) Draft GPL Governance Framework 2022-2023.

Further engagement with Mr Skosana

6.1.28. On 09 September 2025, the Public Protector sent an email to Mr Skosana advising him that the persons and GPL officials he had alleged to have attended the meeting of 11 October 2023, including the Premier, have been engaged by the Investigation Team, and they all denied having attended said meeting.

6.1.29. Furthermore, Mr Skosana was advised that the Investigation Team is also in possession of an invitation from Mr Makhubela to the 11 October 2023 meeting. However, Mr Makhubela indicated the meeting never took place and was instead postponed indefinitely.

6.1.30. In view of the responses by the persons alleged to have attended the meeting, the Investigation Team requested Mr Skosana to furnish any corroborating evidence supporting his assertion that took place on 11 October 2023, at Ruth First House Saxonwold, such as a signed attendance register, Closed Circuit Television footage, security access control records such as car registrations, names of the people who entered the venue, proof of bookings for the venue or record of payment for the venue, to support his submission regarding the existence of the meeting.

Visit by the Investigation Team to Ruth First House

6.1.31. On 17 September 2025, the Investigation Team conducted a site visit to Ruth First House, Saxonwold. The purpose of the visit was to inspect the venue and interview the person responsible for its management, with a view to verifying whether the meeting alleged by Mr Skosana to have taken place on 11 October 2023 was indeed held.

- 6.1.32. Upon arrival at the venue, the Investigation Team met with Mr Amos Masondo (Mr Masondo), who stated that he had no knowledge of the alleged meeting and was not present on 11 October 2023. The Investigation Team also confirmed that the property functions as an ANC office and is decorated with the party's colours.

Further engagement with Mr Skosana

- 6.1.33. On 18 September 2025, a follow-up email was sent to Mr Skosana, advising him that the Investigation had visited Ruth First House Saxonwold, the venue where the meeting is alleged to have taken place on 11 October 2023. He was further informed about the outcome of the meeting with Mr Masondo who submitted that he had no knowledge of the meeting.
- 6.1.34. In view of the foregoing, further noting that none of the GPL members confirmed that the meeting was held, the Investigation Team requested Mr Skosana to adduce any corroborating evidence to substantiate his averments that a GPL meeting took place at Ruth First House, Saxonwold on 11 October 2023.
- 6.1.35. Mr Skosana provided the Investigation Team with the contact details of Ms Sehalahala indicating that she was the organiser of the meeting and could therefore verify that whether the meeting of 11 October 2023, took place.

Engagements with Ms Keoratile Sehalahala

- 6.1.36. On 22 September 2025, the Investigation Team through a telephonic conversation, which was subsequently confirmed in an email requested Ms Sehalahala, the former Secretary/Personal Assistant of Mr Makhubele, to assist the Public Protector in establishing whether she had organised or convened a GPL meeting on 11 October 2023 at Ruth First House, Saxonwold, allegedly at the request of Mr Makhubela, as asserted by Mr Skosana.

- 6.1.37. A response from Ms Sehalahala was due on Friday, 26 September 2025. However, no response has been received to date, and follow-up telephone calls from the Investigation Team have remained unanswered.

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

- 6.1.38. On 22 October 2025, the Complainant was served with a notice in terms of Rule 41(1) of the Public Protector Rules for his comment or reply to the preliminary outcomes of the investigation.
- 6.1.39. On 06 November 2025, the Complainant requested an extension to respond by 28 November 2025; however, no response was received on the due date. On 01, 12 December 2025 and 08 January 2026, email correspondence was addressed to the Complainant reminding him to respond to the Rule 41(1) Notice.

