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

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INVESTIGATION INTO ALLEGATIONS OF IRREGULAR APPOINTMENT OF MEMBERS OF THE NATIONAL RAPID RESPONSE TASK TEAM, MEMBERS OF CERTAIN ADVISORY COMMITTEES, AND TWO SPECIAL ADVISERS, ADVOCATE MENZI SIMELANE AND MR RIEAZ SHAIK, BY THE FORMER MINISTER OF HUMAN SETTLEMENT, WATER AND SANITATION, MS LINDIWE SISULU, MP

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ACRONYMS / ABBREVIATIONS	DESCRIPTIONS
Adv	Advocate
ANCYL	African National Congress Youth League
CDW	Community Development Workers
Constitution	Constitution of the Republic of South Africa, 1996
Commission	Competition Commission
Complainant	Ms Emma Louise Powell
DIRCO	Department of International Relations and Cooperation
COO	Chief Operation Officer
COPE	Congress of the People
COSATU	Congress of South African Trade Union
CV	Curriculum vitae
DA	Democratic Alliance
Dispensation	Dispensation for the Appointment and Remuneration of Persons (Special Advisers) Appointed to Executive Authorities on Ground of Policy Considerations, in Terms of Section 12A of the Public Service Act, 1994
DG	Director-General
DHS	Department of Human Settlement
DIRCO	Department of International Relations and Cooperation
DPSA	Department of Public Service and Administration
DWS	Department of Water and Sanitation
Executive Ethics Code	Executive Ethics Code, 2000
EMEA	Executive Members' Ethics Act, 1998
GCC	General Conditions of Contracts
Investigation Team	Public Protector South Africa Investigating Team
LLB	Bachelor of laws

ACRONYMS / ABBREVIATIONS	DESCRIPTIONS
LGSETA	Local Government Sector Education and Training
NRRTT	National Rapid Response Task Team
Ministerial Handbook 2007	Handbook for Members of the Executive and Presiding Officers, 2007
MP	Member of Parliament
MPSA	Minister of Public Service and Administration
MTEF	Medium Term Expenditure Framework
PAC	Pan African Congress
PAIA	Promotion of Access to Information Act, 2000
Practice Note 3 of 2003	Practice Note SCM 3 of 2003
President Ramaphosa	The President of the Republic of South Africa, Mr Matamela Cyril Ramaphosa
PIMSS	Planning and Implementation Management Support System
Public Protector Act	Public Protector Act, 1994
PSC	Public Service Commission
PSR	Public Service Regulation, 2016
SSA	State Security Agency
TOR	Terms of Reference
WSA	Water Services Act, 1997

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 African, 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, 23 of 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 report relates to an investigation into allegations of irregular appointment of members of the National Rapid Response Task Team (NRRTT) and two Special Advisers, Advocate Menzi Simelane (Adv Simelane) and Mr Rieaz "Moe" Shaik (Mr Shaik), at compensation level IV of the *Dispensation for the Appointment and Remuneration of Persons (Special Advisers) appointed to Executive Authorities on Ground of Policy Considerations in terms of Section 12A of the Public Services Act, 1994*[1] (Dispensation), by the former Minister of Human Settlement, Water and Sanitation, Ms Lindiwe Sisulu, MP (Ms Sisulu).

(iii) The investigation originates from a complaint by the Democratic Alliance's (DA) Deputy Shadow Minister of Human Settlement, Water and Sanitation, Ms Emma Louise Powell (Complainant) and referred to the Public Protector South Africa by the Public Service Commission (PSC) on 28 February 2020. The Complainant further supplemented her complaint through a submission received by the Public Protector on 22 May 2020.

(iv) In the main, the Complainant alleged that:

[1] Annexure F of the Handbook for Members of the Executive and Presiding Officers (2007) (Ministerial Handbook 2007) approved by Cabinet on 07 February 2007.

(a) On 17 January 2020, she received a written reply, dated 04 December 2019, to Parliamentary Question 1720 (Question 1720), from Ms Sisulu indicating that she had appointed nineteen (19) members of the NRRTT;

(b) The appointment of the NRRTT members "*appeared to be additional to Ministerial staff limits as per the Ministerial Handbook, given that the Ministerial staff were detailed separately to the NRRTT, and includes a number of seemingly politically aligned individuals - the likes of ex Fees Must Fall leader, Chumani Maxwele; ex PAC Leader, Thami ka Plaatjie; and ex COPE Regional leader, Mbulelo Ncedana";*

(c) Ms Sisulu's reply revealed that seven (7) of the nineteen (19) NRRTT members were employed by the erstwhile Department of Human Settlement, Water and Sanitation (the Department), albeit having not formally submitted their curricula vitae (CVs). It was also unclear, which legislative prescripts were invoked and/or which recruitment and selection processes were followed to affect the said appointments;

(d) The appointments of the NRRTT *are "inconsistent with the core functions and purpose of the Minister's office...*" Further that the said appointments are "*inconsistent with the Constitution… irrational and corrupt to have appointed departmental staff members without having so much as supplied CV's and, that the Minister and her charges did not follow even the basic public service employment recruitment and appointment processes…"(sic);*

(e) Ms Sisulu's reply also revealed that she had appointed Messrs Simelane and Shaik as Special Advisers at compensation level IV.[2] This was despite the "*apparent lack of qualifications, experience or expertise in relation to the*

[2] In terms of *Dispensation for the Appointment and Remuneration of Persons (Special Advisors) appointed to Executive Authorities on Ground of Policy Considerations in terms of Section 12A of the Public Services Act, 1994,* issued by the Department of Public Services and Administration with effect from 01 April 2017.

functions of the Department of Human Settlement, Water and Sanitation" by the two advisers.

(f) The fact that Messrs Simelane and Shaik have qualifications in law and optometry respectively, provides evidence that these appointments were irrational and unlawful as they are not qualified to provide advice to Ms Sisulu, whose focus is on water, sanitation and housing delivery. "*This is especially egregious given the decimated financial state of the Department and the Water Boards reporting to the Department, and its patently clear failure to fulfil its mandate in light of the current drought crippling many parts of South Africa";*

(g) On 20 January 2020, Ms Sisulu re-issued an amended parliamentary response to the DA, withdrawing the list of the names originally made public in her reply, dated 04 December 2019;

(h) On 15 April 2020, Ms Sisulu drafted and signed a memorandum addressed to the NRRTT for Water and Sanitation, purporting to disband the NRRTT with immediate effect;

(i) Despite the afore-mentioned memorandum, the then Ministry's spokesperson, Mr McIntosh Polela, subsequently denied the disbandment of the NRRTT; and

(j) On 19 May 2020, the Complainant was furnished, via the Parliamentary Question's office, with a response to a follow up written Parliamentary Question from 13 March 2020, in which she had requested details of the recruitment and selection process followed in the appointment of members of the NRRTT. The response did not deal with the specific questions raised, save to summarise the response by saying that: "*We have since 2015 appointed persons with the necessary skills and competencies, taking into account their respective track records experience, knowledge and expertise."*

(v) Based on the analysis of the complaint, the following issues were considered and investigated:

(a) Whether the former Minister of Human Settlement, Water and Sanitation, Ms Lindiwe Sisulu, improperly appointed members of the National Rapid Response Task Team and whether such conduct constitutes improper conduct as contemplated in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994;

(b) Whether the former Minister of Human Settlement, Water and Sanitation, Ms Lindiwe Sisulu, improperly appointed members of the advisory committees in terms of section 76(1) of Water Services Act, 1997 and whether such conduct constitutes improper conduct as contemplated in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994; and

(c) Whether the former Minister of Human Settlement, Water and Sanitation, Ms Lindiwe Sisulu, improperly appointed Advocate Menzi Simelane and Mr Rieaz Shaik as special advisors and whether such conduct constitutes improper conduct as contemplated in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994.

(vi) The investigation was conducted in terms of section 182(1) of the Constitution and section 6(4) of the Public Protector Act. It included an analysis of all the relevant documents, application of relevant laws, case law and related prescripts.

(vii) On 08 December 2022, notices in terms of section 7(9)(a) of the Public Protector Act (section 7(9) Notices) were delivered to Ms Sisulu and the Director-General of the Department, Mr MS Tshangana (Mr Tshangana), to

provide an opportunity for responses on the likely adverse findings and proposed remedial action. Section 7(9)(a) of the Public Protector Act provides that persons implicated in an investigation by the Public Protector, are to be allowed the opportunity to make representations regarding same.

(viii) Section 7(9) Notices were also delivered to the President of Republic of South Africa, Mr CM Ramaphosa (President), the Minister of Water and Sanitation, Mr Senzo Mchunu, MP (Mr Mchunu) on 08 December 2022 and to the Minister of Human Settlement, Ms Mmamoloko Kubayi, MP (Ms Kubayi) on 09 December 2022, to provide for an opportunity to respond to the proposed remedial action.

(ix) A response from Ms Sisulu was received on 02 February 2023 after an extension was granted in terms of Rule 23(3) of the Public Protector Rules,[3] The responses and information/evidence submitted in response to the section 7(9) Notice were duly considered by the Public Protector in relation to the substance of any allegations against the person concerned or the grounds for adverse findings.

(x) Responses noting the intended findings and remedial actions were received from Mr Mchunu and the Acting Director-General of DHS, Ms S Ngxongo, through letters, dated 20 December 2022, respectively.

(xi) No responses were received from the President and Ms Kubayi in this regard.

(xii) Having regard to the evidence and regulatory framework determining the standard that Ms Sisulu should have complied with, the following findings are made:

[3] Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018 as amended.

(a) Whether the former Minister of Human Settlement, Water and Sanitation, Ms Lindiwe Sisulu, improperly appointed members of the National Rapid Response Task Team and whether such conduct constitutes improper conduct as contemplated in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994:

(aa) The allegation that Ms Sisulu improperly appointed members of the NRRTT-DWS, is substantiated.

(bb) The Public Protector finds that, contrary to the principle enunciated in the *Affordable Medicines* case, which requires the Executive Authority to exercise no power and perform no function beyond that conferred upon them by law, there is no evidence of legislative prescripts which empowered Ms Sisulu to make the appointments of members of the NRRTT-DHS and in so doing, acted inconsistent with the dictates of section 195(1)(a) of the Constitution, which requires maintenance of high standard of professional ethics.

(cc) Therefore, the conduct of Ms Sisulu in this regard constitutes improper conduct as envisaged by section 182(1)(a) of the Constitution or maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

(dd) The allegation that Ms Sisulu improperly appointed members of the NRRTT-DWS, is not substantiated.

(ee) The appointment of members of the NRRTT-DWS was made in terms of section 76(1) of the WSA, and the provision does not provide for a specific process to be followed by Ms Sisulu in doing so.

(ff) The evidence provided to the Public Protector indicates that Ms Sisulu appointed members of the NRRTT-DWS based on their expertise and the

knowledge she had of some of the candidates as required by section 76(2) of the WSA.

(b) Whether the former Minister of Human Settlement, Water and Sanitation, Ms Lindiwe Sisulu, improperly appointed members of the advisory committees established in terms of section 76(1) of the Water Services Act, 1997 and whether such conduct constitutes improper conduct as envisaged by section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994

(aa) The allegation that the Minister improperly appointed an advisory committee established in terms of section 76(1) of the Water Service Act, 1997, is not substantiated.

(bb) It was observed that section 76(1) of the WSA does not make provision for a specific process to be adhered to when effecting appointments of an advisory committee in terms thereof.

(cc) Save for Dr Kruger and Mr Nxumalo, it could not be determined based on the CVs provided that the other five members of the Sanitation Committee possessed "*a proven and clear understanding and experience of South African's Water supply and sanitation services…"* as contemplated in paragraph 4.1 of the ToR and the required expertise as contemplated in section 76(2) of the WSA.

(dd) Although it could not be conclusively determined that the appointment of the members of the Sanitation Committee was improper, a considered view is that the lack of a defined process to be followed in the appointment of members of the advisory committees in terms of section 76(1) of the WSA, such as the Sanitation Committee, is susceptible to abuse.

(c) Whether the former Minister of Human Settlement, Water and Sanitation, Ms Lindiwe Sisulu, improperly appointed Advocate Menzi Simelane and Mr Rieaz Shaik as special advisors and whether such conduct constitutes improper conduct as contemplated in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994

(aa) The allegation that there were irregularities during the appointment of Messrs Simelane and Shaik as Special Advisers by Ms Sisulu, is not substantiated.

(bb) Ms Sisulu appointed Adv Simelane in accordance with Section 12A of the PSA and the Dispensation.

(cc) In line with paragraph 11 of the Dispensation, Ms Sisulu submitted proposals/recommendations for approval of compensation level IV in respect of the appointment of Messrs Adv Simelane and Shaik, dated 12 June 2019 and 24 June 2019 respectively.

(dd) Mr Mchunu granted approvals of compensation level IV for Messrs Simelane and Shaik through letters, dated 3 July 2019 and 24 July 2019 respectively.

(ee) Adv Simelane entered into an employment contract 02 August 2019 with Director-General, Mr Tshangana. Although Mr Shaik was also identified as one of Ms Sisulu's special advisers, he did not take up the position.

(ff) Therefore, the conduct of Ms Sisulu does not constitute improper conduct in state affairs as envisaged in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

(xiii) The appropriate remedial action taken in terms of section 182(1)(c) of the Constitution, is the following:

(a) **The President of the Republic of South Africa**

(aa) To take cognisance of the irregularities resulting in maladministration and improper conduct during the appointment of members of the NRRTTs.

(b) **The Minister of Water and Sanitation**

(aa) To take cognisance of the irregularities resulting in maladministration and improper conduct during the appointment of members of the NRRTT-DWS and the Sanitation Committee; and

(bb) Must, within the scope of his powers as envisaged in the WSA, consider the development of the regulatory instruments, and guidelines to govern the selection and recruitment processes of members of the advisory committees as provided for in terms of section 76(1) of the Water Services Act, within ninety (90) calendar days from the date of the report.

(c) **The Minister of Human Settlement**

(aa) Take cognisance of the irregularities resulting in maladministration and improper conduct during the appointment of members of the NRRTT-DHS; and

(bb) Ensure compliance with the applicable statutory prescripts, including sections 8 and 9 of the PSA and regulation 57 of the PSR, for the future appointments of the NRRTT-DHS.

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 empower 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 and to implement the remedial action, where applicable:

1.2.1 Mr MC Ramaphosa, the President of the Republic of South Africa (President Ramaphosa);

1.2.2 Ms Mmamoloko Kubayi, the Minister of Human Settlement (Ms Kubayi);

1.2.3 Ms Lindiwe Sisulu, the former Minister of Human Settlement, Water and Sanitation (Ms Sisulu),

1.2.4 Mr Senzo Mchunu, MP, Minister of Water and Sanitation (Mr Mchunu); and

1.2.5 Acting Director-General of the Department, Ms S Ngxongo (Ms Ngxongo).

1.3 A copy of the report is also provided to the Complainant.

1.4 The report relates to an investigation into allegations of irregular appointment of members of the National Rapid Response Task Team (NRRTT) and two Special Advisers, Advocate Menzi Simelane (Adv Simelane) and Mr Rieaz 'Moe' Shaik (Mr Shaik), at compensation level IV of the *Dispensation for the Appointment and Remuneration of Persons (Special Advisers) appointed to Executive Authorities on Ground of Policy*

Considerations in terms of Section 12A of the Public Services Act, 1994 (Dispensation), by Ms Sisulu.

2. THE COMPLAINT

2.1 The investigation originates from a complaint lodged by the Complainant and referred to the Public Protector by the Public Service Commission (PSC) on 28 February 2020, through a letter from Commissioner Dr TB Luthuli (Dr Luthuli), dated 11 February 2020. The PSC referred the matter to the Public Protector, on the basis that it did not fall within the ambit of the PSC.

2.2 The Complainant further supplemented her complaint through a submission received by the Public Protector on 22 May 2020. In her complaint, it is alleged, *inter alia,* that:

2.2.1 On 17 January 2020, she received a written reply, dated 04 December 2019, to Parliamentary Question 1720 (Question 1720), from Ms Sisulu indicating that she had appointed nineteen (19) members of the NRRTT;

2.2.2 The appointment of the NRRTT members "*appeared to be additional to Ministerial staff limits as per the Ministerial Handbook, given that the Ministerial staff were detailed separately to the NRRTT, and includes a number of seemingly politically aligned individuals - the likes of ex Fees Must Fall leader, Chumani Maxwele; ex PAC Leader, Thami ka Plaatjie; and ex COPE Regional leader, Mbulelo Ncedana";*

2.2.3 Ms Sisulu's reply revealed that seven (7) of the nineteen (19) NRRTT members were employed by the erstwhile Department of Human Settlement, Water and Sanitation (the Department), albeit having not formally submitted their curricula vitae (CVs). It was also unclear, which

legislative prescripts were invoked and/or which recruitment and selection processes were followed to affect the said appointments;

2.2.4 The appointments of the NRRTT *are "inconsistent with the core functions and purpose of the Minister's office...*" Further that the said appointments are "*inconsistent with the Constitution… irrational and corrupt to have appointed departmental staff members without having so much as supplied CV's and, that the Minister and her charges did not follow even the basic public service employment recruitment and appointment processes…"* (sic)*;*

2.2.5 Ms Sisulu's reply also revealed that she had appointed Messrs Simelane and Shaik as Special Advisers at compensation level IV.[4] This was despite the "*apparent lack of qualifications, experience or expertise in relation to the functions of the Department of Human Settlement, Water and Sanitation"* by the two advisers.

2.2.6 The fact that Messrs Simelane and Shaik have qualifications in law and optometry respectively, provides evidence that these appointments were irrational and unlawful as they are not qualified to provide advice to Ms Sisulu, whose focus is on water, sanitation and housing delivery. "*This is especially egregious given the decimated financial state of the Department and the Water Boards reporting to the Department, and its patently clear failure to fulfil its mandate in light of the current drought crippling many parts of South Africa";*

2.2.7 On 20 January 2020, Ms Sisulu re-issued an amended parliamentary response to the DA, withdrawing the list of names originally made public in her reply, dated 04 December 2019;

[4] In terms of *Dispensation for the Appointment and Remuneration of Persons (Special Advisors) appointed to Executive Authorities on Ground of Policy Considerations in terms of Section 12A of the Public Services Act, 1994,* issued by the Department of Public Services and Administration with effect from 01 April 2017.

