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REPORT ON AN INVESTIGATION INTO THE ADMINISTRATION, MANAGEMENT AND THE RESPONSIVENESS OF CERTAIN GAUTENG HOSPITALS TO THE COVID-19 PANDEMIC
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EXECUTIVE SUMMARY

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

(ii) The report communicates the findings and appropriate remedial action that the Public Protector South Africa (PPSA) is taking in terms of section 182(1)(c) of the Constitution, following an investigation into the state of readiness of the Gauteng Department Of Health (GDoH) hospitals designated as covid-19 health facilities.

(iii) In June 2020, a number of media outlets made several allegations against health facilities in the Gauteng Province. On 18 August 2020, the PPSA commenced on an own initiative or intervention investigation to determine the state of readiness of hospitals designated as COVID-19 health facilities.

(iv) A media article published by the Sunday Times newspaper under the heading “Gauteng in the eye of Covid-19 storm as death bell tolls for SA”, on 28 June 2020, stated that Gauteng infections have almost doubled. The National Health Laboratory Service in Gauteng was overwhelmed, with a backlog of 30,000 tests and the Department had asked private labs to assist. Five (5) isolation and quarantine sites have been built in Gauteng, but no field hospitals have been constructed. The bed shortage in the province was expected to reach 5,000.

(v) The media article published by the Sowetan Newspaper Live on 09 July 2020 titled “The number of patients in state and private hospitals as a result of Covid-19 in Gauteng is 2,692, the
The provincial government confirmed on Thursday stated that Johannesburg is the worst-affected district in Gauteng and the province was declared the country’s worst Covid-19 hotspot. The article also confirmed that the country’s response to the pandemic consisted of various stages. Stage 6 which composed of Medical care (for the peak period) included the surveillance on caseload and capacity, managing staff exposures and infections, building field hospitals for triage and expanding ICU bed and ventilator numbers.

(vi) In order to obtain clarity as to what was alleged in the media, the Public Protector visited certain identified health facilities in the GP and conducted site inspections to determine the state of readiness of hospitals to cope/manage with the pandemic. The inspection entailed random interviews with medical and nursing staff, organized labour and patients.

(vii) The investigation therefore continued to examine a number of factors, including the availability of health care services, human resource challenges, physical infrastructure and vital equipment, machinery, quality and the provision of personal protective equipment (PPE) and staff morale in hospitals, in the light of the strain added by the outbreak of the Covid-19 pandemic.

(viii) On 18 August 2020, the following hospitals were visited and inspected by the Public Protector:

(a) Jubilee District Hospital (Jubilee hospital);
(b) Dr George Mukhari Academic Hospital (Dr Mukhari hospital); and
(c) Steve Biko Academic Hospital (Steve Biko hospital).

(ix) On 19 August 2020 the following hospitals were visited and inspected by the Public Protector:

(d) Chris Hani Baragwanath Academic Hospital (Bara hospital); and
(e) Lilian Ngoyi Community Health Centre (Lilian Ngoyi).

(x) On 20 August 2020, Charlotte Maxeke Johannesburg Academic Hospital (Charlotte Maxeke hospital) was visited and inspected by the Public Protector.

(xi) The investigation was conducted in terms of section 182(1)(a) of the Constitution, which gives the PPSA the power to investigate alleged or suspected improper or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action. ; Section 6(4) of the Public Protector Act, regulates the manner in which the power conferred by section 182 of the Constitution may be exercised in respect of government at any level.

(xii) In Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect.\footnote{[2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].}

The Constitutional Court further held that: “When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences”.\footnote{Supra at para [73].}

(xiii) On analysis of the complaint, the following issues were identified and investigated:

(a) Whether the allegations of administrative deficiencies at the Gauteng Department of Health (GDoH) led to systemic challenges in the delivery of primary health care services at the following
hospitals and if yes, whether such failure amounts to improper conduct and/or maladministration;

(aa) Jubilee Hospital;

(bb) Dr George Mukhari Academic Hospital;

(cc) Steve Biko Academic Hospital;

(dd) Chris Hani Baragwanath Academic Hospital;

(ee) Lillian Ngoyi Community Health Centre;

(ff) Charlotte Maxeke Johannesburg Academic Hospital.

The investigation process included an exchange of correspondence and an analysis of all relevant documents and application of all relevant laws, policies and related prescripts. The following are key laws and policies that were taken into account to determine if there had been administrative deficiencies at the GDoH that led to the systemic challenges in the delivery of primary health care services by the inspected Gauteng Hospitals, which resulted in improper conduct and maladministration.

(a) Constitution of the Republic of South Africa, 1996 (the Constitution);

(b) National Health Act 61 of 2003;

(c) Public Finance Management Act 01 of 1999;

(d) Occupational Health and Safety Act 85 of 2003;

(e) National Treasury Instruction Notes 05 of 2020/21;

(f) National Treasury Regulation dated 31 May 2000;

(g) Basic Conditions of Employment act 75 of 1997;

(h) Public Service Regulations 2016;

(i) Hospital Ordinate Act 14 of 1958 as amended;

(j) Public Sector Risk Management Framework published 01 April 2010;
(k) The Public Protector Act, 23 of 1994 (the PPA);
(l) Circulars Issued by the Department ( Personnel Circular Minute 14 of 2020, Personnel Circular Minute 23 of 2022 and undated circular of 2020 signed 21 April 2020);

Having considered the submissions made and evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:

(a) **Regarding whether the allegations of administrative deficiencies by the GDoH led to systemic challenges in the delivery of primary health care services at Jubilee hospital and if yes, whether such failure amounts to improper conduct and maladministration:**

(aa) The allegation that there are administrative deficiencies at the GDoH that led to systemic challenges in the delivery of primary health care services at Jubilee hospital, is substantiated.

(bb) The investigation found that the allegation by Dr Modise that he was not consulted with regard to the construction of the Alternative Building Technology (ABT), is unsubstantiated, as the Covid-19 readiness draft infrastructure assessment report by the Gauteng Department of Health indicates that a needs analysis was conducted at Jubilee Hospital on 06 April 2020 and Dr Modise was present as CEO of Jubilee Hospital. Although the CEO was consulted, the construction of the ABT did not necessarily satisfy the needs of the hospital in respect of adding or enhancing the ICU capacity and theatre equipment.

(cc) The Investigation also found that the allegation that the kitchen is small and not conducive to curb the spread of the virus, is substantiated, however it was established that there was not much that the hospital
could have done as this is a structural issue. The hospital management communicated with staff regularly by way of memoranda and Covid-19 updates advising them to self-regulate by adhering to social distancing, to never sit together to have a meal, to always wash their hands with soap and water in order to mitigate the risk of infection.

(dd) Evidence obtained during the investigation undertaken by the Public Protector team revealed systemic deficiencies such as delays in the distribution of PPE to the hospital, there was also a shortage of certain items of PPE i.e. N95 masks. The evidence also indicates that there were delays in the testing turnaround time, but those improved over time as shown in evidence.

(ee) Personnel Circular 14 of 2020 permitted staff members who contracted Covid-19 to be granted special leave upon application and the hospital could not provide the evidence that they granted such applications to staff members who applied to counter the allegations by Organised Labour.

(ff) In terms of the “COVID-19 Disease: Infection Prevention and Control Guidelines” version 2 dated 21st May 2020, coveralls or gowns may be re-used as there is an acute shortage of PPE during the COVID-19 outbreak. As a result coveralls or gowns may re-used if they are not visibly contaminated or when providing care to same patient.

(gg) The allegation that Jubilee hospital did not have a dedicated vehicle to collect PPE’s at the warehouse, is unsubstantiated. It was established that the hospital had sufficient fleet vehicles and the hospital had an option of requesting additional fleet vehicles from GDoH if required.
(hh) It was established that there were challenges with centralisation of procurement of PPE as shown by the delays in the supply and delivery of PPE.

(ii) All donations received by the hospital are required to be registered and declared with the National Treasury. The evidence at the PPSA’s disposal indicates that the hospital did not declare such donations as required by the treasury regulations.

(jj) Based on the evidence in the Public Protector’s possession and the submissions made by the hospital management, the Public Protector finds that the GDoH experienced systemic challenges which impacted on the health care services.

(kk) Failure by GDoH to comply with standards set by law amounts to contravention of section 195 (1)(b) (e) (h) and 237 of the Constitution, section 27 (1) (a) and (2) of the Constitution, section 25 (2)(n)(p), Regulation 8(1)(2)(d) of the National Health Act, Regulation 13(1)(2)(a)(b) of the National Health Act, Regulation 16(1)(2)(a)(b) of the National Health Act, Regulation 19(1)(2)(a) of the National Health Act, National Treasury Regulation, Paragraph 21.2 of 31 May 2002, Personnel Circular 14 of 2020.

(ll) The conduct of the GDoH accordingly constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4) (a) (i) of the Public Protector Act.

(b) Regarding whether the allegations of administrative deficiencies by the GDoH led to systemic challenges in the delivery of primary health care services at Dr George Mukhari Academic Hospital and if yes, whether such failure amounts to improper conduct and maladministration:
(aa) The allegation that there are administrative deficiencies at the GDoH that led to systemic challenges in the delivery of primary health care services at Dr George Mukhari Academic Hospital, is substantiated.

(bb) Evidence obtained during the investigation undertaken by the Public Protector team revealed systemic deficiencies such as the failure to remunerate contracted Covid-19 health care workers, and the late creation of positions, which was acknowledged by Dr Lebethe.

(cc) There were delays in the procurement of medical equipment for the Dr George Mukhari Academic Hospital, which was requested more than three (3) years ago.

(dd) It was established that the delays in the procurement of medical equipment was as a result of limited delegation to the CEO, as well as centralization of procurement and the ineffective and efficient SCM unit with GDoH.

(ee) Evidence in the Public Protector’s possession revealed that systemic deficiencies such as the failure by the hospital to secure and dispose of medical waste in terms of the applicable provisions of the National Health Act, is substantiated.

(ff) There was lack of contract management in respect of the waste disposal which likely resulted in the service provider benefiting for four (4) years without a competitive process being undertaken.

(gg) There was a failure to convene regular risk management meetings, which would assist the Hospital and more so during a pandemic in order to prepare for and mitigate emerging risks.

(hh) Based on the evidence in the Public Protector’s possession and the submissions made by the hospital management, the Public Protector finds that the GDoH experienced systemic challenges which impacted on the health care services.
(ii) Failure by GDoH to comply with standard set by law amounts to contravention of section 195(1), (e) and (h) of the Constitution, section 237 of the Constitution, section 27(1) (a) and (2) of the Constitution, section 25 (2) (k), (n) and (p) NHA; Section 38 (1) (a) (i) of PFMA; Section 32(3) of BCEA, Regulation 13(1)(2)(a)(b) of the National Health Act; Regulation 15(1)(3)(a)(b)(c)(d)(e)(g)(h)(i)(4)(c)(f)(g)(h)(i)(j)(k)(l) and Paragraph 9(1)(2)(a)(b) of the NHA 61 of 2003; personnel circular 23 of 2020.

(jj) The conduct of the GDoH accordingly constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4) (a) (i) of the Public Protector Act.

(c) Regarding whether the allegations of administrative deficiencies by the GDoH led to systemic challenges in the delivery of primary health care services at Steve Biko Academic Hospital and if yes, whether such failure amounts to improper conduct and maladministration:

(aa) The allegation that administrative deficiencies at the GDoH led to systemic challenges in the delivery of primary health care services at Steve Biko Academic Hospital, is substantiated.

(bb) Evidence in the Public Protector’s possession in respect of the condition assessment report from Department of Infrastructure Development (DID) confirmed that the roof of the hospital leaks, but that the DID does conduct routine maintenance.

(cc) Evidence in the Public Protector’s possession revealed systemic deficiencies such as the failure to convene risk management meetings during the first (1) quarter of the 2020/21 financial year.
Further that the risk management committee was not comprised of both management and external members with the necessary blend of skills, competencies and attributes, neither was the Chairperson of the risk committee an external person as recommended by Chapter 13(24)(3) of the Public Sector Management Framework Act.

Evidence at the PPSA’s disposal affirms the allegation that there was ineffective communication of the risk strategy to all officials in the employ of the hospital and Dr Mathebula, the CEO, also conceded that the communication lines could have been more effective.

There is no evidence at the Public Protector’s disposal that there is provision of inappropriate PPE as the distribution of the PPE is in line with its purpose.

The re-use and redistribution of cleaned and sanitised PPE is in compliance with version 2 of the Covid-19 disease: infection, prevention and control guidelines. Therefore my office could not find any wrongdoing with the reuse of the PPE by the hospital.

The hospital complied with the registration and declarations of donations in the donations register.

Based on the evidence in the Public Protector’s possession and the submissions made by the hospital management, the Public Protector finds that the GDoH experienced systemic challenges which impacted on the health care services.

Failure by GDoH to comply with standard set by law amounts to contravention of Section 38 (a) (i) of PFMA; section 6(2)(a) of PFMA, Paragraph 3.2.1 of the Treasury Regulations, Chapter 13(24)(2) of the Public Sector Framework.

The conduct of the GDoH accordingly constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4) (a) (i) of the Public Protector Act.
(d) Regarding whether the allegations of administrative deficiencies by the GDoH led to systemic challenges in the delivery of primary health care services at Chris Hani Baragwanath Academic Hospital and if yes, whether such failure amounts to improper conduct and maladministration:

(aa) The allegation that administrative deficiencies at the GDoH led to systemic challenges in the delivery of primary health care services at Chris Hani Baragwanath Academic Hospital, is substantiated.

(bb) Evidence in the Public Protector's possession revealed systemic deficiencies such as re broken taps in the kitchen and the ablution facilities in ward 59, which was also broken however they have since been repaired,

(cc) There was an undue delay to fill vacant positions as a result of the late creation of positions,

(dd) The porters were unavailable at their workstations in the hospital to assist with the movement of patients to various wards within the hospital, however additional porters have been appointed,

(ee) The Baragwanath hospital has human resources capacity constraint challenges and as a result cannot handle the influx of patients at the hospital, which is said to be historical challenge.

(ff) Delays in the distribution of PPE i.e. stock of the non-sterile gowns albeit temporary;

(gg) The “COVID-19 Disease: Infection Prevention and Control Guidelines” version 2 dated 21st May 2020, permits the re-use and redistribution of cleaned and sanitized PPE. Therefore the Public Protector could not find wrongdoing with the reuse of the PPE by the hospital.
(hh) Contrary to the allegation that critical or emergency surgeries were deferred, it was established that after the first wave the surgical services were fully restored. The evidence in the Public Protector’s possession shows a current theatre list which indicates that surgeries are still being conducted.

(ii) Elective surgeries were deferred for patient’s safety as they are not life threatening and the Public Protector found the explanation to be reasonable under the circumstances.

(jj) There was no dedicated ward or specialised ward to house Covid-19 psychiatric patients, which meant that in the event that any psychiatric patient tested positive, there would be no ward to accommodate them.

(kk) It is established that there were challenges with centralisation of the procurement of PPE as shown by the delays in the supply and delivery of PPE.

(mm) Based on the evidence in the Public Protector’s possession and the submissions made by the hospital management, the Public Protector finds that the GDoH experienced systemic challenges which impacted on the health care services.

(ll) Failure by GDoH to comply with standard set by law amounts to contravention section 195 (1)(b), (e), (h) of the Constitution, section 27(1)(a) and (2) of the Constitution, Section 237 of the Constitution, section 25 (2)(k)(n)(p) National Health Act, section 57 (4) of the Public Service Regulation and personnel circular 23 of 2020 and Regulation 8(1)(2)(b)(d) of the National Health Act, Regulation 16(1)(2)(a)(b) of the National Health Act ,Regulation 19(1)(2)(a)(l) of the National Health Act.
The conduct of the GDoH accordingly constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4) (a) (i) of the Public Protector Act.

Regarding whether the allegations of administrative deficiencies by the GDoH led to systemic challenges in the delivery of primary health care services at Lillian Ngoyi Community Health Centre and if yes, whether such failure amounts to improper conduct and maladministration:

The allegation that administrative deficiencies at the GDoH led to systemic challenges in the delivery of primary health care services at Lillian Ngoyi Community Health Centre, is substantiated.

Evidence obtained revealed systemic deficiencies at Lillian Ngoyi Community health Centre such as the lack of hot water in the labour ward.

Broken geysers and heaters were observed at the facility however new geysers and heaters have since been installed at the facility after the intervention by the Public Protector in August 2020 as shown by evidence.

The allegations that the ICT infrastructure, such as telephone lines were not working is substantiated, however Lillian Ngoyi remedied the above on 17 August 2020 when the telephone lines were installed and the landline was operational as of 28 October 2020.

A cell phone with R400 airtime, is now used as a backup to the landlines.

The photocopier which were also not functional has since been replaced as of 10 December 2020.

Evidence and observations made during the inspection in loco by the Public Protector revealed systemic deficiencies in that there is an
undue delay to fill various posts including the Facility Manager’s post at Lillian Ngoyi. However the position of Facility Manager was advertised, but a suitable candidates could not be found. As a result, the post has since been re-advertised.

(hh) Mr Malotana and Mrs Morewane conceded that there was dirty linen on the beds but a Supervisor has been assigned to oversee and manage linen.

(ii) It was further observed during on-site inspection undertaken by PPSA investigation team that patients waited for over three (3) hours to be attended to by the Doctors. After the on-site inspection the Chief Medical Officer, Dr Ruiz is monitoring the Doctors as per allocation in order to avoid patients having to wait for long periods before they are attended to.

(jj) The evidence at the Public Protector’s disposal indicates that the allegation that there was a lack of nutritional food available for patients who stay overnight at Lillian Ngoyi, was substantiated. However subsequent to the intervention by the Public Protector, there is sufficient provisioning of food and served to the patients that are admitted to the facility overnight.

(kk) Mr Malotana and Mrs Morewane conceded that there is no Risk Management Committee and Occupational Health and Safety Committee at Lillian Ngoyi.

(ll) There is no evidence that the donations received by the Community Centre hospital from ANOVA were registered and declared in line with National Treasury.

(mm) Based on the evidence in the Public Protector’s possession and the submissions made by the hospital management, the Public Protector finds that the GDoH experienced systemic challenges which impacted on the health care services.
Failure by GDoH to comply with standard set by law amounts to contravention 195(1) (b), (e) and (h) of the Constitution, section 237 of the Constitution, section 27(1) (a) and (2) of the Constitution, Regulation 8(1)(2)(c)(d) of the National Health Act, 13(1)(2)(a)(b) of the National Health Act, Regulation 16(1)(2)(a)(b) of the National Health Act, Regulation 22 of the National Health Act, paragraph 21.2 of the National Treasury 21 May 2020.

The conduct of the GDoH accordingly constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4) (a) (i) of the Public Protector Act.

Regarding whether the allegations of administrative deficiencies by the GDoH led to systemic challenges in the delivery of primary health care services at Charlotte Maxeke Johannesburg Academic Hospital and if yes, whether such failure amounts to improper conduct and maladministration:

The allegation that administrative deficiencies at the GDoH led to systemic challenges in the delivery of primary health care services at Charlotte Maxeke Johannesburg Academic Hospital, is substantiated.

Evidence and observations made during the on-site inspection by the Public Protector revealed systemic deficiencies such as the delay in the creation of positions and filling of positions.

There were delays in the distribution of PPE and some of the PPE was of poor quality which had to be returned to the depot, as it was not as per the specifications. Mr Malotana conceded that initially there were delays with the supply and distribution of PPE but those were corrected, and although some of the PPE was of inferior quality, not all PPE procured was sub-standard.
(dd) There was a lack of medical soap or scrub and the staff had to use green soap. This was not disputed by the hospital.

(ee) There were delays in the procurement and maintenance of medical equipment despite requests being made to the GDoH.

(ff) There is no dedicated ward to accommodate psychiatric patients at Charlotte Maxeke as it was observed during the site visit that the psychiatric patients were accommodated in an open space.

(gg) It was established that the delays in the procurement of medical equipment was as a result of limited delegation to the CEO, as well as centralization of procurement and the ineffective and efficient SCM unit with GDoH.

(hh) There were delays in the storage, collection and disposal of medical waste at the hospital as a result of poor performance by the service provider.

(ii) There was lack of contract management in respect of the waste disposal which likely resulted in the service provider benefiting for four (4) years without a competitive process being undertaken.

(jj) The linen was not checked for sharp objects before being send to the laundry room and this has a potential to cause harm the staff in the laundry room.

(kk) Contrary to the allegation that staff were not allowed to apply for special leave, it was evident that staff members applied for special leave and the said applications were processed as shown in evidence.

(II) It was established by the investigation team that there were challenges with centralisation of procurement of PPE as shown by the delays in the supply and delivery of PPE.
(mm) Based on the evidence in the Public Protector’s possession and the submissions made by the hospital management, the Public Protector finds that the GDoH experienced systemic challenges which impacted on the health care services.

(nn) Failure by GDoH to comply with standard set by law amounts to contravention of section 195(1) (b), (e) and (h) of the Constitution, section 237 of the Constitution, section 27 (1) (a) and (2) of the Constitution, Section 25(2)(k)(n)(p) of the National Health Act, Clause 57(4) of PSR read with personnel circular 23 of 2020, Regulation 8(1)(2)(d) of the National Health Act 61 of 2003, Regulation 13(1)(2)(a)(b) of the National Health Act 61 of 2003, Regulation 16(1)(2)(a)(b) of the National Health Act 61 of 2003, Regulation 15(1)(a)(b)(c) (d) (e) (g)(h)(i)(3)(4)(c)(e ) (f)(g)(h)(i)(j)(k)(l) and Paragraph 9(1)(2)(a)(b) of the NHA 61 of 2003.

(oo) The conduct of the GDoH accordingly constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4) (a) (i) of the Public Protector Act.

(aa) The appropriate remedial action that the office of the Public Protector is taking in pursuit of section 182(1)(c) of the Constitution is the following:

(a) **The Acting HoD of the Gauteng Department of Health must take appropriate steps to ensure that within 60 days of issuing this report:**

(aa) The supply chain management unit is reassessed to determine if it has the capacity and capability to respond to the procurement needs of the Hospitals within the Province. Upon completing the diagnostics, to
implement appropriate measures that will resolve the challenges within the system.

(bb) Undertake a diagnostics exercise to determine what is causing the delays within the supply chain management process, with regards to procuring, maintaining and delivery medical equipment to the Hospitals within the Province as per the demand and maintenance plan. Upon completing the diagnostics, to implement appropriate measures that will resolve the challenges within the system.

(cc) Implement quality assurance measures or mechanism to guard against the provisioning of substandard items.

(dd) GDoH in collaboration with Gauteng Department of e-Gov must ensure that they prevent delays in the late creation of positions at the different hospitals especially in the midst of a pandemic.

(ee) Ensure that an independent review is conducted of Lillian Ngoyi risk management function and to advise on the applicable standards and risk management legislative framework.

(ff) Draft a monitoring tool that will ensure that staff receive in-service training on infection prevention and control every two (2) years.

(gg) Draft a monitoring tool that will ensure health risk care waste is managed appropriately.

(hh) Consider reviewing the delegation of authority in respect of respective CEO’s and implementation of the decentralised SCM policy as envisaged.

(ii) Submits an implementation report in respect of the remedial action.

(b) **In respect of Jubilee Hospital, Dr Sibongile Zungu, Acting Head of the GDoH to take appropriate steps to ensure that within 30 working days:**
(aa) That there is compliance with testing turnaround times of specimen as prescribed in the Ideal Clinic manual version 19 on page 286.

(bb) In the event that the hospital is allocated high volume of goods and the dedicated vehicle does not have the necessary capacity, provide additional fleet vehicles from GDoH.

(cc) Consider having an Alternative Building Technology (ABT) structure to cater for the staff members during their lunch breaks for the duration of the Covid-19 pandemic.

(dd) Within the 2022/23 MTEF, the GDoH and where appropriate in consultation with DID as well as Gauteng Provincial Treasury (GPT) conducts a full conditional assessment of the hospital buildings in order to develop a cost based strategy for planning and budget allocation over the MTEF for refurbishment of the facility, subject to budget availability;

(c) In respect of Dr George Mukhari Academic Hospital, Dr Sibongile Zungu, Acting Head of the GDoH to take appropriate steps to ensure that within 30 working days:

(aa) Within the 2022/23 MTEF the GDoH and where appropriate in consultation with DID as well as Gauteng Provincial Treasury (GPT) that there is a designated medical waste storage space which is duly ventilated, has a lockable door to ensure controlled access, has clearly marked bio hazardous signage in that space, not exposed to direct sunlight and has a specific person in charge of the storage space with available contact details.

(bb) Within 2022/23 MTEF the GDoH and where appropriate in consultation with DID as well as Gauteng Provincial Treasury (GPT) conducts a full conditional assessment of the hospital buildings in
order to develop a cost based strategy for planning and budget allocation over the MTEF for refurbishment of the facility, subject to budget availability;

(cc) Ensure that there is regular collection of bio hazardous waste with an adjustable roster, depending on the generated waste, that has clear timelines.

(dd) Consider taking disciplinary steps against those officials responsible for the late payment of contract health workers as well as the appointment of staff before positions were created.

(ee) Ensure that the hospital complies with Section 38(1) (a) (i) of PFMA and convenes regular risk management meetings, more so during a pandemic in order to prepare for and mitigate emerging risks.

(d) In respect of Steve Biko Academic Hospital, Dr Sibongile Zungu, Acting Head of the GDoH to take appropriate steps to ensure that within 30 working days:

(aa) Within 2022/23 MTEF the GDoH and where appropriate in consultation with DID as well as Gauteng Provincial Treasury (GPT) implement the recommendations of the full conditional assessment of the hospital in respect of the roof repairs in order to develop a cost based strategy for planning and budget allocation over the MTEF for refurbishment of the facility, subject to budget availability;

(bb) That the hospital complies with Section 38(1) (a) (i) of PFMA and convenes regular risk management meetings, more so during a pandemic in order to prepare for and mitigate emerging risks.

(cc) Consider formulating a risk management committee that is comprised of both management and external members with the necessary blend
of skills, competencies and attributes in order to ensure that is efficient and effective risk management and internal control as envisaged by the PFMA. It is advised that the Chairperson of the risk management committee is an external person as recommended by Chapter 13(24)(3) of the Public Sector Management Framework to ensure independence and objectivity.

(e) In respect of Baragwanath Hospital, Dr Sibongile Zungu, Acting Head of the GDoH to take appropriate steps to ensure that within 30 working days:

(aa) For the duration of the Covid-19 pandemic, the ambulances are disinfected after the delivery of every patient by way of a fogging machine or other fast and effective disinfecting method. It is considered crucial that the hospital continues to clean ambulances after every twelve hour shift.

(bb) Within 2022/23 MTEF the GDoH and where appropriate in consultation with DID as well as Gauteng Provincial Treasury (GPT) consider identifying a dedicated ward for Covid-19 positive psychiatric patients in order to develop a cost based strategy for planning and budget allocation over the MTEF for accommodation of psychiatric patients at the facility, subject to budget availability;

(cc) Ensure there are sufficient porters available at the hospital to assist in the movement of patients to various wards within the hospital and refrain from allowing untrained family members to escort patients.

(dd) Ensure that the human resource capacity challenges at the hospital is resolved amicably and in line with the Ideal Hospital Framework, Ideal Hospital Assessment Tool, Ideal Clinic Framework and Ideal Clinic Manual.
(ee) Conduct a work-study investigation which will assist in the identification and resolution of challenges to human resource capacity at Baragwanath Hospital.

(f) In respect of Lillian Ngoyi Community Centre, Dr Sibongile Zungu, Acting Head of the GDoH to take appropriate steps to ensure that within 30 working days:

That there are enough doctors on duty to provide medical care to the patients and have a dedicated roster to monitor adherence to the facilities prescribed waiting times in line with the Ideal Clinic Framework Version 19 of April 2020.

(aa) Ensure that a Risk Management Committee is established and a risk assessment of the Lillian Ngoyi Community Health Centre is conducted with immediate effect, following which regular risk assessments have to be conducted.

(bb) Ensure that all gifts, donations or sponsorship received during the course of a financial year be disclosed as a note in the annual financial statements of Lillian Ngoyi Community Health Centre.

(cc) Ensure that a suitable candidate for the position of Facility Manager is appointed.

(g) In respect of Charlotte Maxeke Academic Hospital, Dr Sibongile Zungu, Acting Head of the GDoH to take appropriate steps to ensure that within 30 working days:

(aa) That all staff check and verify that laundry or linen from the wards do not have sharp objects such as surgical instruments that might be contaminated before it is submitted to the laundry section thereby putting laundry staff at risk of infections or harm.
Within 2022/23 MTEF the GDoH and where appropriate in consultation with DID as well as Gauteng Provincial Treasury (GPT) that there is a designated medical waste storage space which is duly ventilated, has a lockable door to ensure controlled access, has clearly marked bio hazardous signage in that space, not exposed to direct sunlight and has a specific person in charge of the storage space with available contact details.

Ensure that there is regular collection of bio hazardous waste with an adjustable roster, depending on the generated waste, that has clear timelines.

Ensure that there is a dedicated vehicle to collect goods such as PPE and in the event that the hospital is allocated high volumes additional fleet may be requested from GDoH.

Allocate vehicle/s to Charlotte Maxeke Hospital to address its needs and transport challenges.

Within 2022/23 MTEF the GDoH and where appropriate in consultation with DID as well as Gauteng Provincial Treasury (GPT) consider identifying a dedicated ward for psychiatric patients in order to develop a cost based strategy for planning and budget allocation over the MTEF for accommodation of psychiatric patients at the facility, subject to budget availability;

The HoD of the Gauteng Department of Infrastructure Development must take appropriate steps to ensure that:

Within sixty (60) working days of the date of this report provide a report of the maintenance plan of the Hospitals mentioned in this report detailing how often they have been maintained and what has been repaired to date.
(bb) Within sixty (60) working days of the date of this report provide a report in respect of the planned construction, upgrade and maintenance of health facilities mentioned in this report and when it will be implemented.

(cc) Within thirty (30) working days of the issuing of this report indicate which projects are the health facilities infrastructure management unit is working on that relates to the health facilities.
REPORT ON AN INVESTIGATION INTO THE ADMINISTRATION, MANAGEMENT AND THE RESPONSIVENESS OF THE GAUTENG HOSPITALS TO THE COVID-19 PANDEMIC

1. INTRODUCTION

1.1 This is a report by the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and published in terms of section 8(1) of the Public Protector Act 23 of 1994 (Public Protector Act).

1.2 The report is submitted in terms of section 8(3) of the Public Protector Act to the following people to note the outcome of the investigation and implement remedial action:

1.2.1 The Premier of Gauteng: Mr David Makhura;
1.2.2 The MEC for Health: Dr Nomathemba Mokgethi;
1.2.3 Minister of Health: Mr Joseph Phaahla;
1.2.4 The HoD of DID, Mr Thulani Mdadane.
1.2.5 The Acting HoD in the GDoH: DR Sibongile Zungu;
1.2.6 The CEO of Jubilee Hospital: Dr Mpho Mosoane;
1.2.7 The CEO of Dr George Mukhari Hospital: Dr Richard Lebethe;
1.2.8 The CEO of Steve Biko Hospital: Dr Mathabo Mathebula;
1.2.9 The CEO of Bara Hospital: Dr Nkele Lesia;
1.2.10 Chief Director: Johannesburg Metropolitan Health District: Mrs Mogeru Morewane;
1.2.11 The CEO of Charlotte Maxeke Hospital: Ms Gladys Bogoshi;

2. **THE COMPLAINT**

2.1 On 5 March 2020, the then Minister of Health, Dr Zweli Mkhize, confirmed the spread of the coronavirus pandemic (COVID-19) caused by the severe acute respiratory syndrome coronavirus to South Africa.

2.2 On 15 March 2020, the Government of the Republic of South Africa (the Government) declared a National State of Disaster in terms of section 27 of the Disaster Management Act, 2002. The declaration was effected after South Africa had experienced an increasing number of patients diagnosed with Covid-19.

2.3 It became necessary therefore for the Government to initiate preparations to combat Covid-19. These preparations included inter alia the need to procure additional hospital beds, ventilators, primary health care sanitizers, masks and personal protection equipment for health care workers. The procurement thereof was delegated to the Provincial Health Departments.

2.4 Media articles published by various media houses around the Republic, in July 2020, reported widely on PPE tenders to service providers.