Reply to the Rule 41(1) Notice

- 6.1.40. On 08 January 2026, the Complainant replied and stated *inter alia* that:
- 6.1.40.1. He respectfully submits that the investigation, as presently conducted, reflects serious shortcomings in due diligence, particularly in relation to the assessment and verification of cellphone and electronic communication records.
- 6.1.40.2. The investigation places decisive weight on denials by implicated parties, diaries, and the absence of formal records, while failing to pursue objective and independent evidence that ordinary citizens do not have access to. Cellphone records and call logs that are not accessible to private individuals and can only be lawfully obtained through state authority. Despite clear factual disputes and mutually exclusive versions, no effort appears to have been made to obtain or analyse such records.
- 6.1.40.3. The absence of minutes or attendance registers cannot, on its own, be treated as proof that no meeting occurred, particularly where the alleged meeting was informal, political, or convened outside normal legislative processes.

- 6.1.40.4. He submits that the investigation falls short of the standard of thoroughness required by section 182 of the Constitution and the Public Protector Act, as it did not exhaust readily identifiable avenues of independent corroboration within the exclusive reach of the state.
- 6.1.40.5. He therefore requests that the Public Protector reconsider the intended closure of this matter and conduct further investigation, including the lawful procurement and analysis of relevant cellphone and electronic communication records, to properly test the competing versions and ensure a just, credible, and evidence-based outcome.

Applicable law

Constitution of the Republic of South Africa, 1996

- 6.1.41. Section 43(b) stipulates amongst others that in the Republic, the legislative authority of the provincial sphere of government is vested in the provincial legislatures, as set out in section 104.¹
- 6.1.42. Section 111(1) states at the first sitting after its election, or when necessary to fill a vacancy, a provincial legislature must elect a Speaker² and a Deputy Speaker from among its members.
- 6.1.43. Section 114(1) and (2) sets out the powers of a provincial legislature and stipulates amongst others that a provincial legislature may consider, pass, amend or reject any Bill before the legislature; and initiate or prepare legislation, except money Bills. A provincial legislature must provide for mechanisms to ensure that all provincial executive organs of state in the province are accountable to it; and to maintain oversight of the exercise of provincial executive authority in the province, including the implementation of legislation; and any provincial organ of state.

¹ Section 104 of the Constitution states inter alia that the legislative authority of a province is vested in its provincial legislature.

² Rule 64 of the Gauteng Provincial Legislature Standing Rules indicates that the Executive Authority of the Legislature is vested in the Speaker.

6.1.44. Section 125(1) and (2) states amongst others that the executive authority of a province is vested in the Premier of that province and that the Premier exercises the executive authority, together with the other members of the Executive Council by implementing provincial legislation in the province; implementing all national legislation within the functional areas listed in Schedule 4 or 5 except where the Constitution or an Act of Parliament provides otherwise; and by administering in the province.

6.1.45. Section 132(1) provides that the Executive Council of a province consists of the Premier, as head of the Council, and no fewer than five and no more than ten members appointed by the Premier from among the members of the provincial legislature.

6.1.46. Section 136(1) provides that:

Members of the Executive Council of a province must act in accordance with a code of ethics prescribed by national legislation.

Executive Members' Ethics Act, 1998

6.1.47. Section 1 of the EMEA provides that the Executive Council means a Provincial Executive Council contemplated in section 132 of the Constitution and 'MEC' means a Member of an Executive Council and includes the Premier of Gauteng.

6.1.48. The Public Protector is empowered, in terms of section 3 of the EMEA, to investigate breaches of the Code when a complaint is made in terms of section 4 of the EMEA.

6.1.49. Section 2(1) of EMEA provides that "*The President must, after consultation with Parliament, by proclamation in the Gazette, publish a code of ethics prescribing standards and rules aimed at promoting open, democratic and accountable government and with which Cabinet members, Deputy Ministers and MECs must comply in performing their official responsibilities*".

6.1.50. Section 2(2)(b) of EMEA provides that the Code must-

- (b) include provisions prohibiting Cabinet members, Deputy Ministers and MECs from-
- (i) ...;
 - (ii) acting in a way that is inconsistent with their office;
 - (iii) ...;
 - (iv) ...; and
 - (v) acting in a way that may compromise the credibility or integrity of their office or of the government.

- 6.1.51. Section 4 of the EMEA provides that the Public Protector must investigate in accordance with section 3, an alleged breach of the Code on receipt of a complaint by the President, a member of National Assembly or a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet Member or Deputy Minister.