2.2.8 On 15 April 2020, Ms Sisulu drafted and signed a memorandum addressed to the NRRTT for Water and Sanitation, purporting to disband the NRRTT with immediate effect;

2.2.9 Despite the afore-mentioned memorandum, the then Ministry's spokesperson, Mr McIntosh Polela, subsequently denied the disbandment of the NRRTT; and

2.2.10 On 19 May 2020, the Complainant was furnished, via the Parliamentary Question's office, with a response to a follow up written Parliamentary Question from 13 March 2020, in which she had requested details of the recruitment and selection process followed in the appointment of members of the NRRTT. The response did not deal with the specific questions raised, save to summarise the response by saying that: "*We have since 2015 appointed persons with the necessary skills and competencies, taking into account their respective track records experience, knowledge and expertise".*

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector is an independent constitutional institution established in terms of 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 the additional powers and functions prescribed by national legislation, including the Public Protector Act. 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 In her affidavit, dated 04 August 2021, Ms Sisulu amongst others, raised the following issues:

3.5 That the Public Protector, in terms of section 6(3) of the Public Protector Act[5] should have refused the complaint, because if Ms Powell was not happy with her response or suspected corruption and irrationality, as she now asserts in the complaint, she should have referred the matter to the relevant Parliamentary Committees for further investigation.

3.6 Furthermore, the Complainant had ostensibly not taken all reasonable steps to exhaust her legal remedies in the matter.

3.7 It should be noted that the language used in section 6(3) of the Public Protector Act is '*may refuse*' and therefore empowers the Public Protector to exercise a discretion in terms of the complaint received. Having considered the issues raised by the Complainant and the Public Protector's

[5] Section 6(3) of the public Protector Act provides that "*The Public Protector may refuse to investigate a matter reported to him or her, if the person ostensibly prejudiced in the matter*
(1) "The Public Protector may refuse to investigate a matter reported to him or her, if the person ostensibly prejudiced in the matter is-

(a) … or
(b) prejudiced by conduct referred to in subsections (4) and (5) and has not taken all reasonable steps to exhaust his or her legal remedies in connection with such matter."

mandate, the Public Protector exercised her discretion in favour of investigating the matter in terms of section 6(4) of the Public Protector Act.

3.8 The exercise of the discretion in favour of investigating the matter was based on the following considerations:

3.8.1 It was noted that the Complainant had raised the issues of irregular appointments through Parliamentary Questions, which were accordingly responded to by Ms Sisulu. However, the Complainant was not satisfied with the information provided;

3.8.2 The Complainant indicated that numerous requests were made to the Chairperson of the Portfolio Committee for Human Settlement, Ms Rosina Semenya, MP, to summon Ms Sisulu to account before Parliament in relation to the on-going controversy surrounding the appointment of members of the NRRTT and Water Services Advisory Committees, which requests she ignored;

3.8.3 The Complainant also averred that, email correspondence were also directed to Mr Tshangana and Ms Sisulu, requesting information and clarity on numerous aspects of the NRRTT, which emails were also not responded to;

3.8.4 The Public Protector considered that the written replies to the Parliamentary Questions did not contain sufficient details to determine whether the appointments made by Ms Sisulu were consistent with the applicable regulatory framework;

3.9 Furthermore, this matter was referred to the Public Protector by the PSC, raising issues of irregular appointments by Ms Sisulu and the PSC was of the view that this could be appropriately dealt with by the Public Protector. In this regard, the principles of co-operative governance as contemplated in

section 41 of the Constitution were considered. In particular, section 41(1)(h)(ii) of the Constitution requires all organs of state to co-operate with one another in mutual trust and good faith by informing one another of, and consulting one another on, matters of common interest;

3.10 Based on the above considerations, the Public Protector was satisfied that the Complainant's allegations of irregular appointments fell within the purview of section 182(1)(a) of the Constitution and section 6(4)(a)(i) of the Public Protector Act.

3.11 Ms Sisulu further contended that she should have been provided, at the very least, with the copy of the complaint, which request[6] was initially not acceded to. The reasons for the rejection were detailed in a letter from the former Manager: Legal Services (PPSA), Mr Muntu Sithole, dated 27 July 2021.

3.12 However, Ms Sisulu disagreed with the response from Mr Sithole, including the interpretation of section 7(2) of the Public Protector Act.[7] It was considered that the essence of the complaint was sufficiently captured in the Public Protector's letter, dated 23 June 2020 and the subpoena, dated 31 May 2021. Ms Sisulu responded to the subpoena through an affidavit, dated 04 August 2021. Copies of the complaint were subsequently availed to Ms Sisulu on 07 September 2022.

[6] Made through a letter, dated 21 July 2021, from Mr Makhubela of the Office of the State Attorney (Pretoria).

[7] It provides that "*Notwithstanding anything to the contrary contained in any law no person shall disclose to any other person the contents of any document in the possession of a member of the office of the Public Protector or the record of any evidence given before the Public Protector, the Deputy Public Protector or a person contemplated in subsection (3)(b) during an investigation, unless the Public Protector determines otherwise*."

4. ISSUES IDENTIFIED FOR INVESTIGATION

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

4.1.1 Whether the former Minister of Human Settlement, Water and Sanitation, Ms Lindiwe Sisulu, improperly appointed members of the National Rapid Response Task Team and whether such conduct constitutes improper conduct as contemplated in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994;

4.1.2 Whether the former Minister of Human Settlement, Water and Sanitation, Ms Lindiwe Sisulu, improperly appointed members of the Advisory Committees in terms of section 76(1) of Water Services Act, 1997 and whether such conduct constitutes improper conduct as contemplated in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994; and

4.1.3 Whether the former Minister of Human Settlement, Water and Sanitation, Ms Lindiwe Sisulu, improperly appointed Advocate Menzi Simelane and Mr Rieaz Shaik as special advisers and whether such conduct constitutes improper conduct as contemplated in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994.

5. THE INVESTIGATION

5.1 Methodology

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

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

5.2 **Approach to the investigation**

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

(a) What happened?

(b) What should have happened?

(c) Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration, abuse of power or other improper conduct?

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

5.2.2 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, as well as the law. In this particular case, the factual enquiry principally focused on whether the alleged conduct of Ms Sisulu was inconsistent with the applicable prescripts.

5.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by Ms Sisulu and/or the Department in the recruitment of members of the NRRTT, members of the advisory committee appointed in terms of section 76(1) of the Water Services Act, 1997 (WSA) and Messrs Simelane and Shaik.

5.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and maladministration.

5.2.5 In a letter from the Complainant received by the Public Protector on 22 May 2020 (Supplementary complaint), the Complainant requested the Public Protector to investigate "*all advisory appointments made by the Minister in relation to Advisory Committee's established in terms of section 76(1) of the Water Service Act*". In her response to the Public Protector, dated 18 January 2021, Ms Sisulu also made reference to other advisory committees appointed in terms of section 99(1) of the National Water Act, 1998 (NWA).

5.2.6 Although the request for information relating to advisory committees, in terms of section 99(1) of the NWA, was included in the subpoena, dated 31 May 2021 and submitted by Ms Sisulu through her affidavit, dated 04 August 2022, the said information was used as background information and did not form the subject matter of the complaint. In this regard, Ms Sisulu provided comprehensive documentation on the advisory committees, established in terms of section 99(1) of the NWA, namely:

5.2.6.1 The Stabilisation and Efficient Functioning of the Water Sector Committee, on or about 24 October 2019; and

5.2.6.2 The Advisory Committee on Governance and Management of the Nation's Water Resources, with effect from 01 September 2019.

5.2.7 However, the investigation of the Public Protector focused on the appointment of the advisory committees, made in terms of section 76(1) of the WSA.

5.3 The Investigation Process

5.3.1 The investigation process commenced with correspondence to Ms Sisulu on 23 June 2020, wherein she was informed of the investigation as well as the information required from her.

5.3.2 The Public Protector has concluded the investigation and based on the information and evidence obtained during the course thereof, the Public Protector is now in a position to make findings and take appropriate remedial action to address the systemic deficiencies governing the appointments of members of the NRRTTs.

5.4 Key sources of information

5.4.1 Documents and correspondence

5.4.1.1 CDW Framework-Cabinet memo No 32, dated 11 June 2003;
5.4.1.2 SCM: Practice Note 3 of 2003, dated 05 December 2003;
5.4.1.3 Cabinet memo No 52, dated 05 August 2004;
5.4.1.4 CDW Programme Implementation Report, dated 24 July 2017;
5.4.1.5 The Dispensation, dated 01 April 2019;
5.4.1.6 Adv Simelane Security Clearance Certificate, dated 14 May 2019;
5.4.1.7 Proposal letters from Ms Sisulu to the MPSA, dated 12 and 25 June 2019;
5.4.1.8 Hourly rates consultants, dated 01 July 2019;
5.4.1.9 Adv Simelane Performance Agreement, dated 03 July 2019;
5.4.1.10 Letters of approval from MPSA to Ms Sisulu, dated 03 and 24 July 2019;
5.4.1.11 Adv Simelane's employment contract with the Department, dated 02 August 2019;
5.4.1.12 Remuneration level, dated 30 August 2019;
5.4.1.13 Approval to appoint NRRTT members, dated 30 August 2019;
5.4.1.14 Approval to appoint additional NRRTT members, dated 11 November 2019;
5.4.1.15 Written reply to Question No 172, dated 04 December 2019;

5.4.1.16 Complaint of Ms Powell, dated 23 January 2020;
5.4.1.17 Referral letter from Public Service Commission, dated 11 February 2020;
5.4.1.18 Written Reply to Question No 411, dated 13 March 2020;
5.4.1.19 Approval to appoint Advisory Committee Memorandum, dated 25 March 2020;
5.4.1.20 Request to investigate letter, dated 22 May 2020;
5.4.1.21 Question and Answer No 157, dated 27 May 2020;
5.4.1.22 Letter from Public Protector to Ms Sisulu, dated 23 June 2020;
5.4.1.23 Question and Answer No 402, dated 02 September 2020;
5.4.1.24 Letter from the Public Protector to Ms Makhasi, dated 12 November 2020;
5.4.1.25 Response from Ms Makhasi, dated 20 November 2020;
5.4.1.26 Question and Answer No 2721, dated 20 November 2020;
5.4.1.27 Response from Ms Sisulu to Public Protector, dated 18 January 2021;
5.4.1.28 Letter from Public Protector to MPSA, dated 31 May 2021;
5.4.1.29 Subpoena to Ms Sisulu, dated 31 May 2021;
5.4.1.30 MPSA response to the Public Protector, dated 18 June 2021;
5.4.1.31 Affidavit of Ms Sisulu, dated 04 August 2021;
5.4.1.32 Letter from Public Protector to Ms Sisulu, dated 07 September 2022;
5.4.1.33 Letter from Ms Sisulu to Public Protector, dated 03 October 2022;
5.4.1.34 ToR for Water Services Committee undated;
5.4.1.35 Copies of CVs of members of the NRRTTs;
5.4.1.36 Copies of agreements or contracts entered with members of the NRRTTs;
5.4.1.37 CV of Adv Simelane; and
5.4.1.38 CV of Mr Rieaz Shaik.

5.4.2 **Legislation**

5.4.2.1 Constitution of the Republic of South Africa, 1996;
5.4.2.2 Public Protector Act, 1994; and
5.4.2.3 Water Services Act, 1997.

5.4.3 **Case Law**

5.4.3.1 *Economic Freedom Fighters and Others v Speaker of the National Assembly and Another (*CCT76/17) [2017] ZACC 47; 2018 (3) BCLR 259 (CC); 2018 (2) SA 571 (CC) (29 December 2017)*;* and

5.4.3.2 *Affordable Medicines Trust and Others v Minister of Health and Another* (CCT27/04) [2005] ZACC 3; 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC) (11 March 2005).

5.4.4 **Notices issued in terms of section 7(9)(a) of the Public Protector Act (section 7(9) Notice)**

5.4.4.1 On 08 December 2022, a section 7(9) Notice was delivered to Ms Sisulu and Mr Tshangana, to provide them with an opportunity for responses on the likely adverse findings and proposed remedial action. Section 7(9)(a) of the Public Protector Act provides that persons implicated in an investigation by the Public Protector, are to be allowed the opportunity to make representations regarding same;

5.4.4.2 On 08 December 2022, section 7(9) Notices were delivered to President Ramaphosa and Mr Mchunu;

5.4.4.3 On 09 December 2022, a section 7(9) Notice was also delivered to Ms Mmamoloko Kubayi, MP (Ms Kubayi);

5.4.4.4 A response from Ms Sisulu was received on 02 February 2023, after an extension was granted in terms of Rule 23(3) of the Public Protector Rules.[8] The response to the section 7(9) Notice was duly considered by the Public Protector in this report; and

[8] Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018 as amended.

5.4.4.5 Responses noting the intended findings and remedial actions were received from Mr Mchunu and Ms Ngxongo, through letters, dated 20 December 2022, respectively.

5.4.5 **Notice issued in terms of Rule 41 of the Public Protector Rules**

5.4.5.1 On 09 June 2022, a Rule 41 Notice was delivered to the Complainant, to afford her an opportunity to make further representations regarding the issue relating to the appointment of the two Special Advisers.

5.4.5.2 On 14 June 2022, a response from the Complainant was received indicating that she would not be making further representations with regard to the matter.

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 Minister of Human Settlement, Water and Sanitation, Ms Lindiwe Sisulu, improperly appointed members of the National Rapid Response Task Team and whether such conduct constitutes improper conduct as contemplated in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994

Common cause

6.1.1 On 29 May 2019, the President announced his cabinet, which included the appointment of Ms Sisulu as the Minister of Human Settlement, Water and Sanitation.

6.1.2 Ms Sisulu appointed several members to serve on the NRRTT, for both the Department of Human Settlement (DHS) and the Department of Water and Sanitation (DWS).

6.1.3 On 06 March 2023, President Ramaphosa announced changes to his cabinet, which saw Ms Sisulu leave the cabinet and her role as Minister of Tourism.

Issue in dispute

6.1.4 The issue for the Public Protector's determination is whether Ms Sisulu improperly appointed members of the NRRTT**.**

The Complainant's version

6.1.5 The Complainant wrote a letter to the PSC, dated 23 January 2020, titled "*Investigation: The Appointment of Staff Members and/or Consultants in the Private Office of the Minister of Water and Sanitation and Human Settlement*' *National Rapid Response Task Team (NRRTT).*"

6.1.6 In her letter to the PSC, the Complainant indicated that in a written reply to Question 1720, submitted on 04 December 2019 and responded to on 15 January 2020, it was stated that some members of the NRRTT were recruited without submitting their CVs. The Complainant believed that these appointments were inconsistent with the core functions and the purpose of Ms Sisulu's office. She was of the view that these appointments were "*inconsistent with the Constitution; that it is irrational and corrupt to have appointed departmental staff members without their having so much as supplied CV's; and, that the Minister and her charges did not follow even the most basic public service employment recruitment process in these appointments" (sic).*

6.1.7 The Complainant supplemented her complaint with a submission received by the Public Protector on 22 May 2020 and alleged that:

6.1.7.1 On 17 January 2020, she received a written reply to Question 1720 from Ms Sisulu, noting that nineteen (19) members of the NRRTT were appointed by Ms Sisulu;

6.1.7.2 The NRRTT appeared to be additional to Ministerial Staff limits as per the Ministerial Handbook. However, the members of the NRRTT were detailed separately and included a number of seemingly politically aligned individuals, such as the former Fees Must Fall leader, Mr Chumani Maxwele (Mr Maxwele), the former Pan African Congress (PAC) leader, Mr Thami ka Plaatjie (Mr ka Plaatjie) and the former Congress of the People (COPE) Regional Leader, Mr Mbulelo Ncedana (Mr Ncedana);

6.1.7.3 Seven (7) of the nineteen (19) members of the NRRTT were said to have been employed by the Department, despite not formally submitting CVs. It was imprecise which legislative prescripts enabled the NRRTT's appointment or what recruitment and selection process was used;

6.1.7.4 After revealing the names of the NRRTT members, on 20 January 2020, Ms Sisulu re-issued an amended Parliamentary response to the DA, withdrawing the list of names originally made public in her reply;[9]

[9] In a written reply to Question 2721 and a request for the names of all persons employed as members of the NRRTT, the reply was as follows*:*
"Honourable Member, the document titled "Guide to Parliamentary Questions in the National Assembly" prohibits Members of Parliament, including Members of the Executive, from providing names of people or companies. The document referred to states that:
Questions are to be framed as concisely as possible. All unnecessary adjectives, references and quotations are omitted. Names of persons, bodies and, for example, newspapers are only used in questions if the facts surrounding the case have been proven. As the mere mention of such names could be construed as publicity for or against them, it should be clear that this practice is highly undesirable. If a question will be unintelligible without mentioning such names, the Departments concerned are notified of the name(s) and this phrase is used "… certain person (name furnished)."

6.1.7.5 Despite media enquiries regarding the nature and purpose of the NRRTT, Ms Sisulu at the time defended the appointments as necessary in the execution of the Department's core work; and

6.1.7.6 All claims by the DA that the thirteen million nine hundred thousand rand (R13.9 million) team was in fact a political campaign team, irregularly appointed as peripheral to Ministerial staff limits, and remunerated at the tax payers expense, were denied by Ms Sisulu and dismissed as 'false and malicious'.