2.5 The First Special Report of the Auditor General South Africa (AGSA) dated 22 September 2020 "on the financial management of government’s Covid-19 initiatives", inter alia focused their audit of PPE procurement on health on the processes undertaken to identify the need for PPE, the procurement process, payments made and PPE delivered. In terms of the report the key findings on PPE were made:
2.5.1 There are delays in the delivery of PPE,
2.5.2 PPE is not always procured at market related prices,
2.5.3 There are deficiencies and non-compliance in PPE procurement processes.
2.6 There are insufficient controls to ensure the receipt and payment of PPE at the level of quality and price audit.
2.7 According to the AGSA the purchasing of large volume of PPE for the health sector started in March 2020 but some health facilities experienced shortages of curtain PPE items during the pandemic. They stated that this is mainly due to significant delays in delivery by suppliers.
2.8 The President of the Republic of South Africa subsequently issued a proclamation authorising the Special Investigations Unit (SIU) to investigate the alleged procurement irregularity relating to Covid-19, as well as to recover the financial loss suffered by State institutions as the result thereof.
2.9 In June 2020, a number of media outlets made several allegations against health facilities in the Gauteng Province (GP) and the allegations raised in those media outlets are as follows:
2.9.1 A media article published by the Sunday Times newspaper under the heading “Gauteng in the eye of Covid-19 storm as death bell tolls for SA”, on 28 June 2020, which stated that Gauteng infections have almost doubled. The National Health Laboratory Service (NHLS) in Gauteng was overwhelmed, with a backlog of 30,000 tests and the Department had asked private laboratories to assist. Five (5) isolation and quarantine sites have been built in Gauteng, but no field hospitals have been constructed. The bed shortages in the province was expected to reach 5,000.
2.9.2 The media article published by Sowetan Newspaper Live on 09 July 2020 titled “The number of patients in state and private hospitals as a result of Covid-19 in Gauteng is 2,692, the provincial government confirmed on Thursday” stated that Johannesburg is the worst-affected district in Gauteng and the province was declared the country’s worst Covid-19 hotspot. The article also confirmed that the country’s response to the pandemic consisted of various stages. Stage 6 which composed of Medical care (for the peak period) included the surveillance on caseload and capacity, managing staff exposures and infections, building field hospitals for triage and expanding ICU bed and ventilator numbers. (sic)

2.10 The Public Protector commenced with an Own Initiative investigation or intervention on 18 August 2020 which sought to establish how hospitals in Gauteng Province (GP) coped with the Covid-19 pandemic.

2.11 In order to obtain clarity as to what was alleged in the media, the Public Protector visited certain identified health facilities in the GP and conducted site inspections to determine the state of readiness of hospitals to cope/manage with the pandemic. The inspection entailed random interviews with medical and nursing staff, organized labour and patients.

2.12 The investigation therefore continued to examine a number of factors, including the availability of health care services, human resource challenges, physical infrastructure and vital equipment, machinery, quality and the provision of personal protective equipment (PPE) and staff morale in hospitals, in the light of the strain added by the outbreak of the Covid-19 pandemic.

2.13 On 18 August 2020, the following hospitals were visited and inspected by the Public Protector:
2.13.1 Jubilee District Hospital (Jubilee hospital);
2.13.2 Dr George Mukhari Academic Hospital (Dr Mukhari hospital); and
2.13.3 Steve Biko Academic Hospital (Steve Biko hospital).

2.14 On 19 August 2020 the following hospitals were visited and inspected by the Public Protector:

2.14.1 Chris Hani Baragwanath Academic Hospital (Bara hospital); and
2.14.2 Lilian Ngoyi Community Health Centre (Lilian Ngoyi).

2.15 On 20 August 2020, the Public Protector visited the Charlotte Maxeke Johannesburg Academic Hospital (Charlotte Maxeke hospital).

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

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

3.2 Section 182(1) of the Constitution provides that: “The Public Protector has the power as regulated by national legislation:

   (a) To investigate any conduct in state affairs, or in the Public Administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;

   (b) To report on that conduct; and

   (c) To take appropriate remedial action”.

3.3 Section 182(2) of the Constitution directs that the Public Protector has additional powers and functions prescribed by legislation.
3.4 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector is also given the powers to resolve disputes through mediation, conciliation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.5 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 the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect. The Constitutional Court further held that:

“When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences.”

3.6 In the above-mentioned constitutional matter, Mogoeng CJ, stated amongst other things the following, when confirming the powers of the Public Protector:

3.6.1 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (paragraph 65);

3.6.2 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced (paragraph 67);

3.6.3 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the

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3 [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].
4 Supra at para [73].
Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has the effect, if it is the best attempt at curing the root cause of the complaint (paragraph 68);

3.6.4 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow (paragraph 69);

3.6.5 Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to (paragraph 70);

3.6.6 The Public Protector’s power to take remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made (paragraph 71);

3.6.7 Implicit in the words “take action” is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And “action” presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in the words suggests that she has to leave the exercise of the power to take remedial action to other institutions or that it is the power that is by its nature of no consequence (paragraph 71(a);
3.6.8 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (paragraph 71(d); and

3.6.9 “Appropriate” means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (paragraph 71(e)).

3.7 In the matter of the President of the Republic of South Africa vs Office of the Public Protector and Others (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP); [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017), the court held as follows, when confirming the powers of the Public Protector:

3.8 The constitutional power is curtailed in the circumstances wherein there is conflict with obligations under the constitution (para 71);

3.9 The Public Protector has power to take remedial action, which include instructing the President to exercise powers entrusted on him under the Constitution if that is required to remedy the harm in question (para 82);

3.10 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers (para 100 and 101):

   a) Conduct an investigation;
   b) Report on that conduct and
   c) To take remedial action;
3.11 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or prima facie findings (para 104);

3.12 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court (para 105);

3.13 The fact that there are no firm findings on the wrong doing, does not prohibit the Public Protector from taking remedial action. The Public Protector’s observations constitute prima facie findings that point to serious misconduct (para107 and 108); and

3.14 Prima facie evidence which point to serious misconduct is a sufficient and appropriate basis for the Public Protector to take remedial action (para 112).

3.15 The Gauteng Department of Health (GDoH) is an organ of state and its conduct amounts to conduct in state affairs, thus the matters referred to in paragraph 2 above fall within the ambit of the Public Protector’s mandate to investigate.

3.16 The GDID is relevant provincial government department with a supportive role towards the GDoH for infrastructural development.

3.17 As a result, the Public Protector solicited submissions from the Gauteng Department of Infrastructure Development (GDID) in respect of maintenance and repairs of any infrastructure related works.
However, the investigation itself was conducted against the GDoH and it is important to take note that the Public Protector was not investigating the GDID *per se* but rather the GDoH.

The jurisdiction of the Public Protector was not disputed by any of the parties involved.

**4 THE INVESTIGATION**

**4.1 Methodology**

4.1.1 The investigation was conducted in terms of sections 182(1)(a), (b) and (c) of the Constitution which gives the Public Protector the power to investigate alleged or suspected improper or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action; and in terms of section 6(5) of the Public Protector Act, regulating the manner in which the power conferred by section 182 of the Constitution may be exercised in respect of public entities.

**4.2 Approach to the investigation**

4.2.1 The investigation was approached using an enquiry process that seeks to find out:

4.2.1.1 What happened?

4.2.1.2 What should have happened?

4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amounts to maladministration or other improper conduct?

4.2.1.4 In the event of maladministration or improper conduct, what would it take to remedy the wrong and what action should be taken?
4.2.2 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.

4.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulates the standard that should have been met by the GDoH to prevent improper conduct and/or maladministration as well as prejudice.

4.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and maladministration, where possible and appropriate.

4.3 On analysis of the complaint, the following issues were identified and investigated:

4.3.1 Whether the allegations of administrative deficiencies at the Gauteng Department of Health (GDoH) led to systemic challenges in the delivery of primary health care services at Jubilee hospital and if yes, whether such failure amounts to improper conduct and/or maladministration;

4.3.2 Whether the allegations of administrative deficiencies at the GDoH led to systemic challenges in the delivery of primary health care services at Dr George Mukhari Academic Hospital and if yes, whether such failure amounts to improper conduct and/or maladministration;

4.3.3 Whether the allegations of administrative deficiencies at the GDoH led to the systemic challenges in the delivery of primary health care services at Steve Biko Academic Hospital and if yes, whether such failure amounts to improper conduct and/or maladministration;
4.3.4 Whether the allegations of administrative deficiencies at the GDoH led to the systemic challenges in the delivery of primary health care services at Chris Hani Baragwanath Academic Hospital and if yes, whether such failure amounts to improper conduct and/or maladministration;

4.3.5 Whether the allegations of administrative deficiencies at the GDoH led to the systemic challenges in the delivery of primary health care services at Lillian Ngoyi Community Health Centre and if yes, whether such failure amounts to improper conduct and/or maladministration; and

4.3.6 Whether the allegations of administrative deficiencies at the GDoH led to the systemic challenges in the delivery of primary health care services at Charlotte Maxeke Johannesburg Academic Hospital and if yes, whether such failure amounts to improper conduct and/or maladministration;

4.4 The Key Sources of information

4.4.1 Correspondence sent and received

4.4.1.1 Newspaper clippings;

4.4.1.2 Email correspondence from Dr Mathebula addressed to the office of the Public Protector dated 02 September 2020;

4.4.1.3 Allegations letter dated 15 September 2020 from the Public Protector addressed to the CEO of Jubilee Hospital: Dr Olebogeng Modise;

4.4.1.4 Allegations letter dated 14 September 2020 from the Public Protector addressed to the CEO of Steve Biko Hospital: Dr Mathabo Mathebula;
4.4.1.5 Allegations letter dated 14 September 2020 from the Public Protector addressed to the CEO of Bara Hospital: Dr Nkele Lesia;

4.4.1.6 Allegations letter dated 14 September 2020 from the Public Protector addressed to the Chief Director: Johannesburg Metropolitan Health District, Mrs Mogeru Morewane;

4.4.1.7 Allegations letter dated 14 September 2020 from the Public Protector addressed to the CEO of Charlotte Maxeke Hospital: Ms Gladys Bogoshi;

4.4.1.8 Allegations letter dated 15 September 2020 from the Public Protector addressed to the former CEO of Dr George Mukhari Hospital: Dr Freddy Kgongwana;

4.4.1.9 Response letter dated 14 September 2020 addressed to the Public Protector was received from Ms Thethiwe Molefi of Lillian Ngoyi Community Centre;

4.4.1.10 Response letter received on 18 September 2020 addressed to the Public Protector from the CEO of Bara Hospital: Dr Nkele Lesia;

4.4.1.11 Response letter dated 21 September 2020 addressed to the Public Protector was received from the CEO of Jubilee Hospital: Dr Olebogeng Modise;

4.4.1.12 Allegations letter dated 25 September 2020 from the Public Protector addressed to the HoD in the GDoH: Prof Mkhululi Lukhele;

4.4.1.13 Response letter dated 28 September 2020 addressed to the Public Protector was received from the CEO of Steve Biko Hospital: Dr Mathabo Mathebula;

4.4.1.14 Response letter dated 29 September 2020 addressed to the Public Protector was received from the CEO of Charlotte Maxeke: Ms Gladys Bogoshi;
<p>| 4.4.1.15 | Response letter dated 08 October 2020 addressed to the Public Protector was received from the CEO of DR George Mukhari Academic Hospital: Dr Richard Lebethe; Affidavit from Dr Richard Lebethe stamped 08 October 2020; |
| 4.4.1.16 | ADR notice to Dr Richard Lebethe of Dr George Mukhari dated 28 September 2020, signed 08 October 2020; |
| 4.4.1.17 | Response letter dated 20 November 2020 addressed to the Public Protector was received from the HoD Mr Arnold Malotana; |
| 4.4.1.18 | Allegations letter dated 23 November 2020 from the Public Protector addressed to the Acting HoD in the GDoH: Arnold Malotana; |
| 4.4.1.19 | Allegations letter dated 01 December 2020 from the Public Protector addressed to the Acting HoD in the GDID: Mmakwena Selepe; |
| 4.4.1.20 | Email correspondence from Dr Mathabo Mathebula to the Public Protector dated 04 December 2020 regarding donations register; |
| 4.4.1.21 | Email correspondence from the Public Protector to Maria Mazibuko, Deputy Director: DHS dated 04 December 2020 regarding donations register; |
| 4.4.1.22 | A response received from CEO of Jubilee Hospital, Dr Modise a dated 05 and 12 March 2021. |
| 4.4.1.23 | Undated response received from CEO of Steve Biko Hospital, Dr Mathebula. |
| 4.4.1.24 | A response received from CEO of Bara, Dr Lesia dated 03 March 2021. |
| 4.4.1.25 | A response received from Deputy Director at District Ms Morewane dated 03 March 2021. |
| 4.4.1.26 | Response from the CEO of Charlotte Maxeke Hospital, Ms Bogoshi dated 03 March 2021. |
| 4.4.1.27 | Response from the Acting HoD, Mr Malotana dated 19 March 2021. |</p>
<table>
<thead>
<tr>
<th>Paragraph</th>
<th>Description</th>
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<tbody>
<tr>
<td>4.4.1.28</td>
<td>Email correspondence to Dr Modise of Jubilee Hospital request further information dated 18 May 2021.</td>
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<tr>
<td>4.4.1.29</td>
<td>The Public Protector Response from Head of Department (HoD) of DID, Mr Mdadane, dated 28 May 2021.</td>
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<td>4.4.1.30</td>
<td>Email correspondence from Mr. Phenyo Seloane of Jubilee Hospital sent on 01 June 2021.</td>
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<td>4.4.1.31</td>
<td>Email correspondence from Mr. Phenyo Seloane of Jubilee Hospital sent on 15 June 2021.</td>
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<td>4.4.1.32</td>
<td>Email correspondence from Mr. Masote Selaelo of Chris Hani Baragwanath sent on 17 June 2021.</td>
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<td>4.4.1.33</td>
<td>Email correspondence from Ms. Lindiwe Mngomezulu of Charlotte Maxeke sent on 18 June 2021.</td>
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<td>4.4.1.34</td>
<td>Email correspondence from Ms. Madilakhe Mantlana of Lillian Ngoyi on 18 June 2021.</td>
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<td>4.4.1.35</td>
<td>Email correspondence from Ms. Madilakhe Mantlana of Lillian Ngoyi on 24 June 2021.</td>
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<tr>
<td>4.4.1.36</td>
<td>Letter addressed to the Head of Department at the Department of e-Government: Mr Cyril Baloyi, from the Public Protector dated 15 July 2021.</td>
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<tr>
<td>4.4.1.37</td>
<td>Response from Mr Cyril Baloyi dated 17 July 2021.</td>
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<td>4.4.1.38</td>
<td>Email correspondence to Mr Tshililo Nthangeni in the office of the Head of Department at e-Government dated 20 July 2021.</td>
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<tr>
<td>4.4.1.39</td>
<td>Email correspondence from Mr Chris Du Preez in the office of the Head at Gauteng Department of Health dated 20 July 2021.</td>
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4.4.1.40 A letter dated 19 July 2021 from Dr Lesia of Baragwanath Hospital addressed to the Public Protector;

4.4.1.41 A letter dated 16 July 2021 from Dr Mathebula in a further response addressed to the Public Protector;

4.4.1.42 A further response letter dated 26 July 2021 by Mr Cyril Baloyi, Head of Department at e-Gov;

4.4.1.43 Letter addressed to Mr C Du Preez from Acting CEO at Dr George Mukhari Academic Hospital dated 29 July 2020 providing further response.

4.4.1.44 A further response letter dated 03 August 2021 from CEO of Charlotte Maxeke Hospital, Ms Bogoshi.

4.4.2 **Legislation and other legal prescripts**

4.4.2.1 Constitution of the Republic of South Africa, 1996 (the Constitution);

4.4.2.2 National Health Act 61 of 2003;

4.4.2.3 Public Finance Management Act 01 of 1999;

4.4.2.4 Occupational Health and Safety Act 85 of 2003;

4.4.2.5 National Treasury Instruction Notes 05 of 2020/21;

4.4.2.6 National Treasury Regulation dated 31 May 2000;

4.4.2.7 Basic Conditions of Employment act 75 of 1997;

4.4.2.8 Public Service Regulations 2016;

4.4.2.9 Hospital Ordinate Act 14 of 1958 as amended;

4.4.2.10 Public Sector Risk Management Framework published 01 April 2010;

4.4.2.11 The Public Protector Act, 23 of 1994 (the PPA);
4.4.2.12 Circulars Issued by the Department (Personnel Circular Minute 14 of 2020, Personnel Circular Minute 23 of 2022 and undated circular of 2020 signed 21 April 2020);

4.4.2.13 The National Treasury instruction note 03 of 2020/21.

4.4.3 Documents

4.4.3.1 Observation report dated 18 August 2020;

4.4.3.2 A copy of the internal memorandum signed 12 May 2020 by Dr Modise wherein the closure of ICU is communication as a result of a Nurse contracting virus and quarantining of contacts;

4.4.3.3 A copy of the Covid-19 readiness draft infrastructure assessment dated 06 April 2020;

4.4.3.4 A copy of the undated email from Dr Maseko;

4.4.3.5 A copy of the PPE distribution register;

4.4.3.6 A copy of the completion certificate dated 27 November 2020.

4.4.3.7 Copies of the Ideal Hospital Framework, Ideal Hospital Assessment Tool, Ideal Clinic Framework and Ideal Clinic Manual;

4.4.3.8 A copy of the Jubilee Hospital patients Covid-19 specimen register;

4.4.3.9 Copies of internal memoranda, minutes of the Covid-19 task team meetings and attendance registers;

4.4.3.10 A copy of the COVID-19 Disease: “Infection Prevention and Control Guidelines” version 2 dated 21st May 2020;

4.4.3.11 A copy of the unsigned letter from the District Manager: Tshwane Gauteng Emergency Medical Services: Mr Sipho Sithole to Mr Chris Du Preez, Chief Risk Officer;

4.4.3.12 Referral Policy Guideline for Gauteng Department of Health approved on: 31 January 2019;
4.4.3.13 A copy of table of substandard PPE;
4.4.3.14 A copy of donations database and letters;
4.4.3.15 A copy of Jubilee Hospital unsigned or dated business continuity plan;
4.4.3.16 Acting Letter for Mr Malotana dated 30 September 2020;
4.4.3.17 A copy of the Covid-19 expenditure report from the Gauteng Provincial Treasury;
4.4.3.18 A spreadsheet document from Dr George Mukhari Academic Hospital indicating that payment of salaries was made;
4.4.3.19 A copy of the Review of SBAH Risk Management Documents and Activities;
4.4.3.20 A copy of the list of risk management members and the minutes of the steering committee held on 19 June 2020;
4.4.3.21 A copy of the Steve Biko Academic Hospital Risk Management Strategy;
4.4.3.22 A copy of letter dated 12 March 2021 from the Head of the Audit Committee Secretariat, Mr J E Mhlongo;
4.4.3.23 A copy of document titled “REPORT ON THE SHORTAGE OF GOWNS AT MAIN STORES” dated 15 September 2020;
4.4.3.24 A copy of the memorandum seeking approval for the creation and recruitment of staff Covid-19 project dated 24 April 2020 tilted “secret”;
4.4.3.25 A copy of the submission for the creation of Covid-19 positions phase 2 dated 13 July 2020 tilted “secret”;
4.4.3.26 A copy of the Audit action Plan progress view 2019/2020 financial year template;
4.4.3.27 A copy of the internal audits 2019/2020, monthly progress report for Department of Health for the period September 2019;
4.4.3.28 A copy of the Charlotte Maxeke’s special leave applications;
4.4.3.29 A spreadsheet containing names of the porters employed at Bara hospital;
4.4.3.30 A copy of the condition assessment report in respect of Tshwane District Hospital dated 02 August 2017;
4.4.3.31 A copy of planned maintenance and projects for hospitals under investigations;
4.4.3.32 Copies of request for service for Jubilee Hospital;
4.4.3.33 Copies of request for service for Chris Hani Baragwanath Hospital;
4.4.3.34 Copies of spreadsheet for project and maintenance Charlotte Maxeke Hospital;
4.4.3.35 A copy of letter dated 16 July 2021 from Chief Food Service Manager Mrs Nora Molefe;
4.4.3.36 A copy of maintenance reference numbers;
4.4.3.37 A copy of an extract from job description for a driver;
4.4.3.38 A copy of a checklist for the sanitizing and cleaning of Covid-19 Ambulances;
4.4.3.39 A copy of a memorandum dated 23 March 2021 requesting approval to appoint nurses;
4.4.3.40 A copy of a memorandum dated 15 April 2021 requesting the approval to appoint three (3) candidates for the position of staff nurse.
4.4.3.41 A copy of a laundry list for Lillian Ngoyi;
4.4.3.42 A copy of the Steve Biko Academic Hospital Covid-19 Fitness to Work Protocol approved on 13 May 2020;
4.4.3.43 A copy of the strategic risk assessment report;
4.4.3.44 A copy of the minutes of the meeting by the Steering Committee held on 08 May 2020;

4.4.3.45 A copy of an email dated 24 June 2021 from the Chief Environmental Health Practitioner Ms Itumeleng Magana regarding collection of waste;

4.4.3.46 A copy of the occupational health reporting presentation;

4.4.3.47 A copy of the procurement plan from Charlotte Maxeke Hospital in respect of advertised competitive bids (goods, works or services in excess of R500 000 including all applicable taxes) for the 2020 /21 financial year;

4.4.3.48 A copy of the action plan dated 30 July 2021 on healthcare waste management from the Infection Prevention and Control Department;

4.4.3.49 A copy of the minutes of the Covid-19 waste collection in the facility;

4.4.3.50 A copy of the risk assessment for Folateng dated 23 June 2020;

4.4.3.51 Copies of the risk assessments conducted at Charlotte Maxeke, at Folateng, Renal wards dated 23 June 2020 and the security area dated 24 June 2020;

4.4.3.52 A copy of the presentation of circular 11 of 2020 dated 08 September 2020.

4.4.4 Websites


4.4.5 Case law
4.4.1 Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC);

4.4.2 Gamede MA vs The Public Protector (992646/2015) [2018] ZAGPPHC 865; 2019(1) SA 491(GP);

4.5 Interviews/Meetings conducted

4.5.1 A meeting between the Public Protector, organised labour and CEO of Steve Biko Hospital, held on 08 and 18 September 2020;

4.5.2 A meeting between the Public Protector organised labour and CEO of Dr George Mukhari Hospital, held on 19 October 2020;

4.5.3 A meeting between the Public Protector organised labour and CEO of Steve Biko Hospital, held on 19 October 2020;

4.5.4 A meeting between the Public Protector, officials of GDoH and CEO of Steve Biko Hospital, held on 25 November 2020.

4.6 On 24 February 2021, Notices were issued in terms of section 7(9) of the Public Protector Act to the below mentioned officials:

4.6.1 A notice was issued to the erstwhile Minister of Health: Dr Zweli Mkhize;

4.6.2 A notice was issued to the Premier of Gauteng: Mr David Makhura;

4.6.3 A notice was issued to the MEC for Health: Dr Nomathemba Mokgethi;

4.6.4 A notice was issued to the HoD at GDID: Mr Thulani Mdadane;

4.6.5 A notice was issued to the HoD in the GDoH: Mr Arnold Malotana;

4.6.6 A notice was issued to the CEO of Jubilee Hospital: Dr Olebogeng Modise
4.6.7 A notice was issued to the CEO of Dr George Mukhari Hospital: Dr Richard Lebethe;

4.6.8 A notice was issued to the CEO of Steve Biko Hospital: Dr Mathabo Mathebula;

4.6.9 A notice was issued to the CEO of Bara Hospital: Dr Nkele Lesia;

4.6.10 A notice was issued to the Chief Director: Johannesburg Metropolitan Health District: Mr Mogeru Morewane;

4.6.11 A notice was issued to the CEO of Charlotte Maxeke Hospital: Ms Gladys Bogoshi.

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

5.1 Whether the allegations of administrative deficiencies at the GDoH led to systemic challenges in the delivery of primary health care services at Jubilee hospital and if so, whether such failure amounts to improper conduct and/or maladministration

Common cause issues

5.1.1 On 18 August 2020, the Public Protector conducted an inspection *in loco* at the Jubilee Hospital in Pretoria.

5.1.2 During the inspection, assistance was rendered by the Chief Executive Officer of Jubilee Hospital, Dr Olebogeng Modise (Dr Modise), who showed the team around the premises of the health facility.

5.1.3 The GDoH is responsible for the delivery of public healthcare services throughout the province of Gauteng to ensure that the Province’s healthcare system is functional.
5.1.4 The procurement of PPE’s is centralised at various depots/warehouses and upon request by the hospitals, depots/warehouses will issue orders for collection by the hospitals.

5.1.5 In June and July 2020 media reports repeatedly highlighted the challenges faced with by the hospitals, the public and healthcare practitioners in the frontline fighting the deadly Corona virus.

5.1.6 The widespread negative reports across the media spectrum, which all painted a grim picture about the service delivery issues and the unavailability of Personal Protective Equipment (PPE’s) at various health facilities within GP. The Public Protector sanctioned an immediate own intervention/investigation into the allegations to establish the authenticity of the claims made in the media statements.

5.1.7 As indicated, this own accord intervention to inspect the Jubilee Hospital was made with a view to establish whether or not the alleged state of affairs within the public healthcare facilities in the GP resulted in improper conduct or maladministration.

**INSPECTION IN LOCO AND INTERVIEWS CONDUCTED AT JUBILEE HOSPITAL WITH DR OLEBOGENG MODISE (DR MODISE), HOSPITAL MANAGEMENT AND ORGANISED LABOUR**

**PROFILE OF JUBILEE HOSPITAL**

5.1.8 On 18 August 2020 during the site inspection conducted by the investigation team, Dr Modise profiled the hospital as follows:
5.1.8.1 The hospital has a staff complement of 826 staff members (permanent) but it has increased to 927 staff members due to “Covid posts” being created (contract positions).

5.1.8.2 It provides services to Gauteng and North West Province patients and supports 34 clinics - 11 in Gauteng and 23 in North West Province. The hospital has a multidisciplinary Occupational Health and Safety (OHS) responsibility for Covid-19 matters. The Committee is chaired by the Acting Clinical Manager and the Unions are represented at that Committee.

5.1.8.3 The number of staff members who tested positive for Covid-19 are 94, of which 79 have recovered and 15 were in isolation or quarantine. One sessional Doctor and 41 patients have died as a result of Covid-19, but there is no concrete trail as to whether the employees contracted the virus at the hospital or elsewhere.

5.1.9 On completion of the site visit, Dr Olebogeng Modise (Dr Modise) made a presentation regarding the state of readiness of the hospital to handle the Covid-19 pandemic.

5.1.10 The following is a list of the most visible systemic and administrative challenges and deficiencies observed during the site inspection conducted by the investigation team:

**Infrastructure**

5.1.10.1 It was observed that the hospital has three (3) tents which were used to test and house Covid-19 positive patients and Patients under Investigation (PUI).

5.1.10.2 It was observed the Jubilee Hospital`s current infrastructure is old, crumbling, and outdated.
5.1.10.3 Mr Lincon Moahlodi (Mr Moahlodi), the PSA Shop Steward at Jubilee hospital, submitted that the hospital does not have sufficient space to accommodate staff during their lunch time and as such they are not able to comply with the social distancing requirements.

5.1.10.4 Further that the kitchen is small and cannot accommodate staff during lunch time breaks, resulting in non-adherence to social distancing.

5.1.10.5 The hospital was in the process of constructing Alternative Building Technology (ABT) structures and on 24 August 2020 BMW was going to donate three hundred (300) beds to the hospital to be used in the ABT structures. The structures were due to be completed on 10 August 2020.

5.1.10.6 In his presentation, Dr Modise advised that when the GDoH commenced with the building of the ABT structures, a needs analysis for the hospital was not done, as they could have communicated that the Hospital ICU capacity and theatre equipment are areas that could benefit from this process however management did not have any information regarding what informed the GDoH to commence with the construction of the ABT structures at Jubilee Hospital.

5.1.10.7 Dr Modise indicated that management of the hospital was neither consulted nor did they form part of the decision making process at the genesis of the construction of the ABT structures, but since the construction of the structures, they are now participating in meetings for the construction or building of those structures. Dr Modise advised that the hospital tents, which were observed during the site inspection, are used for screening Covid-19 patients.

*Industrial Relations and Communications*
5.1.10.8  Mr Lincoln Moahlodi of the Public Servants Association (PSA), submitted during the walkabout that more could be done to ensure the health and safety of health workers.

5.1.10.9  He further submitted that there is a lack of communication from Management to staff and there are no regular meetings held to discuss the operations of the hospital during the pandemic and a lack of dissemination of information about the processes to be followed in case staff are infected with Covid-19.

5.1.10.10  He also added that staff experienced challenges regarding the approval of special leave on when they submitted their special leave applications.

5.1.10.11  Dr Modise submitted that the hospital is not sufficiently capacitated with staff within the Covid-19 wards and that negatively impacted on the effective and efficient running of the hospital. The Intensive Care Unit (ICU) and theatre were subsequently closed down due to 94 medical staff testing positive for Covid-19, and this resulted in the postponement of elective surgery.

**PPE**

5.1.10.12  The procurement of PPE is centralized at GDoH.

5.1.10.13  Mr Moahlodi indicated that although staff members are provided with PPE, the hospital management instructed staff to wear one overall the entire day, whereas they should be changing that overall and PPE after each consultation with a patient. He further advised that when the issue was raised with Management, the response thereto was that there is insufficient stock of PPE’s.

5.1.10.14  In addition to this, the lack of a dedicated vehicles for the collection of PPE’s exacerbates the availability of PPE’s.
5.1.10.15 There are delays in the Covid-19 testing turnaround times, because the batches of specimens are sent to Dr George Mukhari Academic Hospital for testing.

5.1.10.16 Dr Modise confirmed that there was insufficient procurement, distribution and provisioning of PPE’s to ensure that the staff and Covid-19 patients were adequately protected from the surge of the pandemic as the procurement of PPE’s is centralized with the GDoH. When PPE’s are required by the hospital, the hospital makes a request to the GDoH and once approved, they are collected at a warehouse, however the hospital does not have a vehicle to collect PPE, but it utilizes the laundry vehicle for that purpose.

5.1.10.17 Further that the hospital is not capacitated to conduct Covid-19 tests. The Covid-19 specimens are sent in batches to Dr George Mukhari Academic Hospital for testing and as a result, there is a delay in the turn-around times of providing test results to patients.

**Transport**

5.1.10.18 Jubilee Hospital does not have a dedicated vehicle to collect PPE’s at the warehouse which results in a delay in distribution of PPE to staff.

5.1.10.19 There was a delay in the response time of ambulances due to the patient overflow.

5.1.10.20 Mr Moahlodi explained that ambulances were not available, serviced, cleaned and sanitized and that it had the potential to compromise the health of the medical staff and patients.

**SUBMISSION BY DR MODISE, ACTING CEO OF JUBILEE HOSPITAL**

5.1.11 On 21 September 2020, the investigation team received further submissions from Dr Modise addressing the following areas:
Infrastructure

5.1.11.1 Dr Modise asserted that the hospital was in the process of constructing the ABT structures and that the initial plan was that Phase 1 of the structure will be completed by end of October 2020, but the construction and completion of those structures was disrupted and delayed by community protests. The GDoH receives monthly reports and ad hoc physical and staff structure needs, therefore this could have been done to conduct needs analysis for the 300 beds ABT structures.

5.1.11.2 There are three (03) tents at the hospital which are used to accommodate Patients under Investigation (PUI) and confirmed Covid-19 patients. BMW has donated 300 beds.

5.1.11.3 Dr Modise indicated that due to infrastructural challenges, the hospital does not have a dedicated dining hall for staff members. Therefore management issued a memorandum, wherein staff was prohibited to have meals together as a way of preventing the spread of Covid-19.

5.1.11.4 The Office of the Public Protector is in possession of a Covid-19 readiness draft infrastructure assessment report by the Gauteng Department of Health, which indicates that a needs analysis assessment was jointly conducted by the Department, the hospitals and Department of Infrastructure Development. The report indicates that a needs analysis was conducted at Jubilee Hospital on 06 April 2020. Jubilee was represented by the CEO Dr Modise, and Department of Infrastructure Development (DID) by Mr V Chakane, of Maintenance.

Industrial Relations and Communications

5.1.11.5 With regard of the allegations by Mr Moahlodi that the hospital is not effectively communicating with Organized Labour and staff regarding the support and process to be followed in case a staff member test positive
for Covid-19, Dr Modise advised that the hospital is supporting its officials and has also appointed a psychologist to support staff.

5.1.11.6 Further, employees who need psychological support and assistance are encouraged to contact the Provincial Call Centre Zinakekele Employee Health Wellness Programme, which was appointed to provide psychological support to officials.

5.1.11.7 In his response to the allegation that the hospital is not effectively communicating with Organized Labour and staff regarding Covid-19, Dr Modise stated that information with staff is shared through meetings, circulars, internal memos, emails and the hospital intercom.

5.1.11.8 On the allegation that the hospital management refused to give staff who tested positive for Covid-19 special leave, Dr Modise advised that Organized Labour was dissatisfied with the implementation of personnel circular 14 of 2020.

5.1.11.9 With regard to the postponement of the elective surgery, Dr Modise acknowledged that there was a period where the staff infection rate was high at the hospital, and consequently the ICU was closed. The number of elective surgeries at the theatre were scaled down as a result of a shortage of staff.