Executive Ethics Code

- 6.1.52. The general standards which the members of the Executive³ must comply with are contained in clause 2.1 of the Code, which provides that:

“2.1 Members of the Executive must, to the satisfaction of the President or the Premier of Gauteng, as the case may be-

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

- 6.1.53. Clause 2.2 provides that *“In deciding whether members of the Executive complied with the provisions of clause 2.1, the President or Premier of*

³ Member of the Executive means a Cabinet member, a Deputy Minister or a Member of a Provincial Executive Committee, and Member` and `Executive` have corresponding meaning.

Gauteng, as the case may be, must take into account the promotion of an open, democratic and accountable government.”

- 6.1.54. Clause 2.3(c) and (d) provides that Members of the Executive may not act in a way that is inconsistent with their position.

Standing Rules of the GPL, Revision 9

- 6.1.55. Rule 19 states amongst others that the Speaker as the head of the Legislature safeguards the independence of the Legislature, maintains authority of the Legislature, ensures that the Rules are observed and that meetings are conducted in an orderly manner according to the Constitution and these Rules.
- 6.1.56. Rule 24 states inter alia that the Chief Whip is responsible for ensuring attendance in the House in liaison with other Whips and that s/he is responsible for political consultation among parties in the Legislature.

Analysis

- 6.1.57. Chapter 6 of the Constitution provides for a clear separation of powers between the legislative authority⁴ and the executive authority⁵ of the province to the extent that it is relevant to the present complaint.
- 6.1.58. The doctrine of separation of powers (trias politica) requires that the state authority must be divided to lessen the power in the hands of one authority and thus to protect the citizens against abuse of power. This doctrine precludes one arm of the state from impermissibly assuming the functions that fall within the domain of another arm.⁶

⁴ Section 104 of the Constitution vests the legislative authority of the province to the provincial legislature.

⁵ Section 125 of the Constitution vests the executive authority of the province to the Premier.

⁶ National Director of Public Prosecutions and Others v Freedom Under Law (67/2014) [2014] ZASCA 58; 2014 (4) SA 298 (SCA); 2014 (2) SACR 107 (SCA); [2014] 4 All SA 147 (SCA) (17 April 2014) at para 51.

- 6.1.59. The Speaker in any provincial legislature is the authority who presides over the meetings and proceedings of the House and is responsible for running the legislature subject to the policy laid down by the Joint Rules Committee of Parliament.
- 6.1.60. On 14 March 2025 and 01 August 2025, the Public Protector sought clarity regarding an alleged meeting held on 11 October 2023 by sending letters to the Speaker of the Gauteng Provincial Legislature, requesting statements from individuals who were said to have attended or had knowledge of the meeting. The primary aim was to determine whether the meeting had taken place and if the Premier of Gauteng had been present.
- 6.1.61. In response, statements and clarifications were received from the relevant individuals between 27 March and 15 August 2025. These statements consistently indicated that the individuals had no knowledge of the meeting and refuted its occurrence.
- 6.1.62. After reviewing the statements submitted by the Premier of Gauteng, the Speaker, the Office Bearers of the Gauteng Provincial Legislature, and NEHAWU, it is evident that all the individuals allegedly present at the meeting of 11 October 2023 denied the Complainant's version of events.
- 6.1.63. Notably, the Chief Whip confirmed in his response dated 12 August 2025 that the meeting never took place and had been postponed indefinitely, as the issues he intended to address were already resolved with the former Speaker regarding disruptions in house and committee meetings. Furthermore, the Chief Whip's claim that the Premier, unlike the President, remains a "member" of the Legislature with the right to attend its meetings is fundamentally unsustainable.
- 6.1.64. It is trite that a separation of the powers of the Executive and the Legislature is *sine qua non* to the key founding values of the Constitution namely,

accountability, transparency and openness.⁷ There can simply be no separation of powers if the Premier being the head of Executive in the province⁸ is allowed to be a member of the Executive (one arm of the State) and a member of the Legislature (another arm of the State) simultaneously.