6.1.8 The Complainant referred to the written reply to Question 1720, which contained a table with the details of the NRRTT members. The Complainant received the same list of the nineteen (19) members of the NRRTT as an annexure to her application, in terms of section 18(1) of the Promotion of Access to Information Act, 2000 (PAIA), dated 22 January 2020. The names of the NRRTT members are captured in the table below:

No	Name	Position	Qualifications as per CV
1.	Thami ka Plaatjie	Chairperson of NRRTT	Master's Degree
2.	M Ncedana	Deputy Convenor	ND: Public Management
3.	Xolile Burns Ncamashe	Deputy Chairperson	• BA Degree • Bachelor of Arts Honours (Philosophy) • Master of Social Science African Studies • Higher Diploma in Education
4.	LA Dichoetlise	Member	• Grade 12 • Office Administration Certificate • Business Management N6

No	Name	Position	Qualifications as per CV
5.	Ms Suliwe Ancedile Sihlwayi	Member	• BA Degree-Media Culture Communication • English Literature (Honours) (Cum Laude)
6.	Chumane Maxwele	Member	• B. Political Science Degree • Honours Degree in Political Science
7.	Mogomotsi Mogodiri	Member	• Professional Certificate in Government Communications and Marketing
8.	Ms Noli Qunta	Member	Still awaiting her CV
9.	Likhaya Nqezana	Member	CV mentioned a few certificates of attendance however she has indicated she is till completing them.
10.	Carla Motau	Member	Grade 12 indicated in the CV however no proof has been provided.
11.	Mahle Khuzani	Member	• Bachelor of Arts Degree • Post Graduate Certificate in Education (FET) • Certificate Programme in Housing Policy Development and Management
12.	Prince X Sigcawu	Member	Diploma in Education
13.	K Morero	Member	CV not received
14.	R Madlala	Member	CV not received

No	Name	Position	Qualifications as per CV
15.	T Skwatsha	Member	CV not received
16.	MB Ntuli	Member	CV not received
17.	P Khumalo	Member	CV not received
18.	S Byneveldt	Member	CV not received
19.	V Mabizela	Member	CV not received

Ms Sisulu's version

6.1.9 In a letter dated 23 June 2020, the Public Protector requested Ms Sisulu to respond to the allegations and she responded through a letter, dated 18 January 2021.

6.1.10 In her response, Ms Sisulu stated, *inter alia,* that:

6.1.10.1 "*In 2003, the South African government introduced the community development workers (CDWs) system. The focus of the programme, as adopted by the Cabinet Lekgotla in January of that year was to enable communities to make better use of government services and benefits, to foster community development as well as to improve quality of life of citizens…*

During his State of the Nation address, the President said that: "the government will create a public service echelon of multi-skilled community development workers who will maintain direct contact with the people where these masses live. We are determined to ensure that government goes to the people so that we sharply improve the quality of the outcomes of the public expenditures intended to raise the standard of living of our people."

In 2009, Cabinet Lekgotla resolve that the CDW programme should be intensified so that it can contribute towards government's objective of accelerating service delivery."

6.1.10.2 In an address by the former President of the Republic of South Africa, Mr Thabo Mbeki (President Mbeki), during the Community Development Workers Indaba, held at Gallagher Estate on 14 March 2008, his remarks on the mandate of the CDWS were as follows:

(a) "*To assist in the removal of development and service delivery bottlenecks;*
(b) *To strengthen the democratic social contract between government and the communities;*
(c) *To link communities you live and work in with government services and relay community concerns and problems back to government; and*
(d) *To support, nature and advocate for an organised voice for the poor and to improve government-community networks."* (sic)

6.1.10.3 The then Ministry of Human Settlement, Water and Sanitation (the Ministry), was on a continuous basis inundated with service delivery petitions from community members across South Africa, requesting interventions and assistance. "*In most instances officials are then called upon to respond to violent and risky situations arising from community protests due to perceived lack of service delivery as a result of numerous factors."*

6.1.10.4 Due to the politically charged nature of some of the protests that have been experienced, the Department deemed it appropriate to assemble a group of individuals to act as first responders and make contact with relevant stakeholders on the ground, where such occurrences arise. These individuals are chosen for their experiences as leaders in communities;

6.1.10.5 All members of the NRRTT are individually recruited for their ability to interact with communities and the DG enters into appointment contracts with each of them. They are remunerated as per the National Treasury Consultancy daily rates Category S of 2018/19, for members serving in Commissions, for actual days worked and payable on submission of monthly claims with relevant reports on services rendered;

6.1.10.6 Each member of the NRRTT was considered on the basis of experience and qualifications and was then remunerated at an appropriate comparable level in the public service. Each member of the NRRTT is appointed in accordance with the prescripts and report to the DG for performance in line with the contractual obligations. However, due to the nature of the intervention and the sensitivities of service delivery issues, these individuals are grouped as a team, hence the NRRTT. They are required to brief Ms Sisulu regularly on their interventions throughout the country;

6.1.10.7 There were no positions that required to be advertised, because the members of NRRTT did not fill any positions on the structure of the department. Each member was contracted for the duration agreed in line with prescripts and was contracted on the basis of his experience and qualifications. Additional factors taken into account included knowledge of the political climate, community engagement experience and knowledge of the public service; and

6.1.10.8 She was informed that only a few of the NRRTT members delayed in submitting their updated CVs, but the majority submitted their CVs at the time of contracting.

6.1.11 Ms Sisulu availed the following information to the Public Protector:

6.1.11.1 Written reply to Question 1720, which did not contain the table of the background information received from the Department, containing two

tables consisting of a list of twenty (20) officials in the office of Ms Sisulu and another table consisting of 19 members of the NRRTT;

6.1.11.2 Written reply to Parliamentary Question 411 (Question 411), to the Complainant, dated 13 March 2020. The Complainant asked the following questions, namely, "*What are the details of the (a) recruitment and (b) selection processes that were followed in the appointment of all staff members serving on the National Rapid Response Task Team?"* Amongst other things, Ms Sisulu's reply stated the following:

(a) In her Budget Vote speech of 07 May 2015, she announced the creation of a NRRTT and that it had been in existence since 2015 and their main responsibility was to address sector related challenges;

(b) In the Budget Vote of 10 May 2018, the former Minister of Human Settlement, Ms Noma-India Mfeketo, announced that:

"…*The Solution to these protests lies in a well-coordinated cooperative government involving all spheres of government and multi-sector departments. We will immediately deploy the National Rapid Response Team to engage the affected communities, while we also coordinate the integrated investigation to address the community challenges.*"

(c) Since 2019, her new portfolio included Water and Sanitation, resulting in increased scope of work, it required that she intensify community and stakeholder interactions, consultation and coordination; and

(d) Since 2015, they appointed persons with the necessary skills and competencies, taking into account their respective track records, experience, knowledge and expertise.

6.1.11.3 Written reply to Parliamentary Question 157 (Question 157), dated 19 May 2020, to the Complainant's question regarding the status of the NRRTT. In her reply to the question, Ms Sisulu indicated that the NRRTT was fully functional and that the members were still undertaking their normal tasks as per their contractual obligations and submitting their monthly reports;

6.1.11.4 A question for oral reply on 02 September 2020, to Parliamentary Question 402 (Question 402) from Ms M.R Mohlala of the Economic Freedom Fighter's (EFF), dated 25 August 2020, wherein Ms Sisulu was asked for the reasons for the de-establishment of the NRRTT. Ms Sisulu's response to the question was that the NRRTT was fully functional; and

6.1.11.5 Written reply to Parliamentary Question 2721 (Question 2721) to the Complainant, dated 20 November 2020. Ms Sisulu's reply was as follows:

(a) Regarding the statutory ground relied on to make the NRRTT appointments, members of the NRRTT for Water and Sanitation (NRRTT-DWS) were appointed in terms of section 76(1) of the WSA, whereas members of NRRTT for Human Settlement (NRRTT-DHS) were done additional to the establishment as per Public Services Regulations.

(b) Regarding the total cost to the Department and expense allowances, including bonuses paid to each member of the NRRTT, Ms Sisulu indicated that:

NRRTT-DW

(i) No travel allowances are provided for the members, however, they could submit claims when they have utilised their own transport to undertake official duties; and

(ii) The NRRTT members were remunerated for hours worked, and no bonuses were paid to the members of the NRRTT.

NRRTT-DHS

(i) The members were remunerated at a daily rate of five thousand five hundred and forty nine rand (R5 549.00) per day for a maximum of twenty (20) days per month for the Chairperson and the Deputy Chairperson and at a daily rate of four thousand three hundred and seventeen rand (R4 317.00) per day for a maximum of twelve (12) days per month for all other members. Payment is payable upon submission of individual monthly claims, supported by attendance registers and reports on actual work done;

(ii) The Department also made a cellular phone allowance available to the NRRTT members on a monthly basis, to the value of one thousand two hundred rand (R 1 200.00) per month on submission of a valid invoice within thirty (30) days, as per the Department Cellular Policy; and

(iii) There were no bonuses applicable to members of the NRRTT.

(c) Ms Sisulu's written reply to Question 2721, also contained a list of members of both the NRRTTs as follows:

No	NRRTT-DWS	No	NRRTT-DHS
1.	Mr Likhaya Ngqezana (Mr Ngqezana)	1.	Mr Shaun Edward Byneveldt (Mr Byneveldt)
2.	Ms Suliwe Sihlwayi (Mr Sihlwayi)	2.	Mr Mbulelo Ncedana (Mr Ncedana)
3.	Ms Duduzile Manana (Ms Manana)	3.	Mr Ongeziwe Hlakula (Mr Hlakula)

No	NRRTT-DWS	No	NRRTT-DHS
4.	Ms Deborah Dineo Raphuti (Ms Raphuti)	4.	Mrs Sibongile Promise Khumalo (Mrs Khumalo)
5.	Ms Nolonwabo Qunta (Ms Qunta)	5.	Mr Xhanti Sigcawu (Mr Sigcawu)
6.	Mr Chumani Maxwele (Mr Maxwele)	6.	Mr Maxwell Nceba Fuzani (Mr Fuzani)
7.	Mr Mahle Khuzani (Mr Khuzani)	7.	Mr Lucas Moagi (Mr Moagi)
8.	Mr Mzwakhe Maseou (Mr Maseou)	8.	Mr Ronald Madlala (Mr Madlala)
9.	Ms Carlo Motau (Ms Motau)	9.	Mr April Kenmore Morero (Mr Morero)
10.	Mr Thembeni Samuels (Mr Samuels)	10.	Ms Nomiki Mgezi (Ms Mgezi)

6.1.12 Ms Sisulu also furnished the Public Protector with a copy of a memorandum[10] titled "*Approval to Appoint Members to the Ministerial National Rapid Response Task Team (NRRTT) linked to Minister's Terms of Office from 1 September 2019 of the Department of Human Settlement, Water and Sanitation*" (NRRTT Approval Memo), approved by the Minister on 13 September 2019. The Memo approved the following recommendations:

6.1.12.1 The appointment of the nineteen (19) competent individuals as members of the Ministerial NRRTT, linked to the term of office of Ms Sisulu;

6.1.12.2 Appointment of the NRRTT members with effect from 01 September 2019, "*in line with National Treasury Consultancy daily rates, outside Public Service prescripts, to attend to matters related to Human Settlement and Water Sanitation"*;

6.1.12.3 Appointment of Mr ka Plaatjie as Chairperson of the NRRTTs;

[10] Dated 30 August 2019, and the Memo was submitted to the Public Protector together with Ms Sisulu's affidavit, dated 04 August 2021.

6.1.12.4 Appointment of Mr Ncedana as Deputy Chairperson for NRRTT-DHS; and

6.1.12.5 That the Director-General (DG) of Human Settlement and Acting DG of Water and Sanitation enter into appointment contracts with members of the NRRTT, upon approval by Ms Sisulu.

6.1.13 Paragraph 3.2 of the NRRTT Approval Memo recorded that "*Mr Thami ka Plaatjie assumed duties in the Department with effect from 01 June 2019 and should be remunerated as such. It was an oversight on the part of the Department to effect his appointment upon movement from the Department of International Relations and Cooperation of the Department and into the NRRTT. Please note that the Public Service Act, section 5(7)(a) provides:- 'A functionary shall correct any action or omission purportedly made in terms of this Act by that functional, if that action or omission was based on an error of fact or law or fraud and it is in the public interest."*

6.1.14 Paragraph 3.3.3 of the NRRTT Approval Memo also advised that:

"*Individuals appointed to the NRRTT for Water and Sanitation be appointed in terms of section 76(1) of the National Water Services Act and all other individuals be appointed in terms of Treasury Regulations."*

6.1.15 Paragraph 3.4 of the NRRTT Approval Memo further recorded that all appointed NRRTT members would enter into new appointment contracts with respective Departments as NRRTT members;

6.1.16 Paragraph 4.1 of the NRRTT Approval Memo recorded that:

"*The NRRTT members will be remunerated as per the National Treasury consultancy daily rates category s 2018/2019 for members serving in Commissions, for actual days worked and payable on submission of monthly claims with the relevant reports on services rendered…"*

6.1.17 In paragraph 4.1.2 of the NRRTT Approval Memo, the annual cost for the Department, excluding applicable overheads, was projected at thirteen million nine hundred and forty one thousand five hundred fifty eight rand (R13 941 558.00);[11]

6.1.18 Paragraph 4.2 of the Approval Memo further provides for remuneration costs:

4.2.1 "*Excludes any other additional work individual member overhead costs including flights, car hire, hotel accommodation, and other incidental costs, which shall be borne by the respective Departments, depending on NRRTT projects and location, until the end of the contract period.*

4.2.2 Will be paid under the Goods and Services Budget for the Minister's Unit in the Department of Human Settlement and in the Department of Water and Sanitation, under the Office of the Director-General goods and services, for the duration linked to the Minister's term of office.

4.2.3 The annual costs per Department, excluding applicable overheads, is approximately R6 970 779 per annum.

4.2.4 Both Department of Human Settlement and Water and Sanitation must set aside funds to meet the operation costs linked to the NRRTT."

6.1.19 The rates reflected in the NRRTT Approval Memo were based on annexure A of the National Treasury document[12] titled "*2019 REMUNERATION*

[11] The amount would be R 6 970 779 per each Department per annum.
[12] Submitted together with Ms Sisulu affidavit, dated 04 August 2020.

LEVELS: SERVICE BENEFIT PACKAGE FOR OFFICE BEARERS OF CERTAIN STATUTORY AND OTHER INSTITUTIONS". (2019 Remuneration Levels). Please refer to annexure A below reflecting only category S*:*

ANNEXURE A

RATES EFFECTIVE FROM 1 APRIL 2019

Category sub-category and official designation	2019/20 remuneration				
	Comparative full-time p.a	Part-time			
		Meeting fee per:		Board fee per annum	
		day	hour	5%	8%
CATEGORY S					
Chairperson	1 398 373	5 549	694	69 919	111 870
Vice-chairperson	1 186 777	4 709	589	59 339	94 942
Member	1 087 879	4 317	540	54 394	87 030

Ms Sisulu's affidavit

6.1.20 On 31 May 2021, the Public Protector issued a subpoena to Ms Sisulu,[13] in terms of section 7(4) and (5) of the Public Protector Act.

6.1.21 Ms Sisulu's comprehensive submission was made through the office of the State Attorney on 05 August 2021. In her submission, Ms Sisulu reiterated most of the information that was already communicated to the Complainant through the Parliamentary process and her submission to the Public

[13]. In this regard, the subpoena was not issued because of lack of co-operation with any of the Public Protector's requests and/or directives.

Protector, dated 18 January 2021, which would not be repeated save for the purpose of clarity or emphasis.

6.1.22 Ms Sisulu reported that the NRRTT consists of a Convenor and two deputy Convenors, one for the NRRTT-DHS and the other for NRRTT-DWS, having eight (8) members each as indicated in Question 1720 of 04 December 2019.[14]

6.1.23 She indicated that the names of the members of the NRRTT at the time of responding thereto, were listed in the Parliamentary Reply, however, the Convenor of the two NRRTT components, Mr ka Plaatjie, was inadvertently left out.[15]

6.1.24 She stated that the NRRTT-DHS was first established under her executive authority and she replicated the model when she took over the portfolio of DWS. Consequently, as at 01 September 2019, there were two separate NRRTTs for DHS and DWS respectively, with one Convener responsible for both.[16]

6.1.25 She indicated that the NRRTT-DWS is in fact an advisory committee under section 76 of the WSA.[17] There are two advisory committees established in terms of this section, the other being the Advisory Committee on Sanitation[18] (hereinafter referred to as the Sanitation Committee).

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[14] Par 15.4 and 72.4 of Ms Sisulu's affidavit.
[15] Ibid par 15.9.
[16] Ibid par 70.4 and 70.5.
[17] Section 76 of WSA provides that:

(1) The Minister may appoint advisory committees for matters falling within the scope of this Act.
(2) An advisory committee consists of a chairperson and such members as the Minister may determine, with due regard to the expertise required,
(3) A member of an advisory committee maybe paid an allowance determined by the Minister.
(4) An advisory committee has the functions conferred on it by the Minister."

[18] Par 70.6 of the Minister's Affidavit.

6.1.26 Ms Sisulu contended that section 76 of the WSA does not require her to follow any particular procedure when establishing and appointing members of these advisory committees.

6.1.27 She stated that before the appointment of members of the NRRTT-DWS and the Sanitation Committee, her office issued an oral directive to DWS to appoint certain identified skilled and competent individuals, taking into account their respective track records, experience, knowledge, and expertise.[19]

6.1.28 She indicated that it is important to highlight that at the time of this directive, the term of appointment of the NRRTT-DHS lapsed at the end of August 2019. The directive was then issued to appoint these individuals for both DHS and DWS.

6.1.29 Ms Sisulu indicated that there is one submission compiled and prepared by the Department for approval of the members of the NRRTTs and contains the names of all the individuals. "*The contracts of appointment in certain parts also indicate to the NRRTT for Human Settlement, Water and Sanitation*. *This was for administrative purposes."*

6.1.30 She also stated that paragraph 3.3.3 of the relevant submission provided that individuals appointed to the NRRTT-DWS be appointed in terms of section 76(1) of the WSA. The recommendation was approved on 13 September 2019.

6.1.31 Ms Sisulu stated that although the NRRTT-DHS was established by her, the structure of the NRRTT-DHS was located in the Department under the Chief Directorate: Stakeholder Management.

[19] Par 84.2 of Ms Sisulu's affidavit.

6.1.32 She further stated that for administrative purposes, the NRRTT-DHS members are appointed, with her approval, by the DG in terms of individual contracts, as consultants in terms of the PSA.[20]

6.1.33 Ms Sisulu indicated that there were nine (9) members of the NRRTT-DHS, eight (8) of whom were mentioned in Ms Sisulu's reply to Question 2721.