**PPE**

5.1.11.10 Regarding the provision of PPE’s, Dr Modise stated that PPE is provisioned in accordance with the regulations.

5.1.11.11 Dr Modise conceded that initially when the Covid-19 pandemic started around March 2020, the hospital, as well as the rest of the country, did not
have sufficient PPE’s to cater for all hospital staff members, but once the GDoH started issuing PPE’s from the central storage, the hospital had adequate PPE stock, but labour is not satisfied with the quality of some PPE’s, i.e. KN95 masks. He submitted therefore that the hospital has never experienced challenges with the collection of PPE’s.

5.1.11.12 Dr Modise affirmed the allegation that the hospital is delaying with Covid-19 tests as a result of specimens being taken to Dr George Mukhari hospital for testing. However, the seven (7) days turnaround time to release results was reduced to a total 48 hours

**Transport**

5.1.11.13 Dr Modise’s submission to the Office of the Public Protector during the inspection indicated that the hospital is experiencing challenges with regards to the collection of PPE as they had to utilize the laundry vehicle. However, in his formal response to the Office of the Public Protector he indicated that the Hospital has not experienced any challenges with the collection of PPE, which was contradictory.

5.1.11.14 With regards to the unavailability of ambulances, Dr Modise indicated that ambulances are controlled by the Emergency Medical Services (EMS) call center for the entire Province. Some patients approach the hospital directly without being referred.

5.1.12 The First Special Report of the Auditor General South Africa (AGSA) dated 22 September 2020 “on the financial management of government’s Covid-19 initiatives”, inter alia focused their audit of PPE procurement on health on the processes undertaken to identify the need for PPE, the procurement process, payments made and PPE delivered. In terms of the report the key findings on PPE were made:

5.1.12.1.1 There are delays in the delivery of PPE,
5.1.12.2 There are insufficient controls to ensure the receipt and payment of PPE at the level of quality and price audit.

5.1.12.3 According to the AGSA the purchasing of large volume of PPE for the health sector started in March 2020 but some health facilities experienced shortages of curtain PPE items during the pandemic. They stated that this is mainly due to significant delays in delivery by suppliers.

5.1.13 Response to the Notice in terms of the provisions of section 7(9)(a) of the Public Protector Act, 1994

5.1.14 On 24 February 2021, the Public Protector issued a notice in terms of section 7(9)(a) of the Public Protector Act to Dr Olebogeng Modise, Mr Arnold Malotana, and to all implicated parties and those with a direct interest in this matter, with a view to afford them an opportunity to respond to the allegations against them, particularly in relation to the role each played in this matter. Section 7(9)(a) of the Public Protector Act provides that:

“If it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter being investigated and that such implication may be to the detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector shall afford such person an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances”.

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5.1.15 I now turn to consider the responses submitted regarding the section 7(9) notices (hereinafter referred to as notice/s). My office has made an effort to deal with each and every aspect raised in the responses but where it appears that it has not done so, that should not be misconstrued as an admission of any kind of the averments contained therein.

5.1.16 A response from Dr Modise, to the notice was received on 05 March 2021.

5.1.17 Dr Modise in his response to the section 7(9) acknowledged certain points raised in the report, but the following items were disputed.

5.1.18 Dr Modise challenges the section 7(9)’s findings and argues that there is no scientific evidence that the frontline workers were compromised and not adequately protected.

5.1.19 Dr Modise highlighted that the hospital management was made to believe that the Public Protector’s inspection was a support visit. However the hospital was not made aware that the Public Protector was conducting an investigation. Most of the responses provided at the inspections were meant to give a general overview of the situation of the hospital.

5.1.20 Dr Modise acknowledged that the kitchen is not sufficient to cater for all staff members during their lunch breaks but the matter of space would be addressed with the Gauteng Department of Infrastructure Development (GDID). Further, that in an effort to ensure adherence to social distancing, staff members were encouraged to take their lunch breaks in intervals.

5.1.21 Dr Modise confirmed the Public Protector’s observations in relation to the ABT structures and also indicated that the completion of the construction was delayed due to the community unrest. He further indicated that he was not consulted in the construction of the ABT structures and that the decision to construct the ABT structures at the hospital was taken at the GDOH (Head Office). He also submitted that the hospital formed part of the project team. Dr Modise disputed that a needs analysis was conducted
and further indicated that the meeting held at the hospital was not a needs analysis. At that stage a decision was taken to construct the ABT structures at the hospital.

5.1.22 Dr Modise rejected the allegations by Mr Moahlodi that there was lack of communication from Management to staff regarding the processes to be followed in case staff are infected with Covid-19. Dr Modise submitted that the hospital was disseminating information at the beginning of the pandemic. This was done by distributing pamphlets, frequent announcement and regular meetings but the union would be absent in some of the meetings without even tendering an apology.

5.1.23 Dr Modise denied the allegation that staff members were refused special leave upon submitting applications for special leave when they tested positive.

5.1.24 On 18 May 2021 an email was sent to the Dr Modise requesting to be provided with evidence, in the form of the submitted special leave application, but same was not received.

5.1.25 With regards to the capacity constraints that led to closure of ICU and theatre, Dr Modise denied the allegation and contended that they were allocated two positions for phase two (2). At the time of the visit by the Public Protector, the hospital was in the process of filling the positions but the hospital was unable to attract suitably qualified candidates (ICU trained Nurses, Medical Specialist and Medical Officers).

5.1.26 In relation to the closure of the Intensive Care Unit (ICU) and theatre, Dr Modise submitted that the theatre was never closed and all emergency operations continued as scheduled instead no new operations were booked for that period.

5.1.27 Further that the ICU was closed for fogging for ten (10) days as one staff member who had been infected had come into contact with other ICU staff
member and they were all placed on quarantine. Therefore the ICU was not closed due to capacity constraints nor because ninety four (94) staff members tested positive for Covid-19. Dr Modise also explained that the ninety four (94) infected staff members is a cumulative number and they were never infected all at once.

5.1.28 Dr Modise further indicated that the ICU was closed due hospital not having adequate staff members to work in ICU as it requires specialised training. As such non-emergency services including elective operations were scaled down through the country. Fewer patients were seen during the lockdown and as such there was no negative impact on the level of care provided to patients at the hospital.

5.1.29 Dr Modise contradicted himself on the issue of closure, initially he stated that it was closed for fogging as a staff member was infected with Covid-19 and then again he submits that it was closed as the hospital did not have adequate staff members to work in ICU as it requires specialised training.

5.1.30 It was further noted that Dr Modise indicated that they were allocated two positions at the time of the inspection by the Public Protector however the hospital was unable to attract suitably qualified candidates (ICU trained Nurses, Medical Specialist and Medical Officers) due to the positions being short term.

5.1.31 Dr Modise confirmed that the procurement of PPE is centralized at Province and that PPE is collected from the warehouse. He further acknowledged that there was initially a shortage of certain PPE items at the beginning of the Covid-19 pandemic, N95 masks.

5.1.32 According to Dr Modise, staff members were allocated PPE in line with WHO guidelines however the union wanted staff to be allocated the same PPE across all board.
5.1.33 Dr Modise conceded that there were delays in testing turnaround times due to tests being done at hospitals with bigger laboratories like Dr George Mukhari Academic Hospital.

5.1.34 It was Dr Modise’s submission that, the assertion that the hospital does not have a vehicle to collect PPE from the warehouse to the hospital is incorrect. He indicated that the hospital utilised the Masakhane truck once to collect PPE as the amount of the PPE to be collected exceeded the available hospital vehicle capacity but he also stated that there was never a shortage of PPE as a result of transport challenges.

5.1.35 With regard to the ambulance turnaround times, Dr Modise indicated that he is not in a position to respond to the allegation and advised that the Emergency Medical Services (EMS) is best suited to respond to the allegation.

5.1.36 In relation to the lack of medical equipment to conduct the testing of specimen, Dr Modise indicated that the medical equipment is procured according to the demand plan. He indicated that is not clear how the virus spread could have increased due to delays in procurement of machinery or equipment.

5.1.37 Dr Modise denied the allegation that GDoH could not administer the hospital in the manner intended by the Constitution and the NHA which encourage efficient and effective provision of healthcare services due to the pandemic. In his response, Dr Modise indicated that efficient and effective healthcare was provided during the pandemic. He further alluded that it is not clear what scientific information informed the Public Protector to arrive at this decision as the hospital responded to the pandemic the best way they could under circumstances.
5.1.38 A response to the notice was received by the Public Protector on 19 March 2021, from Mr Arnold Malotana, the Acting Head of Department of Health. The Public Protector will firstly deal with the concerns raised by Mr Malotana in his response to the Section 7(9) notice.

5.1.39 Mr Malotana conveyed his concerns as the Acting HoD and Accounting Officer for the Gauteng Department of Health. He relayed that none of the reports were discussed with him nor was he allowed to interact with the investigating team or respond to any queries. Further that he was not aware of the notice and it was only brought to his attention by one of his officials.

5.1.40 It should be noted that the Section 7(9) notice was served by email to Mr Malotana and the Deputy Director of Integrity Management: Ms Maureen Motjjelele, on 24 February 2021 at 16:45pm to enable him to respond. Therefore, there was no intention by the office to deprive Mr Malotana of an opportunity to respond to the notice as the Public Protector was cognisant of the importance and relevance of his office and role as the Accounting Officer.

5.1.41 Further to the above, Mr Malotana was given an opportunity to interact with the Public Protector investigating team as per the meeting invitation, which he and his team attended at the office of the Public Protector offices on 25 November 2020, wherein the observations from the Hospital inspection and centralisation of procurement were also discussed.

5.1.42 Mr Malotana’s other concern was the approach adopted by the office of the Public Protector during the inspections. He relayed that the CEO’s of the hospitals informed him that the approach was high handed and that the Public Protector team arrived, unannounced and accompanied by
certain members of the media. Mr Malotana’s view is that the manner in which the investigation was conducted was completely inappropriate.

5.1.43 Section 7(1)(b)(i) of the Public Protector Act provides that “the format and the procedure to be followed in conducting any investigation shall be determined by the Public Protector with due regard to the circumstances of each case”. It is unfortunate that the CEO’s viewed the inspection as high handed however there was nothing untoward with regards to the approach adopted.

5.1.44 Mr Malotana disagreed with findings of the Public Protector and submitted that none of the issues raised about the hospitals had an impact on service delivery. Further that he complied with the legal provisions imposed upon him by law.

5.1.45 Further that in order to ascertain the performance of primary health care services, a hospital requires specific processes and methodologies need to be followed. To measure the level of care provided, one needs to follow a specific methodology provided by WHO, based on specific health indicators.

5.1.46 In respect of Jubilee hospital Mr Malotana submitted as follows:

5.1.46.1 Mr Malotana submitted that the only facility called upon by the Public Protector and that renders primary healthcare services is Lilian Ngoyi Community Health Centre, while the Jubilee Hospital renders district hospital services.

5.1.46.2 The four (04) Academic Hospitals namely, (Dr George Mukhari Academic Hospital, Steve Biko Academic Hospital, Chris Hani Baragwanath Hospital and Charlotte Maxeke Academic Hospital) render tertiary hospital services and central referral services and may provide national referral services.
The hospitals train healthcare providers and conduct research and do not offer primary healthcare services.

5.1.46.3 With regard to the allegations that there are administrative deficiencies by the GDoH that led to systemic challenges in the delivery of primary health care services at Jubilee hospital, Mr Malotana submitted that he does not agree with the finding by the Public Protector as Jubilee hospital does not render primary healthcare services.

5.1.46.4 In relation to the allegation that the Hospital does not have sufficient space to accommodate staff during their lunchtime and as such, they cannot comply with the social distancing requirements, Mr Malotana stated that this is a structural matter that will be addressed with DID to mitigate the issue. Staff were advised to take lunch at different times and there is plenty of space outside the hospital for the staff to have their lunch and social distance.

5.1.46.5 According to Mr Malotana, Dr Modise was fully involved in the construction of the ABT structures and the process thereof via the Deputy Director General of Hospital Services.

5.1.46.6 In this regard, Mr Malotana attached an undated email from Chief Director of Infrastructure: Dr Maseko indicating the following that:

“The decision for beds in jubilee as you would recall was an EXCO submission following a submission by health on beds needed on the North, South, Central, Eastern and Central corridors. There were engagements by HOD and clinical services with clusters around where these beds will be. CEO Jubilee was also engaged around the proposed beds in his facility. The Premier and MEC even announced around the new beds. Jubilee was and is meant to benefit because there are long term plans for a trauma centre along the N1.
Ms Visser visited the facility before construction could take place and even the drawings were signed by the CEO. I personally spoke with him about the ABT before construction started. I would find it strange for him to deny prior knowledge of the infrastructure before it was built.

5.1.46.7 Regarding lack of communication by the hospital management to Organised Labour and staff regarding support and the process to be followed when a staff member tests positive for Covid-19 and the hospital management refusal to grant staff members who tested positive for Covid-19 special leave Mr Malotana submitted that Dr Modise communicated with his employees via the intercom system of the hospital, internal memos, as well as health and safety meetings, the latter of which organised labour attended.

5.1.46.7.1 Mr Malotana submitted an internal memorandum dated 14 August 2020, 17 June 2020, 28 September 2020 and 04 September 2020 from Dr Modise addressed to all staff members with subject “Covid-19 update” wherein he provided Covid-19 updates on infections, recoveries and quarantines. Staff were further encouraged to report unavailability of PPE to their sectional head or Supervisor and for those who seek psychological support are encouraged to contact staff clinic or call Zinakekekele Employee Health and Wellness Programme.

5.1.46.7.2 Mr Malotana also attached minutes and attendance registers from Dr Modise of meetings held with the Covid-19 task team at Jubilee Hospital. These submissions by Mr Malotana indicated that meetings were held on several occasions (28 August 2020, 31 August 2020, 04 September 2020, 07 September 2020 and 08 September 2020) respectively.

5.1.46.8 In relation to the issue of special leave, it was alleged that staff was impeded from utilising special leave instead they were required to utilise their normal sick leave. It was submitted by Mr Malotana that leave was
managed according to the prevailing regulatory framework and no evidence was provided in that regard to support his submission.

5.1.46.9 Mr Malotana disagreed with the allegation that the hospital is not sufficiently capacitated with staff within the Covid-19 wards and that as a result it negatively impacted the Hospital's effective and efficient running resulting in the postponement of elective surgery.

5.1.46.10 In his response Mr Malotana, stated that the World Health Organisation does not have a set ratio prescribing the number of clinicians required for a certain number of patients. Further that the fact that employees got infected with the virus (not all at the same time) and that the Intensive Care Unit had to be closed does not automatically translate to inefficiency. Neither does the postponement of elective surgery, which was a rational decision taken by the Provincial Corona Command Council and applied for the whole Province. At no time was patient or personnel safety compromised and there is no evidence to suggest such.

5.1.46.11 In support of his argument, he submitted an ideal Hospital framework dated 2018\(^5\) and also provided a framework which states Executive management, shared between the Chief Executive Officer; Clinical Management and Human Resources Management must utilise the table below to monitor HRH capacity and utilisation:

\(^5\) IDEAL HOSPITAL REALISATION AND MAINTENANCE FRAMEWORK MANUAL 2018, page 130

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<td>NB</td>
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128  128  Critical clinical positions in the organogram are filled

NB  129  Specific support services have designated managers

NB  130  Clinical Staffing needs have been determined in line with WISN

NB  131  Non clinical staff component is determined according to service needs

NB  132  All clinical post are filled according to service needs

NB  133  All non-clinical post are filled according to service needs

1  134  Duty roster for all clinical and non-clinical service areas are available

5.1.46.12 The checklist provides a guide on how to assess compliance and as indicated the hospital had been allocated additional positions to enable it to meet its service needs.

5.1.46.13 According to Mr Malotana the delay in the recruitment of clinicians or any other staff at the hospital was not as a result of the Department. He indicated that Gauteng Department of E-Government experienced some delays in processing certain related documents of new staff members but was resolved. The Department ensured the secondment of 30 (thirty) clinical staff members to assist the hospital.

5.1.46.14 Mr Malotana disagreed with Dr Modise that there was insufficient, procurement, distribution and provisioning of PPE's at Jubilee hospital to ensure adequate protection of staff and Covid-19 patients. He contended that, when PPE's is required by the Hospital, it is requested through GDoH.

5.1.46.15 In support of his contention above, Mr Malotana provided the “PPE distribution register” which contained the inventory of PPE distributed to Jubilee Hospital and other hospitals within Gauteng. The attachment
below is an illustration of the PPE that was distributed to Jubilee and other hospitals.

<table>
<thead>
<tr>
<th>Institution</th>
<th>Aprons Disposable</th>
<th>Aprons Disposable - Body Bags</th>
<th>Body Bags</th>
<th>Boot/Shoe Covers</th>
<th>Coveralls Disposable - Overalls M</th>
<th>Coveralls Disposable - Overalls S</th>
<th>Coveralls Disposable - Overalls XL</th>
<th>Coveralls Disposable - Overalls XXL</th>
<th>Coveralls Disposable - Overalls XXXL</th>
<th>Coveralls Disposable - Overalls CPAP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charlotte Maxeke Hospital</td>
<td>64 000</td>
<td>80 000</td>
<td></td>
<td></td>
<td>14 000</td>
<td>450</td>
<td>2 100</td>
<td>150</td>
<td>750</td>
<td>12 850</td>
</tr>
<tr>
<td>Chris Hani Baragwanath Hospital</td>
<td>227 000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>George Mukhari Hospital</td>
<td>269 000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jubilee District Hospital</td>
<td>26 520</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

5.1.46.16 Mr Malotana acknowledged that the Department did sometimes struggle with the PPE procurement.

5.1.46.17 Regarding the conclusion that there was a delay in the distribution and collection of PPE's to medical staff at the Jubilee Hospital. Mr Malotana disagreed and contended that there was no delay in the distribution and collection of PPE to the hospital.

5.1.46.18 In support of his assertion above, Mr Malotana referred to the “PPE distribution register” in par 5.1.84 and the Ideal Hospital Framework, Ideal Hospital Assessment Tool, Ideal Clinic Framework and Ideal Clinic Manual.

**CHECKLIST FOR ELEMENT 88**

<table>
<thead>
<tr>
<th>Description</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gloves – non sterile</td>
<td>Yes / No</td>
</tr>
<tr>
<td>Gloves – sterile</td>
<td>Yes / No</td>
</tr>
<tr>
<td>Disposable gowns OR aprons</td>
<td>Yes / No</td>
</tr>
<tr>
<td>Protective face shields OR goggles with surgical face masks</td>
<td>Yes / No</td>
</tr>
<tr>
<td>Safety boots</td>
<td>Yes / No</td>
</tr>
</tbody>
</table>
5.1.46.19 The Ideal Hospital Framework provides a checklist for PPE but it does not relate to the delay in the provision of PPE to staff, same was found with the, Ideal Hospital Assessment Tool, Ideal Clinic Framework and Ideal Clinic Manual they did not have a bearing on delay.

5.1.46.20 With regards to the Public Protector’s submission that during this Covid-19 pandemic era, the Jubilee Hospital is required to provide health care and adequate provisioning of PPE’s and that the medical staff should be sufficiently protected to enable them to attend to patients timeously to curb the escalation of the Covid-19 pandemic, Mr Malotana stated that the Department did provide healthcare and adequate PPE. Further, the Clinicians are sufficiently protected as required. He did not provided supporting documentation to the aforesaid response.

5.1.46.21 Regarding the sub-standard PPE, Mr Malotana conceded that some of the PPE was substandard but indicated that it is approximately 2% of the procured PPE which were substandard and the Department has since taken steps to address the issue with suppliers.

5.1.46.22 Mr Malotana provided the table below to showcase which of the PPE was of substandard quality:

<table>
<thead>
<tr>
<th>NT Report item</th>
<th>Stock Item</th>
<th>Quality Concern Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disinfectant</td>
<td>Surface Disinfectant 25L</td>
<td>1000</td>
</tr>
<tr>
<td>Visors</td>
<td>Face Visors/Shield</td>
<td>100 000</td>
</tr>
<tr>
<td>Hand Sanitizers</td>
<td>Hand Sanitizer 5L</td>
<td>230</td>
</tr>
<tr>
<td>Hand Sanitizers</td>
<td>Hand Sanitizer 25L</td>
<td>3 525</td>
</tr>
<tr>
<td>Gowns Disposable</td>
<td>Isolation Gown XL</td>
<td>38 400</td>
</tr>
<tr>
<td>Not on NT list</td>
<td>Mask Cloth/Fabric</td>
<td>124 282</td>
</tr>
</tbody>
</table>
5.1.46.23 In relation to the allegations that the Hospital is not regularly providing staff with PPE's, especially overalls and that the hospital management instructed staff to wear one overall the entire day, whereas they should be changing that overall and PPE after each consultation with a patient, Mr Malotana disagreed with that assertion and submitted that the Infection Control Procedures allow for overalls to be worn for a day and do not require changing after each consultation. As previously stated, PPE was available for use in the Hospital.

5.1.46.24 In order to support his argument, Mr Malotana submitted “COVID-19 Disease: Infection Prevention and Control Guidelines” version 2 dated 21st May 2020 and the below extract which indicates that PPE may be reused:

Extended use of PPE

*Usually PPE is discarded after a single patient or procedure, however, because of an acute shortage of PPE during the COVID-19 outbreak, the WHO and CDC are considering extended use and/or reuse of certain PPE. For South Africa, it is recommended that the extended use of PPE is preferable to reprocessing, the latter being expensive, not validated and the integrity of the PPE cannot be guaranteed (Table below for extended use or reprocessing of PPE).*

<table>
<thead>
<tr>
<th>Type of PPE</th>
<th>Extended use</th>
<th>Reprocessed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gloves (non-sterile)</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Surgical Masks</td>
<td>Yes, until damp and torn or to end shift.</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Change if contaminated</td>
<td></td>
</tr>
<tr>
<td>N95 respirators</td>
<td>Yes. Up to one (1) week for same HCW,</td>
<td>Pending (WHO)</td>
</tr>
<tr>
<td></td>
<td>unless</td>
<td></td>
</tr>
</tbody>
</table>
In terms of the above, it was noted that gowns, cotton gowns and aprons may be re-used, if not visibly contaminated or when providing care to the same patient.

With regards to the Hospital lack of capacity to conduct Covid-19 tests, Mr Malotana acknowledged that there was a delay in the turn-around times in providing test results to patients as the Covid-19 specimens are sent in batches to Dr George Mukhari Academic Hospital for testing but those delays were shortened over the space of one month.

In support of the above mentioned, Mr Malotana provided the “Jubilee Hospital patients Covid-19 specimen register” which contained a list of patients who were tested for Covid-19 and it was noted that the longest testing turnaround time was twenty one (21) days on 19 June 2020 while the shortest turnaround time was twenty four (24) hours on 10 July 2020.

An extract of a checklist of specified turnaround times for laboratory results contained in the Ideal Clinic manual version 19 on page 286 provided by Mr Malotana, provides as follows:

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6 Ideal Clinic manual version 19 on page 286
## Report of the Public Protector

<table>
<thead>
<tr>
<th>No</th>
<th>Item</th>
<th>Turnaround Time</th>
<th>Score record 1</th>
<th>Score record 1</th>
<th>Score record 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>All blood results except those listed in number 2 and 3</td>
<td>24 hours</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Blood results: Cholesterol, CRP (C-reactive protein), FT4 (Free Thyroxine 4), HbA1c (Glycated Haemoglobin), Phenytoin, lipase, PSA (Prostate specific hormone), Red Cell Folate, Triglycerides, TSH (Thyroid stimulating hormone), Vitamin B12, CD4 Count, RPR (Rapid Plasma Reagin test for syphilis), Hepatitis A, B or C</td>
<td>24-48 hours</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Blood results: HIV PCR for infants</td>
<td>48-120 hours</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Blood results: Viral load</td>
<td>48-120 hours</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total**

Total maximum possible score (sum of all samples checked minus those marked NA)

Percentage (Total score ÷ Total maximum possible score) x 100

5.1.46.29 In terms of the above, the longest time to test samples is 120 hours which is five (5) days.

5.1.46.30 In an article by Spotlight under the heading, “Covid-19: Stark differences between public and private sector testing” written by Ms Amy Green dated 24 June 2020. It was reported that the testing crisis started soon after the

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7 Spotlight: COVID-19: Stark differences between public and private sector testing dated 24 June 2020
testing eligibility criteria were expanded on the recommendation of the National Institute for Communicable Diseases (NICD) and tests started being referred through government’s testing and screening campaign.

5.1.46.31 Amy Green indicated that the turnaround time for test results went from 48 hours to anything up to two (2) weeks or more and that the NICD in their weekly report confirmed that the testing turnaround times in the public sector increased from 2.1 days in early May to 12.4 days in the week ending 13 June.

5.1.46.32 Further, that it was reported that the testing backlog in Gauteng in June 2020, stood at 35 000 from 12 000 the previous week. According to Spotlight, the National Health Laboratory Services (NHLS) spokesperson Mzimansi Gcukumana contended that: “The unprocessed specimen backlogs are due to sporadic supply of some of the key products from international suppliers” and further submitted that the prioritisation of tests is part of the solution.

5.1.46.33 Spotlight reported that the “NHLS interventions implemented to address the public sector COVID-19 testing backlogs as communicated to Spotlight include:

1 Prioritising all in-hospital tests, patients under investigation, contacts and critical care workers.

2 Monitoring the rate of test positivity in the provinces and districts to ensure that the NHLS is prioritising resources to these high positivity hotspots.

3 Improving sample workflow and testing process with innovative methods of extraction, including heat and lysis to manage the demand of extraction and testing kit shortages. The supply of extraction kits has improved slightly.
4 Engage private and academic research laboratories to assist where they have spare capacity and test kits available.

5 Reaching out to smaller private laboratories with molecular testing platforms to help manage the increased testing demand.

5.1.46.34 With regards to the allegation that the hospital did not have sufficient vehicles and it utilised the Masakhane laundry vehicle to collect PPE, Mr Malotana disagreed with the allegation and indicated that the hospital had more than enough vehicles to assist with the collection of PPE, further that the SANDF and the Cluster Facilities were able to help, when needed.

5.1.46.35 With regards to the allegations that ambulances were not available, serviced, cleaned, sanitised and had the potential to compromise the medical staff and patients' health, Mr Malotana disagreed with the assertion and submitted that the EMS station at Jubilee hospital does not report to Dr Modise and he had no knowledge as to how to answer the question posed to him. Mr Malotana indicated that EMS is a business unit of the Gauteng Department of Health which is based in Midrand and is a central provider of Emergency Health Services of the Department. Further that ambulances are correctly serviced and maintained, cleaned and sanitised and at no point posed a danger to any staff or patients.

5.1.46.36 In support of his argument, Mr Malotana submitted to the Public Protector an unsigned letter from the District Manager: Tshwane Gauteng Emergency Medical Services: Mr Sipho Sithole to Mr Chris Du Preez, Chief Risk Officer from the Department.

5.1.46.37 In his submission Mr Sithole addressed the concerns raised by organised labour to the Public Protector:
5.1.46.37.1 Regarding the complaint of the ambulances not being available, Mr Sithole responded as follows:

5.1.46.37.1.1 The station has a staff compliment of 58 officials that work on a four shifts system.

5.1.46.37.2 Each shift has an average of 14 Staff, an ambulance is crewed by 2 staff, meaning shift can staff and operate average of 5-7 ambulances per subject to all types of leaves.

5.1.46.37.3 During the period of July 2020 – September 2020 the average fleet strength for Temba was as per the Table below:

<table>
<thead>
<tr>
<th></th>
<th>July</th>
<th>Aug</th>
<th>Sept</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ambulances</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Day</td>
<td>5</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Night</td>
<td>5</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>ICU</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Day</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Night</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

5.1.46.37.4 The Temba EMS station Call Volume during the July – September period was as follows:

<table>
<thead>
<tr>
<th></th>
<th>July 2020</th>
<th>Aug 2020</th>
<th>Sep 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Temba EMS Station</td>
<td>477</td>
<td>631</td>
<td>565</td>
</tr>
<tr>
<td>EMS call client transporte d</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Temba EMS Station</td>
<td>654</td>
<td>740</td>
<td>807</td>
</tr>
<tr>
<td>EMS calls total</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

5.1.46.38 Regarding the complaint concerning the ambulances not being serviced, Mr Sithole responded as follows:
5.1.46.38.1 The Gauteng EMS participates on the RT46 Contract that is concerned with provision of Comprehensive Fleet Management Services to the State – Transit Solutions.

5.1.46.38.2 Transit Solutions provides a range of fleet and fuel management solutions and product offerings including ambulance servicing and repairs.

5.1.46.38.3 Gauteng EMS has a mandate to ensure that fleet availability should always be at 85% or above as per Gauteng EMS Annual Performance Plan.

5.1.46.38.4 Ambulance Fleet at Temba EMS is at 29 Ambulances with 85% fleet availability / uptime, equates to just over 24 ambulances available as operational and pool vehicles.

5.1.46.39 Lastly in response to the concern about ambulances not being cleaned or sanitized, Mr Sithole stated as follows:

5.1.46.39.1 Gauteng EMS has developed an SOP on how vehicles should be cleaned and in addition to that, there is a COVID-19 cleaning SOP that provides guidance on how ambulances should be cleaned.

5.1.46.39.2 During commencement of the shift each operational ambulance is disinfected with a spray down of all surfaces and equipment with a chlorine solution.

5.1.46.39.3 After every case the crew will then again wipe down all surfaces and equipment with a chlorine solution.

5.1.46.39.4 Hand soap is provided in each ambulance for crew to wash their hands regularly.

5.1.46.39.5 A suitable hand sanitizer, containing the recommended percentage of alcohol is also available on each ambulance allowing staff to use regularly, and between each patient contact.
5.1.46.39.6 A fresh batch of chlorine solution is mixed at the beginning of each shift.

5.1.46.39.7 Additional 30g chlorine sachets are also available to shifts in case they need more of the solution.

5.1.46.39.8 Fogging of vehicles were done as and when needed as this was only an additional precaution to the washing with soap and disinfecting with chlorine solution on an ongoing basis.

5.1.46.39.9 During this period staff were also wearing the prescribed PPE which is a link in the chain to reduce and mitigate transferring of infections.

5.1.46.39.10 In addition to these steps’ vehicles were also parked in direct sunlight with doors and windows open to aerate them.

5.1.46.39.11 Staff were also informed about the importance of preventing cross contamination and regular cleaning and disinfection of self and environment.

5.1.46.39.12 To further reduce the possibility of cross infections the base was also cleaned with a chlorine solution on a regular basis.

5.1.46.39.13 Emergencies Vehicles were fogged also, along with the EMS Stations Regularly.

5.1.46.39.14 In September 2020, a deep clean and fumigation was conducted in all EMS vehicles.

5.1.46.40 The Public Protector received a sampling of the five (5) batches if invoices totalling 174 ambulances showing that they were sent to NRC auto body CC and some to Kudeko auto body for “deep clean & valet & fogging” on 18 and 22 December 2020.

5.1.46.41 Regarding the submission that the Department and Jubilee Hospital having a responsibility to provide everyone with access to timely,
equitable, acceptable, and affordable health care of appropriate quality, Mr Malotana submitted that the Department follows these provisions and he did not name the provisions nor provide supporting documentation in support thereof.

5.1.46.42 Regarding the obligations imposed on the head of a provincial department by Section 25(2) of the National Health Act (NHA) 61 of 2003, as amended which provides as follows:

“A number of powers and obligations of the head of a provincial department, the most relevant of which are the following:

“(k) Controlling and managing the cost and financing of public health establishments and public health agencies;

(n) controlling the quality of all health services and facilities;

(p) provide and maintain equipment, vehicles and health care facilities in the public sector”.

5.1.46.43 Mr Malotana submitted that, as the Accounting Officer, he fully complied with the abovementioned provisions and further that the centralisation of the procurement system did not and is not causing delays in the procurement process. If for example, a requisition for PPE is made on a particular day, it will be available for collection the following day.


5.1.46.45 The rationale to decentralize the procurement of Covid-19 PPE GDoH was based:
5.1.46.45.1 On the increased non-compliance to supply chain management (SCM) prescripts by the GDoH in procuring Covid-19 related PPE;

5.1.46.45.2 Freeing GDoH capacity to focus on own institutional SCM related matters considering that the department is more impacted by Covid-19;

5.1.46.45.3 Manageable and controlled Covid-19 departmental demand plans by the Accounting Officers and Accounting Authorities;

5.1.46.45.4 Broader empowerment of suppliers and local procurement.

5.1.46.46 The Public Protector had noted challenges and concerns with centralisation of procurement during the inspection which resulted in delays and poor quality PPE.