- 6.1.65. While the Executive Branch works closely with the Legislature to ensure that the laws and policies of the country reflect the needs and priorities of the people, a distinct separation of powers ought to be maintained, with each branch having distinct responsibilities to safeguard against any single arm accumulating too much authority. This architectural framework as outlined in the Constitution⁹ ensures that the Executive Branch operates within a system of checks and balances, thus promoting accountability and transparency.
- 6.1.66. The Constitution clearly creates a system in which there is a separation of the powers exercised by the different branches of the State. It also creates a system of checks and balances. The exercise of a power by one arm of state is checked by another to ensure that there is no abuse of state power. Organs of state ought to respect each other and the powers allocated to them by the Constitution. No organ of state should encroach upon the domain of the other organs.
- 6.1.67. Separation of the powers is thus an indispensable condition underlined in the Constitution to ensure accountability, transparency and openness. While the Executive Branch plays a pivotal role in shaping legal framework of the nation by assisting the Legislature to ensure that the laws are relevant, effective and responsive to the needs of the people, however, this does not take away from a distinct separation of powers, which ought to be maintained. This is important to ensure that Executive Branch operates within a system of checks and balances, thus promoting accountability and transparency.

⁷ Section 1 of the Constitution.

⁸ Section 125 of the Constitution.

⁹ Section 43, 114 and 125 of the Constitution, variously.

- 6.1.68. As outlined in the evidence, the Complainant's account of the alleged meeting is not supported by any independent evidence capable of challenging the consistent statements of the Premier, the Speaker, the Office Bearers, and NEHAWU. While independent corroboration is not strictly required to establish the truth, it serves as a safeguard against self-corroboration and is important in verifying allegations. Ultimately, no factual or objective evidence was found to substantiate the claim that the meeting took place or that the Premier and other Office Bearers attended.
- 6.1.69. Neither Mr Masondo nor Ms Sehalahala could corroborate Mr Skosana's assertions regarding the meeting. Furthermore, a site visit conducted by the Investigation Team at Ruth First House in Saxonwold confirmed that the location is an ANC office, as evidenced by visible party regalia on the premises.
- 6.1.70. An objective and a purposive reading of the meeting invite indicates that, the invite was for an ANC Caucus meeting, organised by the ANC Chief Whip, Mr Makhubela, inviting ANC comrades and/or members to a follow up meeting with NEHAWU to be held at Ruth First House Saxonwold, which is an ANC office as verified by Investigation Team during a visit on 17 September 2025. The meeting invite was addressed to "Comrades" under a memorandum titled "*ANC Caucus of the Gauteng Legislature*", featuring both ANC and GPL logos.
- 6.1.71. The ANC is a political party and a voluntary association where the relationship between the party and its members is regulated by contract of a unique nature as it is not a body established by statute.¹⁰
- 6.1.72. The office of the Chief Whip of the ANC is the central coordination point of all the activities of ANC in the GPL. Mr Makhubela is the current Chief Whip

¹⁰ See Ramakatsa and Others v Magashule and Others [2012] ZACC 31; 2013 (2) BCLR 202 (CC) at para 79.