6.1.34 She indicated that there were twelve (12) members of the NRRTT-DWS, nine (9) of whom were mentioned in her reply to Question 2721.[21]

6.1.35 Ms Sisulu indicated that Mr Ncamashe was designated as the deputy Chairperson of the NRRTT- DWS. [22]

6.1.36 Ms Sisulu also submitted that the names provided in the affidavit constituted the members of the NRRTTs, as at May 2020.

6.1.37 Ms Sisulu provided copies of CVs and contracts for the 21 members of NRRTTs that were listed in paragraphs 72.1 and 72.3 of her affidavit. Some of the details are captured in the two tables below:

TABLE A: NRRTT-DHS

No	member	Contracting date	Qualifications /Experience as per CV
1.	Mr Stephen "Thamika" Plaatjie	27 September 2019[23]	• BA(Honours) • Master's Degree[24] • Work experience listed includes, Vista University: Lecturer; National Development

[20] Ibid par.87.4.
[21] In paragraph 72.3 of the Ms's affidavit.
[22] Ibid par 72.6.
[23] Member signed the contract on 22 September 2019.
[24] Copies of qualifications not provided.

No	member	Contracting date	Qualifications /Experience as per CV
			Agency; Senior Manager: Strategy Policy Coordination; Pan African Foundation: Director. • **Political Affiliation**: Head of African National Congress Research-2013-2016.
2.	Mr Mbulelo Ncedana	25 September 2019[25]	• National Diploma: Public Management and • Other qualifications[26] • Work experience listed includes, Masibambane Resource Centre: Manager, Habitat for Humanity in Western Cape : Director; City of Tygerberg: Ward Councillor (1996), Member of Parliament (2009) • **Political Affiliation**: Chairperson of ANC Youth League (ANCYL) branch ; ANC Regional Secretary; ANC Head of Organising; Chairperson of Congress of the People (COPE).
3.	Mr Prince Xhanti Sigcawu	25 September 2019	• Diploma in Education[27] • Work experience listed includes, Teacher; Head of Mbhashe Traditional Authority; Thubelisha Housing Institution: Regional General Manager (2006-2009) • **Political Affiliation**: Not listed
4.	Mr Shaun Edward Byneveldt	25 September 2019	• B.IURIS/B.Proc (incomplete) • Work experience listed includes, Accounting officer (2009-2018); Chair of Standing

[25] Date on which member signed the contract was not recorded.
[26] Copies of qualifications not provided.
[27] See *supra.*

No	member	Contracting date	Qualifications /Experience as per CV
			Committee: Western Cape (WC) Provincial Parliament; Speaker of WC Provincial Parliament (2004-2009). • **Political Affiliation**: Not specified but served in WC Provincial Parliament.
5.	Mr April Kenmore Morero	25 September 2019	No qualifications indicated. • Work experience listed include, Entrepreneur, Nestle South Africa: Sale representative; Orlando Fine Foods: Manager. • **Political Affiliation**: Not specified but was involved social programmes with the late Mrs Winnie Madikizela- Mandela.
6.	Mr Ronnie Thembinkosi Madlala	06 December 2019[28]	• ND: Cost and Management Accounting. • Work experience listed includes, the NRRTT. • **Political Affiliation**: Not listed.
7.	Mr Ranako Lucas Moagi	02 December 2019	• Grade 12 • N2 National Certificate[29] • Experience listed includes, Liberty: ECM Team Manager (2015-2016); Regent Insurance: Team Leader (2010-2015); Auto & General: Broker Sales Consultant; South African Airways: Saes and Voyager Consultant. • **Political Affiliation**: None listed.

[28] Date on which the member signed the contract, however, the DG did not complete the date on which he signed the contract.

[29] Certificates listed on CV but no copies were provided.

No	member	Contracting date	Qualifications /Experience as per CV
8.	Mr Ongeziwe Hlakula	20 December 2019[30]	• ND: Office Management and Technology • B.Tech: Business Administration[31] • Work Experience listed includes, Activate Change: Recruitment Coordinator, City of Cape Town: Specialist Performance Management. • **Political Affiliation**: Not listed.
9.	Mr Nceba Maxwell Fuzani	02 January 2020[32]	• Bachelor of Social Science • Executive Development (NQF Level 8)[33] • Work experience listed includes: DHS: Chief of Staff (2018-June 2019); Sports & Recreation SA: Special Advisor (November 2010-March 2017); Office of President: Cabinet Committee for Economic Affairs: Executive Secretary (1997-1999); Ministry of Provincial and Local Government: Director and Head of Ministerial Services (1999-2001) • Ministry of Education: Chief Director and Chief of Staff: Ministerial Services (2001). • **Political Affiliation:** SAYCO: Media Liaison (1986-1989); ANCYL: Eastern Cape Region: Deputy Secretary-General (1990-1991)

[30] Date on which the member signed the contract, however, the DG did not complete the date on which he signed the contract.
[31] Qualifications listed on CV but no copies were provided.
[32] See 16 *supra.*
[33] Qualifications listed on CV but no copies were provided.

TABLE B: NRRTT-DWS

No.	Member	Contracting date	Qualifications as per CV
1.	Mr Zolile Burns-Ncamashe	25 September 2019	• BA Degree • Bachelor of Arts Honours (Philosophy) • Master in Social Science • Higher Diploma in Education • Work experience listed includes, Board Experience Eastern Cape (EC) Rural Finance Corporation: Chairperson (2010-2012); EC Rural Development Trust: deputy Chairperson (2012-2015); Amathole Forestry Company: Non-Executive Director-Stakeholder Relations. • CONTRALESA[34]: National Organiser • House of Traditional Leaders: Deputy Chairperson (2002-2017) • **Political Affiliation**: No listed.
2.	Mr Lekgotla April Dichoetlise	25 September 2019	• Grade 12 • Office Administration Certificate[35] • Business Management N6[36] • Work experience listed includes, Blessing are Forever: Facilitator (2013-3014); Shoprite Group: Management Assistant (2014-2016) • **Political Affiliation**: ANCYL: Branch Secretary Pando Tladi (2014-current)

[34] The Congress of Traditional Leaders of South Africa.
[35] Listed on CV but no copy was provided.
[36] See *supra.*

No.	Member	Contracting date	Qualifications as per CV
3.	Ms Suliwe Ancedile Sihlwayi	25 September 2019	• BA Degree-Media, Communication and Culture • English Literature (Honours) (Cum Laude) • Work experience listed includes, Bay FM Community Radio Station: Co-hosted weekly current show called Community Matters (2010-2011); TrueFM: Content Producer & SABC Education Talk Show Host (February 2011-March 2012); Bay TV: Television Presenter and Producer (2013-2015); AFDA: Actress (2018); The Media Workshop: Scriptwriter and Producer (2019) • **Political Affiliation**: Not listed.
4.	Mr Chumani Maxwele	25 September 2019	• B. Political Science Degree • Honours Degree in Political Science[37] • Work experience listed includes Social Media Coordinator for Minister Nomaindia Mfeketo and Minister Siusulu (2018-2019); Ambassador for DHS (2017-2019); Minister Nathi Mthethwa: Ministerial Task Team member (2017-2019) • **Political Affiliation**: Not specified but was catalyst and founding member of #RhodesMustFall Student Movement (2015); Founding member of #FeesMustFall Student Movement (2015).

[37] Listed on CV but copies of qualifications were not provided.

No.	Member	Contracting date	Qualifications as per CV
5.	Mr Mogomotsi Mogodiri	25 September 2019	• Professional Certificate in Government Communications and Marketing • Advanced Course in Corporate Communication • Advanced Course in Media Management[38] • Work experience listed includes, Communication Commission and Media Consultancy (2019-to date); MEC for COGTA: Spokesperson for the MEC (February 2016-January 2019); Ministry of Arts and Culture: Spokesperson for Minister (Sep 2013-June 2014); Public Protector South Africa: Interim Communication Specialist (October 2010-June 2011). • **Political Affiliation**: ANCYL: Head-Sport (1990-1992), Arts and Culture; ANC Gauteng: Scriptwriter to Provincial Chairperson (2014-January 2016)
6.	Ms Nolonwabo Qunta	09 October 2019	• No qualifications obtained but mentioned studying BCom: Management in Marketing. • Work experience listed includes , Social Media Analysts & Community Manager : Lindiwe Sisulu Presidential Campaign (May 2017-December 2017); DAD Consulting Services: Social Media Campaign Manager (April 2018-August

[38] See *supra*

No.	Member	Contracting date	Qualifications as per CV
			2018); Africa Business Radio: Radio Presenter (January 2019- May 2019), NRRTT-DWS: Social Media Manager/Digital Communicator (September 2019-to date) • **Political Affiliation**: Not listed.
7.	Mr Likhaya Ngqezana	25 September 2019	• Executive Certificate in Monitoring Evaluation • Executive Leadership Certificate in Local Government Management[39] • Work experience listed includes, Department of Provincial & Local Government: Advisory Services to DG (2002); Peoplemetrics: Service Delivery Specialist (2002-2003); Deloitte & Touché (2003-2008); Department of Road & Public Works (EC): Senior Manager (2009-2013); Nelson Mandela Bay Municipality: Strategic Advisor to the Mayor (2013-2016), Freelance Consultant: Facilitation of Municipal Strategic Sessions (2016-2018). • **Political Affiliation:** Not listed.
8.	Ms Carla Maria Motau	25 September 2019	• Grade 12 • Courses attended[40] • Work experience listed includes Office of Deputy Minister of Public Service and

[39] Listed on CV but copies of certificates were not provided.
[40] See *supra*

No.	Member	Contracting date	Qualifications as per CV
			Administration: Administration (2012-Jnaury 2017); Security & Facilities Management (2017-to date) • **Political Affiliation**: Not listed.
9.	Mr Mahle Khuzani	25 September 2019	• BA Degree • Post Graduate Certificate in FET Teaching • Certificate Programme in Housing Policy Development and Management. • Work experience listed includes, DHS: Youth Ambassador (2016-2019); Mvula Primary School: Teacher (2016-Febaruary to May) Leegra Marketing: Sales Person (2012-2014). • **Political Affiliation**: Not listed.
10.	Ms Debbie Dineo Raphuti	17 April 2020	• Diploma in Nursing Science • Higher Diploma in Nursing Administration • Diploma in Nursing Management & Nursing Education • Diploma in Community Health Sciences • Postgraduate Diploma in Strategic Diplomacy & Transitional Justice[41] • Work experience listed includes, Member of Parliament (May 2014-May 2019); Ministry of Health: Head of Office (April 2011-20 May 2014); Democratic Nursing Organisation: provincial Secretary (May 2002-March 2011); Charlotte Maxeke

[41] No copies of all the qualifications listed in the CV were provided.

No.	Member	Contracting date	Qualifications as per CV
			Hospital: Nursing Manager (April 1986-March 2001) • **Political Affiliation**: Chair of ANC Health Committee, Zonal Executive Member of ANC, Member of the ANC Transformation Committee, Provincial Executive Member of COSATU.
11.	Ms Duduzile Promise Manana	16 April 2020	• Diploma in Office Administration • Certificate in Computer Literacy • Certificate for Sustainable Human Settlement & Planning[42] • Working experience includes, Member of Parliament (2014-2019), Ehlanzeni District Municipality: Secretary and Transversal Officer; Mpumalanga Provincial Government- Department of Sports & Recreation: Monitoring Evaluation Officer (2010-2011). • **Political Affiliation**: Not specified but has been Member of Parliament.
12.	Mr Thembeni Samuel	16 April 2020	• BA • Higher Diploma in Education • Bachelor of Administration (Honours) • Masters of Administration • Diploma in Local Government Management; and • Other certificates.

[42] No copies of all the qualifications listed in the CV were provided.

No.	Member	Contracting date	Qualifications as per CV
			• Experience listed includes, Sakhisizwe Local Municipality: Municipal Manager; Department of Education: Regional Coordinator (Queenstown Regional Office), Assistant Director: Personnel Practice (1995-2005). • **Political Affiliation**: Not listed.

6.1.38 Ms Sisulu also availed copies of the appointment contracts of the members of the NRRTTs. The appointment contracts of the members depict the following:

6.1.38.1 Paragraph 1.2 of the appointment contracts of Messrs ka Plaatjie and Byneveldt reflected the effective date of appointment as 01 June 2019 and 01 August 2019, respectively;

6.1.38.2 Paragraph 1.2 of the appointment contracts of the remaining seven (7) members of the NRRTT- DHS stated that *"Effective Date' notwithstanding the date of signature herein, the effective date shall be the appointment date as recorded in the appointment letter this being 1 September 2019*;"

6.1.38.3 Whereas paragraph 1.2 of the employment contracts of Ms Raphuti, Ms Manana and Mr Samuel reflected the effective date of appointment as 08 April 2020 respectively, the effective date on the contracts of the remaining 9 members of the NRRTT-DWS was reflected as 01 September 2019.

6.1.38.4 Ms Sisulu also availed a copy of the letter which she addressed to Mr Fuzani,[43] dated 03 December 2019 titled "*APPOINTMENT AS A MEMBER*

[43] As an example of the appointment letter.

ON THE NATIONAL RAPID RESPONSE TASK TEAM: NATIONAL DEPARTMENT OF HUMAN SETTLEMENT", Ms Sisulu wrote *inter alia* that "*Your appointment is in line with the National Treasury Rates for Commissions. I have requested the Director-General to formalize the necessary administration, terms and conditions surrounding your appointment, including your Employment Contract thereof."*

The version of the Director-General of the Department of Human Settlement (DHS), Mr Tshangana

6.1.39 On 22 June 2021, Mr Tshangana responded to the Public Protector's letter, dated 31 May 2021.

6.1.40 Mr Tshangana availed documents to the Public Protector through a submission, dated 22 June 2021. The documents received from Mr Tshangana were similar to those availed by Ms Sisulu. Therefore reference is only made to the documents that have not been considered under Ms Sisulu's submission.

6.1.41 On 03 December 2019, Ms Sisulu approved a memorandum, dated 18 November 2019 and titled "*APPROVAL TO APPOINT ADDITIONAL FOUR (04) MEMBERS OF THE NATIONAL RAPID RESPONSE TASK TEAM (NRRTT) LINKED TO MINISTER'S TERM OF OFFICE FROM 01 SEPTEMBER 2019 FOR THE DEPARTMENT OF HUMAN SETTLEMENT AND DEPARTMENT OF WATER AND SANITATION"* (Additional NRRTT Memo).

6.1.42 Amongst others, the Additional NRRTT Memo approved the following:

6.1.42.1 The appointment of four (4) additional NRRTT members, namely; Messrs Fuzani; Lucas Moagi, Ongeziwe Hlakula and Emmanuel Mkhabela[44];

6.1.42.2 Note that the four (4) additional NRRTT members had already assumed and performed duties from 01 September 2019, "*as per by monthly work reports to be submitte*d*"*, including approving their remuneration connected therewith; and

6.1.42.3 The appointment of the four additional NRRTT members are to be made with effect from 01 September 2019.

6.1.43 In paragraph 3.1.4 of the Additional NRRTT Memo, it was recorded that the four members committed through their Deputy Chairperson, Mr Ncedana, to submit their CVs and qualifications.

6.1.44 In paragraph 4 of the Additional NRRTT Memo, the annual cost for the Department, excluding applicable overheads, was projected at two million four hundred and eighty six thousand five hundred and ninety two rand (R2 486 592.00).

Response from the Director-General of the DPSA, Ms Yoliswa Makhasi

6.1.45 The Public Protector, through a letter, dated 12 November 2020, requested Ms Makhasi to advice on the prescripts that regulate the appointment of the NRRTT members, and whether the DPSA was involved and/or consulted regarding the said appointments.

6.1.46 In a letter dated 20 November 2020, Ms Makhasi reported *inter alia* that "... *the Department of Public Service and Administration wishes to inform the*

[44] The first three (3) names were included in the written reply to Question 2721, except the name of Mr Emmanuel Mkhabela.

Public Protector that it cannot pronounce itself on the legislation that applied to the appointment of the National Rapid Response Team (NRRTT) and neither was it involved in the appointment of same."

6.1.47 In her letter, dated 26 July 2022, Ms Makhasi indicated that the WSA was not administered by the DPSA and thus not in a position to advise the Public Protector on its application in respect of appointments made in terms thereof.

6.1.48 Ms Makhasi further reported that "*It is important to emphasise that not all appointments additional to the establishment are subjected to the limitation of twelve (12) consecutive months, which may be extended on request by the Minister of Public Service and Administration. To the extent that the department requires an extension before 12 months, where applicable, departments were advised on the process to follow under the attached DPSA Circular No. 18 of 2021 dated 26 August 2021*."

6.1.49 Ms Makhasi further submitted that Regulation 57(2) of the Public Service Regulations, 2016 (PSR) was applicable when dealing with appointments additional to the establishment.

Cabinet Memorandum No.32 dated 11 June 2003 (Cabinet Memo No. 32)

6.1.50 The DPSA provided a copy of the Cabinet Memo No. 32. The purpose of the said memo was recorded as "*To submit a framework on community development workers to cabinet for approval*."

6.1.51 Paragraph 4.7 dealt with the framework for implementation and recorded the following:

4.7.1 Community development must be institutionally based at local government level. The community development worker programme

should be implemented by provincial administrators, from the Office of the Premier or the provincial department of local government. The Department of Provincial and Local Government will assume responsibility for providing overall programme management including the facilitation of funding. DPSA will provide support and training and the development of a toolkit for community development workers.

4.7.2 A community development manager should be installed in district municipalities, to manage the work of community development supervisors in local municipalities. There should be community development work in the ward reporting to the supervisors. In the metropolitan municipalities, there should be a community development manager supported by community development supervisor in each region. There should likewise be community development workers at ward level.

4.7.3 *Community development managers could be based as the Planning and Implementation Management Support System (PIMSS) Centres in district municipalities…Community development workers will coordinate the work of community based workers and volunteers in communities*.

4.7.4 Community development workers, supervisors and managers should be public servants appointed at levels six, nine and 11 respectively, assuming duties at ward, local and district level. They should be appointed on contract for a term of one year.