5.1.46.47 Regarding the conclusion that Jubilee hospital was unable to conduct Covid-19 tests as they do not have equipment to conduct their own Covid tests and had to rely on Dr George Mukhari Hospital for testing which affected service delivery because test results are delayed, Mr Malotana argued that appropriate Supply Chain Management (SCM) processes were put in place according to the prescripts provided by the Treasury. Further that Covid-19 testing centres were arranged at specially equipped and staffed facilities placed within central hospitals. Jubilee Hospital is part of the Dr George Mukhari Academic Hospital (DGMAH) Cluster and the testing facility for that Cluster is DGMAH.

5.1.46.48 Mr Malotana provided the Referral Policy Guideline for Gauteng Department of Health approved on: 31 January 2019 by Head of Department. Below is a referral diagram system which indicates how the referral applies in respect of Specialised, Tertiary, District and Regional Health Establishments:
5.1.46.49 Regarding the lack of no evidence in possession of the Public Protector indicating that the donation of tents and beds from BMW at Jubilee Hospital was registered and declared in the donations register to the GDoH, Mr Malotana submitted that the Provincial Government established a Committee to manage all donations received for Covid-19 and all donations are properly managed and recorded as required and will all be reported in the financial statements.

5.1.46.50 In order to address the allegations of the donations, Mr Malotana provided a copy of a donations register and presentation but the donation from BMW could not be traced or identified therein.

5.1.46.51 On 18 May 2021, the Public Protector sent an email to Dr Modise requested to be favoured with a copy of the donations, but same was not received.
5.1.46.52 Regarding the Public Protector`s conclusion that based on observations made during the on-site visit, that the GDOH could not maintain appropriate conditions for the delivery of health care services for the community of Gauteng and North West Province which it serves, Mr Malotana disagreed with the Public Protector and stated that none of the findings made in respect to Jubilee Hospital support such a conclusion. The Department performed their work within the applicable legal framework.

5.1.46.53 Mr Malotana again referred to the Ideal Hospital Framework, Ideal Hospital Assessment Tool, Ideal Clinic Framework and Ideal Clinic Manual as evidence to support of his above-mentioned contention. He further contended that the assessment of a Hospital and whether people have access to healthcare follows a scientific approach and the assessment to determine what constitutes the ideal conditions for the delivery of health care services is contained in the Ideal Hospital Framework, Ideal Hospital Assessment Tool, Ideal Clinic Framework and Ideal Clinic Manual.

5.1.46.54 Regarding the recorded systemic deficiencies such as the closure of the ICU and subsequent postponement of elective surgery, provisioning of PPE's, the delays in conducting Covid-19 tests, poor communication channels between management and staff having a negative impact on the level of care that is provided to patients at Jubilee hospital, Mr Malotana disagreed with the above and submitted that it was elective surgery only that was postponed and emergency healthcare services were continuously rendered. Mr Malotana did not provide any evidence to support his argument.

5.1.46.55 On the discussions held with the hospital management, medical staff and Organised Labour regarding conclusion that GDoH could not administer Jubilee Hospital in the manner intended by the Constitution and the NHA, which encourage the efficient and effective provision of quality healthcare services, due to the pandemic. Mr Malotana, rejected the above-mentioned assertion and indicated that the findings are not based on facts
but gossip and do not follow scientifically established assessment procedures.

5.1.46.56 Regarding the centralisation of procurement at provincial level delaying and hampering the health service at the Hospital as a result of the dysfunctional, ineffective and inefficient SCM unit at the provincial health Department, Mr Malotana disagreed and contended that although there were procurement delays at times, they do not negatively impact service delivery at the Hospital and services continue to be rendered.

5.1.46.57 Regarding the issue of the high infection rate amongst the staff which resulted into the temporary closure of the ICU and scaling down of elective surgeries in the theatre unit affected service delivery at the Hospital. Further that there is no business continuity management plan regarding the impact of the closure of the theatre unit and scaling down of elective surgeries, Mr Malotana submitted that although staff were infected and the ICU needed to be closed, it did not impact service delivery or patient care. Jubilee Hospital is part of the Dr George Mukhari Academic Hospital and the patients were transferred to the Dr George Mukhari Academic Hospital for further consideration. Elective surgery is, by its nature not life-threatening and can be rescheduled.

5.1.46.58 In support of his argument, Mr Malotana submitted an undated Business Continuity Plan (BCP) from Jubilee Hospital whereby the objective of the BCP is to develop internal processes for the hospital *inter alia* to:

5.1.46.58.1 Maximise the physical and emotional safety of health care workers and support staff,

5.1.46.58.2 Resume operations as quickly as possible following disruptions,

5.1.46.58.3 Make sure that key products and services are resilient to disruption associated with Covid-19.
In response to the findings that the failure by GDoH amounts to the contravention of section 195(1) (b), (e) (f)and (h) of the Constitution, section 237 of the Constitution, section 27(1) (a) and (2) of the Constitution; section 25 (2) (k), (n) and (p) NHA; section 8 (1) OHS Act; section 76 (1) (a) PFMA, paragraph 3.1, 3.2, 3.4 of National Treasury Instruction Note 05 of 2021; National Treasury Regulation, paragraph 21.2 of 31 May 2002; Personnel Circular Minute 14 of 2020. Mr Malotana disagreed with above the findings contended that it is not based on any scientific evidence.

Mr Malotana disagrees with the conclusion by the Public Protector that his conduct as the acting Head of Department Mr Arnold Malotana accordingly constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4) (a) (i) of the Public Protector Act. He was appointed as Acting Head of Department on 30 September 2020, which is more than a month after the inspections took place.

In support of his submission, Mr Malotana provided an Acting letter signed 30 September 2020, appointing him as HoD by the Gauteng Premier, Mr David Makhura.

**Response to the Notice in terms of the provisions of section 7(9)(a) of the Public Protector Act, 1994**

A response was received from the Head of Department at GDID, Mr Thulani Mdadane, dated 28 May 2021 and this part of the response applies *mutatis mutandis* to all the hospitals.

The Gauteng Department of Infrastructure Development and Property Management (DID) is the custodian and implementing agent of all Gauteng Provincial Government immovable assets.
5.1.48.2 The DID has a responsibility for the construction and maintenance of health infrastructure in the Gauteng Province.

5.1.48.3 The DID receives requests for service (RFS) from the Gauteng Department of Health (GDoH) to carry out various infrastructure projects.

5.1.48.4 GDoH is responsible for conducting needs analysis and communicating the type of infrastructure to be constructed.

5.1.48.5 On the implementation of Covid-19 projects, the DID receives RFS’s for various health institutions including the scope of works for each.

5.1.48.6 DID received an RFS for fever tents at various institutions. The fever tents were meant to accommodate triage patients for recording of vitals before they are admitted into the hospital. The triage tents were equipped with oxygen tanks for patients that arrive to the hospital in need of oxygen whilst they await placement in the hospital.

5.1.48.7 DID received an instruction from GDoH in April 2020 for the construction of 1400 ICU/High facilities using ABT. The ABT structures were chosen for their ability to deliver infrastructure faster than conventional building methods. The Jubilee hospital and Dr George Mukhari Academic Hospital were the facilities chosen for the 300 bed ICU/High care ABT facility. The DID develops an annual maintenance plan for all health infrastructure that is implemented in the financial year. The maintenance plan includes statutory and planned maintenance. The planned maintenance is carried out using projects that are developed from the condition assessment, requests from the hospital and the Gauteng Department of Health.

5.1.49 In respect of Jubilee Hospital infrastructure related observations, Mr Mdadane responded as follows:

5.1.49.1 Regarding the hospital having three (3) tents which were used to test and house Covid-19 positive patients and Patients under Investigation (PUI). It
was observed that Jubilee Hospital’s current infrastructure is old, crumbling and outdated. Further, the kitchen is small and cannot accommodate staff during lunch time breaks, resulting in non-adherence to social distancing.

5.1.49.2 Mr Mdadane indicated that the state of the current infrastructure was taken into account hence the implementation of the ABT structure to supplement the existing structure. There is also a project that was at an advanced stage to address all the occupational health and safety (OHS) concerns regarding the hospital. The kitchen extension was not part of the RFS for both ABT and OHS projects.

5.1.49.3 Regarding the constructing of ABT structures due for completion on 10 August 2020.

5.1.49.4 The ABT were completed on 27 November 2020 in terms of the completion certificate and the work was checked by Supervisor Mr Samuel Mahapa. It was certified by the Project Manager Olabode Ayandibu.

5.1.49.5 In his response, Jubilee hospital was one of the facilities chosen for the 300 bed ICU/High care ABT facility.

5.1.49.6 The contract duration for the construction of the facility was four (4) months from the date of the site hand over, the site hand over was on 29 June 2020 with completion date of 29 October 2020. However, the facility was completed on 27 November 2020 due to various challenges of strikes and external supplier challenges due to the lockdown.

5.1.49.7 The date of 10 August 2020 was the initial proposed completion date before the site hand over and the contractor was requested to fast track the project to complete it in two (2) months instead of four (4) months but this could not be achieved instead a sectional completion of 150 beds was achieved in September 2020.
5.1.49.8 Regarding the delay in the response time of ambulances due to the patient overflow, Mr Mdadane responded as follows:

5.1.49.9 He indicated that the RFS given to GDID contained the scope of work for the proposed facility. The projects were constructed using a contracting strategy of design and build, were the contractor is appointed to design the facility and carry out the construction.

5.1.49.10 The DID and the contractor’s professional team consulted the hospital on the design of the facility before the designs were finalised and implemented. Compromise’s had to be made on some of the needs of the hospital as they were not part of the initial RFS and had not been priced by the contractor. The budget was not available to accommodate all the needs of the hospital.

5.1.49.11 Regarding whether Jubilee Hospital had a maintenance plan in place as required by the NHA regulation and the construction of the ABT structure Mr Mdadane responded as follows:

5.1.49.12 The Jubilee hospital has a maintenance plan that is developed which includes planned project of which some are regarded as priority projects given the budget constraints in each financial year. The extension of the kitchen may have been one of the projects but it was not classified as a priority and as such was not implemented in the financial year.

5.1.49.13 In support of the above, the Public Protector is in possession of a copy of the maintenance plan that was provided by the DID.

Applicable Legal Framework

Constitution
5.1.50 Section 195(1) of the Constitution, 1996 provides amongst other things that:

“Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(a) ....;
(b) Efficient, economic and effective use of resources must be promoted;
(c) ....;
(d) ....;
(e) People’s needs must be responded to ....;
(f) Public administration must be accountable .......;
(g) ....; and
(h) Good human-resource management and ...... to maximise human potential, must be cultivated.

5.1.51 According to section 195 (1) (b), the Department and the Hospitals have an obligation to ensure that procurement processes of PPE’s was done in a manner that is efficient, economic and effective.

5.1.52 The Department is required to account for the effective usage of departmental resources and the efficient administration of hospitals. In this instance, procurement is centralised at provincial level and the Department is responsible for the timeous distribution of medical supplies to various hospitals.

5.1.53 The Department and the Jubilee Hospital must cultivate good human resource management to maximise human potential by recruiting and selecting appropriate human capital in terms of the required needs of the hospital. During the pandemic the recruitment and selection of human capital for the Covid-19 was not maximised as there was a delay by the
Department and Jubilee Hospital to appoint essential workers who would have assisted in the fight against the pandemic.

5.1.54 Section 237 of the Constitution provides that all constitutional obligations must be performed diligently and without delay.

5.1.55 It follows that according to the above provision, the Department and the Jubilee Hospital also had a responsibility to ensure that the performance of the hospitals in Gauteng was conducted diligently and without delay. As such the distribution and collection of PPE’s including the distribution of such to various medical staff at the Jubilee Hospital was delayed.

5.1.56 Section 27 read with 195 (1) (e) of the Constitution provides inter alia:

1) Everyone has the right to have access to –

(a) health care services…;

(b) ….;

(c) ….;

2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

5.1.57 The positive obligations imposed on the government by section 27(1) and (2) of the Constitution entitle people of GP to claim healthcare on demand. However, it requires government to develop a comprehensive and workable plan to meet its obligations.

5.1.58 The Constitution requires that regardless of resource constraints the state must take reasonable legislative and other measures, within its available resources to ensure the realisation of the right to health care.
5.1.59 Accordingly, the Department and Jubilee Hospital have a responsibility to provide everyone with access to timely, equitable, acceptable, and affordable health care of appropriate quality. Therefore, the Department must provide healthcare in line with the resources constraints without decreasing the value of health care provided to everyone.

5.1.60 The Department must ensure that medical equipment is procured timeously so that the Jubilee Hospital can provide quality healthcare in order to avoid service delivery failures.

5.1.61 Under the circumstances and during this Covid-19 pandemic era, the Jubilee Hospital is required to provide health care and adequate provisioning of PPE’s. The medical staff should be sufficiently protected to avoid from the risk of acquiring infections.

5.1.62 In his response dated 19 March 2021 to the section 7(9) notice, Mr Malotana stated as follows: “I am advised that the content of these paragraphs do not correctly state the legal position as it regards the provision of healthcare in South Africa. Section 27(1) of the Constitution obliges the state to ensure that everyone has the right to have access to health care services. It does not afford to all persons and unlimited and unrestricted right to healthcare. Further, I am advised that section 27(2) of the Constitution places a further constraint on this right, being that it obliges the state to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right. This qualifies the right based on, inter alia, budget and human resource constraints. The Constitutional Court has long since recognised this limitation.

5.1.63 In Soobramoney v Minister of Health (Kwazulu-Natal) 1998 (1) SA 765 (CC), at paragraph 11, it stated: “What is apparent from these provisions

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is that the obligations imposed on the state by sections 26 and 27 in regard to access to housing, health care, food, water and social security are dependent upon the resources available for such purposes, and that the corresponding rights themselves are limited by reason of the lack of resources. Given this lack of resources and the significant demands on them that have already been referred to, an unqualified obligation to meet these needs would not presently be capable of being fulfilled.”

5.1.64 Mr Malotana’s contention of section 27(1) and (2) not being applicable and not correctly stating the legal position as it regards the provision of healthcare in South Africa is not correctly interpreted. The GDoH is an organ of state and as such section 27(1) of the Constitution is applicable to the Gauteng Provincial Government.

5.1.65 Further that the state is obliged to ensure that everyone has the right to have access to health care services. The assertion by Mr Malotana that the state does not afford all persons an unlimited and unrestrictive right to healthcare is misconstrued in that the state does not limit anyone to have access to health care services. Therefore regardless of the service one requires at the hospital, one has a right to access health services at any public hospital. Hospital has a duty to provide such a service within its available resources.

5.1.66 The office of the Public Protector is aware that while public health authorities are not obliged to provide all possible health services immediately, however the Constitution obliges the State to provide the maximum possible access and to progressively realize greater access.

5.1.67 The WHO health systems framework has six (6) pillars of building blocks of health system with aims and desirable attributes for member states:
5.1.68 The building blocks contribute to the strengthening of health systems in countries that are affiliated with the WHO. Cross cutting components such as leadership, governance and health information systems provide for the basis of the overall policy and regulation of all the other system blocks. Medical products and technologies, and services delivery reflect on the availability and distribution of care.

5.1.69 The compliance of member states with the six (6) building blocks of health systems according to WHO, will lead to improved health, efficiency, responsiveness, social and financial risk protection. Therefore, if administration and governance structures are put in place and adequately monitored by the Department the health care challenges observed in the hospitals would be minimized or eradicated.

5.1.70 Accordingly, the Department and Jubilee Hospital have a responsibility to provide everyone with access to timely, equitable, acceptable, and affordable health care of appropriate quality. Therefore, the Department must provide healthcare in line with the resources constraints without decreasing the value of health care provided to everyone.

5.1.71 The Department is required to ensure that medical equipment is procured timeously so that the Jubilee Hospital can provide quality healthcare to
avoid service delivery failures. In this instance any delays in the procurement of valuable medical machinery and equipment may have caused the spread of Corona virus to increase and further collapsing the already congested health care system.

5.1.72 Section 25(2) of the National Health Act (NHA) 61 of 2003, as amended, lists a number of powers and obligations of the head of a provincial department, the most relevant of which are the following:

“(k) controlling and managing the cost and financing of public health establishments and public health agencies;…

(n) controlling the quality of all health services and facilities;

(p) provide and maintain equipment, vehicles and health care facilities in the public sector”.

5.1.73 According to the abovementioned provision it is clear that the head of a provincial department has the obligation to control the quality of all health services and facilities. As a result, the centralization of the budget and procurement caused delays in the provision of service delivery especially regarding the procurement of PPE and medical equipment in GP hospitals.

5.1.74 Paragraph 3.1 of the Gauteng Provincial Treasury Circular 3 of 2019/2020 provides that all Covid-19 related PPE are to be centrally procured, warehoused and distributed.

5.1.75 The above-mentioned provision directs that all Covid-19 related PPE is to be centrally procured, warehoused and distributed.

5.1.76 In this instance, the Department centrally procured the PPE, placed it in the warehouses and distributed it therefrom. In addition, the hospital collected all the PPE from the warehouse.

9 The head of the provincial department must act in accordance with national health policy and the relevant provincial health policy in respect of or within the relevant province.
5.1.77 Under the circumstances it is clear that centralisation of procurement of Covid-19 related PPE is mandatory.

5.1.78 Paragraph of the Gauteng Provincial Treasury instruction note 02 of 2020/21 decentralised the procurement of all Covid-19 related PPE as of 01 July 2020.

Paragraph 3.1 provides that “All Departments and Entities are required to procure own COVID-19 PPE requirements effective from 01 July 2020 in line with the current applicable SCM prescripts”

5.1.79 Section 76(1) (a) of the Public Finance Management Act 1 of 1999 (PFMA) states that “The National Treasury must make regulations or issue instructions applicable to departments, concerning any matter that must be prescribed for departments in terms of this Act.

5.1.80 In terms of section 8(1) of the Occupational Health and Safety Act 85 of 1993

“All employers shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his employees.

5.1.81 In terms of paragraph 3.1 of the National Treasury Instruction No.05 of 2020/21

“Accounting officers and accounting authorities must put in place the following additional procurement and expenditure measures to address the programme of preventing the spread of the Covid-19 virus: Internal system for financial control, risk management and reporting in order to account for the funds used for the Covid-19 disaster;

5.1.82 It follows that the Department has an obligation to put in place additional procurement and expenditure measures to address the programme of
preventing the spread of the Corona virus. The Department and the hospitals are legally bound to provide and maintain a working environment that is safe and without risk to the health of the medical staff by providing PPE’s to the medical staff whilst controlling, maintaining, managing and monitoring finances of the institution in accordance with the prescribed vote, to avoid wasteful and irregular expenditure.

5.1.83 The responsibility of ensuring that adequate and quality PPE’s are procured and delivered to the Jubilee Hospital timeously lies solely with the Department in order to curb the pandemic and safeguard the health and safety of all workers. In this instance the procured PPE’s was inadequate and was of poor and substandard quality.

5.1.84 Paragraph 3.2 of the National Treasury Instruction note 5 of 2020/21 provides as follows:

“National Treasury SCM Instruction Note 3 of 2016/17-Prevention and Combating Abuse in the Supply Chain Management System, paragraph 8.1, states that accounting officers/authorities must only deviate from inviting competitive bids in cases of emergency and sole supplier status. These deviations do not require the approval of the relevant treasury approval. Paragraph 8.2 thereof further states that emergency procurement may occur when there is a serious and unexpected situation that poses an immediate risk to health, life, property or environment which call an agency to action and there is insufficient time to invite competitive bids”.

5.1.85 Paragraph 3.4 of the National Treasury Instruction note 5 of 2020/21 provides as follows:

“The emergency procurement provisions provide for accounting officers/authorities to procure the required goods or services by other means, such as price quotations or negotiations in accordance with
Treasury Regulation 16 A6.4. The reasons should be recorded and approved by the accounting officer/authority or his/her delegate.”

5.1.86 Based on the above provision the Department is allowed to deviate from competitive bidding process in an emergency situation and in this instance an unexpected situated of Covid-19 that posed immediate health risk qualified as an emergency.

5.1.87 The Treasury Practice Note make provision in emergency situations for the Department to deviate from normal procurement processes in the procurement of medical equipment’s that are normally above the procurement threshold. The Department is not barred from using other means of procurement such as price quotations or negotiations in such defined emergency situations.

5.1.88 In this instance Jubilee hospital is unable to conduct Covid-19 tests as they do not have equipment to conduct their own Covid tests, as a result they had to rely on Dr George Mukhari Hospital for testing which affected service delivery because test results are delayed.

5.1.89 The National Health Act Norms and Standards Regulations applicable to different categories of health establishments, issued as per Government Gazette 67 No. 41419 dated 02 February 2018\(^\text{10}\) (Regulations were promulgated with the purpose to promote and protect the health and safety of users and health care personnel. The Regulations stipulates *inter alia* the following:

Infection prevention and control programmes

\(^{10}\) Signed off by Minister of Health: Dr A Motsoaledi on 15 January 2018.
“8. (1) The health establishment must maintain an environment, which minimises the risk of disease outbreaks, the transmission of infection to users, health care personnel and visitors.

(2) For the purposes of sub-regulation (1), a health establishment must-

(a) ....;

(b) .....;

(c) .....; and

(d) ensure that health care personnel are protected from acquiring infections through the use of personal protective equipment and prophylactic immunisation”.

5.1.90 According to the abovementioned regulation, the hospital has an obligation maintain an environment, which minimises the risk of disease outbreaks, the transmission of infection to users, health care personnel and visitors and to further to minimise the abovementioned risk by ensuring that health care personnel are protected from acquiring infections through the use of personal protective equipment.

5.1.91 In this instance, Dr Modise conceded that initially when the Covid-19 pandemic started around March 2020, the hospital and the rest of the country did not have sufficient PPE’s to cater for all hospital staff members.

5.1.92 Some of the procured PPE’s was inadequate, as well as of poor and substandard quality.

Medical equipment

“Regulation 13(1) of the NHA provides that the Health establishments must ensure that the medical equipment is available and functional in compliance with the law.

(2) For the purpose of sub-regulation (1) the health establishment must ensure that equipment is:

(a) licensed where required from the relevant licensing body; and
(b) in accordance with the essential equipment list in all clinical service areas”.

5.1.93 In terms of the regulation, a health establishment must ensure that the medical equipment is available and functional in compliance with the law.

5.1.94 The Hospital did not medical equipment to enable them to test their own specimens and had to rely on Dr George Mukhari Academic Hospital. As a result the testing turnaround times were delayed for long periods.

Transport management

“Regulation 16(1) of the NHA provides that the health establishment must ensure that vehicles used to transport users and health care personnel are safe and well maintained.

(2) For the purposes of sub-regulation (1), a health establishment must ensure that;

(a) vehicles, owned or used, are licensed and maintained; and

(b) drivers have valid driver’s license and or public transport driving permit”.

Human resources management

“Regulation 19(1) of the NHA provides that the health establishment must ensure that they have systems in place to manage health care personnel in line with relevant legislation, policies and guidelines.

(2) For the purposes of sub -regulation (1), the health establishment must, as appropriate to the type and size of the establishment: -
(a) have and implement a human resource plan that meet the needs of the health establishment”.

5.1.95 The health establishment is required to have systems in place to manage health care personnel in line with relevant legislation, policies and guidelines and to further implement human resource plan that meet the needs of the health establishment.

5.1.96 In August 2020, at the time of the visit by the Public Protector, the hospital had still not filled the temporary positions of ICU trained Nurses, Medical Specialist and Medical Officers because they were unable to attract suitable candidates.

5.1.97 It follows that the GDoH has an obligation to observe and adhere to the above mentioned Regulations of the NHA, which are intended to govern the state of health facilities in the Gauteng Province.

5.1.98 The National Treasury Regulation issued in terms of the PFMA dated 31 May 2000 paragraph 21.2 provides for the acceptance of gifts, donations and sponsorship to the state as follows

“21.2.1 The accounting officer may approve the acceptance of any gift, donation or sponsorship to the state, whether such gifts, donations or sponsorships are in cash or kind;

21.2.1 .....;

21.2.3 .....;

21.2.4 All gifts, donations or sponsorship received during the course of the financial year must be disclosed as a note to the annual financial statements of the institution.”
5.1.99 The accounting officer may approve the acceptance of any gift, donation or sponsorship to the state, whether such gifts, donations or sponsorships are in cash or kind.

5.1.100 Therefore it is clear that all gifts, donations or sponsorships received during the course of the financial year must be disclosed as a note to the annual financial statements of the institution. There is no evidence in possession of the Office of the Public Protector indicating that the donation of tents and beds from BMW at Jubilee Hospital was registered and declared in the donations register to the GDoH.

5.1.101 Personnel Circular Minute 14 of 2020 with reference number 3/2/1/1 signed on 19 March 2020 by (former Head of the Department of Health) Professor Mkhululi Lukhele titled “management of sick or special leave in lieu of Covid -19 (Corona Virus) implications”-

Clause 3: The Covid -19 cases should be covered by the following leave:

3.1 Normal sick leave if tested positive or display symptoms of illness whilst at work;

3.2 ........................;

3.3 ........................;

3.4 ........................; and

3.5 Special leave if an employee is compulsory quarantined by Employer.

5.1.102 The above circular depicts the types of leave which employees are entitled to should they contract or are suspected to have contracted the Corona virus. It follows that where an employee was quarantined by the employer, they will be entitled to utilize special leave. Normal sick leave was utilised if an employee tested positive or displayed symptoms of illness whilst at work.
5.1.103 The hospital did not produce any evidence to counter the allegation despite same being requested.

Management of buildings and grounds

5.1.104 Regulation 14(1) of the National Health Act 61 of 2003 dated 02 February 2018 provides that the health establishment and their grounds must meet the requirements of the building regulations. For the purposes of sub-regulation (1), a health establishment must inter alia have a maintenance plan for buildings and the ground in terms of sub-regulation 14 (2)(b).

5.1.105 The Public Protector is in possession of a maintenance plan which is designed and the planned maintenance at the hospital is carried out using projects that are developed from the condition assessment, requests from the hospital and the Gauteng Department of Health.

5.1.106 Regulation 14(1) and (2)(b) requires the hospital to have a maintenance plan to deal with infrastructure challenges faced by the hospital as the current infrastructure is old, crumbling and outdated. In addition the kitchen is small and as a result it cannot accommodate all staff during lunch breaks.

5.1.107 The kitchen extension was not part of the RFS for both ABT and OHS projects

Conclusion

5.1.108 It can be concluded from observations made during the on-site visits that were undertaken by the PPSA investigation team as recorded above and the submissions made by hospital management and GDoH, that GDoH has failed to ensure appropriate conditions for the enjoyment and delivery of health care services for the community of Gauteng.
5.1.109 All recorded systemic deficiencies such as the delay in the testing turnaround times of specimens, lack of testing equipment, the shortages in PPE as well as poor quality PPE and the inadequate physical infrastructure such as small kitchen had a negative impact on the level of care that is provided to patients at the hospital.

5.1.110 The GDoH failed to provide medical equipment and human resources which are all necessary to sustain an efficient and effective health facility.

5.1.111 The coveralls or gowns do not have to be discarded after each use as alleged by the organised labour and can be re-used if not visibly contaminated or when providing care to the same patient.

5.1.112 The ICU of Jubilee hospital had to be closed due a Nurse contracting Covid-19 to mitigate the risk of further infections and fogging. Even though the ICU was closed operations resumed by way of referral of ICU patients to Dr George Mukhari Academic Hospital in line with the hospital’s Business Continuity Plan.

5.1.113 Contrary to organised labour’s assertion that Jubilee hospital did not have a dedicated vehicle to collect PPE’s at the warehouse, it was established that the hospital had sufficient fleet vehicles with the option of requesting additional fleet from GDoH if required.

5.1.114 Contrary to organised labour stating that the kitchen was small and not conducive to curb the spread of the virus, it was established that the hospital management communicated with staff regularly by way of memoranda and Covid-19 updates for the staff to self-regulate by adhering to social distancing, to never sit together to have a meal, to always wash their hands with soap and water.
5.1.115 It can further be deduced from interactions with staff, union representatives and with hospital management and the GDoH, that the GDoH failed to adequately administer Jubilee Hospital in the manner envisaged by the Constitution and the NHA, which would promote access to quality healthcare and enable the staff to provide effective access to the healthcare services to which the community is entitled to.

5.2 Whether the allegations of administrative deficiencies by the GDoH led to systemic challenges in the delivery of primary health care services at Dr George Mukhari Academic Hospital and if yes, whether such failure amounts to improper conduct and/or maladministration.

Common Cause Issues

5.2.1 On 18 August 2020, the Public Protector to conducted an inspection at Dr George Mukhari Academic Hospital (Dr George Mukhari hospital) in Pretoria.

5.2.2 During the inspection, the team was assisted by the Chief Executive Officer of Dr George Mukhari hospital, Dr Richard Lebethe (Dr Lebethe) and Mr Gugu Xaba, the Chairperson of the Board of the hospital, who took the team around the premises of the health facility.

5.2.3 The GDoH is responsible for the delivery of public healthcare services throughout the province of GP to ensure that the Province’s healthcare system is functional.

5.2.4 The procurement of PPE is centralised at various depot/warehouse and upon request by the hospitals, depot/warehouse will issue orders for collection by the hospitals.

Issues in dispute
5.2.5 In June and July 2020, media reports repeatedly highlighted the challenges faced by public healthcare practitioners on the frontline fighting the deadly Corona virus.

5.2.6 The widespread negative reports across the media spectrum, all painted a grim picture about the deteriorating service delivery conditions at various health facilities within GP. The Public Protector authorised an immediate own intervention/investigation into the allegations to establish the authenticity of the claims made in the press statements.

5.2.7 As indicated, this own accord intervention to inspect Dr George Mukhari Hospital was made with a view to establish whether or not the alleged state of affairs within the public healthcare facilities in the GP was caused by improper conduct or maladministration.

**INSPECTION IN LOCO AND INTERVIEWS CONDUCTED AT DR GEORGE MUKHARI HOSPITAL WITH DR LEBETHE, HOSPITAL MANAGEMENT AND ORGANISED LABOUR**

**PROFILE OF DR GEORGE MUKHARI HOSPITAL**

5.2.8 On 18 August 2020 during the site inspection conducted by the team, Dr Lebethe profiled the hospital as follows:

5.2.8.1 The hospital has a staff compliment of 4700 staff members and 3300 patients.

5.2.8.2 Services are provided to three (3) provinces namely, North West, Limpopo and a part of Mpumalanga Provinces. However, the resources are separated. The hospital was designated as a Covid-19 facility in March 2020 and it is part of the Jubilee cluster.
5.2.8.3 There is a total of 1652 beds and the surgical ward was converted into a functional ward. Twelve (12) wards were converted to Covid-19 wards and the hospital has 430 Covid-19 beds. A ward that was initially carrying 26 patients currently carries 46 patients.

5.2.8.4 The Department allocated 150 temporary Covid-19 posts and there is a quarantine area earmarked for the isolation of Covid-19 patients at the Dr George Mukhari Academic Hospital.

5.2.8.5 The Covid-19 wards are fitted with a Heating, Ventilation and Air Conditioning (HVAC) system which controls the airflow when the ward doors are opened.

5.2.9 During the inspection *in loco* conducted by the team, the following observations were made at Dr George Mukhari Academic Hospital:

**Infrastructure**

5.2.9.1 The hospital had tents which were supposed to house Covid-19 positive patients. The Office of the Public Protector noted that the Dr George Mukhari Academic Hospital was in the process of building prefabricated structures, or Alternative Building Technology (ABT).

**Industrial Relations and Communications**

5.2.9.2 Subsequent to the visit at Dr George Mukhari hospital, there were media reports that alleged that temporary Covid-19 staff appointed at hospitals were not paid their salaries for a period of 3 months. The office of the Office of the Public Protector immediately dispatched the team to the hospital to investigate veracity of the unpaid salaries.
5.2.9.3 In a meeting held with the Office of the Public Protector team, Dr Lebethe, hospital management and organized labour on 19 October 2020, Dr Lebethe indicated that there was interference with the recruitment processes by the community that was protesting about the posts. The protests were with regard to the posts that were allegedly advertised by the hospital.

5.2.9.4 Dr Lebethe averred that the posts were created by the province and sent to E-Government and Provincial Treasury where payment would be processed. As such this resulted in the delay in the creation of those posts by E-Government.

5.2.9.5 Dr Lebethe indicated that a total of 93 employees were affected with regard to non-payment of salaries, in that funding was received in June 2020 but the instruction to appoint staff was only done in July 2020. The posts were approved but staff were appointed before the instruction to appoint was made by the province.

PPE and Centralisation

5.2.9.6 During the site inspection: Mr Gugu Xaba, the Chairperson of the Board of Dr George Mukhari Hospital, advised that the process of procurement of PPE was over centralised and need to be unbundled. He indicated that that he could not comprehend why a hospital as huge as George Mukhari is not able to procure its own PPE.