of the ANC in GPL. The ANC caucus consists of all ANC members serving in GPL.¹¹

- 6.1.73. The caucus of a political party serve as the organ within which those elected by caucus to parliamentary positions account to the organisation as well as serving as institutions that ensure the accountability of members of the caucus. Political party caucuses also serve as the point of contact between the MPs and the leadership of the organisation to which they belong.¹²
- 6.1.74. By its nature, a parliamentary caucus does not fall under the category of institutions that can be referred to as state or any of its institutions. Part of the duties of the parliamentary caucus are to perform constituency duties, attend caucus meetings and other political meetings that complement the work of parliamentary caucus on behalf of its political organisation.
- 6.1.75. NEHAWU is a trade union formed by workers from the Education, Health, Government and Social Welfare sectors and it is affiliated to the COSATU, which is a political alliance of the ANC.
- 6.1.76. Therefore, the alleged contravention of the principle of separation of powers between the Executive and the Legislature by the Premier of Gauteng, as well as the conflation between the State and the political party lines are not borne out by the evidence placed at the disposal of the Public Protector.
- 6.1.77. Furthermore, a critical analysis of Clause 2.1 of the Code indicates that it is the President or Premier who determines whether the relevant obligations have been properly discharged or not. As a result, there might be merit in the legal consideration that *“the Public Protector is not empowered to make a judgement”* on whether a Member of the Executive has complied with the requirements of Clause 2.1 of the Code. Taking into account this legal limitation, it means that the jurisdictional competency of the Public Protector

¹¹ <https://www.ancparliament.org.za/content/anc-parliamentary-caucus>, accessed on 08 October 2025.

¹² <https://www.ancparliament.org.za/content/anc-parliamentary-caucus>, accessed on 08 October 2025.

should be limited to a substantive finding based only on Clause 2.3 of the Code.

- 6.1.78. The contentions raised by Complainant in his response to Rule 41(1) notice were noted, however, on closer scrutiny it is appropriate to submit these averments do not raise anything against the content or findings but rather seeks to dispute the investigation methodology and procedure followed by the Investigation Team. In this regard, it worth noting that section 7(1)(b)(i) of the Public Protector Act, 1994 gives the Public Protector a singular discretion to determine the format and procedure to be followed in conducting any investigation with due regard to the circumstances of each case.
- 6.1.79. It follows therefore that the Public Protector is a sole determinant regarding the investigation procedure and format to follow in order to procure evidence for a particular case. The permissive language of the section clearly confers on her a wide discretion to exercise in terms of the approach, procedure and methodology.
- 6.1.80. Similarly, in the matter of the *Minister of Agriculture, Fisheries and Forestry v Public Protector*¹³ the court held that the Public Protector was entitled, as provided for in the Public Protector Act, 1994 to determine the format and procedure and she opted or used in that matter. The court held that there was no obligation on the Public Protector to use the procedure the Minister suggested.
- 6.1.81. Furthermore, the Supreme Court of Appeal (SCA) in the matter of *Government Employee Medical Scheme v the Public Protector*,¹⁴ the SCA noted that “*Because subpoena powers are extraordinary coercive powers, they are generally reserved for courts. This means that where the power is granted to a body other than a court, the power should be interpreted restrictively*”

¹³ (21830/2014) [2017] ZAGPPHC 993 (13 March 2017) at Para 55.

¹⁴ (1000/19) [2020] ZASCA 111; [2020] 4 All SA 629 (SCA); 2021 (2) SA 114 (SCA) (29 September 2020) at Para 44.



- 6.1.82. In this instance, it is submitted that the Investigation Team conducted extensive investigation and gathered evidence through various methods which included an exchange of correspondence with all the relevant parties, meetings and interviews with the relevant stakeholders, perusal of relevant documents, consideration, and application of relevant legislation.
- 6.1.83. The evidence gathered using all the aforesaid methods was satisfactory and adequate to enable the Public Protector to arrive at a finding, based on a standard of a *“balance of probability”*. It cannot therefore be held that just because the Investigation Team did not obtain cellphone records as suggested by Complainant, the Investigation Team did not have an open and enquiring mind during the investigation. Furthermore, no evidence was placed before the Public Protector, which at face value constitutes or provides a reason to distrust all the statements given to the Investigation Team.
- 6.1.84. The power to subpoena cellphone records is extraordinary in nature and it is not an unfettered power. Considering the principle of legality and to mitigate intrusion upon individual fundamental rights, guaranteed by the Bill of Rights,¹⁵ the Public Protector may only subpoena cellphone records for the purpose of performing her constitutional and statutory obligations, only when objectively necessary. At this stage nothing appears to prompt the Public Protector to investigate further.