4.7.5 The provincial implementing department must consult with the municipalities where it intends to install a community development team…"

6.1.52 Paragraph 5 dealt with the organisational and personnel implications and provides that:

"*Implementing administrations must make provision on their establishments for the posts that will be requested to implement their proposals. A programme management office should be established at the Department of Provincial and Local Government*."

Cabinet Memorandum No.52, dated 05 August 2003 (Cabinet Memo No.52)

6.1.53 The DPSA provided a copy of the Cabinet Memo No.52 and its purpose was recorded as "*To submit a progress report in respect of the Community Development Worker Programme."*

6.1.54 Paragraph 3 indicated that the MPSA assumed responsibility for the incubation of the programme, and a learnership approach was adopted.

6.1.55 Progress report included the enrolment of an initial intake of four hundred and ninety five (495) learners in five (5) provinces during February and March 2004.

6.1.56 Paragraph 6 dealt with financial implications and it was recorded that:

"*Funding for the learnerships has been obtained by the LGWSETA from the National Skills Fund. The initial intake of learners will be ready to be absorbed into the establishments of the relevant provincial departments early next year. The relevant provincial departments were requested to incorporate the CDWP in their Strategic plans so that they could put forward budget proposal in their Medium Term Expenditure Framework (MTEF) submissions…Funding for the employment of CDWs in 2005/6 and in the medium term has therefore not yet been secured."*

COMMUNITY DEVELOPMENT WORKERS PROGRAMME: PROGRESS REPORT –Working together to advance the South African development state-2003-2010 (2010 CDW Programme Report).

6.1.57 On 05 August 2021, Ms Sisulu provided the Public Protector with the 2010 CDW Programme Report, stating the following on page 5:

"*CDWs are employed in the CDW programme to ensure that the afore-mentioned purpose and objectives of the programme are achieved. All CDWs are public servants who-*

(i) are subject to the provisions of the Public Service Act of 1994, the Regulations promulgated thereunder, and any other special conditions determined by the Ministry for Public Service and Administration;
(ii) work across the three spheres of government in order to support the existing service delivery programmes of government;
(iii) *have completed a 12-month CDW Learnership.*[45]

DPSA: REPORT ON THE IMPLEMENTATION OF THE COMMUNITY DEVELOPMENT WORKERS PROGRAMME dated 24 July 2017 (2017 Implementation Report).

6.1.58 The DPSA also provided the Public Protector with the 2017 Implementation Report, relating to institutional arrangements and states as follows in paragraph 2:

2.1 "Cabinet Directive

[45] *"The CDW was implemented in 2005 through a Learnership programme. A Learnership approach was adopted to ensure that the CDWs are well capacitated to deliver on their mandate. The Local Government Sector Education and Training (LGSETA) coordinates the CDW learnership programme. The training extends over a period of twelve (12) months divided into six months of theory and six months of practical work."*

2.1.1 Following the SONA pronouncement, the Cabinet issued a directive detailing the institutional arrangements and structural configuration of the CDWP, in terms of which, at the national level, the Department of Public Service and Administration (DPSA) assumed the policy development role, which included amongst others, the determination of generic job descriptions and conditions of service for CDWs, training and development programme for the CDWs and the overall coordination and monitoring of the programme.

2.1.2 Still, at the national level, the Department of Provincial and Local Government (now Department of Cooperative Governance) assumed the specific role of ensuring that sufficient resources (personnel and budget) are available for the operational sustainability of the programme.

2.1.3 At a provincial level, the respective provinces retained the overall management of the programme given the fact that they are the ultimate employer of the CDWs. In specific terms, each province is responsible for the recruitment, training and supervision of CDWs. The provinces also have a role in ensuring proper implementation of policies and directives emanating from the centre of government (DPSA and DCOG)."

Response to the section 7(9) Notice

6.1.59 On 08 December 2022, a notice in terms of section 7(9)(a) of the Public Protector Act was delivered to Ms Sisulu, to which she responded through a submission, dated 31 January 2023, received from the State Attorney through an email, dated 02 February 2023.

6.1.60 She stated that for any conduct on her part to constitute conduct as contemplated in section 182(1)(a) of the Constitution and section 6(4)(a) of the Public Protector Act, such conduct must be judged on what she has done against the statutory and regulatory framework applicable to such conduct at the time. [46]

6.1.61 She also contended that the Public Protector took a position that the legal framework highlighted in the section 7(9) Notice should be applied to adjudicate the propriety or otherwise of the appointment of members of the NRRTTs, despite her responses and supporting documents, indicating she did not purport to be acting in terms of the cited legal framework, save for the Constitution.[47]

6.1.62 She stated that in light of her responses and significantly, the response from the DPSA, that it could not pronounce itself on the appointments, as they did not fall within its jurisdiction, the Public Protector does not state why the legal framework highlighted was nevertheless applicable.[48]

6.1.63 She stated that in the current constitutional setting, it does not follow that failure to comply with certain statutory and regulatory provisions as a matter of course constitutes improper conduct and maladministration.[49]

6.1.64 Ms Sisulu further submitted that improper conduct is generally behaviour that is reasonable and a sensible person would not do. It is behaviour that is unfitting and not suited to the character, time and place.[50]

[46] At paragraph 7.1 of the Response.
[47] At paragraph 7.2 of the Response.
[48] At paragraph 7.3 of the Response.
[49] At paragraph 7.4 of the Response.
[50] At paragraph 8 of the Response.

6.1.65 She indicated that according to the Collins dictionary, improper conduct is conduct that is corrupt and dishonest.[51]

6.1.66 Ms Sisulu also indicated that maladministration is defined in the Oxford dictionary as inefficient or dishonest administration or mismanagement. In the Merriam Webster dictionary, maladministration is defined as corrupt or incompetent administration (as of public office).[52]

6.1.67 Ms Sisulu further submitted that maladministration is also a term usually associated with conduct of a public officer, or the practice, policy or procedure of a public authority that results in an irregular or unauthorised use of public money or the substantial mismanagement of public resources.[53]

6.1.68 Ms Sisulu stated that she did not appoint members of the NRRTT-DHS in terms of Regulation 57(2) of the PSR. Further that, Regulation 57(4) is equally not applicable.[54]

6.1.69 She also indicated that although members of the NRRTT-DHS were administratively located under the structure of the Department, under the Chief Directorate Stakeholder management, they are not appointed additional to the establishment and posts were not created and graded for these members.[55]

6.1.70 Ms Sisulu stated that in paragraph 87.4 of her affidavit, she mentioned that the members of the NRRTT-DHS are for administrative purposes, appointed by the DG in terms of individual contracts, as consultants in terms of the PSA, which statement was incorrect. She also indicated that clause

[51] At paragraph 9 of the Response.
[52] At paragraph 10 of the Response.
[53] At paragraph 10 of the Response.
[54] At paragraph 22 of the Response.
[55] At paragraph 23 of the Response

7.1.1 of the applicable contracts states that the members are appointed *"outside Public Service prescripts (and) shall be remunerated according to scales determined by the National Treasury Category S (2018/2019 financial year)…"*[56]

6.1.71 Ms Sisulu contended that the identification of potential members of the NRRTT was a collaborative effort between the DG and officials of the Department, officials in her office, Provincial Offices, as well as Municipalities.[57] Therefore, the names of the NRRTT members were identified and coordinated from all these quarters, who then compiled the list from which the appointments were made. Those responsible for the proposed names, which she accepted, did so on the basis of the known skill and experience of the particular individual.[58]

6.1.72 According to Ms Sisulu, Ms Qunta's experience as a community liaison and stakeholder facilitator was known, as evidenced by her CV, which was received at a later stage. The said CV also confirmed her compliance with the general requirements of the NRRTT as outlined in paragraphs 66 to 68 of her affidavit. [59]

6.1.73 Ms Sisulu stated that the ToRs appear in the relevant submission for the appointment of members of the NRRTT-DWS.[60] She contended that from the submission itself, the required tasks are amongst others, community engagement, proactive and responsive interventions, as well as proactive alerts to activate rapid response in or to lessen service delivery tensions on the ground.[61]

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[56] At paragraph 24 of the Response.
[57] At paragraph 26.1 of the Response.
[58] At paragraph 26.2 of the Response.
[59] At pparagraph 26.3 of the Response.
[60] At paragraph 27.1 of the Response. The said submissions related marked 9.3.2.5 related to Sanitation Committee as discussed below. It was however noted that Ms Sisulu was referring to the NRRTT Approval Memo as highlighted herein in this document.
[61] At paragraph 27.2 of the Response.

6.1.74 She further stated that the skills required are therefore not for technical water services, but for generic community liaison and stakeholder facilitation skills. [62]

6.1.75 Ms Sisulu asserted that the CV submitted were the only reasonable measure to adjudicate her determination [as envisaged in section 76 of the WSA]. It was therefore not fair and reasonable to find that she acted improperly by the mere deduction without pointing to the actual evidence.[63]

6.1.76 Ms Sisulu reiterated that when she appointed members of the NRRTT-DHS, she did not purport to be acting in terms of Regulations 57(2) and 57(4) of the PSR. [64]

6.1.77 She further stated that although the appointments were linked to her term of office, in practice, this meant that contracts would be confirmed for extension on a year to year basis if there is till the need for the NRRTT members' services until her term of office ends, which in most cases might not be five (5) years, as it was in this case.[65]

Additional response to the Section 7(9) Notice from Ms Sisulu

6.1.78 Ms Sisulu further stated in a letter, dated 31 January 2023, that the Cabinet Lekgotla in 2009 resolved that the CDW programme be intensified by working across the three spheres of government. Each department would have modelled the programme differently. There is no difference between the work of the NRRTTs and the CDW. The Department would not have been able to pay members of the NRRTTs, if the model had not been regularised and formalised.

[62] At paragraph 27.3 of the Response.
[63] At paragraph 27.4 of the Response.
[64] Paragraphs 29.1 and 31.1 of the Response.
[65] At paragraph 31.2 of the Response.

Response to the section 7(9) Notice by the Acting Director-General, Ms Ngxongo

6.1.79 On 08 December 2022, a section 7(9) Notice was delivered to Mr Tshangana. The Public Protector received a response, dated 20 December 2022, from Ms Ngxongo, wherein she noted the irregularities identified and committed to ensure compliance with the statutory prescripts for future appointment of NRRTT-DHS' members.

Applicable law and legal prescripts

The Constitution

6.1.80 Section 195 of the Constitution provides that public administration must be governed by the democratic values and principles enshrined in the Constitution, which amongst others include the following principles:

(a) Promotion and maintenance of a high standard of professional ethics.
(b) Promotion of efficient, economic and effective use of resources.
(c) Fostering of transparency by providing the public with timely, accessible and accurate information.
(d) Cultivation of good human-resource management and career-development practices, to maximise human potential.

6.1.81 This section enjoined Ms Sisulu to adhere to these principles in the appointment of members of the NRRTT-DHS.

Ministerial Handbook: A handbook for members of the Executive and Presiding Officers[66] (Ministerial Handbook)

6.1.82 Chapter 8 of the Ministerial Handbook provides for a staff complement of 10 staff members in the office of Ms Sisulu. It also provides that *"An additional post may be provided for Ministers whose portfolios relates to the activities of more than one executive institution/department (i.e. Portfolio)."*

Guide for Members of the Executive[67] (the Guide)

6.1.83 Chapter three of the Guide provides for the staff complement of 11 in the office of Ms Sisulu, who are appointed in terms of Regulation 66 of the PSR.

The Public Service Act, 1994 (PSA)

6.1.84 Section 8(1) deals with the composition of public service and provides that:

> *(1)* "*The public service shall consist of persons who are employed-*
>
> *(a) in posts on the establishment[68] of departments; and*
>
> *(b) additional to the establishment of departments.*
>
> *(2) Subject to the prescribed conditions, any person referred to in subsection (1) may be employed permanently or temporarily and in a full-time or part-time capacity."*

6.1.85 Section 8 of the PSA empowers the Executive Authority (the Minister) to make appointments additional to the establishment.

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66 Approved by Cabinet on 07 February 2007.

67 Approved by the President with effective date of 20 November 2019.

68 According to the definitional section of the Act, establishment means "the *posts which have been created for the normal and regular requirements of a department."*

Public Service Regulations, 2016 (PSR)

6.1.86 The MPSA, in terms of section 41 of the PSA, is empowered to make regulations amongst other things, regarding appointments additional to the establishment and restrictions on the employment of persons, other than permanently or for fixed periods or specific tasks, in the public service as a whole.

6.1.87 Regulation 57 of the PSR stipulates that:

(2) "An executive authority may, unless otherwise authorised by the Act, within the available budget and at a salary level linked to a grade determined through job evaluation or as determined in an OSD, employ persons additional to the establishment, where—

(a) the incumbent of a post is expected to be absent for such a period that his or her duties cannot be performed by other employees;
(b) a temporary increase in work occurs or it is necessary for any other reason to temporarily increase the staff of the department;
(c) an employee's post has been abolished and he or she cannot be transferred into another post; or
(d) an employee is part of a development programme as contemplated in regulation 58.

(3) Before making a decision on an appointment of a person additional to the establishment, an executive authority shall—

(a) satisfy himself or herself that the person qualifies in all respects for the position and that his or her claims in his or her application for the position have been verified; and
(b) record that verification in writing.

(4) The employment of a person additional to the establishment in terms of sub-regulation (2) (a) or (b) shall not exceed 12 consecutive calendar months unless otherwise directed by the Minister."

6.1.88 Read with section 8 of the PSA, this regulation empowers the Executive Authority to employ individuals additional to the establishment.

Water Services Act, 1997 (WSA)

6.1.89 Section 76 of the WSA provides that:

(1) "*The Minister may appoint advisory committees for matters falling within the scope of this Act.*

(2) An advisory committee consists of a chairperson and such members as the Minister may determine, with due regard to the expertise required.

(3) A member of an advisory committee maybe paid an allowance determined by the Minister.

(4) *An advisory committee has the functions conferred on it by the Minister.*"

6.1.90 This section empowers the Minister to make appointments of members of advisory committees in the DWS. The NRRTT-DWS is one of the committees contemplated in this section.

National Treasury: Practice Note SCM 3 of 2003 (the Practice Note)

6.1.91 The Practice Note provides for the appointment of Consultants and states *inter alia* that *"Consultants should be appointed by means of competitive*

bidding processes, whenever possible. All bids and contracts should be subject to the General Conditions of Contracts (GCC) issued by the National Treasury."

6.1.92 Paragraph 1.3 of the Practice Note provides that for the purpose of the practice note, the term consultant includes, amongst others, individuals.

6.1.93 Paragraph 3 of the Practice Note provides that:

3.1 "Accounting officers/authorities sometimes consider appointing persons as consultants whilst it would be more appropriate to appoint the relevant individuals on contract in terms of the Public Service Act, 1994 (PSA).

3.2 If accounting officers/ authorities wish to appoint a person for a limited period to perform duties to a post on the fixed establishment, the person should as a general rule be appointed on contract in terms of section 8(c)(ii) of the PSA.[69]

3.3 Should accounting officers/ authorities experience additional work demands which are not permanent and there are no suitable vacancies available, they may consider creating additions to the fixed establishment based on the specific nature of the activities to be undertaken as well as the level at which the activities are to be performed. This may include appointing persons on contract in terms of the Act. Under no circumstances should a person be appointed as

[69] This section was amended the Public Service Amendment Act, 2007 (No. 30 of 2007) and used to read thus:

"(1) The public service shall consist of persons who—
c(ii) are employed temporarily or under a special contract in a department, whether in a full-time or part-time capacity*, additional to the fixed establishment or in vacant posts on the fixed establishment."*

a consultant merely to be granted higher remuneration packages than are prescribed by the Act."

6.1.94 This practice note requires the appointment of consultants through a competitive bidding process. It also discourages unnecessary departure from making appointments in terms of the PSA.

Case Law

6.1.95 The constitutional court in paragraph 49 of the *Affordable Medicines Trust and Others v Minister of Health and Another*[70] (Affordable Medicine case) denoted that:

"*The exercise of public power must therefore comply with the Constitution, which is the supreme law, and the doctrine of legality, which is part of that law. The doctrine of legality, which is an incident of the rule of law, is one of the constitutional controls through which the exercise of public power is regulated by the Constitution. It entails that both the legislature and the executive "are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law.*"[71]

6.1.96 The legal framework highlighted above will be considered in respect of the appointments of members of the NRRTT-DWS and NRRTT-DHS, respectively.

Analysis of evidence

6.1.97 In her response to the section 7(9) Notice, Ms Sisulu contended that her conduct did not amount to improper conduct and maladministration as

[70] CCT27/04) [2005] ZACC 3; 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC) (11 March 2005).

[71] *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1999 (1) SA 374 (CC); 1998 (12) BCLR 1458 (CC) at para 58.

contemplated in section 182(1) of the Constitution and section 6(4) of the Public Protector Act.

6.1.98 Ms Sisulu contended that the Public Protector had taken the position that the legal framework relied upon in the section 7(9) Notice was applicable in the appointment of the NRRTTs, despite the fact that in her affidavit she stated that she did not purport to be acting in terms of the said framework, save for the Constitution.

6.1.99 It should be noted that following Ms Sisulu's first response to the Public Protector, dated 18 January 2021. Ms Sisulu stated in the response that all members of the NRRTTs are individually recruited for their ability to interact with communities and the DG enters into an appointment contract with each of them. They are remunerated as per the National Treasury Consultancy daily rates Category S of 2018/19 for members serving in Commissions. It was, however, not evident which regulatory framework was utilised to appoint the members of the NRRTTs.

6.1.100 In the aforesaid response, Ms Sisulu provided a copy of a written reply to Question 2721, which indicated that the appointments of members of the NRRTT-DHS were done additional to the establishment as per the PSR. The appointment of members of the NRRTT-DWS was made in accordance with section 76(1) of the WSA.

6.1.101 The Public Protector observed that the aforesaid response did not provide authority for the appointment of members of the NRRTTs, but instead provided authority for their remuneration. This prompted the Public Protector to seek further clarity from Ms Sisulu regarding the regulatory framework relied upon. Ms Sisulu duly provided her response to the enquiry through her affidavit, dated 04 August 2021.