5.2.9.7 It was mentioned by Dr Xaba, and supported by Dr Lebethe, that the CEO`s of hospital`s are delegated to procure goods for not more than R500 000. A hospital of the same size as Dr George Mukhari, namely, Dr Sefako Makgatho University, is delegated to procure for over 15 million whereas they are not.
5.2.9.8  Dr Lebethe confirmed that the money allocated for procurement and maintenance of the hospital is available in theory, but he is not able access it as he has to go through the province and as a result, it affects the hospital’s budget and commitment. The unutilized money for that financial year will subsequently be diverted to other hospitals.

Medical Equipment

5.2.9.9  In an interview held with Dr Christine Holm, the Director of Clinical Services at George Mukhari hospital, she raised her frustration with regards to the delays in the procuring of medical equipment at the hospital in respect of Radiology and O-Arm with Neuro and Ear Nose and Throat (ENT) machine. She indicated that it has been three (3) years since the hospital put in a request to the GDoH to procure the above machine but to no avail. She indicated that despite the medical equipment budgeted for in the last three (3) financial years, it has still not been procured as the budget is centralized at Provincial level.

Waste disposal

5.2.9.10 There was no proper process of securing and disposing of medical waste at the hospital, as it was lying in the corridor and not safely stored. The below photograph depicts the observations of medical waste photographs that the team took on 18 August 2020 during site inspection at Dr George Mukhari Hospital:
The Hospital Board

5.2.9.11 Dr Xaba further indicated that the role of the board was not clarified in terms of it being supervisory or advisory. He averred, that if the role of the board can be clarified, the board should be able to assist the hospital in the management thereof.

Risk Management

5.2.9.12 With regards to the issue of risk management meetings conducted, Dr Lebethe conceded that there were no meetings held by the hospital.

SUBMISSIONS BY DR RICHARD LEBETHE (DR LEBETHE), THE CHIEF EXECUTIVE OFFICER OF DR GEORGE MUKHARI HOSPITAL

5.2.10 The Public Protector received further submissions from Dr Lebethe in a letter dated 08 October 2020.

Industrial Relations and Communications

5.2.10.1 Dr Lebethe conceded that Covid-19 employees were appointed in July 2020 whereas the posts were only created on 13 August 2020 and that led to late payments of such employees.
5.2.10.2 All 93 affected employees were subsequently paid, 73 employees were paid on 31 August 2020 while 20 employees were paid on 04, 10 and 17 September 2020 respectively.

5.2.10.3 The Public Protector has evidence at its disposal corroborating the concession by Dr Lebethe that Covid-19 staff commenced work in July 2020 whereas the posts were only created in August 2020 and payments were only processed in September 2020.

**PPE and Centralisation**

5.2.10.4 Dr Lebethe, indicated that the status quo of PPE procurement remains centralised and that the central office is intended to utilise the economies of scale, help manage exclusion of red flagged companies and minimise competition of similar resources amongst facilities in the same province.

5.2.10.5 In the response provided to the Public Protector by Dr Lebethe, did not address the R5 and R15 million threshold allocated to CEO's of Sefako Makgatho and the hospitals in the Western Cape Province.

**Delegation of R500 000 to the Chief Executive Officer for the procurement of goods and services**

5.2.10.6 This subject of delegation of authority will apply *mutatis mutandis* to all hospitals in respect of which it applies to with the exception of Lillia Ngoyi as it is a Community Centre.

5.2.10.7 In terms of procurement and maintenance threshold, the CEO is not allowed to procure any PPE's or medical equipment above R 500 000. As a result, the lack of authority and ability to procure anything above R500 000 has a negative impact on service delivery. The consequence of the above is shown or is evident in the delay by the Provincial Government
to procure and deliver medical equipment that was requested more than three (3) years timeously to the hospital.

5.2.10.8 Dr Lebethe indicated that if the operational budget for the hospital was increased, the CEO`s will have the powers to make such approvals and service delivery will not be compromised.

5.2.10.9 The Public Protector is in possession of a copy of the decentralized supply chain management policy 2019\(^{11}\) that was availed by GDoH during the course of the investigation indicates that the governance arrangements for a decentralized Supply Chain Management (SCM).

5.2.10.10 The Gauteng Department of Health will manage and maintain a completely decentralized supply chain management system. Strategic Sourcing of transversal matters will be dealt with at Central Office, where Group Tenders and Bodyshop's will be put in place for use by all facilities. Central Office will also provide the governance framework, standards and norms that facilities will be required to adhere to. Central Office SCM will monitor and report on compliance with these standards.

5.2.10.11 All supply chain management delegations will be decentralized to facilities. Facilities will be able to procure for themselves, however they will be restricted and compelled to make use of the strategic sourced tenders, contracts and body shops put in place by Central Office.

5.2.10.12 The following functions will be decentralized:

5.2.10.12.1 Demand Management.
5.2.10.12.2 Acquisitions Management.
5.2.10.12.3 Contract Management.
5.2.10.12.4 Logistics Management.
5.2.10.12.5 Disposal Management.

\(^{11}\) Signed by MEC Dr Gwen Ramokgopa on 03 May 2019
5.2.10.12.6 Assets Management.
5.2.10.12.7 Risk and Performance Management.

5.2.10.13 These functions will be decentralised as follows:
5.2.10.14 Central Hospitals
5.2.10.15 Tertiary Hospitals
5.2.10.16 Specialised Hospitals
5.2.10.17 Regional Hospitals
5.2.10.18 District Hospitals
5.2.10.19 District Offices Nursing Colleges
5.2.10.20 EMS
5.2.10.21 Laundries and Cook-freeze Dental Hospitals

5.2.10.22 The necessary decentralised infrastructure will be established to support the facilities with these functions.

5.2.10.23 The decentralisation will be supported by a SCM Forum that will be used as the foundation for all SCM integration and coordination.

5.2.10.24 In a paper titled: Chief Executive Officers and Public Hospital Management in South Africa by Shan Naidoo dated September 2016, he indicated that as follows:

5.2.10.24.1 “Decentralisation (a main feature of NPM (New Public Management) according to Prof Van Den Heever (ibid) needs clear accountability mechanisms. There are four pillars to this accountability according to him. Firstly there needs to be explicit performance requirements. Secondly there has to be transparency and therefore reports on performance requirements must be made public. Thirdly there needs to be a supervisory structure that receives regular reports on performance and offers strategic direction and be able to act on it if things go wrong. The supervisory structure should have no conflict of interest and should be
independent and represent the public’s interest. Finally there should be penalties and rewards. These four pillars provide a coherent accountability framework which is largely absent in the public sector and especially so in hospital management."

5.2.10.24.2 The Public Protector during the inspection in loco and interaction with the CEOs observed that they wanted more delegations and the systemic support that goes with it and they indicated that they have not been given sufficient authority to effectively and efficiently manage hospital as most powers rest with the Executive Authority (the MEC).

5.2.10.24.3 According to the CEO’s their main challenge is not having the appropriate delegations for financial management and human resources.

5.2.10.24.4 Decentralisation has to be within an appropriate accountability framework. Accountability cannot be held by CEOs if they are not given the appropriate powers and authority.

Medical Equipment

5.2.10.25 Dr Lebethe indicated the challenge of having a limited operational budget of R500 000, in that the O-Arm (a Radiology Diagnostic machine) which has been part of the procurement plan since 2015/16 financial year and it is still yet to be advertised as an open tender.

5.2.10.26 It was further mentioned by Dr Lebethe that there are instances where the hospital has on several occasions submitted requisition forms to procure the medical equipment which have been part of their procurement plan since the 2015/16 financial year to be advertised as an open tender but to date they have not been procured.

Waste Disposal
5.2.10.27 Dr Lebethe submitted that he held a meeting with Buhle Waste on 30 September 2020 and it was agreed that the medical waste will be collected on a daily basis as per the service level agreement. Buhle Waste has since adhered to the agreement and committed two (2) trucks, one (1) for covid-19 waste and the other for the rest of the medical waste.

**The Hospital Board**

5.2.10.28 Dr Lebethe further clarified that the Hospital Ordinance Act 14 of 1958 and the amended 04 of 1999 directed the Board of the hospital to be advisory until 2018 when the MEC of Health believed that they could contribute more if they were supervisory but this was not supported by legislation.

5.2.11 **Response to the Notice in terms of the provisions of section 7(9)(a) of the Public Protector Act**

5.2.12 On 24 February 2021, the Public Protector issued a notice in terms of section 7(9)(a) of the Public Protector Act to Dr Richard Lebethe, Mr Arnold Malotana, and to all implicated parties and those with direct interest on this matter with a notice in terms of section 7(9)(a) of the Public Protector Act, with a view to afford them an opportunity to respond to the allegations against them, particularly in relation to the role each played in this matter. Section 7(9)(a) of the Public Protector Act provides that: -

"If it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter being investigated and that such implication may be to the detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector shall afford such person an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances".
5.2.13 The Public Protector now turns to consider the responses submitted regarding the section 7(9) notices (hereinafter referred to as notice/s). The office has made an effort to deal with each and every aspect raised in the responses but where it appears that it has not done so, that should not be misconstrued as an admission of any kind of the averments contained therein.

5.2.14 The Public Protector did not receive a response from Dr Richard Lebethe, the CEO of Dr George Mukhari Academic Hospital. The only response received was from Mr Malotana through Mr Chris Du Preez, Chief Director: Risk and Internal Control. Mr Du Preez advised the Public Protector in an email dated 26 March 2021 that the submission dated 19 March 2021 from Mr Malotana will be what the CEO’s of all the affected hospitals agreed to in their response to the Public Protector.

5.2.15 Regarding the conclusion that there are administrative deficiencies by the GDoH that led to systemic challenges in the delivery of primary health care services at Dr George Mukhari Academic Hospital. Mr Malotana indicated in his response Dr George Mukhari Academic Hospital is a designated central hospital providing tertiary and quaternary services. Hence, it is a referral hospital for the four levels of hospitals within the country and province with a specific referral path within the Cluster. Each level has its designated responsibilities. Dr George Mukhari Academic Hospital is a central hospital by location and that makes it accessible to three Provinces (Northwest, Limpopo and Mpumalanga) without central hospitals and is hence designated to provide central hospital services (this being a National mandate).

5.2.16 Further that by location, Dr George Mukhari Academic Hospital has no designated Regional nor Tertiary hospital referring to it. This implies a lack of two (2) levels of health care, the absence of which demand Dr George Mukhari Academic Hospital to provide needed health care to the
surrounding communities in line with both National and Provincial mandates.

5.2.17 The lack of these is structural and systemic to both National and Provincial governments, which form parts of developmental needs to be addressed at all levels to the Hospital's benefit, which is not designated to primary or regional health care services but offers them on demand. This is seen because Jubilee District and Odi District hospitals refer directly to Dr George Mukhari Academic Hospital in the absence of both Regional and Tertiary hospitals between them and Dr George Mukhari Academic Hospital a central hospital.

5.2.18 According to Mr Malotana, there is no maladministration by the Dr George Mukhari Academic Hospital but structural and systemic challenges as stated above.

5.2.19 Regarding the allegation that there was an undue delay by the hospital to timeously remunerate temporary Covid-19 health workers. In his response, Mr Malotana submitted there can be no argument to defend the non-payment of employees and further that various factors contributed towards the employees not getting paid on time, but these have been resolved.

5.2.20 The Public Protector is possession of spreadsheet document indicating that the employees were paid their salaries as of September 2020.

5.2.21 In support of the above submission, Mr Malotana submitted to the Public Protector, a copy of the personnel circular 23 of 2020 which relates to the appointment of personnel during the lockdown. The circular 23 of 2020 announced a management decision to deviate from the normal recruitment and selection processes in response to the spread of the Covid-19.
5.2.22 On the appointment of Covid-19 staff without following the recruitment as per the circular and the approval by the Department amounting to maladministration, Mr Malotana submitted in his response that he does not agree and that all Covid-19 appointments followed the Covid-19 appointment process personnel circular minute number 23 of 2020, which mandated a deviation from the usual recruitment processes to respond to the state of disaster.

5.2.23 Further that the Department approved all COVID-19 appointments and there was no maladministration in the appointment process. Also that the appointment process did not cause the delay of the payment of employees however, it resulted from the delay in the creation of the posts.

5.2.24 The Public Protector is in possession of a memorandum dated 13 July 2020 titled “creation and recruitment of staff for Covid-19 phase two project” was approved by Prof Lukhele former Head of Department on 22 July 2020. At paragraph 1(b) states that the purpose of the memorandum was to approve the creation of temporary positions in health institutions within the various clusters, Covid-19 quarantine sites and other areas of care.

5.2.25 In the background of the memorandum it states that the declaration of the Covid-19 pandemic as a national disaster has necessitated the need for the expedited mass recruitment of health workers. The increase of the numbers of staff will require more positions to be created on persal due to the rapid spread of the infections and the speed in which GDoH must appoint additional staff, a decision by senior management has been taken that they will deviate from the normal process of appointing.

5.2.26 The memorandum further stated that any delays in appointing additional personnel will have dire consequences in the spread of the Covid-19. The HoD mandated hospitals and health facilities to appoint health workers in line with circular minute 23 of 2020.
Personnel circular minute number 23 of 2020 did authorise a deviation from the usual recruitment processes to respond to the state of disaster but to the extent that Head of Health Facilities to are not required to advertise the required positions related to the COVID-19 appointments, shortlisting for the positions is not required and interviews will not be conducted. Additional employees for the COVID outbreak will be appointed by following the processes of:

*Walk in application for health professionals.*

*Appointment or administration support staff from the runner-up previously received applications.*

*Appointments to be processed over and above the appointed existing permanent staff. The additional employees’ appointment in response to the COVID-19 to be appointed on fixed term contract for a period of 12 months (twelve months).*

*All employees appointed in response to the COVID-19 outbreak to be terminated after the period of 12 months (twelve months).*

*Human Resource appointment function for the COVID-19 response to be decentralized to all Health Facilities, including District Health Services.*

It was noted however that there is no mention in the above-mentioned circular of appointing additional before positions are created, further that it was approved in an effort to avert delays in the recruitment process.

Regarding the allegation of undue delay in the procurement of medical equipment that is endangering and compromising the lives of people who depend on the Hospital for health care, Mr Malotana stated that the allegation was incorrect, bearing in mind that the hospital does not function independently and is part of a bigger health system. Although the hospital is waiting for a long time for new machines, services continue to be rendered using the existing devices (machines) and where a specific
service cannot be provided at the hospital, there is a provision to refer the patient to the Steve Biko Academic Hospital or any other hospital to assist the patient.

5.2.30 Regarding the centralisation of procurement at provincial level delaying and hampering the health service in the Hospital as a result of the dysfunctional, ineffective and inefficient SCM unit at the provincial health Department, Mr Malotana advised that the above is incorrect as the hospital does not operate in a vacuum. The hospital is part of a bigger health system and where services cannot be rendered at this Hospital, patients are referred to another facility that can assist. Therefore, it is not correct to state that procurement delays hamper service delivery as such continues to be provided with the machines available and by making use of the referral system.

5.2.31 With regards to the allegations that the Hospital failed to secure and dispose of hazardous medical waste and that has the possibility of endangering and exposing all staff and patients at the Hospital to infections, Mr Malotana in his response submitted that GDoH manages its medical waste according to the applicable legislation.

5.2.32 He further submitted that a service provider is in place to collect and dispose of medical waste however Covid-19 placed additional strain on these service providers. Once it became clear that waste was accumulating, the service providers were directed to make additional removals.

5.2.33 GDoH submitted a copy of an email dated 24 June 2021 from the Chief Environmental Health Practitioner Ms Itumeleng Magana addressed to the Environmental Health Practitioner Ms Pfumelani Sibambo indicating that Buhle Waste has been collecting waste on a daily basis but they have since been requested to collect waste over the weekend and to use more trucks to collect it.
5.2.34 In terms of the above, the service provider was requested to collect waste over the weekend and to arrange for more trucks that will collect the waste at the hospital.

5.2.35 The Public Protector is in possession of the Internal Audit 2019/2020, Monthly Progress Report, Department of Health for The Period September 2019, in respect of the Management of Healthcare Waste at Dr George Mukhari Academic Hospital, stated that the “practices/processes adopted by the Hospital in managing Health Care Risk Waste were found to be inefficient and ineffective compared to the minimum requirements proposed by World Health Organisation, relevant national legislation and guidelines, internal policy and procedures. This situation promotes unsafe health care waste management practices and exposes healthcare workers, patients, waste handlers and the community to the dangers of hazardous health care waste as summarised below:

5.2.36 Health Care Risk Waste was not collected efficiently and effectively.
5.2.37 Health Care Risk Waste was not effectively segregated and appropriately containerised.
5.2.38 Inappropriate packaging of health care risk waste.
5.2.39 Pharmaceutical waste was not disposed off efficiently and effectively.
5.2.40 Central Waste Storage Area was not managed efficiently and effectively.
5.2.41 Wheelie bins and sharps containers were not appropriately sealed, labelled and were filled to capacity.
5.2.42 There were no specific routes to follow during the collection of Health Care Risk Waste in the Hospital.
5.2.43 Waste handlers were not protected while carrying out their duties.
5.2.44 Training and awareness in the management of Health Care Risk Waste was not efficiently and effectively provided to healthcare workers and waste handlers.
5.2.45 Absence of Health Care Risk Waste roles and responsibilities in job descriptions of healthcare workers and waste handlers.
5.2.46 Inadequate public health education and awareness on hazards linked to *Health Care Risk Waste*.

5.2.47 It was noted that the internal audit affirmed the observations by the Public Protector regarding the securing and disposal of hazardous medical waste and the possibility of endangering and exposing all staff and patients at the Hospital to infections.

5.2.48 The Public Protector is in possession of a copy of a contract between GDOH and Seane Medical Waste (Buhle Waste) received from Mr Du Preez on 30 July 2021, which was concluded on 01 September 2014 and terminated on 31 August 2017. There is no further evidence indicating that a subsequent waste disposal contract was entered into after Buhle’s contract terminated on 31 August 2017.

5.2.49 Mr Du Preez further submitted a circular signed on 02 March 2020 by the Director: Logistic Management Mr Dave Selby advising all Provincial health care facilities in Regions A, B and C of the extension of Buhle’s contract for a period of one (1) month, from 01 February 2020 to 31 March 2020, thereafter on a month to month basis until a new contract is being prepared. When the Public Protected conducted an inspection in loco at Dr George Mukhari In August 2020, there was still no new contract in place.

5.2.50 Regarding the obligation that the hospital is required to effectively communicate the Covid-19 strategy to all the officials in order to manage and control Covid-19 infections. Mr Malotana in his response indicated that special arrangements were put in place to ensure that all stakeholders are part of the management and decision-making process. This included (management, clinicians, support staff and labour) taking a multidisciplinary approach to short circuit communication, including responding to emergent challenges and crafting strategies to suit the fluid COVID 19 situation.
5.2.51 In support of the above, the Acting CEO, Dr KE Letebele-Hartell, provided minutes of the Executive Committee meetings and PPE Committee meetings with unions in attendance.

5.2.52 The PPE Committee held a meeting on 21 September 2020 and 08 October 2020, it was noted that in both meetings Covid-19 was discussed and there was further Covid-19 training was an agenda item. Furthermore it was noted that the availability, accessibility and utilization rate of PPE was discussed.

5.2.53 The minutes of the PPE meeting communicated that a total number of 290 staff members were trained in September 2020.

5.2.54 Mr Malotana disagreed with the Public Protector`s assertion that the failure by the hospital to conduct regular risk management meetings amounts to maladministration. He indicated that while the Covid-19 outbreak control measures warranted a reduction of routine meetings and ordinary risk committee meetings did not occur, situational risk assessments continued at regular management meetings to discuss and drive the risk response to Covid-19. These meetings consisted of, amongst others a war room, nerve centre meetings and management meetings. The War Room Meetings are also active Multidisciplinary structures meetings that meet regularly.

5.2.55 In support of his argument, Mr Malotana provide the Executive Committee briefing minutes from March 2020 to November 2020 in which risk management was particular agenda item and the following was indicated therein:

5.2.55.1 In March 2020, Deputy Director: Risk Management Mr Mathues Willemse indicated that the Gauteng Audit Services (GAS) medical waste audit will be coming to the hospital and further that Auditor General will be visiting the hospital from 16 March 2020.
5.2.55.2 In November 2020, it was reported that there are no urgent matters reported from risk management.

5.2.56 The rest of the agenda items was ordinary day to day challenges, planning and incidents that require interventions.

5.2.57 Mr Malotana disagreed with the conclusion that based on the observations and hospital management submissions, the Public Protector is likely to find the GDoH has failed to ensure conducive and safe working conditions, as well as effective health care services for the community around Gauteng.

5.2.58 Mr Malotana argued that GDoH provided safe working conditions and the PPE was provided and used according to the required guidelines. He also indicated that conclusion by the Public Protector that the Department failed to provide effective healthcare services to the community is a question that seeks a scientific answer and the mere fact that some deficiencies may exist, does not mean that the Department failed to render effective healthcare services. Therefore, the Public Protector’s finding is not based on scientific evidence and in order to make such a determination, the Public Protector will need to apply the WHO’s processes and methodologies.

Response to the Notice in terms of the provisions of section 7(9)(a) of the Public Protector Act
5.2.59 In response letter dated 28 May 2021, to the Section 7(9) notice Mr Thulani Mdadane the Head of Department at GDID in respect of Dr George Mukhari Academic:

5.2.59.1 Regarding the tents at the hospital had tents which were supposed to house Covid-19 positive patients. Mr Mdadane indicated in his response, Dr George Mukhari Academic Hospital was one of the facilities chosen for the 300 bed ICU/High care ABT facility.

5.2.59.2 On the lack storage and disposal of medical waste at the hospital, Mr Mdadane indicated that the storage and disposal of medical waste is the competency of GDoH.

5.2.59.3 Regarding whether Dr George Mukhari Academic Hospital had a maintenance plan in place as required by the NHA regulation. Mr Mdadane indicated in his response that Dr George Mukhari Academic Hospital has a maintenance plan.

5.2.59.4 In support of the above, the Public Protector is in possession of a copy of the maintenance plan in respect of Dr George Mukhari Academic Hospital.

Applicable Legal Framework

Constitution

5.2.60 Section 195(1) of the Constitution, 1996 provides amongst other things that:

“Public Administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(a) ……………………………..
(b) Efficient, economic and effective use of resources must be promoted;
(c) ........................................;
(d) ........................................;
(e) People’s needs must be responded to....;
(f) Public administration must be accountable ........;
(g) ......; and
(h) Good human-resource management and ...... to maximise human potential, must be cultivated.

5.2.61 According to section 195 (1) (b), the Department and hospitals have an obligation to ensure that procurement processes of PPE’s was done in a manner that is efficient, economic and effective.

5.2.62 The Department is required to account for the effective usage of the departmental resources and efficient administration of hospitals. In this instance, procurement is centralised at the provincial level and the Department is responsible for the timeous distribution of medical supplies thereof to various hospitals.

5.2.63 The Department and Dr George Mukhari Hospital must cultivate good human resource management to maximise human potential by recruiting and selecting appropriate human capital in terms of the required need of the hospital. During the pandemic the recruitment and selection of human capital for the Covid-19 was not maximised as there was a delay by the Department to create positions which resulted in Dr George Mukhari Hospital appointing essential workers without positions being timeously created, which further resulted in the late payment of salaries to these essential workers.

5.2.64 Section 237 of the Constitution provides that all constitutional obligations must be performed diligently and without delay.
5.2.65 It follows that according to the above provision, the Department and Dr George Mukhari Hospital also had a responsibility to ensure that the service delivery of the hospitals in Gauteng was conducted diligently and without delay. There was a delay in the creation of positions and as such essential workers were appointed before positions were created.

5.2.66 Section 27 read with 195 (1) (e) of the Constitution provides *inter alia*:

1) *Everyone has the right to have access to* –

(a) *health care services*...........;

(b) ...............;

(c) ...............;

2) *The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.*

5.2.67 The positive obligations imposed on the government by section 27(1) and (2) of the Constitution entitle people of GP to claim healthcare on demand. However, it requires government to develop a comprehensive and workable plan to meet its obligations.

5.2.68 The Constitution requires that regardless of the resources constraints the state must take reasonable legislative and other measures, within its available resources to ensure the realisation of the right to health care services.

5.2.69 Accordingly, the Department and Dr George Mukhari Hospital have a responsibility to provide everyone with access to timely, equitable,
acceptable, and affordable health care of appropriate quality\textsuperscript{12}. Therefore, the Department must provide healthcare services in line with the resources constraints without decreasing the value of health care provided to everyone.

5.2.70 The Department must ensure that medical equipment is procured timeously so that Dr George Mukhari Hospital can provide quality healthcare in order to avoid service delivery failures. In this instance any delay in the procurement of medical equipment had the possibility of having an adverse effect on the delivery of health care services.

5.2.71 Under the circumstances and during this Covid-19 pandemic era, the Dr George Mukhari Hospital is required to provide health care and adequate provisioning of PPE’s. The medical staff should be sufficiently protected to enable them to attend to patients timeously to curb the escalation of the pandemic.

5.2.72 The WHO health systems framework has six (6) pillars of building blocks of health system with aims and desirable attributes for member states \textsuperscript{13}:

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{WHO_building_blocks.png}
\end{figure}

5.2.73 The building blocks contribute to the strengthening of health systems in countries that are affiliated with the WHO. Cross cutting components such as leadership, governance and health information systems provide for the

\begin{itemize}
\item \textsuperscript{12} http://www.who.int/mediacentre/factsheets/fs323/en/ [accessed on 21 August 2020]
\item \textsuperscript{13} www.who.int/healthinfo/systems/WHO_MBHSS_2010_fullweb
\end{itemize}
basis of the overall policy and regulation of all the other system blocks. Medical products and technologies, and services delivery reflect on the availability and distribution of care.

5.2.74 The compliance of member states with the six (6) building blocks of health systems according to WHO, will lead to improved health, efficiency, responsiveness, social and financial risk protection. Therefore, if administration and governance structures are put in place and adequately monitored by the Department the health care challenges observed in the hospitals would be minimized or eradicated.

5.2.75 Accordingly, the Department and Dr George Mukhari Hospital have a responsibility to provide everyone with access to timely, equitable, acceptable, and affordable health care of appropriate quality. Therefore, the Department must provide healthcare in line with the resources constraints without decreasing the value of health care provided to everyone.

5.2.76 The Department is required to ensure that medical equipment is procured timeously so that the Dr George Mukhari Hospital can provide quality healthcare to avoid service delivery failures. In this instance any delays in the procurement of valuable medical machinery and equipment may have caused the spread of Covid-19 to increase and further collapsing the already congested health care system.

5.2.77 Section 25(2) of the National Health Act (NHA) 61 of 2003, as amended, lists a number of powers and obligations of the head of a provincial department, the most relevant of which are the following\(^{14}\):

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\(^{14}\) The head of the provincial department must act in accordance with national health policy and the relevant provincial health policy in respect of or within the relevant province.
“(k) Controlling and managing the cost and financing of public health establishments and public health agencies;

(n) Controlling the quality of all health services and facilities;

(p) Provide and maintain equipment, vehicles and health care facilities in the public sector”.

5.2.78 According to the abovementioned provision it is clear that the head of a provincial department has the obligation to control the quality of all health services and facilities. As a result, the centralization of the budget and procurement caused delay the provision of service delivery especially regarding the procurement of medical equipment in GP hospitals.

5.2.79 In terms of PFMA Section 38 (1) (a) (i) the Accounting Officer for a department, trading entity or constitutional institution must ensure that the department, trading entity or constitutional institution has and maintains effective, efficient and transparent systems of financial and risk management and internal control.

5.2.80 According to the above cited provisions the Accounting Officer has a responsibility to ensure that the institution has and maintains effective, efficient and transparent systems of financial and risk management and internal control.

5.2.81 It was noted that the Departmental risk management strategy is applicable. The Department is required to ensure that regular meetings with members of the Risk Management Committee takes place as per the risk management framework and schedule. The risk strategy should be effectively communicated to all staff but in this case there were no regular meetings that were held.
5.2.82 In terms of Section 32(3) of the Basic Conditions of Employment Act\(^{15}\), employers are obligated to pay employees’ salaries and provides for the following:

“(3) An employer must pay remuneration not later than seven days after – (a) the completion of the period for which the remuneration is payable.”

5.2.83 According to the above mentioned provision, it is clear that an employer must pay remuneration to its employees not later than seven (7) days after completion of rendering performance.

5.2.84 Although Dr George Mukhari Hospital was allocated posts, the Hospital appointed essential workers without posts being created which resulted in late payment of salaries of these workers.

5.2.85 In this instance the Covid-19 staff were appointed by Dr George Mukhari hospital in July 2020 but the incumbents were only remunerated for services rendered by September 2020, as opposed to the period within which the remuneration was due or payable.

5.2.86 Section 76(1) (a) of the Public Finance Management Act 1 of 1999 (PFMA) states that “The National Treasury must make regulations or issue instructions applicable to departments, concerning any matter that must be prescribed for departments in terms of this Act.”

5.2.87 In terms of section 8(1) of the Occupational Health and Safety Act 85 of 1993

“Every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his employees.

\(^{15}\) Act 75 of 1997
5.2.88 In terms of paragraph 3.1 of the National Treasury Instruction No.05 of 2020/21

“Accounting officers and accounting authorities must put in place the following additional procurement and expenditure measures to address the programme of preventing the spread of the Covid-19 virus: Internal system for financial control, risk management and reporting in order to account for the funds used for the Covid-19 disaster;

5.2.89 The Department therefore has an obligation to put in place additional procurement and expenditure measures to address the programme of preventing the spread of the Corona virus. The Department and Dr George Mukhari Hospital must provide and maintain a working environment that is safe and without risk to the health of the medical staff by providing medical equipment and PPE’s to the medical staff, whilst controlling, maintaining, managing and monitoring the finances of the institution in accordance with the prescribed vote, to avoid wasteful and irregular expenditure.

5.2.90 Paragraph 3.2 of the National Treasury Instruction note 5 of 2020/21 provides as follows:

“National Treasury SCM Instruction Note 3 of 2016/17-Prevention and Combating Abuse in the Supply Chain Management System, paragraph 8.1, states that accounting officers/authorities must only deviate from inviting competitive bids in cases of emergency and sole supplier status. These deviations do not require the approval of the relevant treasury approval. Paragraph 8.2 thereof further states that emergency procurement may occur when there is a serious and unexpected situation that poses an immediate risk to health, life, property or environment which call an agency to action and there is insufficient time to invite competitive bids”.
5.2.91 Paragraph 3.4 of the National Treasury Instruction note 5 of 2020/21 provides as follows:

“The emergency procurement provisions provide for accounting officers/authorities to procure the required goods or services by other means, such as price quotations or negotiations in accordance with Treasury Regulation 16 A6.4. The reasons should be recorded and approved by the accounting officer/authority or his/her delegate.”

5.2.92 Based on the above provision the Department is allowed to deviate from a competitive bidding process in an emergency situation, and in this instance the unexpected situation of the Covid-19 pandemic posed an immediate health risk and qualified as an emergency.

5.2.93 The Treasury Practice Note make provision in emergency situations for the Department to deviate from normal procurement processes in the procurement of medical equipment that are normally above the procurement threshold. The Department is not barred from using other means of procurement such as price quotations or negotiations in such defined emergency situations.

5.2.94 It was established that the CEO’s delegation is limited to R500 000 and as a result, the bulk of the procurement needs are above this threshold. Consequently, Dr George Mukhari Hospital submitted their annual procurement plans which included a request for a Radiology and O-Arm with Neuro and Ear Nose and Throat (ENT) machine to the Department. However three (3) years later, Dr George Mukhari Hospital had still not received the said equipment. There are delays in acquisition and delivery of the bulk procurement to meet the operational needs of the Hospital.

5.2.95 The responsibility of ensuring that timeous procurement of medical equipment and adequate and quality PPE’s is delivered to Dr George Mukhari Hospital lies solely with the Department in order to curb the
pandemic and safeguard the health and safety of all workers. In this instance the procured PPE’s was inadequate and was of poor and substandard quality. There was also a long delay in the procurement of medical equipment.

5.2.96 In this instance Dr George Mukhari Hospital was without essential medical equipment that is vital to adequate healthcare. This could have been avoided if the Department had used other means to procure essential medical equipment as provided for by the Treasury Regulations.

5.2.97 The National Health Act Norms and Standards Regulations applicable to different categories of health establishments, issued as per Government Gazette 67 No. 41419 dated 02 February 2018 (Regulations were promulgated with the purpose to promote and protect the health and safety of users and health care personnel. The Regulations stipulates inter alia the following:

Medical equipment

“Regulation 13(1) of the NHA provides that the Health establishments must ensure that the medical equipment is available and functional in compliance with the law.

(2) For the purpose of sub -regulation (1) the health establishment must ensure that equipment is:

(a) licensed where required from the relevant licensing body; and
(b) in accordance with the essential equipment list in all clinical service areas”.
5.2.98 In terms of the regulation, a health establishment must ensure that the medical equipment is available and functional in compliance with the law.