Conclusion

- 6.1.85. On the balance of probabilities, the evidence of a single and uncorroborated affidavit by Mr Skosana cannot surpass the weight of all other affidavits provided by various GPL members, who denied the meeting that a GPL meeting occurred on 11 October 2023 or that the Premier attended any such meeting in his executive capacity.

- 6.1.86. The overwhelming weight of the evidence by GPL members who provided statements to the Public Protector supports the conclusion that no GPL meeting took place on 11 October 2023, and accordingly, no breach of the separation of powers or violation of Clause 2.3(c) occurred
- 6.1.87. It is also concluded that the Public Protector is not empowered to make a judgment on whether a Member of the Executive has complied with the requirements of Clause 2.1 of the Code, due to the inherent limitations imposed by this provision.

7. FINDINGS

Having regard to the evidence, the Public Protector makes the following findings:

7.1. **Whether the Premier of Gauteng breached the separation of powers between the Executive and Legislature as well as conflated the state and the political party lines by being a part of the Legislature's meeting convened on 11 October 2023, and if so, whether such conduct constitutes violation of clause 2.1(c) and (d) and clause 2.3(c) of the Executive Ethics Code.**

- 7.1.1. The allegation that the Premier of Gauteng acted in a manner that is inconsistent with his office by contravening the principle of separation of powers between the Executive and Legislature as well as conflating the state and the political party lines by being a part of the Legislature's meeting convened on 11 October, **is not substantiated.**

Jurisdictional and Interpretive Findings

- 7.1.2. The Public Protector has jurisdiction under section 3 of the EMEA to investigate complaints alleging breaches of the Code by Members of the Executive, including Premiers.

7.1.3. However, Clause 2.1 of the Code, which requires Members of the Executive to discharge obligations "to the satisfaction of the President or the Premier, as the case may be," creates an interpretive constraint when the alleged violator is the Premier himself, as no external assessor is designated to determine "satisfaction" under this provision.

7.1.4. By contrast, Clause 2.3 contains no such qualifying language and applies uniformly to all Members of the Executive, including the Premier. The Public Protector retains full competence to investigate and make findings regarding alleged breaches of clause 2.3.

Substantive Findings on the Allegations

Alleged Breach of Clause 2.1(c) and (d)

7.1.5. The Public Protector is unable to make a finding that the Premier breached clauses 2.1(c) (acting in good faith and in the best interests of good governance) or 2.1(d) (acting consistently with the integrity of office) due to the structural limitation within clause 2.1 itself, which assigns the assessment function to the Premier in respect of other Members. This limitation does not reflect on the merits of the allegations but arises from the Code's own architecture.

Alleged Breach of Clause 2.3(c)

7.1.6. The allegation that the Premier acted in a manner inconsistent with his position by contravening the principle of separation of powers through attending a GPL meeting on 11 October 2023 is not substantiated on the available evidence.

7.1.7. All individuals allegedly present at the meeting, except Mr Skosana, deny that such a meeting occurred or that the Premier attended any GPL meeting in an official capacity.

- 7.1.8. The Chief Whip, Mr Makhubela, confirmed that the meeting was postponed indefinitely. The documentary evidence such as the copy of meeting invitation in possession of the Public Protector indicates that any contemplated meeting was an ANC party caucus meeting, not an official GPL meeting.
- 7.1.9. Furthermore, the site visit by the Investigation Team at Ruth First House Saxonwold on 17 September 2025 indicates that this venue is an ANC office as demonstrated by its visible regalia on the property. Neither Mr Masondo nor Ms Sehalahala could corroborate Mr Skosana's assertions regarding the existence of the meeting on 11 October 2023.
- 7.1.10. No other independent corroboration supports Mr Skosana's version of events and accordingly, there is no factual or evidentiary basis to find that the Premier violated clause 2.3(c) of the Code.

8. CONCLUSION

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



ADV KHOLEKA GCALEKA
PUBLIC PROTECTOR
REPUBLIC OF SOUTH AFRICA
DATE: 31 MARCH 2026

Assisted by: Ms Lerato Motaung
Senior Investigator: Gauteng Provincial Office