6.1.102 In that regard, the clarity provided by Ms Sisulu was that members of the NRRTT-DHS were appointed in terms of section 76(1) of the WSA. She then submitted that members of the NRRTT-DHS were appointed as consultants in terms of the PSA.

6.1.103 It is further noted that the contracts entered into with all members of the NRRTT recorded that the NRRTT members were appointed outside the Public Service prescripts. The contracts did not reference the relevant prescripts that were relied upon.

6.1.104 Based on Ms Sisulu's version contained in her affidavit, the Public Protector, through a letter, dated 07 September 2022, sought further clarity regarding the specific provisions in the PSA that the Minister sought reliance, in appointing members of the NRRTT-DHS. In her response, dated 03 October 2022, Ms Sisulu did not provide further clarity, save to say that she had already responded through an affidavit, dated 04 August 2021.

6.1.105 It is noted that in the response to the section 7(9) Notice, Ms Sisulu clarified her previous submission that she had relied on the PSA to make the appointments of members of the NRRTT-DHS.

6.1.106 The Constitutional Court in paragraph 49 of the *Affordable Medicines Trust and Others v Minister of Health and Another*[72] (Affordable Medicine case) denoted that:

"*The exercise of public power must therefore comply with the Constitution, which is the supreme law, and the doctrine of legality, which is part of that law. The doctrine of legality, which is an incident of the rule of law, is one of the constitutional controls through which the exercise of public power is*

[72] CCT27/04) [2005] ZACC 3; 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC) (11 March 2005).

regulated by the Constitution. It entails that both the legislature and the executive "are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law."[73]

6.1.107 In line with this constitutional court judgement, the Public Protector sought to understand the legal prescript which empowered Ms Sisulu to make the appointments of the NRRTT-DHS. To simply say the appointments were made outside the Public Service prescripts was evidently not sufficient to satisfy the doctrine of legality.

Appointment of members of the NRRTT-DWS

6.1.108 Section 76 of the WSA empowered Ms Sisulu to establish advisory committees on matters that fell within the scope of the Act. It is further noted that the aforesaid section does not prescribe a process to be followed in the appointment of members of such advisory committees.

6.1.109 Section 76(2) requires that the advisory committee must consist of a chairperson and such members as the Minister may determine, with due regard to the expertise required.

6.1.110 It was observed that twelve (12) members were appointed as members of the NRRTT-DWS. However, of the 12 members appointed, only eleven (11) had submitted CVs. The evidence further indicates that the CV of Ms Qunta had not been submitted at the date of publication of the written reply to the parliamentary question 1720. This was despite the fact that the evidence shows that her appointment contract had already been concluded on 10 October 2019. Ms Sisulu in her response to the section 7(9) Notice stated

[73] *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1999 (1) SA 374 (CC); 1998 (12) BCLR 1458 (CC) at para 58.

that Ms Qunta's experience as a community liaison and stakeholder facilitator was known.

6.1.111 Ms Sisulu was requested to clarify the expertise required, when appointing the members of the NRRTT-DWS in terms of section 76 of the WSA. In the responses provided by Ms Sisulu, she did not provide an explanation of the expertise she considered prior to appointing the members of the NRRTT.

6.1.112 It was observed that the list of the NRRTT members given to the Complainant through Question 1720 reflected that the CVs of T Skwatsha, MB Ntuli, P Khumalo, S Byneveldt and V Mabizela had not been received as at 04 December 2019.

6.1.113 It was noted that the list in the written reply to Question 1721 consisted of a total of 20 NRRTT members as opposed to the 19 names that were approved through NRRTT Approval Memo and provided to the Complainant through Question 1720 and the PAIA application.

6.1.114 Notably, the seven (7) names of Ms Manana, Ms Raphuti, Ms Mgezi, Mr Maseou, Mr Moagi, Mr Hlakula and Mr Samuel as recorded in the written reply to Question 1721 did not appear in the written reply to Question 1720. The four (4) names that were omitted in the reply to Question 1721 were that of Mogomotsi Mogodiri, T Skwatsha, MB Ntuli and V Mavimbela.

6.1.115 Ms Sisulu was requested to clarify the expertise required when appointing the members of the NRRTT-DWS in terms of section 76 of the WSA. In her response dated 03 October 2022, Ms Sisulu indicated that she had responded on 04 August 2021 by way of an affidavit and seven (7) lever arch files. The Public Protector considered the evidence provided by Ms Sisulu in the said arch lever files, however, there was no document

explaining the expertise required as contemplated in section 76(2) of the WSA.

6.1.116 It is however noted that paragraph 3.1.3 of the NRRTT Approval Memo referred to a directive from Ms Sisulu to the respective Departments *"for the appointment of the identified skilled and competent individuals taking into account their respective records, experience, knowledge and expertise as per attached Curriculum Vitaes and qualifications*" (sic).

6.1.117 As it would be observed in the discussion of the second issue below, the appointment of the Sanitation Committee members in terms of section 76 of the WSA involved the production of the ToR. In paragraph 4 of the ToR, members of the Sanitation Committee were required to have "…*proven and clear understanding and experience of South African's Water supply and sanitation services*…" On the contrary, there was no corresponding ToR highlighting the requisite expertise for the members to be appointed to the NRRTT-DWS.

Appointment of members of the NRRTT-DHS

6.1.118 In most of her submissions, Ms Sisulu made reference to the CDW Programme that was introduced by the South African government in 2003. She contended that as it was the case with the CDWs, the main role of the NRRTT was to liaise with various communities and stakeholders, assist in the identification of the root cause of problems plaguing those communities and stakeholders.

6.1.119 It should however be stated that the CDW Programme and the NRRTT appointments are distinguishable in that the CDW Programme was designed to be implemented at provincial and local levels, whereas the NRRTT was pitched at the national level. As it was highlighted in the 2010

CDW Report, the CDWs are noticeably recruited in terms of the PSA and the PSR.

6.1.120 In the 2010 CDW Report, it was specifically recorded that all CDWs are public servants who are subject to the provisions of the PSA, the Regulations promulgated thereunder, and any other special conditions determined by the MPSA.

6.1.121 Despite Ms Sisulu's insistence that the NRRTT is akin to the CDW Programme, she was also adamant that the appointment therein are made outside the Public Service prescripts. However, Ms Sisulu did not provide and explain the legal framework used to appoint members of the NRRTT-DHS. The contracts entered into with members of the NRRTTs, make specific reference to the remuneration framework to the exclusion of the recruitment prescripts.

6.1.122 The Complainant's allegation or apprehension and thus the issue in dispute is with regard to the legislative framework used in the appointment of members of the NRRTT. The Complainant contended that the appointment of members of the NRRTT appeared additional to the limit to Ministerial staff. Upon consideration of the limits prescribed in Chapter 8 of the Ministerial Handbook, 2007 and the Guide, it is evident that the appointment of 12 members of the NRRTT-DHS would have extended the prescribed limit beyond what is permissible. There was however, no evidence or assertion by Ms Sisulu that the appointment of the NRRTT members were made in terms of the Ministerial Handbook.

6.1.123 Whereas, Ms Sisulu had, in her affidavit, initially contended that members of NRRTT-DHS are appointed, for administrative purposes, by the DG "*in terms of the individual contracts as consultants in terms of the Public Service Act*", she subsequently withdrew the statement as incorrect.

However, this withdrawal was still not accompanied by an expatiation of the prescripts relied on for the appointments.

6.1.124 In *Affordable Medicines Trust and Others v Minister of Health and Another*[74] (Affordable Medicine case), the Constitutional Court held that the exercise of public power must comply with the Constitution, which is the supreme law, and the doctrine of legality, which is part of that law. The doctrine of legality entails that both the legislature and the executive are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law.

6.1.125 Despite attempts to solicit from Ms Sisulu, the authority which empowered her to exercise the power as she did, no such authority was availed to the Public Protector, leading to the conclusion that she acted *ultra vires*.

6.1.126 The NRRTT Approval Memo further recorded that the "*Individuals appointed to the NRRTT for Water and Sanitation be appointed in terms of section 76(1) of the National Water Services Act and all other individuals be appointed in terms of Treasury Regulations."*

6.1.127 In this respect, although Ms Sisulu also made reference to the appointment of members of the NRRTT-DHS in terms of Treasury Regulations, she did not mention the specific provisions applicable to the appointments. Ms Sisulu also did not provide the Public Protector with the evidence indicating that a competitive bidding process as contemplated in the applicable Practice Note.

[74] CCT27/04) [2005] ZACC 3; 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC) (11 March 2005).

Conclusion

Appointment of members of the NRRTT-DWS

6.1.128 The appointment of members of the NRRTT-DWS was made in terms of section 76(1) of the WSA, and the provision does not provide for a specific process to be followed by Ms Sisulu in doing so.

6.1.129 Although Ms Qunta was considered and appointed before submitting her CV, her expertise was already known by Ms Sisulu.

6.1.130 The evidence provided to the Public Protector indicates that Ms Sisulu appointed the members of the NRRTT-DWS based on their expertise and the knowledge she had of some of the candidates, as required by section 76(2) of the WSA.

Appointment of members of NRRTT-DHS

6.1.131 Having regard to the evidence traversed above, there is no indication that there was a regulatory framework or regime Ms Sisulu relied upon to appoint members of the NRRTT-DHS.

6.1.132 In accordance with the written reply to Question 1720 dated 04 December 2019, Mr Byneveldt's CV had not been submitted despite signing the appointment contract on 01 October 2019.

6.1.133 In accordance with the Additional NRRTT Memo, Messrs Fuzani, Moagi, Ongeziwe and Mkhabela were considered and appointed by Ms Sisulu on 03 December 2020, without the submission of their CVs. Their CVs were only provided to the Public Protector on 05 August 2021.

6.2 Whether the former Minister of Human Settlement, Water and Sanitation, Ms Lindiwe Sisulu, improperly appointed members of an Advisory Committee established in terms of section 76(1) of the Water Services Act,1997 and whether such conduct constitute improper conduct as contemplated in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act,1994

Common cause issues

6.2.1 Ms Sisulu appointed several members to a Ministerial Advisory Committee on Water Services (Sanitation Committee) on 25 March 2020, during her tenure as the Minister of Human Settlement, Water and Sanitation.

Issue in dispute

6.2.2 The issue for the Public Protector's determination was whether Ms Sisulu appointed the Sanitation Committee contrary to the provisions of section 76 of the WSA.

The Complainant's version

6.2.3 In her undated complaint letter received by the Public Protector on 22 May 2020, the Complainant requested the Public Protector to conduct an investigation into all advisory appointments made by the Minister in relation to Advisory Committees established in terms of Section 76(1) of the WSA.

Ms Sisulu's version

6.2.4 The issues raised in the complaint was directed to Ms Sisulu through a letter dated 23 June 2020. In her response to the Public Protector, dated 18

January 2021, Ms Sisulu indicated that the advisory committees of the DWS are established in terms of section 76 of the WSA.

6.2.5 Ms Sisulu, through an affidavit, dated 04 August 2021, responded to the subpoena, dated 31 May 2021, furnishing more details regarding the appointment of the members of the Sanitation Committee.

6.2.6 In paragraph 76.1 of the Ms Sisulu's affidavit, she stated that "*There are two advisory committees established in terms of section 76(1) of the WSA, namely the NRRTT on Water and Sanitation and the Advisory Committee on Sanitation.*"

6.2.7 According to Ms Sisulu, the Advisory Committee on Water Services (Sanitation Committee) was established on 01 April 2020, and it was chaired by Dr Michelle Kruger (Dr Kruger).

6.2.8 Ms Sisulu listed the names and provided the CVs of members of the Sanitation Committee[75] as reflected in the table[76] below:

No	Name	Position	Qualifications and experience
1.	Dr Michelle Kruger	Chairperson	• B Eng (Civil), M Eng (Civil), D Eng (Civil) • Pump Station Design • Wastewater Treatment: Principles, Modelling and Design[77] • Listed key skills such as Specialist Water and Wastewater Process

[75] Mentioned in par 76.6 of Ms Sisulu's affidavit.

[76] The table also include the Investigation Team's summary of the qualifications and experience as per the copies of the CV read together with a table that accompanied Ms Sisulu's submission.

[77] Copies of qualifications not provided.

No	Name	Position	Qualifications and experience
			Engineer, Wastewater network modelling.
2.	Mr Mphumzi Mdekazi	Deputy Chairperson	• B Com Hons (Business Studies) • Masters in Commerce (Corporate Governance) • Certificate in Monitoring and Evaluation[78] • Previously worked at DIRCO AS Chief Director: Stakeholder • Has been a researcher and advisor to the Education and Recreation Cluster.
3.	Mr Mlungisi "Lulu" Johnson	Ordinary Member	• Certificate in Public Management and Development • Short course in macro-economics and Development economics[79] • Work experience listed as: Chairperson of Agriculture Forestry and Fisheries Committee (2009-2014) and Chairperson of the Water and Sanitation Committee (2014-2019)
4.	Mr Khulekani Nxumalo	Ordinary Member (Water Specialist)	• PPP Specialist short course • Managing Successful Programmes: Foundation[80] • Employment includes: Acting Chief Operations officer (COO), Acting

[78] *Ibid*.
[79] *Ibid.*
[80] *Ibid.*

No	Name	Position	Qualifications and experience
			General Manager: Strategic Asset Management, and Executive in the office of COO (at Rand Water) • Deputy Municipality Manager: Infrastructure Planning and Asset Management at Emfuleni Local Municipality • Senior Plant Engineer and Ore Processing Engineer at De Beer Venetia Mine.
5.	Mr Clifford Derrick Otieno[81]	Ordinary Member (Media Specialist)	• Master of Arts (Film & Television) • Postgraduate Diploma in Arts (Journalism and Media Studies • Postgraduate Diploma in Media Leadership and Management[82] • CV also listed experience in the media space.
6.	Ms Nomdakazana Mbina-Mthembu	Ordinary Member (Financial Specialist)	• Bachelor of Commerce • Associate Chartered Cost & Management Accountant • Work experience include: DG-Office of the Premier (Eastern Cape) • Head of Department (Provincial Treasury (Eastern Cape) • DDG-: Corporate Services (National Treasury).

[81] Otieno is recorded in his CV as the same whereas he was referred to as Clifford Derrick in all documentations of the Department.

[82] Copies of qualifications not provided.

No	Name	Position	Qualifications and experience
7.	Dr Nondumiso Maphazi	Ordinary Member	• Master's in Public Administration (Cum Laude) • Doctoral Degree of Philosophy in Public Administration • Diploma in Project Management • Several certificates[83].

6.2.9 Ms Sisulu submitted that Mr Nxumalo was appointed on secondment from Rand Water.

6.2.10 Ms Sisulu also indicated that the members of the Sanitation Committee are linked to her term of office and are appointed in line with the prescribed DPSA Hourly Fee Rates for Consultants that are appointed on a long-term basis (more than 60 hours), with no mark-up as stated in the table below[84]:

Chairperson	R1675 per hour to a maximum of R201 000 per month / R2 412 000 p/a
Deputy Chairperson	R1420 per hour to a maximum of R170 400 per month / R2 044 800 p/a
Ordinary member	R1191 per hour to a maximum of R142 920 per month / R1 715 040 p/a

6.2.11 Ms Sisulu submitted that the function of the Sanitation Committee is to advise Ms Sisulu on matters that fall within the scope of the WSA, in particular, water supply and sanitation services.[85]

6.2.12 Ms Sisulu furnished the Public Protector with a copy of a memorandum titled "*APPOINTMENT OF MEMBERS OF A MINISTERIAL ADVISORY*

[83] Copies of qualifications not provided.
[84] Mentioned in par 76.7 of Ms Sisulu's affidavit.
[85] Par 76.10 of Ms Sisulu's affidavit.

COMMITTEE IN TERMS OF SECTION 76(1) OF THE WATER SERVICES ACT (ACT NO. 108 OF 1997), LINKED TO THE TERM OF OFFICE OF THE MINISTER" (Advisory Committee Memo) which was signed by Ms Sisulu on 25 March 2020.

6.2.13 The Advisory Committee Memo amongst others, sought approval for the ToR, the appointment of the members the Sanitation Committee, the appointments to be made in line with the DPSA Hourly Fee Rates for Consultants and the Acting DG to enter into employment contracts with the members.

6.2.14 Paragraph 2 of the Advisory Committee Memo recorded *inter alia* that:

(a) Human Resources was requested to facilitate the appointment of individuals as indicated in the memo as members of the Sanitation Committee, linked to the term of Ms Sisulu, effective from 01 April 2020;

(b) The Sanitation Committee is established to advise Ms Sisulu on matters that fall within the scope of the WSA, in particular, water supply and sanitation services. The Committee shall consist of members who have a proven record and clear understanding and experience of South Africa's water supply and sanitation services; and

(c) The Sanitation Committee will function under the authority of Ms Sisulu and DWS will make provision for the funding of the Committee, as well as related activities.

6.2.15 Paragraph 5.1 of the Advisory Committee Memo listed a total of eight (8) members, namely, Dr Kruger, Mr Mphumzi Mdekazi, Mr Clifford Derrick, Ms Zodwa Manase (Ms Manase), Mr Khululekani Nxumalo, Mr Lulu Johnson,

Ms Nomdakazana Marion Mbina-Mthembu. Ms Raphuti[86] and Ms Manase were also mentioned as committee members. The name of Ms Raphuti was strikethrough on the copy of the Advisory Committee Memo provided.

6.2.16 Copies of undated appointment letters signed by Ms Sisulu provided to the Public Protector included that of Dr Kruger, Mr Mdekazi, Mr Otieno, Mr Nxumalo, Mr Johnson and Ms Mbina-Mthembu.

6.2.17 Ms Sisulu also furnished a copy of a memorandum titled "*APPOINTMENT OF DR N MPHAZI, AN ADDITIONAL MEMBER TO THE MINISTERIAL ADVISORY COMMITTEE ON WATER SERVICES, IN TERMS OF SECTION 76(1) OF THE WATER SERVICES ACT (ACT NO. 108 OF 1997) LINKED TO THE TERM OF OFFICE OF THE MINISTER*" on 08 June 2020, approving the appointment of Dr Maphazi.