5.2.99 In this instance, Dr George Mukhari Hospital submitted their annual procurement plans which included a request for a Radiology and O-Arm with Neuro and Ear Nose and Throat (ENT) machine to the Department three (3) years ago and at the time the response was received Dr George Mukhari Hospital had still not received the said equipment.

Waste disposal

5.2.100 National Health Act, 61 of 2003 Regulations \(^{16}\) provides as follows-

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15. (1) all health care risk waste shall be stored in accordance with the provisions in the South African National Standard 10248-1: Management of healthcare waste…;

(2) ….;

(3) The health care risk waste intermediate storage area must, at a minimum, include the following:

(a) Easy access to the area;

(b) Well ventilated, illuminated and easy to clear;

(c) Regular collection to prevent accumulation and nuisance free;

(d) Space for storage of empty containers;

(e) Lockable door, where applicable, to ensure controlled access or under close supervision;

(f) ….;

(g) Easy to clean with smooth surfaces;

(h) Equipped with a spill kit; and

(i) Clear posting of the international biohazardous signage.
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\(^{16}\) Chapter 7 of the health care waste storage, signed on 06 May 2014 by the Minister of Health Dr A Motsoaledi
(4) The health care risk waste central storage area must, at a minimum, include the following:

(a) ...;
(b) ...;
(c) Security from unauthorized entry;
(d) ...;
(e) Good ventilation and lighting in terms of National Building Regulations and Standards Act, 1977 (Act No. 103 of 177);
(f) Smooth, impervious floor for easy cleaning with gulleys;
(g) Running water and washing facilities with water to be disposed off in a closed system;
(h) Rodent proof;
(i) Lockable with a permanent power supply;
(j) Protected from direct sunlight;
(k) Adequate refrigeration and freezers to store health care risk waste at the appropriate temperatures and time limits as stipulated in the provisions of the South African National Standard 10248-1...; and
(l) The name of the person in charge of the storage area and contact details displayed on or adjacent to the exterior doors or gates.”

5.2.101 Paragraph 9 (1) of the National Health Act, 61 of 2003 Regulation\textsuperscript{17} states that health establishment must ensure that waste is handled, stored, and disposed of safely in accordance with the law-

“(2) for the purposes of sub -regulation (1), the health establishment must —

(a) have appropriate waste containers at the point of waste generation; and
(b) implement procedures for the collection, handling, storage and disposal of waste.”

\textsuperscript{17}Norms and standards regulations applicable to different categories of health establishments, signed on 15 January 2018 by the Minister of Health Dr A Motsoaledi
5.2.102 The above regulations clearly shows the manner in which medical waste should be handled, stored and disposed of in a safe manner. The Office of the Public Protector has evidence indicating that Dr George Mukhari Hospital did not store and dispose of medical waste in accordance with the above provisions.

5.2.103 During the inspection in loco at Dr George Mukhari hospital the medical waste boxes were not stored in secured storage rooms but were outside in the corridors where they are accessible and visible to all. Furthermore, the medical waste was also stored in the hospital vicinity - outside the hospital building in an open area, and in the corridors which is accessible to everyone including patients and in direct sunlight.

5.2.104 Clause 57(4) of the Public Service Regulations 2016 (Regulation) states that -

“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”.

5.2.105 Personnel Circular Minute 23 of 2020 with reference number 3/3/P signed on 06 April 2020 by (former Head of the Department of Health) Professor Mkhululi Lukhele titled “Covid-19 containment measures appointment process ”-

Clause 2: Under discussion on 19 March 2020 the Human Resource Management, Acting Deputy Director General announced a management decision to deviate from the normal recruitment and selection processes in response to the spread of Covid-19:

“To implement the appointment process of additional employees to respond to the COVID-19 management took a decision based on the following measures:
- Head of Health Facilities to deviate by not advertising the required positions related to the COVID-19 appointments.
- Shortlisting for the positions not to be conducted.
- Interviewing not to be held.

Management also took a decision to appoint additional employees for the COVID outbreak by following the processes of:
- Walk in application for health professionals.
- Appointment or administration support staff from the runner-up previously received applications.
- Appointments to be processed over and above the appointed existing permanent staff. The additional employees’ appointment in response to the COVID 19 to be appointed on fix term contract for a period of 12 months (twelve months).
- All employees appointed in response to the COVID-19 outbreak to be terminated after the period of 12 months (twelve months).
- Human Resource appointment function for the COVI0 response to be decentralized to all Health Facilities, including District Health Services.

This circular therefore serves as a directive to that should guide the appointment of additional staff during the Covid-19 lockdown.

For any clarity please contact Human Resource Administration at Central Office”.

M.LUKHELE
HEAD OF DEPARTMENT
DATE: 2020/04/06

5.2.106 In terms of the above 57 (4) read with Circular Minute 23 of 2020, the circular allows for the executive authority to employ persons additional to the establishment and further to dispense with normal recruitment
processes where a temporary increase in work occurs or is necessary for any other reason to temporarily increase the staff of the department.

5.2.107 In this instance, it was of paramount importance for the Department to issue a directive for hospitals to employ additional temporary Covid-19 staff for a period of twelve (12) months by deviating from the normal recruitment and selection process. The additional Covid-19 temporary staff were appointed to assist the Dr George Mukhari Hospital in the fight of the scourge of the Covid-19 pandemic, especially in light of the staff members that tested positive for the pandemic and who left a void whilst recuperating from Covid-19. Similarly, the Covid-19 employees are entitled to be remunerated in accordance with the agreed conditions of appointment as provided for in the appointment letters and the service they rendered at the hospital.

5.2.108 During the pandemic the recruitment and selection of human capital for the Covid-19 was not in line with the circular in that the Dr George Mukhari Hospital appointed the Health workers before the positions were created. The health workers were appointed in July 2020, whilst the positions were created in August 2020. The circular allowed for a deviation from the normal recruitment process but it did not confer power or authority to the CEO to appoint staff members before posts were created.

5.2.109 As a result of the above conduct, there was an undue delay by George Mukhari Hospital to effect payment of salaries for Covid-19 staff which is non-compliant with the provisions of the Basic Conditions of Employment Act.

5.2.110 Section 21 (a) of the Hospital Ordinance Act 14 of 1958 and the amended 04 of 1999 provides that a Board of the hospital may make the recommendations to or advise the (Deputy Director General) Superintendent General or the Superintendent of the Provincial hospital Chief Executive Officer of a hospital for which board has been constituted
5.2.111 It is clear from the above mentioned provision that the role of the board is purely advisory, therefore the assertion by Dr Lebethe that the role of the board advisory is supported by the applicable law. In this instance the law has not been amended to provide for supervisory role to board.

**Management of buildings and grounds**

5.2.112 Regulation 14(1) of the National Health Act 61 of 2003 dated 02 February 2018 provides that the health establishment and their grounds must meet the requirements of the building regulations. For the purposes of sub-regulation (1), a health establishment must inter alia have a maintenance plan for buildings and the ground in terms of sub-regulation 14 (2)(b).

5.2.113 Regulation 14(1) and (2)(b) requires the hospital to have a maintenance plan to deal with infrastructure challenges faced by the hospital as the current infrastructure lacks sufficient waste storage. In this instance, it is unclear if the Dr George Mukhari Hospital had a maintenance plan in place as required by the NHA regulation.

5.2.114 In this instance it was discovered that DID develops an annual maintenance plan for all health infrastructure that is implemented in the financial year and a copy of the maintenance plan was provided.

5.2.115 In this regard a copy of the maintenance plan in respect of Dr George Mukhari Academic Hospital has been provided.

**Conclusions**
5.2.116 It can be concluded from observations made during the on-site visits that were undertaken by the PPSA investigation team as recorded above and the submissions made by hospital management and GDoH, that GDoH has failed to ensure appropriate conditions for the enjoyment and delivery of health care services for the community of Gauteng.

5.2.117 There is failure to secure and dispose of medical waste in terms of the applicable provisions of the National Health Act. It was established that since Buhle waste disposal contract terminated on 31 August 2017, there was no new service provider in place to manage waste disposal.

5.2.118 There was a delay to procure medical equipment at the Hospital despite requests being submitted to GDoH.

5.2.119 The delay to remunerate to contract workers timeously, the late creation of positions and failure to convene risk management meetings had a negative impact on the level of care that is provided to patients at the hospital.

5.2.120 The CEO of the hospital is delegated R500 000.00 by GDOH and any purchase of goods and services beyond that limit is procured by GDOH. Therefore delegation process is essential to managers in the public sector to assist them in discharging the responsibilities delegated to them.

5.2.121 The GDoH failed to provide medical equipment, human resources and secure and dispose of medical waste which are all necessary to sustain an efficient and effective health facility.

5.2.122 With regards to SCM procurement delays and inefficiencies, Mr Malotana acknowledge that the SCM unit is inefficient and accordingly the SCM unit requires a complete overhaul as they are not held accountable for non-performance.
5.2.123 It can further be deduced from interactions with staff, union representatives and with hospital management and the GDoH, that the GDoH failed to adequately administer Dr George Mukhari Academic Hospital in the manner envisaged by the Constitution and the NHA, which would promote access to quality healthcare and enable the staff to provide effective access to the healthcare services to which the community is entitled to.

5.3 **Whether the allegations of administrative deficiencies by the GDoH led to systemic challenges in the delivery of primary health care services at Steve Biko Academic Hospital and if yes, whether such failure amounts to improper conduct and maladministration**

**Common Cause Issues**

5.3.1 On 18 August 2020, the Public Protector conduct an inspection at the Steve Biko Academic Hospital (Steve Biko) in Pretoria.

5.3.2 During the inspection, the team was assisted by the Chief Executive Officer of Steve Biko hospital, Dr Mathabo Mathebula (Dr Mathebula) who took the team around the premises of the health facility.

5.3.3 The GDOH is responsible for the delivery of public healthcare services throughout the province of GP to ensure that the Province’s healthcare system is functional.

5.3.4 The procurement of PPE`s is centralised at various depot/warehouse and upon request by the hospitals, depot/warehouse will issue orders for collection by the hospitals.

**Issues in dispute**
5.3.5 In June and July 2020 media reports repeatedly highlighted the challenges faced by public and healthcare practitioners on the frontline fighting the deadly Corona virus.

5.3.6 The widespread negative reports across the media spectrum, all painted a grim picture about the deteriorating service delivery conditions at various health facilities within GP. The Office of the Public Protector authorised an immediate own intervention/investigation into the allegations to establish the authenticity of the claims made in the press statements.

5.3.7 As indicated, this own accord intervention to inspect Steve Biko Hospital was made with a view to establish whether or not the alleged state of affairs within the public healthcare facilities in the GP resulted in improper conduct or maladministration.

**INSPECTION IN LOCO AND INTERVIEWS CONDUCTED AT STEVE BIKO ACADEMIC HOSPITAL WITH DR MATHABO MATHEBULA (DR MATHEBULA), HOSPITAL MANAGEMENT AND ORGANISED LABOUR**

**PROFILE OF STEVE BIKO HOSPITAL**

5.3.8 On 18 August 2020 during the site inspection conducted by the Public Protector team, Dr Mathebula profiled the hospital as follows:

5.3.8.1 The hospital has a staff complement of 4507 staff members and it is a combination of Steve Biko and Tshwane District hospital.
5.3.8.2 A total number of 100 staff members with comorbidities were assessed at the OHS department. A total number of 95 staff members were exempted from working in Covid-19 designated areas.

5.3.8.3 A total number of 108 Covid-19 contract positions were received by the hospital.

5.3.8.4 The hospital has an 845 bed capacity for non-Covid-19 patients who require specialist care and Tshwane District has a 200 bed capacity for confirmed Covid-19 patients.

5.3.8.5 The PUI’s are admitted in tents pending their Covid-19 test results.

5.3.9 During the inspection in loco conducted by the team, the following observations were made at Steve Biko Academic Hospital:

**Infrastructure**

5.3.9.1 The hospital had rental tents at the entrance of the hospital which could capacitate twenty (20) patients. The tents are piped with oxygen which was supplied by AFROX Company.

5.3.9.2 Mr Jonas Hlabane, shop steward of the Democratic Nursing Organisation of South Africa (DENOSA) alleged that the Tshwane District Hospital which falls under Steve Biko Hospital, is not structurally compliant in terms of the health and safety standards in that the escape doors are not working, the lightning detector is not working and the roof is leaking and the documents in the hospital get damp and damaged as a result of the leaks. Mr Hlabane submitted that the DID inspected the Tshwane District
Hospital premises but to date no repairs have been made and no report has been issued in terms of their findings and recommendations.

5.3.9.3 He indicated that the patient’s files (records) are lying down on the floor and not filed properly.

**Industrial Relations and Communications**

5.3.9.4 Circular 38 of Department of Public Serve and Administration (DPSA) advised that the staff could work unlimited hours but the hospital management indicated that there was a 30% limit on overtime. Therefore, the staff could not be allowed to work limitless hours.

5.3.9.5 Patients - staff ratios are un-balanced.

5.3.9.6 Mr Hlabane indicated that the infection control unit and the Occupational Health and Safety Committee is not responding to the Covid-19 related needs of staff, and they are not trained on OHS and Covid-19 related matters.

5.3.9.7 Furthermore, he indicated that labour is not represented in these structures. The focus is only on Covid-19 matters thereby neglecting other functions of the hospital. The Covid-19 regulations are drafted by a Doctor and do not accommodate staff with comorbidities.

5.3.9.8 Mr Hlabane also complained that when service providers are appointed to provide services at the hospital, labour is not represented in the appointment thereof. The Steve Biko Academic Hospital has a complaints handling process in place but labour was not involved in the appointment of service providers.

**PPE and/ or Equipment**
5.3.9.9 During the deliberations, Dr Mathebula indicated that the hospital has a machine for sanitising masks in order for the masks to be re-used by staff as there was a shortage of PPE.

5.3.9.10 The picture below depicts the machine that is utilised at Steve Biko Hospital to wash masks that are re-usable and it was received from Dr Mathebula on 08 September 2021.

![Machine for washing masks](image)

5.3.9.11 There is a challenge with the re-use of N95 masks, as they are used for construction purposes. However, the hospital staff is using KN95.

5.3.9.12 The maternity wards staff are not provided with proper PPE’s.

5.3.9.13 Mr Hlabane alleged that there is a conflict of interest as in that he CEO of the hospital Dr Mathebula is also the Chairperson of the Steering Committee.

**Transport**

5.3.9.14 There is a shortage of ambulances.
Risk Management

5.3.9.15 Dr Mathebula submitted that the Risk Management Committee has been in existence for years prior the Covid-19 pandemic and the committee mainly deals with strategic risk and audit matters.

5.3.9.16 On 08 September 2020 during the engagements between management, labour representatives and the Office of the Public Protector Team, it was noted that the committee had not held any risk committee meetings for the current financial year, sighting COVID-19 as reason for non-compliance. This only attests to the inadequacy and the ineffectiveness of the committee. This notion was supported during the meeting with Management and labour representative when this concern was raised.

5.3.9.17 It was observed that the level of personnel serving in the Steve Biko Academic Hospital (SBAH) Risk Management Committee is not adequate and not compliant to relevant guidelines, in particular the chairperson appears not to be qualified for the position.

5.3.9.18 There was no proof provided that there were quarterly risk committee reports presented to the Audit Committee and also whether there were any interaction`s with Audit Committee.

5.3.9.19 The Occupational Health and Safety Committee forms part of the Steering Committee of the Hospital since its conception and it also looks into issues relating to infectious diseases and the efficiency of the hospital.

Immediate interventions made by the Office of the Public Protector

5.3.10 On a subsequent visit to the hospital on 08 and 18 September 2020 respectively, which was prompted by organised labour indicating that the hospital does not have a Risk Management Committee that deals, the Public Protector team visited the hospital as an immediate intervention to
assist with the review of the risk management function and to provide advice on the applicable standards and risk management frameworks.

5.3.11 In order to assist Steve Biko Academic Hospital with the risk management compliance, the hospital submitted all approved risk management documents on 17 September 2020 to enable the Office of the Public Protector to assist in conducting a needs analysis assessment and providing an opinion and guidance in this regard.

5.3.12 The following was established in the risk assessment report based on the assessment and analysis of the risk management documents received from Dr Mathebula:

5.3.12.1 It is clear that the level of personnel constituting the Steve Biko Hospital Risk Management Committee is not adequate and not compliant with the applicable legislation, particularly in relation to the position of Chairperson.

5.3.12.2 It does not seem as if there is any staff member at executive management level serving in the committee. It is constituted with more than 90% management and lower level staff members.

5.3.12.3 Regarding the risk management principles and knowledge, it is clear that there is very limited knowledge in regard to risk management on the committee (only the Chief Risk Officer) and therefore the value added by the Committee to the operations of the institution can only be limited.

5.3.12.4 Based on the engagements with management and labour representatives during the last meeting with the Office of the Public Protector team, the committee had not held a single risk committee meeting for the current financial year sighting COVID-19 as a reason for non-compliance. This only attest to the inadequacy and the ineffectiveness of the committee.
5.3.12.5 There was no evidence that there were quarterly risk committee reports presented to the Audit Committee and also whether there were any interaction with Audit Committee.

5.3.13 Dr Mathebula conceded during the subsequent meeting held 08 September 2020 with management, organised labour and the investigative team that the risk management committee has never held a risk management committee meeting since the beginning of the current financial year citing Covid-19 as a reason for non-compliance.

5.3.14 The risk assessment report was sent to and discussed with Dr Mathebula on 20 October 2020, however she rejected the observations made in the Office of the Public Protector’s report. She dismissed it contents a non-factual.

5.3.15 SUBMISSIONS BY DR MATHEBULA, THE CHIEF EXECUTIVE OFFICER OF STEVE BIKO ACADEMIC HOSPITAL

Infrastructure

5.3.16 Dr Mathebula indicated the hospital did not hire any tents, as it purchased tents. There are two (2) tents at Steve Biko and three (3) at Tshwane District Hospital which were donated by Old Mutual and Outsurance.

Industrial Relations and Communications

5.3.17 Dr Mathebula indicated that unlike any other service to humanity, the Covid-19 pandemic is a healthcare challenge and is unknown and Covid-19 patients present with complex symptoms. This disease cannot be dealt with by inexperienced staff. Experienced staff members almost all have comorbidities and are of advanced ages. However, for fairness’ sake, a
protocol was drawn up and a memorandum was distributed regarding the allocation of staff members with comorbidities.

5.3.18 On the assertion by organized labour that the Covid-19 regulations are drafted by a Doctor and do not accommodate staff with comorbidities. Dr Mathebula in her response submitted that a total of 100 staff members with comorbidities were assessed at OHS department and a total number of 95 staff members were exempted from working in Covid-19 designated areas.

5.3.19 With regards to consulting labour in the appointment of service providers, Dr Mathebula emphasised that there is no regulation that stipulates that appointment of service providers must be approved by labour.

5.3.20 Regarding the Infection Control Unit not responding to the Covid-19 related needs of staff and they being untrained on OHS and Covid-19 related matters. Dr Mathebula further submitted that the hospital has an Infection Control Unit with dedicated officials in the form of an Infection Control Co-ordinator as well as one officer, both of whom are professional nurses and trained in infection control.

5.3.21 She also indicated that the officials at the Infection Control Unit are assisted by Medical practitioners from the Infectious Diseases Unit and champions from various units, who are part of the Infection and Prevention Control (IPC) Committee.

**PPE**

5.3.22 Dr Mathebula submitted that PPE are procured by the province and acquired from provincial warehouses. Dr Mathebula indicated that the staff
at the hospital was provided with adequate PPE as per the area of work and purpose.

5.3.23 Dr Mathebula denied the allegation that there is a lack of proper PPE in the Maternity ward as PPE is distributed in accordance with its purpose.

**Risk Committee**

5.3.24 Dr Mathebula indicated that the hospital has a Risk Management Committee, which is chaired by her and it has been in existence for years prior to Covid-19 pandemic. This Committee however deals with mainly strategic risks and audit matters. Discussions were held relating to risk assessment reports on the evaluation of the key risks that threaten the achievement of the institution objectives.

5.3.25 Dr Mathebula indicated that the Risk Committee and sub-committees in the form of OHS committee, deal with OHS related risks including Covid-19. In addition, a separate risk committee for Covid-19 pandemic for “Steve Biko Academic Hospital/Tshwane District Hospital” Steering Committee was established.

5.3.26 A risk assessment on the Covid-19 walk-through was also conducted by the hospital.

5.3.27 Dr Mathebula indicated that she no longer chairs the Steering Committee and that the Steering Committee was established to deal with all matters pertaining to Covid-19 pandemic and that members of organised labour are permanent members of the committee that sat during March to June 2020.

5.3.28 That subsequently, the Steering Committee convenes bi-weekly as per consensus. In addition there is a Covid-19 OHS Committee that meets
weekly and a PPE Committee that meets daily. Organised labour serves as a member in both committees.

**Transport**

5.3.29 According to the letter dated 28 September 2020, Dr Mathebula submitted, that like all health care resources and services, ambulance services are also overwhelmed with the numbers of patients. This adversely affected the ambulance response time of hospitals.

5.3.30 Lastly that the departmental procurement delegations to the hospital allow for R500 000 per case. The PPE purchase is centralised and acquired from the provincial warehouse.

5.3.31 After the conclusion of the intervention and analysis of the documents, a risk assessment report was compiled by the office of the Public Protector and a copy thereof was sent to and discussed with Dr Mathebula on 20 October 2020, however she rejected the observations made in the Office of the Public Protector’s report. She dismissed it contents a non-factual.

5.3.32 **Undated response to the Notice in terms of the provisions of section 7(9)(a) of the Public Protector Act, 1994.**

5.3.33 On 24 February 2021, the Public Protector issued a notice in terms of section 7(9)(a) of the Public Protector Act to Dr Mathabo Mathebula, Mr Arnold Malotana and to all implicated parties and those with direct interest on this matter with a notice in terms of section 7(9)(a) of the Public Protector Act, with a view to afford them an opportunity to respond to the allegations against them, particularly in relation to the role each played in this matter. Section 7(9)(a) of the Public Protector Act provides that:

“If it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter being investigated and
**5.3.34** The Public Protector now turns to consider the responses submitted regarding the section 7(9) notices (hereinafter referred to as notice/s). The office has made an effort to deal with each and every aspect raised in the responses but where it appears that it has not done so, that should not be misconstrued as an admission of any kind of the averments contained therein.

**5.3.35** Undated and unsigned response to the section 7(9) notice was received by email on 25 March 2021 by the Public Protector from Dr Mathabo Mathebula (Dr Mathebula), wherein she acknowledged certain points raised in the report but of importance is what she disputed. In her response she raised the following issues:

**5.3.36** According to Mr Jonas Hlabane, the DENOSA former shop steward Tshwane District Hospital which falls under Steve Biko Hospital is not structurally compliant in terms of the health and safety standard and the roof has leaks. Mr Hlabane submitted that the DID inspected the Tshwane District Hospital premises but to date no repairs have been made and no report has been issued in terms of their findings and recommendations. Dr Mathebula submitted that this is full of mixed allegations and the statement was made by a person who is clearly unreliable. TDH falls under the Tshwane District Health Services and infrastructure under Department of Infrastructure Development and the management has not seen such a roof.
5.3.37 An inspection was conducted at the hospital on 02 August 2021 and Dr Mathebula indicated that DID was at the hospital to conduct routine maintenance in February 2021.

5.3.38 The Public Protector is in possession of the condition assessment report provided by DID and it indicates that the entire roof of the hospital is in a very bad state of repair.

5.3.39 In response to the issue of overtime, Dr Mathebula submitted that circular 38 of DPSA provided that staff could work overtime however the management of Steve Biko introduced a 30% limit on overtime. Therefore, staff were not allowed to work limitless hours.

5.3.40 The Public Protector is in possession of the overtime policy from GDoH which provides that the head of the unit must determine who must work overtime and the period thereof. Further ensure that no employee shall work more than ten hours per week.

5.3.41 Regarding the allegations that the KN95 masks are used for construction purposes and organised labour are questioning the re-use of the said masks. Dr Mathebula indicated that there are no challenges in re-use of KN95 masks and they are not for construction purpose. She further indicated that the hospital staff do not use KN95 in Covid-19 areas.

5.3.42 On the allegation that the maternity ward was not provided with proper PPE, Dr Mathebula indicated that each unit is allocated PPE as per the unit’s mandated function and risk assessment in accordance with its purpose.

5.3.43 Regarding the infection control unit and the occupational health and safety committee not responding to the Covid-19 related needs of staff, and the lack of training on OHS and Covid-19 related matters. Dr Mathebula
rejected this allegations that the infection control unit is non-existent at the hospital and staff is not trained on how to control and maintain Covid-19. She submitted that the hospital has an infection control unit with dedicated officials in the form of an infection control coordinator as well as the one officer. Both infection control coordinator and the officer are professional nurses trained in infection control.

5.3.44 Further that the officials at the infection control unit are assisted by medical practitioners from the infectious diseases unit and champions from various units, who are part of the infection and prevention control (IPC) committee.

5.3.45 In support of the above, Dr Mathebula provided the Public Protector with a copy of the minutes for the Infection Prevention and Control committee meeting held on 20 January 2020 at the training room level 10.

5.3.46 According to the above-mentioned document, the infection Prevention Control Committee offers training on adherence to standard transmission based precautions, PPE training on Covid-19 and training on IPC champions.

5.3.47 The Public Protector is in possession of the attendance register for the members of the IPC committee including the attendance register for the Covid-19 PPE training held on 01 April 2020 presented by Ms Elsie Lewis (Secretary of the IPC)

5.3.48 Mr Hlabane further indicated that labour is not represented in the structure and it focuses only on Covid-19 matters thereby neglecting other functions of the hospital. The Covid-19 regulations are drafted by a Doctor and do not accommodate staff with comorbidities. Dr Mathebula rejected this assertion and advised that the hospital separated Covid-19 and non-Covid-19 services.
5.3.49 Dr Mathebula in a further response dated 16 July 2021 submitted to the Public Protector indicated that the structure is the facility bilateral coordination committee composed of the Senior Core Management, Senior Medical Specialist, Senior Nursing Manager, infrastructure Management and Quality Assurance Management. Medical Specialist, Medical Management and Nursing Management Infection Prevention, Prevention, Infectious Diseases Management and Microbiologists.

5.3.50 GDoH provided the Public Protector on 27 July 2020, with a copy of the Steve Biko Academic Hospital Covid-19 Fitness to Work Protocol approved on 13 May 2020 compiled by Dr Lumka Puwani Occupational Medical Practitioner.

5.3.51 According to the abovementioned document, certain health workers with medical conditions are exempted from working with Covid-19 patients. Health workers undergoing active radiotherapy, active chemotherapy, cancers of the blood, transplant recipients and severe respiratory conditions such as severe asthma, cystic fibrosis including pregnant women with significant heart disease, congenital or acquired.

5.3.51.1 As well as other vulnerable workers, such as people who are 60 years and older, people with diabetes, cardiovascular disease, chronic respiratory disease.

5.3.51.2 Further that health workers who meet the abovementioned criteria and/or have a valid medical condition confirmed by a specialist physician, that precludes them from caring for Covid-19 patient must contact OHS and make an appointment to see the Occupational Medical Practitioner.

5.3.52 Regarding the existing risk committee at the hospital which does not deal with Covid-19, Dr Mathebula submitted that the Risk Committee at the hospital deals with Audit and Risk as per the Hospital’s Annual Strategic Risk Plan that get developed before the beginning of the Financial Year,
as well Internal external audit finding issues. Also, the committee makes a follow up on plans as per the Operational Risk registers that get compiled through various section’s inputs. When the 2019-2020 Strategic Risk Plan was developed on 11 March 2019 Covid-19 was not in the picture, hence this risk was not amongst those reported on by the committee. The Covid-19 risk Committee is managed the rough the operational registers of OHS Nursing and Clinical Directorate due to it requiring more attention and detailed deliberation.

5.3.53 On 27 July 2021, the Mr Du Preez submitted a copy of the strategic risk assessment report of Steve Biko Hospital 2019/20 which was compiled by the Risk Manager: Ms Christinah Moloantoa on 11 March 2019 and approved by Dr M Mathebula on 14 March 2019.

5.3.54 It was noted that Covid-19 was not discussed in the report as a risk and this is consistent with the submission by Dr Mathebula that when the 2019-2020 Strategic Risk Plan was developed on 11 March 2019, there was no Covid-19.

5.3.55 The evidence in the possession of the Public Protector also indicates that the Hospital has a steering committee which deals with Covid-19 and the minutes of the committee indicate that there was an agenda items for the following: an update on the concerns by both employees and management on Covid-19, availability of PPE, staff well-being etc.

5.3.56 She further indicated that the Covid-19 specific Risk Committees were established as guided by GDoH: biweekly Steering Committees (Executive Committee, Middle management & being members of (EXCO, Middle management & Organised Labour Unions Chairpersons being members of the committee), weekly OHS Committee and daily PPE subcommittee. These committees dealt with COVID-19 and having the main Risk Committee dealing with the same issue would be a duplication and would derail the mandate of the Risk Committee.
5.3.57 In this regard, Dr Mathebula provided the office of the Public Protector is in possession of the minutes of the steering committee held on 19 June 2020. The following people were in attendance:

5.3.57.1 Dr M P Mathebula, CEO of Steve Biko Academic Hospital;
5.3.57.2 Dr S Nkusi, CEO of Tshwane District Hospital;
5.3.57.3 Mr JJ Ngcobo, Director: Human Resources at Steve Biko Academic Hospital;
5.3.57.4 Ms M Matube, Assistant Director: Human Resources Management at Tshwane District Hospital;
5.3.57.5 Ms A M Mowayo, Director: Nursing at Steve Biko Academic Hospital;
5.3.57.6 Mr C Maligavhada, Denosa at Tshwane District Hospital;
5.3.57.7 Mr Budzwa, Nursing Manager at Tshwane District Hospital;
5.3.57.8 Dr L Puwani, Occupational Health and Safety (OHS).

5.3.58 This is a list of apologies in respect of the same meeting:

5.3.58.1 Mr E Khoza, Labour Relation Officer at Tshwane District Hospital;
5.3.58.2 Mr P M Motsweni, Deputy Director: Human Resources Management at Steve Biko Academic Hospital;
5.3.58.3 Mr J A Masemola, the National Education, Health and Allied Workers' Union (NEHAWU) at Steve Biko Academic Hospital;
5.3.58.4 Ms N Mampane, Director: Finance at Steve Biko Academic Hospital;
5.3.58.5 Ms M Chauke, Nursing Manager at Tshwane District Hospital;
5.3.58.6 Mr M F Monama, Director: Administration and Logistic at Steve Biko Academic Hospital;
5.3.58.7 Ms L Mohapi, Assistant Director: Communication at Steve Biko Academic Hospital;
5.3.58.8 Mr J Tlhabane, Denosa at Steve Biko Academic Hospital;
5.3.58.9 Ms J Mafifi, Assistant Director: OHS.

5.3.59 On the allegation by organised labour that there was a conflict of interest as the CEO of the Hospital, Dr Mathebula is also the Chairperson of the Steering Committee and that meant that she was wearing two caps. Dr Mathebula advised the Public Protector that as of 02 September 2020 she no longer chairs the Steering Committee and that it is currently chaired by the Labour Relations Officer. Ms Ida Phasha.

5.3.60 In respect of Dr Mathebula being the Chairperson of the risk management committee, Dr Mathebula in her response submitted that she was a member of the committee for years but never chaired it but was Chairperson of the Covid-19 Risk Management Committee until the office of the Public Protector advised her not to.

5.3.61 The Public Protector is in possession of an attendance register dated 05 March 2020, listing the risk management committee members and the minutes of risk management committee indicate that the Chairperson of the risk management committee is the Assistant Director: Risk Management, Ms Christinah Moloantoa.

5.3.62 On the failure to convene a risk committee meeting current financial year (2020/21). Although Dr Mathebula acknowledged that the Hospital’s Risk Committee did not sit in the first quarter only and submitted that members of the Risk Committee were active in the Covid-19 Risk Committees, while some members were quarantined or in isolation.

5.3.63 Upon perusal of the attendance register for the steering committee meeting dated 08 May 2020 and the attendance register for strategic risk assessment held on 27 February 2019, it was noted that there are common persons who are in both committees such Ms. Rosinah Mamadi, Ms. Nomsa Victoria Mampane and Mr Frank Monama.
5.3.64 Further that the use of virtual route of communication was not yet known at the time, however the small committee comprising of the CEO, Risk Manager, Finance Director and Deputy Director Finance met to compile the Audit Committee quarterly report. This subcommittee oversees the Hospital Risk Committee and the reports get sent to the Provincial Audit Committee on quarterly.

5.3.65 Dr Mathebula explained in her letter of response dated 16 July 2021 addressed to the Public Protector that the committee was convened by the Chairperson of the Board Audit and risk subcommittee through Secretary of the board. The report is the same one which was submitted to the Audit Committee of the Province.

5.3.66 In a letter dated 12 March 2021 from the Head of the Audit Committee Secretariat, Mr Jafta Mhlongo confirmed that Steve Biko Academic Hospital submitted the required reports on time to the Audit Committee for consideration.

5.3.67 Dr Mathebula acknowledged that the Hospital did not provide proof of the quarterly risk committee reports. However, Dr Mathebula indicated that the Public Protector was notified on 08, 18 September 2021 and 20 October 2021 that the hospital compiles and submits the reports to GDoH, who in turn submits them to the Provincial Audit Committee. As a results, GDoH and the Provincial Audit Committee are custodian of the reports and the Public Protector was advised to request same from GDoH and the Provincial Audit Committee.

5.3.68 The Head of the Audit Committee Secretariat, Mr Jafta Mhlongo confirmed that Steve Biko Academic Hospital submitted the required reports on time to the Audit Committee for consideration.
5.3.69 The risk assessment report compiled by the Public Protector after the intervention visits was submitted to and discussed with Dr Mathebula on 20 October 2020 at Steve Biko Academic Hospital, however she rejected the observations made in the Public Protector’s report. She dismissed it contents as non-factual. In a subsequent response to the Public Protector, Dr Mathebula clarified that it was not a dismissal of content but rather correction and further explanation.

5.3.70 Dr Mathebula rejected the conclusion by the Public Protector that based on the observations made during the on-site visits, GDoH could not maintain or ensure appropriate conditions for the delivery of health care services for the community of Gauteng Provincial which it serves. Dr Mathebula questioned which service was not delivered that GDoH was expected to deliver.

5.3.71 Dr Mathebula rejected the assertion that systemic deficiency such as the failure to convene risk management meetings at Steve Biko Academic Hospital led to the inability to ascertain if the Risk Management Strategy has been communicated to all staff members as require by the Risk Management Framework. She indicated that Steve Biko Academic Hospital is not an independent entity and other Risk Management activities were affected by Covid-19 but nonetheless GDOH did submit and present the Quarter 1 Audit Committee report in accordance with prescripts.

5.3.72 According to the Steve Biko Academic Hospital Risk Management Strategy, at paragraph10 (e) under roles and responsibilities of management and staff, provides that the Chief Risk Officer communicates all risk management strategies and policies to all staff and relevant stakeholders.

5.3.73 With regards to the existence of a complaints handling process at the hospital, Dr Mathebula submitted that there is no complaints handling service provider at the hospital.
On the allegation that organised labour was not consulted in the appointment of service providers, Dr Mathebula emphasized that there is no regulation that stipulates that appointment of service providers must be approved by organised labour.

Regarding the inefficiency of ambulances Dr Mathebula indicated that like all health care resources and services, ambulance services are also overwhelmed with the numbers of patients and everyone knows that.

According to Dr Mathebula the conclusion by the Public Protector that based on the observation it is clear that the GDoH did not administer Steve Biko Hospital in the manner intended by the Constitution and the NHA. Which encourages efficient and effective provision of quality healthcare is serious and concerning statement. She further indicated that there is no basis for the conclusion made by the office of the Public Protector.

Response to the Notice in terms of the provisions of section 7(9)(a) of the Public Protector Act, 1994.

The response letter was received by email from the Acting HoD, Mr Malotana, dated 19 March 2021 and he stated as follows:

Mr Malotana disagreed with the findings that there were administrative deficiencies by the GDoH that led to systemic challenges in the delivery of primary health care services at Steve Biko Academic Hospital. He argued that none of the issues raised in related to this Hospital impacts the delivery of primary healthcare. To ascertain the performance of primary healthcare services or those of a Hospital requires specific processes and methodologies to be followed.
5.3.80 Regarding the failure to convene regular risk management meetings, possibly resulting in the said committees being unable to review and update the risk policy, so that it is better placed to respond to the current challenges and opportunities. In his response Mr Malotana disagreed with the assertion and submitted that the hospital follows a fair risk management process and regular risk committee meetings do take place however no evidence was provided to that effect.

5.3.81 In support of his submission above, Mr Malotana provided the Public Protector with a copy of letter dated 12 March 2021 from the Head of the Audit Committee Secretariat, Mr Jaftha Mhlongo wherein he confirms that the audit committee meetings were held and Steve Biko Academic Hospital submitted the required reports on time to the Audit Committee for consideration.

5.3.82 With regards to the membership of the risk management committee not being compliant with guidelines in that there is a lack of adequate representation, skill and experience of executive management. Mr Malotana disagreed and contended that the Risk Committee functions under the Risk Management Framework of the Gauteng Provincial Government as approved by the Provincial Treasury. The Dr Mathebula rearranged the Risk Committee to be better placed to respond to the COVID-19 threat. The required reports were submitted to the Audit Committee as needed.

5.3.83 It was noted that Steve Biko had a steering committee which dealt with Covid-19 including the IPC committee. Dr Mathebula rationale was that these committees dealt with COVID-19 and having the main Risk Committee dealing with the same issue would be a duplication and would derail the mandate of the Risk Committee.

5.3.84 Mr Malotana in support of his argument referred to the Gauteng Provincial Government Risk Management Framework: Gauteng Provincial Treasury
which indicates that the governance structure should be as follows: Accounting Officer, Risk Management Committee, Risk Management and compliance function, Programme Manager, Risk Owner (Manager).

5.3.85 It is further stated in the above-mentioned framework that the governance structure should ensure that:

5.3.86 There are regular and accurate reports on the risk profile of the institution.

5.3.87 There is a regular assessment of the effectiveness and adequacy controls.

5.3.88 There is a periodic assessment of any new and emerging risk.

5.3.89 There is a regular review of the risk tolerance and the breaches thereof.

5.3.90 The Public Protector in her interventions found that there was a regular risk assessment and the policy on risk management complied with the listed guidelines of the Public Service Risk Management Framework but could not ascertain if the risk management strategy had been communicated to all staff members as a requirement per standard practice and risk management framework and Mr Malotana submitted that the GDoH concedes that communication could have been more effective.

5.3.91 Regarding the finding that the Public-Sector Management Framework published on 01 April 2010 requires the chairperson of the risk management committee to be an independent external person appointed by the accounting officer, in this instance, Dr Mathebula is the chairperson of the risk management committee and that is in direct violation of the above framework. Mr Malotana, submitted that the Risk Committee operates under the Risk Management Framework of the Gauteng Provincial Government. The provision that the Committee needs to be chaired by an external person is a recommendation only and not a requirement.
5.3.92 The Public Protector accepts that the interpretation by GDoH is correct and further established that Ms Christinah Molantoa is the Chairperson of the risk committee not Dr Mathebula.

5.3.93 **Response to the Notice in terms of the provisions of section 7(9)(a) of the Public Protector Act, 1994.**

5.3.94 In response letter dated 28 May 2021, relating to the infrastructure challenges at Steve Biko Academic Hospital, the HOD of DID, Mr Thulani Mdadane indicated as follows in a response:

5.3.95 Regarding the allegations by Mr Hlabane that the Tshwane District Hospital is not structurally compliant in terms of the health and safety standards and that the roof is leaking.

5.3.96 In his response, Mr Mdadane submitted that the compliance issues raised are to be addressed under the OHS Compliance project at the hospital which currently at the planning process. Periodic maintenance is carried on the roof as part of the maintenance plan and the roof leaks are also attended to when DID is notified of the defect.

5.3.97 In support of the above, a copy of the condition assessment report dated 02 August 2017 was provided to the Public Protector. The purpose of the report indicates that Rantopo Boikanyo Architecture and Design was appointed by the Gauteng Department of Infrastructure Development (GDID) on behalf of Gauteng Department of Health to develop a costed maintenance implementation plan on condition assessment for Mamelodi hospital, among other things we were to:

5.3.98 Inspect the current state of the hospital and report on the compliance with the current South African National Building Standards.
5.3.99 Provide recommendations on making good the hospital to achieve compliance.

5.3.100 Provide an attractive, functional, durable and sustainable hospital that will meet the needs of the patients and nursing personnel and be complaint with Gauteng Department of Health R158 guidelines.

All existing facilities to be inspected in exclusion of the following facilities: Residences and any other ancillary buildings that re not critical to functioning of the facility.

After the meeting with the CEO on 04 July 2017 and subsequent inspection from 06 July 2017 the following items which would enhance treating and healing at the hospital on a day to day basis were deemed by the hospital CEO and supporting staff to be lacking:

5.3.101 The entire roof of the hospital is in a very bad state of repair.

5.3.102 With regards to the patient’s files (records) are lying down on the floor and not filed properly, in his response, Mr Mdadane indicated that the storage of patient files is the competency of the GDoH.

5.3.103 An inspection was conducted on 02 August 2021 and the files were not lying on the floor, but are stored on floor pallets.

5.3.104 Dr Mathebula explained the rationale that the files are put on the floor pallets, when in transit to and fro various hospital areas, as there are volumes and volumes of them, they are put in an orderly way on the floor for sorting whilst being prepared to be distributed to wherever or to be filed back on the shelves.

5.3.105 Further that the files are placed on a pallet is to minimise their wear and tear.
5.3.106 Dr Mathebula further explained that National and Provincial health offices and Sita, CSIR are working toward automation of patient records.

5.3.107 The roof was serviced or maintained by DID in February 2021 as part of the routine maintenance.

5.3.108 A copy of the Tshwane District Hospital has a maintenance plan was provided to the Public Protector.

**Applicable Legal Framework**

**Constitution**

5.3.109 Section 195(1) of the Constitution, 1996 provides amongst other things that:

“Public Administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(a) ..............................,
(b) Efficient, economic and effective use of resources must be promoted;
(c) .................................;
(d) .................................;
(e) People’s needs must be responded to....;
(f) Public administration must be accountable .......;
(g) ......; and
(h) Good human-resource management and ...... to maximise human potential, must be cultivated.
5.3.110 According to section 195 (1) (b), the Department and the Hospitals have an obligation to ensure that procurement processes of PPE was done in a manner that is efficient, economic and effective.

5.3.111 The Department is required to account for the effective usage of the departmental resources and efficient administration of hospitals. In this instance, procurement is centralised at the provincial level and the Department is responsible for the timeous distribution of medical supplies thereof to various hospitals.

5.3.112 The Department and the Steve Biko Academic Hospital must cultivate good human resource management to maximise human potential by recruiting and selecting appropriate human capital in terms of the required need of the hospital. The Steve Biko Academic Hospital seemed to have been managing its human capital and there were no challenges observed during the inspection.

5.3.113 Section 237 of the Constitution provides that all constitutional obligations must be performed diligently and without delay.

5.3.114 It follows that according to the above provision, the Department and the Steve Biko Academic Hospital also had a responsibility to ensure that the performance of the hospitals in Gauteng was conducted diligently and without delay.

5.3.115 Section 27 read with 195 (1) (e) of the Constitution provides *inter alia*:

1) *Everyone has the right to have access to* –

(a) *health care services* ..........;

(b) ...............;

(c) ...............;
2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

5.3.116 While the positive obligations imposed on the government by section 27(1) and (2) of the Constitution entitle the people of GP to claim healthcare on demand. However, it requires the government to develop a comprehensive and workable plan to meet its obligations.

5.3.117 The Constitution requires that regardless of the resources constraints the state must take reasonable legislative and other measures, within its available resources to ensure the progressive realisation of the right to health care.

5.3.118 Accordingly the Department and the Steve Biko Academic Hospital have a responsibility to provide everyone with access to timely, equitable, acceptable, and affordable health care of appropriate quality\(^{18}\). Therefore, the Department must provide healthcare in line with the resources constraints without decreasing the value of health care provided to everyone.

5.3.119 The Department must ensure that medical equipment is procured timeously so that the hospitals can provide quality healthcare in order to avoid service delivery failures. In this instance, there were no challenges raised in relation to the procurement of medical equipment.

5.3.120 Under the circumstances and during this Covid-19 pandemic era, the hospitals are required to provide health care and adequate provisioning of PPE. The medical staff should be sufficiently protected to enable them to attend to patients timeously to curb the escalation of the Covid-19.

5.3.121 The WHO health systems framework has six (6) pillars of building blocks of health system with aims and desirable attributes for member states 19:

![](image)

5.3.122 The building blocks contribute to the strengthening of health systems in countries that are affiliated with the WHO. Cross cutting components such as leadership, governance and health information systems provide for the basis of the overall policy and regulation of all the other system blocks. Medical products and technologies, and services delivery reflect on the availability and distribution of care.

5.3.123 The compliance of member states with the six (6) building blocks of health systems according to WHO, will lead to improved health, efficiency, responsiveness, social and financial risk protection. Therefore, if administration and governance structures are put in place and adequately monitored by the Department the health care challenges observed in the hospitals would be minimized or eradicated.

19 [www.who.int/healthinfo/systems/WHO_MBHSS_2010_fullweb](http://www.who.int/healthinfo/systems/WHO_MBHSS_2010_fullweb)
5.3.124 Accordingly, the Department and the Steve Biko Hospital have a responsibility to provide everyone with access to timely, equitable, acceptable, and affordable health care of appropriate quality. Therefore, the Department must provide healthcare in line with the resources constraints without decreasing the value of health care provided to everyone.

5.3.125 In terms of section 8(1) of the Occupational Health and Safety Act 85 of 1993

“Every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his employees.

5.3.126 Version 2 of Covid-19 disease: infection prevention and control guidelines of 21 May 2020:

“Paragraph 8.4: Extended used of PPE

Usually PPE is discarded after a single patient or procedure, however, because of an acute shortage of PPE during the Covid-19 outbreak, the WHO and CDC are considering extended use and/or re-use of certain PPE. For South Africa, it is recommended that the extended use of PPE IS preferable to reprocessing, the latter being expensive, not validated and the integrity of the PPE cannot be guaranteed.”

5.3.127 The Department has an obligation to ensure that the employees are provided with a safe working environment that does not pose a risk to their health. As a result the Steve Biko Academic Hospital has a responsibility to establish Occupational Health and Safety Committees to deal with the health threat posed by Covid-19 and in this instance the hospital complied with statutory provision of the Act.
The Department has an inherent responsibility to ensure that all staff are safe and protected at all times. The unavailability and inadequate provisioning of PPE compromised and endangered the health and safety of staff and further made the working conditions of staff at the hospitals not conducive and hazard free.

According to the “Covid-19 disease: infection prevention and control guidelines of 21 May 2020”, most PPE is reusable or has extended life unless contaminated. However, that is with the exception of gloves. Under the circumstances, there was reuse of masks at Steve Biko Academic Hospital which was in accordance with the above mentioned guidelines.

In terms of PFMA Section 38 (1) (a) (i) the Accounting Officer for a department, trading entity or constitutional institution must ensure that the department, trading entity or constitutional institution has and maintains effective, efficient and transparent systems of financial and risk management and internal control.

In terms of the PFMA section 6(2) (a), which empowers the National Treasury to prescribe uniform norms and standards in terms of Risk Management Framework.

Treasury Regulations paragraph 3.2.1\(^\text{20}\) requires that-

“The accounting officer must ensure that a risk assessment is conducted regularly to identify emerging risks of the institution to determine the material risks to which the institution may be exposed and to evaluate the strategy for managing these risks…the strategy must be clearly communicated to all officials to ensure that the risk management strategy is incorporated into the language and culture of the institution.”

\(^\text{20}\) Issued March 2005
5.3.133 According to the above cited provisions the Accounting Officer has a responsibility to ensure that the institution has and maintains effective, efficient and transparent systems of financial and risk management and internal control.

5.3.134 It was noted that the Departmental risk management strategy is applicable. The Department is required to ensure that regular meetings with members of the Risk Management Committee takes place as per the risk management framework and schedule. The strategy should be effectively communicated to all staff but in this case there were no regular meetings that were held.

5.3.135 Chapter 13 (24) requires the following:

“(2) The membership of the Risk Management Committee should comprise both management and external members with the necessary blend of skills, competencies and attributes, including the following critical aspects:

(a) an intimate understanding of the Institution’s mandate and operations;
(b) the ability to act independently and objectively in the interest of the Institution; and
(c) a thorough knowledge of risk management principles and their application.

(3) The chairperson of the Risk Management Committee should be an independent external person, appointed by the Accounting Officer / Authority.”

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21 Public Sector Risk Management Framework published on 01 April 2010
5.3.136 In terms of the above provision the membership of the risk management committee should comprise of management and external members that possess skills, competencies and attributes to add value to the operations of the institution. The provision further provides that the Chairperson of the Risk Management Committee should be an independent external person.

5.3.137 Evidence in possession of the Office of the Public Protector indicates that the audit risk consists of the chief risk officer, middle management and lower level staff members, therefore, the value added by the committee to the operations of the institution is limited.

5.3.138 In terms of Chapter 13(24)(3) of the Public Sector Management Framework Act, the above-mentioned provision is just recommendation and not mandatory but the rationale behind it is worth considering. Especially as it seeks to ensure independence and objectivity in the interest of the institution.

5.3.139 In this regard it is noted that Ms Christinah Moloantoa is the Chairperson of the risk management committee and in terms of the abovementioned provision, Chapter 13(24)(2)(3), it requires the Chairperson of the risk committee to be an external and independent person, however in this instance, Dr Mathebula and is not an independent external person as required by the above regulation.

5.3.140 The National Treasury Regulation issued in terms of the PFMA dated 31 May 2000 paragraph 21.2 provides for the acceptance of gifts, donations and sponsorship to the state as follows:

“21.2.1 The accounting officer may approve the acceptance of any gift, donation or sponsorship to the state, whether such gifts, donations or sponsorships are in cash or kind;”
21.2.1 .....;

21.2.3 .....;

21.2.4 *All gifts, donations or sponsorship received during the course of the financial year must be disclosed as a note to the annual financial statements of the institution."

5.3.141 The accounting officer may approve the acceptance of any gift, donation or sponsorship to the state, whether such gifts, donations or sponsorships are in cash or kind.

5.3.142 Therefore it is clear that all gifts, donations or sponsorships received during the course of the financial year must be disclosed as a note to the annual financial statements of the institution. There is evidence in the Office of the Public Protector’s possession indicating that the donation of tents at Steve Biko from Old Mutual, Outsurance and COPTA were registered and declared in the donations register to the GDoH.

5.3.143 The Department of Health and Social Development overtime policy signed on 14 February 2011 by DR K S Chetty provides as follows:

Paragraph 7.4 “*The Head of the section must determine who must perform overtime and the period thereof*"

Paragraph 7.7 “*No employee shall work more than ten hours overtime per week*"

5.3.144 In terms of the provision, the head of the section must determine who must perform overtime and the period thereof and further that no employee shall work more than ten hours per week.
5.3.145 In this instance, employees could work overtime however the management of Steve Biko introduced a 30% limit on overtime to prevent employees from working limitless hours.

Management of buildings and grounds

5.3.146 Regulation 14(1) of the National Health Act 61 of 2003 dated 02 February 2018 provides that the health establishment and their grounds must meet the requirements of the building regulations. For the purposes of sub-regulation (1), a health establishment must inter alia have a maintenance plan for buildings and the ground in terms of sub-regulation 14 (2)(b).

5.3.147 Regulation 14(1) and (2)(b) requires the hospital to have a maintenance plan to deal with infrastructure challenges faced by the hospital. The current infrastructure at Tshwane District hospital, which is under Steve Biko hospital is not structurally compliant in terms of the health and safety standards and no report has been issued to date in terms of their findings and recommendations.

5.3.148 The DID develops an annual maintenance plan for all health infrastructure that is implemented in the financial year. The maintenance plan includes statutory and planned maintenance. The planned maintenance is carried out using projects that are developed from the condition assessment, requests from the hospital and the Gauteng Department of Health.

5.3.149 In this regard Steve Biko Academic Hospital has a maintenance plan which was provided to the Public Protector.

Conclusion

5.3.150 It can be concluded from evidence in the possession of the Public Protector and responses received that GDoH could not maintain appropriate conditions at the Steve Biko Academic hospital to provide...
effective and efficient health care services to the community in response to the Covid-19 pandemic. In this regard it was established that:

5.3.150.1 No risk management meetings were held in the first (1) quarter of the 2020/21 financial year and no additional information was provided that indicate that risk management meetings in the quarters that followed however a report was submitted to GDoH.

5.3.150.2 The risk management committee was not comprised of both management and external members with the necessary blend of skills, competencies and attributes, neither was the Chairperson of the risk committee an external person as recommended by Chapter 13(24)(3) of the Public Sector Management Framework Act.

5.3.150.3 Even though the recommendation is not mandatory, it is required to ensure independence and objectivity in the interest of the institution

5.3.150.4 Based on the evidence received it is clear that the GDoH could not administer the Steve Biko Academic Hospital in the manner intended by the Constitution and the NHA, which encourages the efficient and effective provision of quality healthcare services.

5.4 Whether the allegations of administrative deficiencies by the GDoH led to systemic challenges in the delivery of primary health care services at Chris Hani Baragwanath Academic Hospital (Bara) and if yes, whether such failure amounts to improper conduct and maladministration.

*Common Cause Issues*

5.4.1 On 19 August 2020, the Public Protector conducted an inspection at the Chris Hani Baragwanath Academic Hospital (Bara) in Johannesburg.
5.4.2 During the inspection, the team were assisted by the Acting Chief Executive Officer of Bara Hospital, Dr Steve Mankopane (Dr Mankopane) who took the team around the premises of the health facility.

5.4.3 The GDOH is responsible for the delivery of public healthcare services throughout the province of GP to ensure that the Province’s healthcare system is functional.

5.4.4 The procurement of PPE is centralised at various depots/warehouses and upon request by the hospitals, depots/warehouses will issue orders for collection by the hospitals.

*Issues in dispute*

5.4.5 In June and July 2020 media reports repeatedly highlighted the challenges faced by the public and healthcare practitioners on the frontline fighting the deadly Corona virus.

5.4.6 The widespread negative reports across the media spectrum, all painted a grim picture about the deteriorating service delivery conditions at various health facilities within GP. The Office of the Public Protector authorised an immediate own intervention/investigation into the allegations to establish the authenticity of the claims made in the press statements.

5.4.7 As indicated, this own accord intervention to inspect Bara Hospital was made with a view to establish whether or not the alleged state of affairs within the public healthcare facilities in the GP resulted in improper conduct or maladministration.
INSPECTION IN LOCO AND INTERVIEWS CONDUCTED AT BARA HOSPITAL WITH THE ACTING CHIEF EXECUTIVE OFFICER: DR STEVE MANKOPANE (DR MANKOPANE), HOSPITAL MANAGEMENT AND ORGANISED LABOUR

5.4.8 During the inspection *in loco* conducted by the team, the following observations were made at Bara Hospital:

**PROFILE OF BARA HOSPITAL**

5.4.8.1 The hospital has a staff complement of 6324 staff members and a total of 7136 approved posts.

5.4.8.2 There is a total of 812 vacant posts at the hospital.

5.4.8.3 There is a total of 2680 beds of which 480 are reserved for Covid-19 patients.

5.4.8.4 There is a total of 100 critical care beds capacity, 52 which are functional and there was a total of 500 critical care beds capacity in the Alternative Building Technology (ABT) structure which was under construction at the hospital.

5.4.8.5 There was an additional capacity of 280 beds identified by the hospital should the need arise in Block G and H.

5.4.8.6 Maternity ward 59 was converted into a Covid-19 ward and the damaged galvanised pipes were replaced.

5.4.9 On 19 August 2020 during the site inspection the following was observed and gathered from the stakeholder during the inspection:

**Infrastructure**
5.4.9.1 It was observed that there were Covid-19 renovations that commenced in March 2020 and the hospital was provided with ten (10) wards. The temporary tents have ablution facilities, air conditioning and heaters.

5.4.9.2 Further that there was an incomplete infrastructure in the Oncology Unit. Taps and basins in the kitchen at the hospital are not functional.

**Industrial Relations and Communications**

5.4.9.3 Porters were unavailable at their work stations and as a result, patients cannot be transported around the Hospital. Consequently, family members have to transport their family members (patients) from one ward to the other.

5.4.9.4 There were delays in attending to patients by health care workers at the hospital.

**PPE**

5.4.9.5 There was non-delivery of procured PPE by the service provider who was appointed from the provincial database, as well as the unavailability of the PPE at the peak of the pandemic and also the quality thereof being substandard.

5.4.9.6 The delivery of substandard PPE as well as the sterile gowns which were not fit for purpose, as they were short and do not offer much protection to the medical staff.

5.4.9.7 The hospital had a service provider who was contracted to conduct Covid-19 tests for staff. However, the contract has expired and the staff were no longer tested.
Transport

5.4.9.8 The ambulances are not serviced, cleaned and sanitized and as a result posing a health hazard to the patients and staff.

Surgeries

5.4.9.9 Elective surgeries were deferred for a period of three (3) to twelve (12) months based on the assessment of the patients and possibility of causing a backlog.

Psychiatric Ward for Covid-19 positive patients

5.4.9.10 There was a lack of a specialised ward for psychiatric patients

SUBMISSIONS BY DR MANKOPANE THE ACTING CHIEF EXECUTIVE OFFICER OF BARA HOSPITAL

5.4.10 During the site inspection at Bara on 19 August 2020, submitted as follows:

5.4.10.1 Dr Mankopane indicated that procurement, maintenance and repairs are centralized at the Department and as a result, there are delays in procurement and servicing of medical equipment and goods.

5.4.10.2 Dr Mankopane indicated that there is a limited operational budget of R 500 000, and as the CEO he is not allowed to procure goods and services above this required threshold.

5.4.11 According to an undated letter received by the Office of the Public Protector from Dr Nkele Lesia, Chief Executive Officer (Dr Lesia) on 18 September 2020:
Infrastructure

5.4.11.1 It was observed that there were Covid-19 renovations that commenced in March 2020 and the hospital was provided with ten (10) wards. The temporary tents have ablution facilities, air conditioning and heaters.

5.4.11.2 Further that there was an incomplete infrastructure in the Oncology Unit. Taps and basins in the kitchen at the hospital are not functional.

5.4.11.3 Regarding non-functional taps, Dr Lesia indicated that the taps in the kitchen have been repaired.

Industrial Relations and Communications

5.4.11.4 On the porters being unavailable at their work stations and as a result, patients cannot be transported around the Hospital. Consequently, family members have to transport their family members (patients) from one ward to the other.

5.4.11.5 Dr Lesia indicated that porters are available at the Bara Hospital but delays occurred when some of the porters were off sick. However, the situation has improved since the deployment of military personnel at the hospital. She further submitted that fourteen (14) additional porters are awaiting medical surveillance.

5.4.11.6 With regard to the delays in attending to patients by health care workers at the hospital. Dr Lesia indicated that the waiting time is also affected by the high volumes of patients that visit the hospital for care.

PPE
5.4.11.7 On the non-delivery of procured PPE by the service provider who was appointed from the provincial database, as well as the unavailability of the PPE at the peak of the pandemic and also the quality thereof being substandard.

5.4.11.8 With regards to the delivery of substandard PPE as well as the sterile gowns which were not fit for purpose, as they were short and do not offer much protection to the medical staff.

5.4.11.9 The Public Protector is in possession of a letter or document compiled by the Director Supply Chain Management: Ms Tshikalange Ravele titled “REPORT OF POOR QUALITY OF GOWNS AT THE BEGINNING OF COVID-19” dated 15 September 2020. The said of document communicates the challenge experience regarding the poor quality of gowns at the beginning of Covid-19. It was indicated therein that at the beginning of June, concerns were raised regarding the poor quality of gowns including the length that could not cover the entire body of the health workers. The gowns were procured by GDoH and the matter was escalated to quality assurance at GDoH because they were tasked with verification and monitoring the quality of PPE.

5.4.11.10 On the hospital having had a service provider who was contracted to conduct Covid-19 tests for staff. However, the contract has expired and the staff were no longer tested.

5.4.11.11 Dr Lesia in her response submitted that on 01 September 2020 and 02 September 2020 at Management Committee and Executive Committee meetings it was reported that there was an anticipation of a shortage of gowns. The provincial warehouses that were designated to provide the stock of non-sterile items were running out of stock.
5.4.11.12 Dr Lesia further indicated that the hospital did not encounter any challenges regarding the shortage of PPE during the peak of the pandemic.

5.4.11.13 She also submitted that on 07 September 2020 the PPE Committee was made aware of the imminent shortage of non-sterile gowns at main stores. In the meeting the Committee discussed the above and agreed that the provision of non-sterile gowns should be prioritised for those who are caring for the suspected and confirmed Covid-19 patients as well in high risk areas within the hospital. This resolution was made in a PPE Committee meeting wherein organised labour members were also sitting.

5.4.11.14 The Public Protector is in possession of a letter or document compiled by the Director Supply Chain Management: Ms Tshikalange Ravele titled “REPORT ON THE SHORTAGE OF GOWNS AT MAIN STORES” dated 15 September 2020. The said of document communicates that Executive Committee meeting that there was an anticipation of the shortage of gowns due to the provincial warehouses that were secured to provide stock of non-sterile items running low or out of stock. It also confirms that there was a meeting on 07 September 2020 regarding the imminent shortage at main stores.

5.4.11.15 Dr Lesia further submitted that the contract of the previous service provider hired for conducting testing expired and the hospital has appointed a new service provider, Hamadi Clinical Services, to test staff at the hospital.

**Transport**

5.4.11.16 Regarding ambulances not being serviced, cleaned and sanitized and as a result posing a health hazard to the patients and staff.

5.4.11.17 Dr Lesia submitted in her response that the hospital ambulances are sanitised on a daily basis.
Surgeries

5.4.11.18 On the deferment of elective surgeries for a period of three (3) to twelve (12) months based on the assessment of the patients and possibility of causing a backlog.

5.4.11.19 Dr Lesia in her response indicated that elective surgeries were deferred by the hospital to give priority to Covid-19 cases. Uncompleted surgeries were postponed, which resulted in a backlog of surgeries. Emergency and essential surgeries such as cancer surgery, continued.

Psychiatric Ward for Covid-19 positive patients

5.4.11.20 Regarding the lack of a specialised ward for psychiatric patients, Dr Lesia indicated that the affected wards were used as either PUI or Covid-19 wards when the situation arise and were closed for new admissions. She submitted that staff in those wards were provided with full PPE and new admissions were discontinued until all affected patients are discharged. Further, that the ward is deep cleaned.

5.4.12 Response to the Notice in terms of the provisions of section 7(9)(a) of the Public Protector Act, 1994.

5.4.13 On 24 February 2021, the Public Protector issued a notice in terms of section 7(9)(a) of the Public Protector Act to Dr Nkele Lesia, Mr Arnold Malotana, and to all implicated parties and those with direct interest on this matter, with a view to afford them an opportunity to respond to the allegations against them, particularly in relation to the role each played in this matter.
“If it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter being investigated and that such implication may be to the detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector shall afford such person an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances”.

5.4.14 The Public Protector now turns to consider the responses submitted regarding the section 7(9) notices (hereinafter referred to as notice/s). The office has made an effort to deal with each and every aspect raised in the responses but where it appears that it has not done so, that should not be misconstrued as an admission of any kind of the averments contained therein.

5.4.15 The Public Protector received a response to the Section 7(9) notice from Dr Lesia dated 03 March 2021. Dr Lesia responded as follows:

5.4.15.1 On the undue delay to repair the broken taps in the kitchen and the ablution facilities in ward 59, Dr Lesia advised that the broken taps in the kitchen were repaired and the ablution facilities in ward 59 were attended to.

5.4.15.2 Dr Lesia submitted a copy of a letter dated 16 July 2021 to the Public Protector from the Chief Food Service Manager: Mrs Nora Molefe confirming that all the leaking taps were repaired and are currently functional.

5.4.15.3 In addition to the above, the Public Protector was provided with a template of reported maintenance. It was noted therein that leaking taps were reported and repaired.
5.4.15.4 In terms of a copy of communication book for ward 59 which was provided to the Public Protector by GDoH, it was noted that ablution facility was reported as blocked on 20 August 2020 and subsequently repaired.

5.4.15.5 On the unavailability of porters at workstations in the hospital to assist in the movement of patients to various wards within the hospital has the potential to endanger patients in the hospital, as patient’s families resort to doing the work of the porters which they are not trained to do, Dr Lesia conveyed that some of the hospitals porters were also affected by Covid-19 however the hospital has since appointed twenty three (23) additional porters to mitigate future gaps from November 2020 to January 2021.

5.4.15.6 In support of the above, Dr Lesia provided names of people who were appointed as porters at Baragwanath hospital is captured in the table below:

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Compiled by: Ratombo Malilimala
Date: 31 May 2021

5.4.15.7 Regarding the allegation indicating that the available human resources capacity is not able to handle the influx of patients at the hospital, Dr Lesia conceded and submitted that it is a historical fact that the staff...
establishment at the hospital is skewed. The waiting times are affected by high volumes of patients who visit the hospital for medical care.