6.2.18 Ms Sisulu also provided a copy of Dr Maphazi's appointment letter signed by Ms Sisulu on 08 June 2020.

6.2.19 Ms Sisulu provided a copy of the ToR for the appointment of the Sanitation Committee in terms of section 76(1) of the WSA. In paragraph 5 of the ToR, the powers of the Sanitation Committee were stated as follows:

5.1 "*To advise and make suggestions and recommendations to the Minister on water services;*
5.2 To establish Working Group/s, comprising of committee members, to support the work of the Committee;
5.3 To provide the Minister with monthly and quarterly Reports and on specific matters as and when required;
5.4 To determine the rules of procedure of the Committee;

[86] The name also appeared in the NRRTT-DWS.

5.5 To make recommendations to the Minister on any amendment to the Terms of Reference; and

5.6 *To ensure appropriate behaviour by all members at all times."*

6.2.20 In a subsequent response to the Public Protector dated 04 August 2021, to explain in detail, the process that was followed in the appointment of the Sanitation Committee. Ms Sisulu indicated that "*Section 76 does not require the Minister to follow any particular procedure when establishing and appointing members of these advisory committees*."[87]

6.2.21 However, Ms Sisulu indicated that before the appointment of members of NRRTT-DWS-and Sanitation Committee, her office issued an oral directive to DWS to appoint certain identified skilled and competent individuals, taking into account their respective track record, experience, knowledge, and expertise.[88]

Response to the section 7(9) Notice by Ms Sisulu

6.2.22 On 31 January 2023, Ms Sisulu responded to the section 7(9) Notice delivered to her on 08 December 2022. In her response, Ms Sisulu noted and acknowledged the Public Protector's proposed remedial action. However, she denied that her conduct constituted improper conduct and maladministration in terms of section 182 of the Constitution and section 6(4) of the Public Protector Act.[89]

6.2.23 Ms Sisulu accepted that there was a need for the streamlining of policy and guidelines for the appointment of NRRTTs, which she submits are an essential tool to avert service delivery tensions and protests and in bringing the Executive closer to communities in terms of service delivery needs. She

[87] Par 84.1 of Ms Sisulu's affidavit.
[88] Par 84.2 of Ms Sisulu's affidavit.
[89] Paragraphs 34 and 35 of the Response.

also accepted that there were gaps that need to be addressed, to ensure certainty in regulatory compliance.[90]

6.2.24 Ms Sisulu further submitted that the administrative gaps identified by the Public Protector are not of a policy kind as contemplated in section 85(2)(b) of the Constitution. Conversely, appropriate recommendations can be made to the Public Service Commission and the National Treasury in this regard.[91]

Response to the section 7(9) Notice by the Minister of Water and Sanitation, Mr Senzo Mchunu, MP

6.2.25 A section 7(9) Notice was delivered to Mr Mchunu on 08 December 2022. In his response, dated 20 December 2022, Mr Mchunu stated that the DWS concurs with the proposed remedial action that indicates that regulatory instruments and guidelines should be developed to govern the selection and recruitment processes of the advisory committees members, provided for in terms of section 76(1) of the WSA.

Applicable law and prescripts

Water Services Act, 108 of 1997 (WSA)

6.2.26 Reference is made to section 76 of the WSA as already highlighted in this report and would not be repeated herein.

[90] Paragraph 36 of the Response.
[91] Paragraph 37 of the Response.

Terms of Reference for the Ministerial Advisory Committee on Water Services (ToR)

6.2.27 Paragraph 2 of the ToR provides for the establishment of the Sanitation Committee and provides that:

2.1 "*The Committee is established in terms of Section 76(1) of Water Services Act (Act No. 108 of 1997);*

2.2 The Committee shall function under the authority of the Minister of Human Settlement, Water and Sanitation;

2.3 DWS will make provision for an appropriate budget relating to the activities of the Committee;

2.4 DWS, together with the Ministry, will make provision for Secretarial support for the Committee; and

2.5 The Minister may dissolve the Committee at any time, after providing the members with one (1) month notice."

6.2.28 Paragraph 4 of the ToR provides for the composition of the Committee and states that:

4.1 "*Members of the Committee shall consist of Members who have a proven and clear understanding and experience of South Africa's Water supply and sanitation services that provide for the right of access to basic water supply and the right to basic sanitation necessary to secure sufficient water and within an environment not harmful to human health or well-being;*

4.2 The Members of the Committee are appointed by the Minister for a period linked to the Minister's term of office."

6.2.29 The ToR also provide for the powers of the Committee under paragraph 5, the Chairperson of the Committee, Ms Sisulu's attendance of the meetings under paragraph 6 and Remuneration of members under paragraph 7.

Analysis of the evidence

6.2.30 Paragraph 5.1 of the Advisory Committee Memo listed a total of 8 members, 6 of whom appear in paragraph 76.6 of Ms Sisulu's affidavit. The names of Mses Raphuti[92] and Manase were also mentioned as members of the Sanitation Committee. However, the name of Ms Raphuti was strikethrough on the copy of the Advisory Committee Memo provided. Notably, Ms Manase was not mentioned in Ms Sisulu's affidavit as one of the members of the Sanitation Committee, nor was a copy of her CV and an appointment letter provided to the Public Protector. Dr Maphazi was also included in the list of members of the Sanitation Committee as provided in Ms Sisulu's affidavit.

6.2.31 It should be noted that at paragraph 76.9 of her affidavit, Ms Sisulu indicated that the CVs and the contracts of employment for the members of the Sanitation Committee were provided to the Public Protector. Whereas the copies of the CVs were found in her submission, no copies of the employment contracts could be traced.

6.2.32 The Complainant did not allege specific contravention or non-compliance with any specific process concerning the appointment of members of the Sanitation Committee. On the contrary, the Complainant sought to understand the processes that were followed in appointing members of the Sanitation Committee.

[92] The name also appeared in the NRRTT-DWS.

6.2.33 On the other hand, Ms Sisulu contended that there was no specific process she was enjoined to follow in the appointment of members of the Sanitation Committee.

6.2.34 Section 76(2) of the WSA requires that the composition of the Sanitation Committee should have "*due regard to the expertise required".* The section does not provide for a process to appoint members of the Sanitation Committee. However, paragraph 4.1 of the ToR provide that the Committee should consist of members *"who have a proven and clear understanding and experience of South Africa's water supply and sanitation services".*

6.2.35 From the evidence gathered, it was noted that Mr Nxumalo was appointed on secondment from Rand Water. It would appear Dr Kruger and Mr Nxumalo were the only two members of the Sanitation Committee that were regarded as water specialist. It was noted that Dr Kruger was appointed as the chairperson of the Committee as contemplated in section 76(2) of the WSA. His CV reflected amongst others that he was a water specialist.

6.2.36 Ms Mbina-Mthembu and Mr Otieno were regarded as a financial specialist and media specialist, respectively. The three other remaining members, namely, Mr Mdekazi, Mr Johnson and Dr Maphazi, held various qualifications that could not be associated with water and sanitation. In this regard, it was not evident if the members appointed to the Sanitation Commission, save for Dr Kruger and Mr Nxumalo, had a proven and clear understanding and experience of the South Africa's water supply and sanitation services as contemplated in paragraph 4.1 of the ToR.

6.2.37 It was also noted in terms of section 76(3) of the WSA, the members of the Sanitation Committee were entitled to an allowance determined by Ms Sisulu. In this regard, Ms Sisulu determined that the allowance of the

members would be in line with prescribed DPSA Hourly Rates for Consultants.

Conclusion

6.2.38 The appointment of the members of the Sanitation Committee was conducted in terms of section 76 of the WSA.

6.2.39 The WSA does not provide for a specific process to be followed when appointing Advisory Committee members. Section 76(2) of the WSA only makes reference to such appointments made with due regard to the expertise of the members of the committee.

6.2.40 In view of the above, there is no evidence to conclude that Ms Sisulu improperly appointed members of the Sanitation Committee during her tenure as Ms Sisulu of Human Settlement, Water and Sanitation.

6.2.41 However, it was observed that the lack of a defined process to be followed in the appointment of members of the advisory committees, in terms of section 76(1) of the WSA, such as the Sanitation Committee, is susceptible to abuse and as such, a clear process should ordinarily be formulated to regulate the process.

6.3 Whether the former Minister of Human Settlement, Water and Sanitation, Ms Lindiwe Sisulu, improperly appointed Advocate Menzi Simelane and Mr Rieaz Shaik as special advisers, at compensation level IV of the Dispensation, and whether such conduct constitutes improper conduct as contemplated in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994

Common cause

6.3.1 The names of Messrs Simelane and Shaik were submitted in a written reply to Question 1720 on 04 December 2019 as the two Special Advisers attached to the office of Ms Sisulu, during her tenure as the Minister of Human Settlement, Water and Sanitation.

Issue in dispute

6.3.2 The issue for Public Protector's determination is whether the appointments of Messrs Simelane and Shaik were in accordance with applicable prescripts.

The Complainant's version

6.3.3 In her letter to the PSC, the Complainant indicated that a written reply, dated 04 December 2019, to Question 1720, from Ms Sisulu revealed that she had appointed Messrs Simelane and Shaik as Special Advisers at compensation level IV[93], benchmarked at a Grade 16 DPSA Remuneration Scale. According to the DPSA Circular 19 of 2019, this grading scale was reserved to the DGs.

6.3.4 The Complainant stated that "*The simple fact that Menzi Simelane and Mo Shaik have qualifications in Law and Optometry, respectively, provides further evidence that these appointments are unlawful as these individuals are not qualified to provide advice to a department whose focus is on water and housing delivery.*"

[93] In terms of *Dispensation for the Appointment and Remuneration of Persons (Special Adviser s) appointed to Executive Authorities on Ground of Policy Considerations in terms of Section 12A of the Public Services Act, 1994,* issued by the Department of Public Services and Administration with effect from 1 April 2017.

6.3.5 The Complainant further contended that "*It is unacceptable that Minister Lindiwe Sisulu has hired Simelane and Shaik as Grade 16 Special Advisors, given an abundantly apparent lack of qualifications, experience, or expertise in relation to the core functions of the Departments of Water and Sanitation and Human Settlement. Further, it is in my view unacceptable that taxpayers money which could have been used to hire suitably qualified Water and Housing Experts, or Engineers, has been used to hire what appears to be politically aligned cadre deployee's, both with questionable professional histories. This is especially egregious given the decimated financial state of the Department and the Water Boards reporting into the Department, and its patently clear failure to fulfil its mandate in light of the current drought crippling many parts of South Africa*." (sic)

Ms Sisulu's version

6.3.6 In a letter dated 23 June 2020, the Public Protector requested Ms Sisulu to respond to the Complainant's allegations. Ms Sisulu responded to the allegations through a letter, dated 18 January 2021. In the aforesaid letter, Ms Sisulu advised that she had already responded to the Complainant's Parliamentary Questions.

6.3.7 Ms Sisulu submitted that in instance of both of her advisers, due process was followed and both were appointed after complying with all the statutory requirements, including obtaining the concurrence therewith from the MPSA.

6.3.8 Ms Sisulu attached letters, dated 03 July 2019 and 24 July 2019, respectively, wherein Mr Mchunu concurred with her decision to award compensation level IV to both Mr Simelane and Mr Shaik.

6.3.9 The afore-mentioned letters were in response to Ms Sisulu's letters dated 12 and 25 June 2019 (hereinafter referred to as the proposal letters), wherein she sought the MPSA's concurrence on the appointments of Messrs Simelane and Shaik, at compensation level IV.

6.3.10 Ms Sisulu submitted that, in considering the appointment of the Special Advisers, their qualifications, experience and skills, amongst other things, were taken into consideration. She stated that both advisers served the government in different capacities since 1994 and were more than suitably qualified for the positions they held.

6.3.11 According to Ms Sisulu, the two advisers had served the South African government at different levels which included DG, Deputy Director-General, Ambassador and Commissioner. The two advisers had played a key role in establishing some of the well-respected institutions in the country. They were amongst some of the most experienced public servants in management, policy, legal and security matters in the country.

Ms Sisulu's subsequent submission

6.3.12 On 31 May 2021, the Public Protector issued a subpoena to Ms Sisulu, requesting her to clarify her earlier submission and furnish supporting documents in relation thereto.

6.3.13 Ms Sisulu's comprehensive submission to the Public Protector was made through the office of the State Attorney on 05 August 2021. In her affidavit, dated 04 August 2021, Ms Sisulu contended that the Ministerial Handbook, 2007 and the Dispensation do not prescribe the format of the proposal/ recommendation for the level of remuneration for the concerned Special Advisers, which must be approved by the MPSA.

6.3.14 Ms Sisulu submitted that she made an assessment of the candidates based on their CVs, therefore the proposal/recommendation referred to in paragraph 11 of the Dispensation were the said CVs of Messrs Simelane and Shaik.

6.3.15 She also asserted that, at the time, she was responsible for two Departments and more than twenty (20) entities, including oversight over their Boards and Councils. It was therefore not only advisable but necessary that she appoints the Special Advisers of the calibre of Messrs Simelane and Shaik, in order to advise her in carrying out her executive mandate.

6.3.16 Ms Sisulu availed to the Public Protector, copies of her proposal letters to Mr Mchunu in respect of Messrs Simelane and Shaik, dated 12 June 2019 and 25 June 2019, respectively.

6.3.17 In the main the aforesaid letters recorded that Ms Sisulu intended to appoint both of them as her special advisers and that she has evaluated their CVs and decided to remunerate both of them at compensation level IV.

6.3.18 Ms Sisulu also availed to the Public Protector copies of the CVs of Messrs Simelane and Shaik.

6.3.19 The CV of Adv Simelane recorded, *inter alia*, that he holds an LLB qualification and has done a course on Management Advancement Programme. He has practised as an Advocate of the High Court of South Africa since 1997.

6.3.20 The CV also recorded that Adv Simelane was employed at the Competition Commission (Commission) between 1996 and 2000, where he performed different roles, which included the Chief Executive of the Commission and the Accounting Officer. He provided strategic direction to the Department of Trade and Industry and the Commission on competition policy and cases.

He also provided advice to Ministers, viz, Mr Alec Erwin and Mr Mandisi Bongani Mabuto Mpahlwa.

6.3.21 It was also reflected in Adv Simelane's CV that he served as the DG of the Department of Justice and Constitutional Development and National Director of Public Prosecutions, amongst other roles.

6.3.22 The CV of Mr Shaik recorded that he holds amongst others, a Masters' degree in Optometry and also an Advanced Management Programme from the Harvard Business School. He held different roles which included Group Executive (International Division), for the Development Bank of South Africa (DBSA), Head of the then South African Secret Services. He also worked for the Department of International Relations and Cooperation (DIRCO), wherein he was the head of the Policy and Research Unit, the Special Adviser to the then Minister of International Relations and Cooperation, the Ambassador to the Democratic Republic of Algeria and the Consul General to Hamburg.

6.3.23 Ms Sisulu also reported that Mr Shaik subsequently declined his appointment and resigned on 21 January 2020. He did not take up the offer of employment and he did not sign a contract with Ms Sisulu, despite the concurrence received from the MPSA on 24 July 2019.

6.3.24 Ms Sisulu further submitted that, "*It is important to point out that the Minister of Public Service and Administration (the MPSA) does not appoint or approve or concur with the appointment of advisers. The MPSA merely approves the remuneration of such special advisers as recommended by the relevant Minister, who is the one with the power to appoint the advisers in terms of section 12A.*"

6.3.25 Ms Sisulu also availed a copy of the employment contract concluded between Adv Simelane and Mr Tshangana.

6.3.26 In terms of paragraph 2 of the aforementioned employment contract, the duration of contract was linked to the Minister's term of office, unless terminated earlier, in accordance with any permitting provision of the employment contract, which period commenced on 01 July 2019. The employment contract reflected that it was signed by Mr Tshangana and Adv Simelane on 23 July 2019 and 02 August 2019, respectively.

6.3.27 Paragraph 4 of employment contract between the Department and Adv Simelane recorded that, "*The Employer agrees to compensate the Employee for all services performed in terms of the Employment Contract and the Employee accepted as remuneration for all services to be performed, at a Senior Management Services (SMS) with an all-inclusive package of R1 782 687.00 (One Million Seven Hundred and Eighty Two Thousand Six Hundred and Eighty Seven Rand) less deductible tax."*

6.3.28 Ms Sisulu also furnished the Public Protector with a copy of Adv Simelane's performance agreement signed on 31 July 2019, albeit no signature of the supervisor appeared thereon.

6.3.29 Ms Sisulu also indicated that officials of the Department did not submit Adv Simelane's contract of employment and performance agreement to the MPSA, within 30 days of signature thereof, as requested in his letter dated 03 July 2019. However, this was in any event, an extra-curricular request by the MPSA, which is not a requirement in terms of the Ministerial Handbook, 2007 and the Dispensation.

Director-General, Ms Yoliswa Makhasi's (Ms Makhasi)

6.3.30 In a letter dated 12 November 2020, the Public Protector requested Ms Makhasi to respond to the Complainant's allegations and provide relevant information in regard thereto.

6.3.31 In her response, dated 20 November 2020, Ms Makhasi reported that, as prescribed in the Dispensation, Ms Sisulu followed the prescribed process and approached the MPSA to approve the appropriate compensation levels of Messrs Simelane and Shaik at compensation level IV.

6.3.32 She also indicated that the MPSA was only responsible for approving the appropriate compensation level for a Special Adviser and not to verify the relevance of their background and/or experience to a specific department.

6.3.33 In letters, dated 03 and 24 July 2019, the MPSA concurred with the decision of Ms Sisulu to award compensation level IV to both Mr Simelane and Mr Shaik, respectively.

6.3.34 Paragraphs 3 of the aforesaid letters drew the attention of Ms Sisulu to paragraph 10 of the dispensation, which required Ms Sisulu to enter into a contract of employment with the advisers. Paragraph 12 of the dispensation required Ms Sisulu to enter into, and sign a performance agreement and submit same to the DPSA for record purposes, within 30 days of signing.

6.3.35 Paragraph 4 of the said letter also directed Ms Sisulu to obtain and submit to the DPSA, for record purposes, a full security clearance of the respective candidates.

The MPSA response to the Public Protector, dated 18 June 2021.

6.3.36 The Public Protector, through a letter, dated 31 May 2021, also requested the MPSA to assist with information and documentation relating to this investigation.

6.3.37 The MPSA, through a letter, dated 18 June 2021, responded to the issues raised by the Public Protector and his responses are captured in the paragraphs hereunder

6.3.38 On the question whether the MPSA received a "proposal/recommendations" (as contemplated in paragraph 11 of the Dispensation), the MPSA referred to attached letters in respect of Messrs Simelane and Shaik, dated 12 and 25 June 2019, respectively. Compensation level IV recommended by Ms Sisulu in the appointment of Messrs Simelane and Shaik as Special Advisers were noted and accepted through letters, dated 03 and 24 July 2019, respectively.

6.3.39 Regarding whether Ms Sisulu submitted the necessary security clearance as contemplated in paragraph 14 of the Dispensation, the MPSA indicated that there were no records that could be located in the DPSA that indicated that the security clearance for Messrs Simelane and Shaik were received.

6.3.40 Regarding whether Ms Sisulu submitted the necessary security clearance as contemplated in paragraph 14 of the Dispensation, the MPSA indicated that there were no records that could be located in the DPSA that indicated that the security clearance for Messrs Simelane and Shaik were received thereto.

6.3.41 Regarding the submission of the contracts of employment and performance agreements concluded with the two Special Advisers in terms of paragraph 12 of the Dispensation, within thirty (30) days as indicated in his letter to Ms Sisulu, the MPSA reported that it had no record of submissions thereof.

Applicable law and legal prescripts

Public Service Act, (PSA)

6.3.42 The appointment of Special Advisers is provided for in section 12A of the PSA, which states that:

(1) *"Subject to this section, such executive authorities as the Cabinet may determine may appoint one or more persons under a contract, whether in a full-time or part-time capacity-*

(a) to advise the executive authority on the exercise or performance of the executive authority's powers and duties;

(b) to advise the executive authority on the development of policy that will promote the relevant department's objectives; or

(c) to perform such other tasks as may be appropriate in respect of the exercise or performance of the executive authority's powers and duties."

(2) *The maximum number of persons that may be appointed by an executive authority under this section and the upper limits of the remuneration and other conditions of service of such persons shall be determined by the Cabinet in the national sphere of government*.

(3) The special contract contemplated in subsection (1) shall include any term and condition agreed upon between the relevant executive authority and the person concerned, including-

(a) the contractual period, which period shall not exceed the term of office of the executive authority;

(b) the particular duties for which the person concerned is appointed; and

(c) the remuneration and other conditions of service of the person concerned."

6.3.43 The above provisions entitle a member of the Executive to appointment Special Adviser(s) on such terms and conditions provided for in the section.

Dispensation for the Appointment and Remuneration of Persons (Special Advisers) Appointed to Executive Authorities on Ground of Policy Considerations in Terms of Section 12A of the Public Service Act, 1994[94] (the Dispensation)

6.3.44 The appointments are further governed by the Dispensation which is contained in the Ministerial Handbook, 2007, specifically annexure F (which was amended with effect from 01 April 2019).

6.3.45 Paragraph 1 of the Dispensation provides that, "*In order to ensure an acceptable degree of uniformity, Cabinet has determined the compensation for Special Advisors[95]. The compensation provides for four different compensation levels in order to accommodate different levels of expertise.*"

6.3.46 Paragraph 2 of the Dispensation provides that:

"The provision to appoint Special Advisers in terms of Section 12A of the Public Service Act, 1994, as amended, is limited to two full-time equivalent positions for each Minister and Premier, unless Cabinet or the relevant Provincial Executive Council approves a higher number up to two additional full-time equivalents for each Minister and Premier because of work requirements. The President and Deputy President may appoint as many Special Advisers as they may see fit. Cabinet may also reduce the number of Special Advisers that Ministers and Premiers may employ."

6.3.47 Paragraph 5 of the Dispensation stipulates, "*Only South African citizens should be appointed as Special Advisers. All candidates for appointment as Special Advisers should be subjected to a security clearance before*

[94] Issued by the Department of Public Service and Administration with effect from 1 April 2019, and releases annexure F of Ministerial Handbook, 2007.

[95] The phrase in the Dispensation is used interchangeably with Special Adviser.

appointment. If an Executive Authority wishes to deviate from this requirement, the matter must be submitted to the President."

6.3.48 In terms of paragraph 10 of the Dispensation, Cabinet approved a standard contract which must be entered into by the Special Adviser and the Executive. It also limits the duration of the contract to the term of the political principal as envisaged in section 12A(3) of the PSA.

6.3.49 Paragraph 11 of the Dispensation provides that Executive Authorities must submit proposals/recommendations for the appointment of individual Special Advisers to the MPSA, for approval of the individual's compensation level before the appointment is effected.

6.3.50 Paragraph 12 requires each Special Adviser to sign performance agreements which determines amongst other things, major output for the period of employment.

6.3.51 Paragraph 14 provides that:

"*Executive Authorities must ensure that the Special Adviser obtains the necessary security clearance before he/she is appointed. Request received without necessary security clearance will not be entertained*."

6.3.52 Paragraph 15 of the Dispensation contains a table with compensation levels with ranges of inclusive flexible remuneration packages with effect from April 2017. The compensation levels III and IV For full-time Special Advisers were reflected as follows:

Compensation level	**Flexible Remuneration Package**	
	31 March 2019	**1 April 2019**

	(Rand per annum)	(Rand per annum)
III	1 446 378	1 521 591
	1 468 077	1 544 418
	1 490 097	1 567 581
	1 512 456	1 591 104
	1 535 145	1 614 972
	1 558 170	1 639 194
	1 581 546	1 663 785
	1 605 282	1 688 757
	1 629 348	1 714 074
IV	1 880 736	1 978 533
	1 908 942	2 038 206
	1 937 586	2 038 341
	1 966 656	2 068 923
	1 996 155	2 099 955
	2 026 101	2 131 458
	2 056 488	2 163 426
	2 087 337	2 195 880
	2 118 651	2 228 820

6.3.53 Paragraphs 24, 25 and 26 provides that:

24 "*For the purposes of determining which compensation level should apply, Executive Authorities should take cognisance of the particular individual's level of expertise and the stature in the particular field before submitting a request for approval to the Minister for the Public Service and Administration*.

25 *The Following broad guidelines in this regard should be applied*:

(d) Compensation level IV

(i) Enjoys recognition as a competent expert at national and to some degree international level.
(ii) To appoint and retain persons with very high level skills and/or scarce skills.
(iii) *Complexity of advice to be rendered is comparable to that given by a Director-General (Senior Management Service Grade D) in the Public Service*."

26 Requests addressed to the Minister for the Public Services and Administration must be fully motivated and must include the following:
(a) Comprehensive CV of the person.
(b) The persons' remuneration at her/his current employer."

6.3.54 The Complainant referred to Circular 19 of the DPSA, which deals with the MPSA's determination for the cost–of-living adjustment effective from 1 April 2019. Paragraph 2 of Circular 19 reads thus:

"*The determination applies to SMS members who are appointed in terms of the Public Service Act, 1994 and SMS members in the SA Social Security Agency (SASSA) in terms of the SASSA Remuneration, Grading and Performance Management Framework*."

Analysis of evidence

6.3.55 Upon consideration of the above regulatory framework and information gathered during the investigation, it evident that Ms Sisulu was entitled to appoint two Special Advisers as contemplated in section 12A(2) of the PSA, read with paragraph 2 of the Dispensation. However, only Adv Simelane took up the position whilst Mr Shaik had declined the position.

6.3.56 In the main, the Complainant's contention was that there was an "*apparent lack of qualifications, experience or expertise in relation to the functions of the Department of Human Settlement, Water and Sanitation"* in the two Special Advisers appointed by Ms Sisulu. However, it should be noted that the PSA and/or the PSR does not prescribe the level of skills and/or expertise that should be held by the candidates to be appointed as Special Advisers.

6.3.57 The Complainant also argued that in terms of the DPSA circular 19 of 2019, compensation IV, benchmarked at Grade 16 DPSA Remuneration Scale, was only reserved for the DGs. This submission by the Complainant cannot be sustained because the Dispensation provides for four levels of compensation which can be awarded to Special Advisers.

6.3.58 In particular, the compensation levels are provided for in paragraph 15 of the Dispensation. Further details regarding how to allocate the respective levels to the Special Adviser are provided for in paragraphs 24 and 25 of the Dispensation.

6.3.59 Paragraph 24 of the Dispensation requires Executive Authorities to consider the candidate's level of expertise and stature in a particular field only for the determination of compensation level.

6.3.60 Paragraph 25(d) further provides the guidelines that should be applied when awarding compensation level IV. This level can be awarded if the candidate enjoys recognition as a competent expert at national and international level or has high level skills and/or scarce skills or can render complex advice at the level of DG.

6.3.61 In her submission to the Public Protector, Ms Sisulu provided justification and/or motivation why the two Special Advisers were recommended for compensation level IV. In this regard, she submitted *inter alia,* that the two

advisers had served the South African government at different levels which included DG, Deputy Director-General, Ambassador and Commissioner. The two Special Advisers had played a key role in establishing some of the well-respected institutions in the country. They were also some of the most experienced public servants in management, policy, legal and security matters in the country.

6.3.62 Evidence provided by the Public Protector reflects that the two advisers possessed high level skills and/or scarce skills as envisaged in paragraph 25(d) of the Dispensation. In this regard, the evidence shows that Adv Simelane had previously held the position of DG, whereas Mr Shaik had previously held the position of a Special Adviser and comparable positions to that of the DG.

6.3.63 In line with paragraph 11 of the Dispensation, the evidence shows that Ms Sisulu submitted requests or proposals to the MPSA for the approval of Messrs Simelane and Shaik to be appointed at compensation level IV, through letters, dated 12 and 25 June 2019. The evidence further shows that the MPSA granted the approvals of compensation level IV, through letters dated 03 and 24 July 2019, respectively.

6.3.64 It was also observed that the all-inclusive package of R1 782 687.00 (one million seven hundred and eighty two thousand six hundred and eighty seven rand), less deductible tax offered and accepted by Adv Simelane was not above the maximum amount listed under compensation level IV.

6.3.65 It is manifest that paragraph 5 of the Dispensation requires a Special Adviser to be a South African citizen. It was not disputed that Messrs Simelane and Shaik were South African citizens.

6.3.66 However, paragraph 5 further requires the candidates to be subjected to security clearance before they are appointed. The Public Protector was

furnished with a copy of security clearance certificate, dated 14 May 2019 issued to Adv Simelane.

6.3.67 Although the MPSA reported that he was not favoured with the security clearance certificates of the two Special Advisers, paragraph 5 of the Dispensation does not place an obligation on Ms Sisulu to submit same to the MPSA.

6.3.68 It is also manifest that paragraph 12 of the Dispensation requires each Special Adviser to sign a performance agreement. Ms Sisulu provided a copy of a performance agreement signed by Adv Simelane on 02 August 2019, whereas Mr Shaik did not take up the position.

6.3.69 The evidence further reflects, as conceded by Ms Sisulu, that Adv Simelane's contract of employment and performance agreement were not submitted to the MPSA within thirty (30) days of signature thereof as requested in his letter, dated 03 July 2019. However, Ms Sisulu correctly submitted that this was an extra-curricular request which is not a requirement in terms of the Dispensation.

Conclusion

6.3.70 The process followed to appoint Messrs Simelane and Shaik (albeit the latter having not taken the post) was in accordance with Section 12A of the PSA, read with the Dispensation.

6.3.71 Ms Sisulu was compliant with the provisions of the Dispensation, including paragraphs 2, 5, 10, 11 and 12 as discussed above.

6.3.72 Ms Sisulu considered the expertise and skills of Messrs Simelane and Shaik and recommended the candidates to be appointed at compensation

level IV of the Dispensation and the MPSA accordingly approved the compensation level before Adv Simelane was appointed.

6.3.73 The all-inclusive package of R1 782 687.00 offered and accepted by Adv Simelane was within the limits provided for in paragraph 15 of the Dispensation.

6.3.74 Adv Simelane concluded an employment contract on 02 August 2019 with Mr Tshangana after the approval of compensation level IV was granted by the MPSA through a letter dated 02 July 2019.

6.3.75 Accordingly, there is no evidence to support the allegation that the process followed by Ms Sisulu to appointed Messrs Simelane and Mr Shaik at compensation level IV was irregular as contended by the Complainant.

7. FINDINGS

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

7.1 Whether the former Minister of Human Settlement, Water and Sanitation, Ms Lindiwe Sisulu, improperly appointed members of the National Rapid Response Task Team and whether such conduct constitute improper conduct as contemplated in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994

7.1.1 The allegation that Ms Sisulu improperly appointed members of the NRRTT-DHS, is substantiated.

7.1.1.1 The Public Protector finds that, contrary to the principle enunciated in the *Affordable Medicines* case which requires the Executive Authority to exercise no power and perform no function beyond that conferred upon them by law, there is no evidence of legislative prescripts which empowered Ms Sisulu to make the appointments of members of the NRRTT-DHS and in so doing, acted inconsistent with the dictates of section 195(1)(a) of the Constitution, which requires maintenance of high standard of professional ethics.

7.1.1.2 Therefore, the conduct of Ms Sisulu in this regard constitutes improper conduct as envisaged by section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

7.1.2 The allegation that Ms Sisulu improperly appointed members of the NRRTT-DWS, is not substantiated.

7.1.2.1 The appointment of members of the NRRTT-DWS was made in terms of section 76(1) of the WSA, and the provision does not provide for a specific process to be followed by Ms Sisulu in doing so.

7.1.2.2 The evidence provided to the Public Protector indicates that Ms Sisulu appointed members of the NRRTT-DWS based on their expertise and the knowledge she had of some of the candidates as required by section 76(2) of the WSA.

7.2 Whether the former Minister of Human Settlement, Water and Sanitation, Ms Lindiwe Sisulu, improperly appointed members of the Advisory Committees in terms of section 76(1) of Water Services Act, 1997 and whether such conduct constitutes improper conduct as contemplated in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994

7.2.1 The allegation that the Minister improperly appointed advisory committee established in terms of section 76(1) of the WSA, is not substantiated.

7.2.1 It was observed that section 76(1) of the WSA does not make provision for a specific process to be adhered to when effecting appointments of an advisory committee in terms thereof.

7.2.2 Save for Dr Kruger and Mr Nxumalo, it could not be determined based on the CVs provided that the other 5 members of the Sanitation Committee possessed "*a proven and clear understanding and experience of South African's Water supply and sanitation services…"* as contemplated in paragraph 4.1 of the ToR and the required expertise as contemplated in section 76(2) of the WSA.

7.2.3 Although it could not be conclusively determined that the appointment of the members of the Sanitation Committee was improper, a considered view is that the lack of defined process to be followed in the appointment of members of the advisory committees in terms of section 76(1) of the WSA, such as the Sanitation Committee, is susceptible to abuse.

7.3 Whether the former Minister of Human Settlement, Water and Sanitation, Ms Lindiwe Sisulu, improperly appointed Advocate Menzi Simelane and Mr Rieaz Shaik as special advisors and whether such conduct constitutes improper conduct as contemplated in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994

7.3.1 The allegations that there were irregularities during the appointment of Messrs Simelane and Shaik as special advisers by the former Minister of Human Settlement, Water and Sanitation, is not substantiated.

7.3.2 Ms Sisulu appointed Adv Simelane in accordance with Section 12A of the PSA and the Dispensation.

7.3.3 In line with paragraph 11 of the Dispensation, Ms Sisulu's submitted proposals/recommendations for approval of compensation level IV in respect of the appointment of Messrs Adv Simelane and Shaik, dated 12 June 2019 and 24 June 2019 respectively.

7.3.4 Mr Mchunu granted approvals of compensation level IV for Messrs Simelane and Shaik through letters dated 3 July 2019 and 24 July 2019 respectively.

7.3.5 Adv Simelane entered into an employment contract 02 August 2019 with Director-General, Mr Tshangana. Although Mr Shaik was also identified as one of Ms Sisulu's special advisers, he did not take up the position.

7.3.6 Therefore, the conduct of Ms Sisulu does not constitute to improper conduct in state affairs as envisaged in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

8. REMEDIAL ACTION

8.1 The Public Protector is empowered in terms of section 182(1)(c) of the Constitution to take appropriate remedial action with a view of redressing the conduct referred to in this notice upon the conclusion of an investigation where adverse findings are made.

8.2 In the matter of the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others (Economic Freedom Fighters),* the Constitutional Court per Mogoeng, CJ held that the remedial action taken by the Public Protector has a binding effect.

8.3 Having regard to the evidence, the regulatory framework determining the standard the Department should have complied with and the impact on the proper administration, the Public Protector takes the following remedial action:

The President of the Republic of South Africa

8.3.1 To take cognisance of the irregularities resulting in maladministration and improper conduct during the appointment of members of the NRRTTs.

The Minister of Water and Sanitation

8.3.2 To take cognisance of the irregularities resulting in maladministration and improper conduct during the appointment of members of the NRRTT-DWS and the Sanitation Committee; and

8.3.3 Must, within the scope of his powers as envisaged in the WSA, consider the development of the regulatory instruments, and guidelines to govern the selection and recruitment processes of members of the advisory committees as provided for in terms of section 76(1) of the Water Services Act, within ninety (90) calendar days from the date of the report.

The Minister of Human Settlement

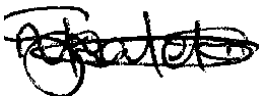
8.3.4 Take cognisance of the irregularities resulting in maladministration and improper conduct during the appointment of members of the NRRTT-DHS; and

8.3.5 Ensure compliance with the applicable statutory prescripts, including sections 8 and 9 of the PSA and regulation 57 of the PSR, for the future appointments of the NRRTT-DHS.

9. MONITORING

9.1 The Minister of Water and Sanitation to submit an action plan to the Public Protector within thirty (30) calendar days from the date of this report on the implementation of the remedial action referred to in paragraph 8 above.

9.2 The submission of the implementation plan and the implementation of the remedial action shall, in the absence of a court order, be complied with within the period prescribed in this report to avoid being in contempt of the Public Protector.



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

Assisted by: Ponatshego Mogaladi
Executive Manager: Investigations Branch