5.4.15.8 Regarding the undue delay to fill additional Covid-19 posts, Dr Lesia contended that the Covid-19 posts were created late into the pandemic. She also indicated that there were systemic challenges due to centralisation of some of the appointment functions. Dr Lesia further submitted that the appointment of personnel late was as a result of the delay in the mandate to the Department of e-Gov for processing and medical surveillance processes.

5.4.15.9 The Department of e-Government, Head of Department Mr Cyril Baloyi, in a response letter dated 26 July 2021 submitted a spreadsheet which shows the persal appointments processed transaction duration. In respect of Baragwanath Hospital it was noted that between 1-5 days a total of 111 were processed and 3 were processed between 6-10 days. Therefore 97, 37% was processed within 1-5 days and 2, 63% was processed within 6-10 days.

5.4.15.10 Regarding the obligation placed on the Department and the hospital to ensure that procurement processes of PPE were done in a manner that is efficient, economic and effective, Dr Lesia submitted that procurement of PPE in the hospital was done in a manner that is economic and effective.

5.4.15.11 Further that contracted PPE items were procured from Transversal tenders concluded by National Treasury. Items that were not in any contract were procured following the prescribed normal procurement processes as per regulations taking into consideration value for money and transparency.


5.4.15.13 The rationale to decentralise the procurement of Covid-19 PPE GDoH was based:

5.4.15.13.1 On the increased non-compliance to supply chain management (SCM) prescripts by the GDoH in procuring Covid-19 related PPE;

5.4.15.13.2 Freeing GDoH capacity to focus on own institutional SCM related matters considering that the department is more impacted by Covid-19;

5.4.15.13.3 Manageable and controlled Covid-19 departmental demand plans by the Accounting Officers and Accounting Authorities;

5.4.15.13.4 Broader empowerment of suppliers and local procurement.

5.4.15.14 The Public Protector had noted challenges and concerns with centralisation of procurement during the inspection which resulted in delays and poor quality PPE.

5.4.15.15 On the delay by the hospital to collect and distribute, PPE to various medical staff, Dr Lesia submitted that the hospital has the responsibility of procuring and distribution of PPE to all staff members however at the beginning of Covid-19 pandemic, GDoH took a decision to centralise the procurement of certain items of PPE and the hospitals could only procure sterile items such as sterile surgical gowns, sterile gloves, etc.

5.4.15.16 Dr Lesia acknowledged that there were delays in terms of distribution of stock of the non-sterile gowns and she further stated that all sterile consumables were procured by the hospital and distributed to all end-users. However, the non-sterile gowns were being collected from the centralised provincial warehouses, both in Centurion and Krugersdorp. Sometimes both warehouses did not have sufficient stock of non-sterile
isolation gowns that can cater for the numbers required by the hospital hence there were some delays in terms of distribution of stock.

5.4.15.17 On the conclusion by the Public Protector that the unavailability and inadequate provisioning of PPE compromised and endangered the health and safety of staff and further made the working conditions of staff at the hospital not conducive and hazard free, Dr Lesia conveyed that the hospital procured PPE that was not being centrally procured by the GDoH such as non-sterile isolation gowns, KN95 masks, surgical mask, etc. Further that officials were provided with all required PPE and the responsibility to monitor and assess the usage and control was vested with area managers.

5.4.15.18 With regards to expiration of the contract of the service provider who was contracted to conduct Covid-19 testing for staff. Dr Lesia indicated that HAMADI was appointed by the GDoH to conduct Covid-19 tests on staff and when the contract expired, the infected or exposed staff members were tested through the NHLS. Therefore, there were no staff members who were refused access to testing after exposure.

5.4.15.19 Regarding ambulances not being serviced, cleaned and sanitized thereby posing a risk of health hazard to the patients, Dr Lesia conveyed that the hospital has two ambulances. The one ambulance is solely dedicated for transportation of Covid-19 positive patients and before September 2020, the Covid-19 ambulance was cleaned and sanitised by an external service provider after every 3 days. However after September 2020 the Covid-19 ambulance is cleaned and sanitised in-house after every 12-hour shift. The hospital has chemicals for cleaning and a dedicated machine for fogging the ambulance and no evidence was provided in respect of the above.

5.4.15.20 In a letter dated 19 July 2021 addressed to the Public Protector, Dr Lesia submitted that the cleaning of ambulances is one of the key performance areas (KPAs) of a driver and an extract of the KPAs at bullet number 8
provides as follows: “ensure that the vehicle is clean(and sanitized where applicable) and in good condition before handing back the keys at the end of the shift”

5.4.15.21 A copy of the checklist for sanitizing of covid-19 ambulances for the month of June 2021 was provided and Mr Siphiwe Manyoni the Supervisor or the drivers daily completed the checklist to indicate that the ambulance was cleaned and sanitized.

5.4.15.22 On deferring elective surgeries, Dr Lesia advised that surgical emergency cases and cancer lists continued as scheduled. She advised that there was a surgical vetting committee which was established to ensure rational use of the theatre. The committee ensured that all essential surgery cases were prioritised and done. After the first wave the surgical services were fully restored and the vetting committee meetings were no longer essential.

5.4.15.23 In support of the submission above, Dr Lesia provided copies of theatre booking list dated 28 May 2021 and June 2021.

5.4.15.24 On the deferring of elective surgeries for 3-12 months thereby possibly causing a backlog as a result of capacity constraints, Dr Lesia indicated in her response that only non-emergency or elective theatre cases were deferred mainly for Patient safety, i.e. in order to minimize the risk of exposure to Covid-19 for patients that would have come in for surgery. Further that some of the surgical wards were repurposed for Covid-19 admissions, therefore there would be less capacity for surgical admissions.

5.4.15.25 The Public Protector noted that the explanation tendered for deferring elective surgeries to be reasonable under the circumstances.

5.4.15.26 On the lack of specialised ward to house Covid-19 psychiatric patients, Dr Lesia conceded that there is no such ward. She further submitted that
when a staff member or a patient tested positive for Covid-19, all patients in that psychiatric ward were tested and treated as PUI’s whilst waiting for results, no new patients were admitted.

5.4.15.27 Dr Lesia also indicated that the hospital has since identified an area that will be renovated and repurposed to accommodate mental health care users with suspected or confirmed Covid-19.

5.4.15.28 In a letter dated 19 July 2021 addressed to the Public Protector, Dr Lesia submitted that the funds to renovate and repurpose have been secured through a sponsor (Islamic Relief SA), the memorandum of understanding between the department and the donor is being finalised and the specifications for the renovations have been completed. In the meantime, the psychiatric department is using Ward 55 which has isolation cubicles to admit mental health patients who are suspected of confirmed Covid-19.

*Response to the Notice in terms of the provisions of section 7(9)(a) of the Public Protector Act, 1994.*

5.4.16 In his response letter dated 19 March 2021, in respect of Baragwanath hospital, Mr Malotana responded as follows:

5.4.16.1 On the undue delay to repair broken taps in the kitchen and the ablution facilities in ward 59 by the hospital and the Department of Infrastructure Development, it was submitted by Mr Malotana that the broken taps in the kitchen were repaired and the ablution facilities in ward 59 were attended to.

5.4.16.2 On the unavailability of Porters at workstations in the Hospital to assist in the movement of patients to various wards within the Hospital, Mr Malotana agreed with the abovementioned and further submitted that some of the Porters were affected by Covid-19 but the hospital has since appointed additional porters to mitigate future gaps.
5.4.16.3 Regarding the evidence indicating that the available human resources capacity is not able to handle the influx of patients at the hospital, Mr Malotana submitted in his response that it is a historical fact that the staff establishment at hospital is skewed. This is a legacy issue and the Department endeavours to comply with section 27 of the Constitution, within its available resources.

5.4.16.4 Regarding the undue delay to fill additional Covid-19 posts has resulted in additional strain on existing staff, Mr Malotana submitted that the Department caused no undue delay and that although there were some challenges in the appointment of additional staff, services continued to be rendered. As in any state of a disaster of this nature, the circumstances will add pressure on any health system and the people working within that health system. The Department provides counselling services the employees if they do require or request such.

5.4.16.5 Mr Malotana further indicated that although it took some time to appoint Covid-19 employees, there was no undue delay caused by the Department and the Covid-19 employees were eventually appointed and received payment. The Human Resource Capacity at the hospital has been an issue for some time due to financial pressures. To determine the correct capacity, one will need to conduct a work-study investigation to assess the real ability required. The postponement of elective surgeries did not impact patient safety and was done rationally. The decisions taken were adequately considered and were rational.

5.4.16.6 The Public Protector is in possession of a memorandum dated 13 July 2020 titled “creation and recruitment of staff for Covid-19 phase two project” was approved by Prof Lukhele former Head of Department on 22 July 2020. At paragraph 1(b) states that the purpose of the memorandum was to approve the creation of temporary positions in health institutions within the various clusters, Covid-19 quarantine sites and other areas of care.
5.4.16.7 In the background of the memorandum it states that the declaration of the Covid-19 pandemic as a national disaster has necessitated the need for the expedited mass recruitment of health workers. The increase of the numbers of staff will require more positions to be created on persal due to the rapid spread of the infections and the speed in which GDoH must appoint additional staff, a decision by senior management has been taken that they will deviate from the normal process of appointing.

5.4.16.8 The memorandum further stated that any delays in appointing additional personnel will have dire consequences in the spread of the Covid-19. The HoD mandated hospitals and health facilities to appoint health workers in line with circular minute 23 of 2020.

5.4.16.9 The abovementioned memorandum and circular 23 of 2020, were implemented to expedite the mass recruitment of health workers, as it was anticipated that delays in appointing additional personnel will have dire consequences in the spread of the Covid-19.

5.4.16.10 Mr Malotana argued that the procurement delays did not hamper services as services continued to be delivered, either with existing machines or utilising referrals to other facilities where such service can be rendered. The delay in the distribution of PPE was temporary and not all PPE was of sub-standard quality.

5.4.16.11 Regarding the delay in the supply and distribution of PPE at the hospital as a result of centralisation of procurement at provincial level. Furthermore, the supplied PPE was of substandard quality and not compliant with criteria as provided for by the Treasury note. Mr Malotana in his response submitted that the delay cannot be contributed to the provincial procurement system. The procurement of PPE in the hospital was done in a manner that is economical and effective. Further that the contracted PPE items were procured from Transversal tenders concluded
by National Treasury. Things that were not in any contract were procured following the prescribed normal procurement processes as per regulations considering value for money and transparency however no evidence was provided in this regard.

5.4.16.12 In order to support his submission above, Mr Malotana submitted copies of Bid Adjudication Committee submissions for the supply of PPE.

5.4.16.13 On the non-allocation of a specialised ward to house Covid-19 psychiatric patients posing a health hazard in that should such patients contract Covid-19 they cannot be placed a general ward. Mr Malotana conceded in his response and submitted that the hospital has since identified an area that will be renovated and repurposed to accommodate mental health care users with suspected or confirmed Covid-19.

5.4.16.14 Lastly, Mr Malotana submitted that GDoH is prepared to admit the issue pertaining to the porters and further that the issue has been addressed.

5.4.17 In response to Chris Hani Baragwanath Academic Hospital, Mr Mdadane indicated as follows:

5.4.17.1 Regarding the lack of a specialised ward to accommodate psychiatric patients who test positive for Covid-19, Mr Mdadane submitted that patient care is a competency of the GDoH.

5.4.17.2 On the incomplete infrastructure in the Oncology Unit in respect of taps and basins in the kitchen at the hospital are not functional, in his response Mr Mdadane indicated that DID checked oncology ward, taps are functional and only one basin needed a bottle trap replacement, and that the plumbing team has replaced it.

5.4.17.3 The Public Protector is in possession of an RFS sent to DID on 21 March 2021 for emergency repair works for repairing burst water pipe at ward 44
oncology, according to the RFS service was approved by FMU Manager: Mr Leon Van Der Westhuizen on 26 March 2021.

5.4.17.4 The Public Protector’s possession of a maintenance plan in respect of Baragwanath Hospital.

**Applicable Legal Framework**

**Constitution**

5.4.18 Section 195(1) of the Constitution, 1996 provides amongst other things that:

“Public Administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(a) ........................................,
(b) Efficient, economic and effective use of resources must be promoted;
(c) ........................................;
(d) ........................................;
(e) People’s needs must be responded to....;
(f) Public administration must be accountable ........;
(g) ......; and
(h) Good human-resource management and ...... to maximise human potential, must be cultivated.
5.4.19 According to section 195 (1) (b), the Department and the Hospitals have an obligation to ensure that procurement processes of PPE was done in a manner that is efficient, economic and effective.

5.4.20 The Department is required to account for the effective usage of the departmental resources and efficient administration of hospitals. In this instance, procurement is centralised at the provincial level and the Department is responsible for the timeous distribution of medical supplies thereof to various hospitals.

5.4.21 The Department and Baragwanath Hospital must cultivate good human resource management to maximise human potential by recruiting and selecting appropriate human capital in terms of the required need of the hospital. During the pandemic the recruitment and selection of human capital for the Covid-19 was not maximised as there was a delay by the Department and Baragwanath Hospital to appoint essential workers who would have assisted in the fight against the pandemic.

5.4.22 Section 237 of the Constitution provides that all constitutional obligations must be performed diligently and without delay.

5.4.23 It follows that according to the above provision, the Department and Baragwanath Hospital also had a responsibility to ensure that the performance of the hospitals in Gauteng was conducted diligently and without delay. As such the distribution and collection of PPE and the distribution of such to various medical staff in the hospital was delayed.

5.4.24 Section 27 read with 195 (1) (e) of the Constitution provides *inter alia*:

1) *Everyone has the right to have access to* –

   (a) *health care services*………..;

   (b) ...............;
(c) ............;

2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

5.4.25 While the positive obligations imposed on the government by section 27(1) and (2) of the Constitution entitle the people of GP to claim healthcare on demand. However, it requires the government to develop a comprehensive and workable plan to meet its obligations.

5.4.26 The Constitution requires that regardless of the resources constraints the state must take reasonable legislative and other measures, within its available resources to ensure the progressive realisation of the right to health care.

5.4.27 In terms of section 8(1) of the Occupational Health and Safety Act 85 of 1993

“Every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his employees.

5.4.28 Version 2 of Covid-19 disease: infection prevention and control guidelines of 21 May 2020:

“Paragraph 8.4: Extended used of PPE - Usually PPE is discarded after a single patient or procedure, however, because of an acute shortage of PPE during the Covid-19 outbreak, the WHO and CDC are considering extended use and/or re-use of certain PPE. For South Africa, it is recommended that the extended use of PPE
IS preferable to reprocessing, the latter being expensive, not validated and the integrity of the PPE cannot be guaranteed.”

5.4.29 The Department has an obligation to ensure that the employees are provided with a safe working environment that does not pose a risk to their health. As a result the Baragwanath Hospital has a responsibility to establish Occupational Health and Safety (OHS) Committees to deal with the health threat posed by Covid-19 and in this instance the hospital complied with statutory provision of the Act.

5.4.30 The Department has an inherent responsibility to ensure that all staff are safe and protected at all times. The unavailability, inadequate provisioning and the quality of PPE compromised and endangered the health and safety of staff and further made the working conditions of staff at the hospital not conducive and hazard free.

5.4.31 According to the “Covid-19 disease: infection prevention and control guidelines of 21 May 2020”, most PPE is reusable or has extended life unless contaminated. However, that is with the exception of gloves. Under the circumstances, there was reuse of gowns and respirators at Bara Hospital which was in accordance with the above mentioned guidelines.

5.4.32 Accordingly the Department and Baragwanath Hospital have a responsibility to provide everyone with access to timely, equitable, acceptable, and affordable health care of appropriate quality. Therefore, the Department must provide healthcare in line with the resources constraints without decreasing the value of health care provided to everyone.

5.4.33 The Department must ensure that medical equipment is procured timeously so that the hospitals can provide quality healthcare in order to

avoid service delivery failures. In this instance any delays in the procurement of medical equipment has potential to increase the spread of Covid-19 to increase and ultimately endanger the health of staff and patients.

5.4.34 Under the circumstances and during this Covid-19 pandemic era, the Baragwanath Hospital is required to provide health care and adequate provisioning of PPE. The medical staff should be sufficiently protected to enable them to attend to patients timeously to curb the escalation of the Covid-19.

5.4.35 The WHO health systems framework has six (6) pillars of building blocks of health system with aims and desirable attributes for member states 23:

The building blocks contribute to the strengthening of health systems in countries that are affiliated with the WHO. Cross cutting components such as leadership, governance and health information systems provide for the basis of the overall policy and regulation of all the other system blocks. Medical products and technologies, and services delivery reflect on the availability and distribution of care.

23 www.who.int/healthinfo/systems/WHO_MBHSS_2010_fullweb
5.4.37 The compliance of member states with the six (6)s building blocks of health systems according to WHO, will lead to improved health, efficiency, responsiveness, social and financial risk protection. Therefore, if administration and governance structures are put in place and adequately monitored by the Department the health care challenges observed in the hospitals would be minimized or eradicated.

5.4.38 Accordingly the Department and Baragwanath Hospital have a responsibility to provide everyone with access to timely, equitable, acceptable, and affordable health care of appropriate quality. Therefore, the Department must provide healthcare in line with the resources constraints without decreasing the value of health care provided to everyone.

5.4.39 The Department is required to ensure that quality PPE is procured timeously so that the hospitals can provide quality healthcare to avoid service delivery failures. In this instance any delays in the procurement of PPE may have caused the spread of Covid-19 to increase and further collapsing the already congested health care system.

5.4.40 Section 25(2) of the National Health Act (NHA) 61 of 2003, as amended, lists a number of powers and obligations of the head of a provincial department, the most relevant of which are the following:\textsuperscript{24}:

\textquotedblleft(k) controlling and managing the cost and financing of public health establishments and public health agencies;…\textquotedblright

\textquotedblright(n) controlling the quality of all health services and facilities;\textquotedblright

\textquotedblright(p) provide and maintain equipment, vehicles and health care facilities in the public sector\textquotedblright.

\textsuperscript{24} The head of the provincial department must act in accordance with national health policy and the relevant provincial health policy in respect of or within the relevant province.
5.4.41 According to the abovementioned provision it is clear that the head of a provincial department has the obligation to control the quality of all health services and facilities. As a result, the centralization of the budget and procurement caused delays in the provision of service delivery especially regarding the procurement of PPE in GP hospitals.

5.4.42 Section 76(1) (a) of the Public Finance Management Act 1 of 1999 (PFMA) states that “The National Treasury must make regulations or issue instructions applicable to departments, concerning any matter that must be prescribed for departments in terms of this Act.

5.4.43 In terms of section 8(1) of the Occupational Health and Safety Act 85 of 1993

“Every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his employees.”

5.4.44 Paragraph 3.1 of the Gauteng Provincial Treasury Circular 3 of 2019/2020 provides that all Covid-19 related PPE are to be centrally procured, warehoused and distributed.

5.4.45 The above-mentioned provision directs that all Covid-19 related PPE is to be centrally procured, warehoused and distributed.

5.4.46 In this instance, the Department centrally procured the PPE, placed it in the warehouses and distributed it therefrom. In addition, the hospital collected all the PPE from the warehouse.

5.4.47 Under the circumstances it is clear that centralisation of procurement of Covid-19 related PPE is mandatory.
5.4.48 Paragraph of the Gauteng Provincial Treasury instruction note 02 of 2020/21 decentralised the procurement of all Covid-19 related PPE as of 01 July 2020.

Paragraph 3.1 provides that “All Departments and Entities are required to procure own COVID-19 PPE requirements effective from 01 July 2020 in line with the current applicable SCM prescripts”

5.4.49 In terms of paragraph 3.1 of the National Treasury Instruction No.05 of 2020/21

“Accounting officers and accounting authorities must put in place the following additional procurement and expenditure measures to address the programme of preventing the spread of the Covid-19 virus: Internal system for financial control, risk management and reporting in order to account for the funds used for the Covid-19 disaster;

5.4.50 It follows that the Department has an obligation to put in place additional procurement and expenditure measures to address the programme of preventing the spread of the Covid-19 virus. The Department and the hospitals are legally bound to provide and maintain a working environment that is safe and without risk to the health of the medical staff by providing PPEs to the medical staff whilst controlling, maintaining, managing and monitoring finances of the Institution in accordance with the prescribed vote, to avoid wasteful and irregular expenditure.

5.4.51 The responsibility of ensuring that adequate and quality PPE are procured and delivered to the Bara Hospital timeously lies solely with the Department in order to curb the pandemic and safeguard the health and safety of all workers. In this instance the procured PPE was inadequate and was of poor and substandard quality.
Paragraph 3.2 of the National Treasury Instruction note 5 of 2020/21 provides as follows:

“National Treasury SCM Instruction Note 3 of 2016/17-Prevention and Combating Abuse in the Supply Chain Management System, paragraph 8.1, states that accounting officers/authorities must only deviate from inviting competitive bids in cases of emergency and sole supplier status. These deviations do not require the approval of the relevant treasury approval. Paragraph 8.2 thereof further states that emergency procurement may occur when there is a serious and unexpected situation that poses an immediate risk to health, life, property or environment which call an agency to action and there is insufficient time to invite competitive bids”.

Paragraph 3.4 of the National Treasury Instruction note 5 of 2020/21 provides as follows:

“The emergency procurement provisions provide for accounting officers/authorities to procure the required goods or services by other means, such as price quotations or negotiations in accordance with Treasury Regulation 16 A6.4. The reasons should be recorded and approved by the accounting officer/authority or his/her delegate.”

Based on the above provision the Department is allowed to deviate from competitive bidding process in an emergency situation and in this instance an unexpected situated of Covid-19 that posed immediate health risk qualified as an emergency.

The Treasury Practice Note make provision in emergency situations for the Department to deviate from normal procurement processes in the procurement of medical equipment’s that are normally above the
procurement threshold. The Department is not barred from using other means of procurement such as price quotations or negotiations in such defined emergency situations.

5.4.56 In this instance Baragwanath Hospital were without quality PPE and medical equipment that are vital to adequate healthcare and containment of the spread of Covid-19 pandemic. This could have been avoided if the Department had used other means to procure essential medical equipment’s as provided for by the Treasury regulations.

5.4.57 Paragraph 3 of the National Treasury Note 8 of 2007/2008 issued in terms of section 76 (4) (c) of the PFMA prescribes the threshold values within which accounting officers may procure goods, works and services by means of petty cash, verbal/written price quotations or competitive bids.

5.4.58 The process of procuring goods above R500 000 is legislated and regulated by the executive authority. The Accounting Officer of Baragwanat Hospital is delegated powers to only procure goods and services below R500 000. Any procurement of goods and services above the R500 000 threshold must be done through competitive bidding through the GDoH.

5.4.59 The Baragwanath Hospital is required to submit procurement plans annually and therefore it is the Department’s responsibility to ensure that the procurement needs of the hospitals are met in accordance with the submitted plans, to avoid and not compromise service delivery at the hospitals.

5.4.60 It is established that the CEO’s delegation is limited to R500 000 and as a result, the bulk of the procurement needs are above their threshold. Consequently, Baragwanath Hospital submitted their annual procurement
plans to the Department however there are delays in acquisition and delivery of the bulk procurement to meet the operational needs of Baragwanath Hospital.

5.4.61 The National Health Act Norms and Standards Regulations applicable to different categories of health establishments, issued as per Government Gazette 67 No. 41419 dated 02 February 2018 (Regulations were promulgated with the purpose to promote and protect the health and safety of users and health care personnel. The Regulations stipulates inter alia the following:

**Infection prevention and control programmes**

“8. (1) The health establishment must maintain an environment, which minimises the risk of disease outbreaks, the transmission of infection to users, health care personnel and visitors.

(2) For the purposes of sub-regulation (1), a health establishment must-

(a) ....;

(b) provide isolation units or cubicles where users with contagious infections can be accommodated;

(c) ....; and

(d) ensure that health care personnel are protected from acquiring infections through the use of personal protective equipment and prophylactic immunisation”.

5.4.62 According to the abovementioned regulation, the hospital has an obligation maintain an environment, which minimises the risk of disease outbreaks, the transmission of infection to users, health care personnel and visitors and to further to minimise the abovementioned risk by ensuring that health care personnel are protected from acquiring infections through the use of personal protective equipment. In this instance there was a shortage of non-sterile gowns, a delay in the distribution of PPE and
some of the PPE was of sub-standard quality, it further could not cover the entire body of the health workers as it was short or wrong length.

5.4.63 To further provide isolation units or cubicles where users with contagious infections can be accommodated. In this case, there was no place identified or reserved to accommodate psychiatric patients in the event that they contracted covid-19.;

Human resources management

5.4.64 “Regulation 19(1) of the NHA provides that the health establishment must ensure that they have systems in place to manage health care personnel in line with relevant legislation, policies and guidelines.

(2) For the purposes of sub-regulation (1), the health establishment must, as appropriate to the type and size of the establishment: -

(a) have and implement a human resource plan that meet the needs of the health establishment”.

5.4.65 The health establishment is required to have systems in place to manage health care personnel in line with relevant legislation, policies and guidelines and to further implement human resource plan that meet the needs of the health establishment.

5.4.66 Dr Lesia conceded and submitted that it is a historical fact that the staff establishment at the hospital is skewed and there was a delay to appoint additional healthworkers.
5.4.67 It follows that the GDoH has an obligation to observe and adhere to the above mentioned Regulations of the NHA, which are intended to govern the state of health facilities in the Gauteng Province.

5.4.68 Clause 57(4) of the Public Service Regulations 2016 (Regulation) states that:

“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”.

5.4.69 Personnel Circular Minute 23 of 2020 with reference number 3/3/P signed on 06 April 2020 by (former Head of the Department of Health) Professor Mkhululi Lukhele titled “Covid -19 containment measures appointment process”:

Clause 2: Under discussion on 19 March 2020 the Human Resource Management, Acting Deputy Director General announced a management decision to deviate from the normal recruitment and selection processes in response to the spread of Covid-19:

“To implement the appointment process of additional employees to respond to the COVID-19 management took a decision based on the following measures:

- Head of Health Facilities to deviate by not advertising the required positions related to the COVID-19 appointments.
- Shortlisting for the positions not to be conducted.
- Interviewing not to be held.

Management also took a decision to appoint additional employees for the COVID outbreak by following the processes of:

- Walk in application for health professionals.
- Appointment or administration support staff from the runner-up previously received applications.
- Appointments to be processed over and above the appointed existing permanent staff. The additional employees’ appointment in response to the COVID-19 to be appointed on fix term contract for a period of 12 months (twelve months).

- All employees appointed in response to the COVID-19 outbreak to be terminated after the period of 12 months (twelve months).

- Human Resource appointment function for the COVID-19 response to be decentralized to all Health Facilities, including District Health Services.

This circular therefore serves as a directive to that should guide the appointment of additional staff during the Covid-19 lockdown.

For any clarity please contact Human Resource Administration at Central Office”.

M. LUKHELE
HEAD OF DEPARTMENT
DATE: 2020/04/06

5.4.70 In terms of the above 57 (4) read with Circular Minute 23 of 2020, the circular allows for the executive authority to employ persons additional to the establishment and further dispense with normal recruitment processes where a temporary increase in work occurs or is necessary for any other reason to temporarily increase the staff of the department.

5.4.71 In this instance, it was of paramount importance for the Department to issue a directive for the Baragwanath Hospital to employ additional temporary Covid-19 staff for a period of twelve (12) months by deviating and not following the normal recruitment and selection process. The
additional Covid-19 temporary staff were appointed to assist Bara Hospital in the fight of the scourge of the Covid-19 pandemic, especially in light of the staff members that tested positive for the pandemic and left a void whilst recuperating from Covid-19.

5.4.72 The lack of availability of porters at their workstations affected service delivery. The hospital had a high turnover of patients and as such that caused delays in service delivery.

5.4.73 Circular letter\textsuperscript{25} of 2020 signed on 21 April 2020 by (former Head of the Department of Health) Professor Mkhululi Lukhele titled “Mass screening, testing, medical surveillance and influenza vaccination of all Gauteng Department of Health employees ” provides as follows:

\textbf{1. The Gauteng Covid-19 Provincial Command Council} resolved to have all health care workers and support staff to be screened, tested and be subjected to medical surveillance programme as interventions for the current phase of the Covid-19 epidemic in South Africa.

\textbf{2. The specific interventions to be conducted among all Gauteng Department of Health employees} from now on until the 30 May 2020 are as follows:

\begin{itemize}
\item \textit{Daily symptomatic screening of all employees}
\item \textit{Baseline Polymerised Chain Reaction (PCR) test for each of the GDoH employees}
\item \textit{Medical Surveillance of GDoH employees using the attached medical surveillance tool (Appendix A)}
\item \textit{Vaccination of all GDoH employees}
\end{itemize}

\textsuperscript{25} Circular letter signed on 21 April 2020 was not numbered.
3. The testing and medical surveillance will be conducted in the GDoH OHS and Wellness Centers indicated in the attached list (Appendix B) and all GDoH facilities.”

5.4.74 In order to ensure that employees are both risk free and suitable for the work that they are required to perform, the Gauteng Covid-19 Provincial Command Council issued a directive to the Department, wherein health care workers and support staff for Covid-19 were required to undergo testing at designated GDoH OHS and Wellness Centers.

5.4.75 The circular was clear in terms of advising staff to undergo Covid-19 testing at specified OHS Centres. However, Baragwanath Hospital did not provide this services to its employees at some point as the contract had expired and new a new service provider, Hamadi Clinical Services was appointed to test staff at the hospital.

Maintenance of grounds and buildings

5.4.76 Regulation 14(1) of the National Health Act 61 of 2003 dated 02 February 2018 provides that the health establishment and their grounds must meet the requirements of the building regulations. For the purposes of sub-regulation (1), a health establishment must inter alia have a maintenance plan for buildings and the ground in terms of sub-regulation 14 (2)(b).

5.4.77 Regulation 14(1) and (2)(b) requires the hospital to have a maintenance plan to deal with infrastructure challenges faced by the hospital as the lack of infrastructure (ward) to cater for Psychiatric patients who test positive for Covid-19. Further, the infrastructure in the Oncology Unit is incomplete. In this instance, it is unclear if the Bara Hospital had a maintenance plan in place as required by the NHA regulation.
5.4.78 The lack of infrastructure (ward) to cater for Psychiatric patients who test positive for Covid-19 is a competency of GDoH.

5.4.79 The Oncology ward was serviced and the broken taps, basin needing a bottle trap replacement were repaired.

5.4.80 The Chris Hani Baragwanath Academic Hospital has a maintenance plan.

Conclusions

5.4.81 It can be concluded from observations made during the on-site visits that were undertaken by the PPSA investigation team as recorded above and the submissions made by the hospital management and GDoH, that GDoH has failed to ensure appropriate conditions for the enjoyment and delivery of health care services for the community of Gauteng.

5.4.82 All recorded systemic deficiencies such as delays in the distribution of PPE and shortage of PPE, the lack of specialised ward for psychiatric patients, fill vacant positions, the late creation of positions delay, unavailability of porters at their workstations and historical human resources capacity constraint challenge at the hospital, as well as broken taps, basin needing a bottle trap replacement, had a negative impact on the level of care that is provided to patients at the hospital.

5.4.83 The GDoH failed to provide human resources and isolation units or cubicles where users with contagious infections can be accommodated and other resources like PPE which are all necessary to sustain an efficient and effective health facility.

5.4.84 It can further be deduced from interactions with staff, union representatives and with hospital management and the GDoH, that the GDoH failed to adequately administer Bara Hospital in the manner
envisioned by the Constitution and the NHA, which would promote access to quality healthcare and enable the staff to provide effective access to the healthcare services to which the community is entitled to.

5.5 Whether the allegations of administrative deficiencies by the GDoH led to systemic challenges in the delivery of primary health care services at Lillian Ngoyi Community Health Centre and if yes, whether such failure amounts to improper conduct and maladministration.

Common Cause Issues

5.5.1 On 19 August 2020, the Public Protector conducted an inspection at Lillian Ngoyi Community Health Centre (Lillian Ngoyi) in Gauteng.

5.5.2 During the inspection, the team were assisted by the Acting Facility Manager of the Lillian Ngoyi Hospital, Ms Thethiwe Molefi (Ms Molefi) who took the team around the premises of the health facility.

5.5.3 The GDOH is responsible for the delivery of public healthcare services throughout the province of GP to ensure that the Province’s healthcare system is functional.

5.5.4 The procurement of PPE is centralised at various depots/warehouses and upon request by the hospitals, depots/warehouses will issue orders for collection by the hospitals.

Issues in dispute
5.5.5 In June and July 2020 media reports repeatedly highlighted the challenges faced by public and healthcare practitioners on the frontline fighting the deadly Corona virus.

5.5.6 The widespread negative reports across the media spectrum, all painted a grim picture about the deteriorating service delivery conditions at various health facilities within GP. The Office of the Public Protector authorised an immediate own intervention/investigation into the allegations to establish the authenticity of the claims made in the press statements.

5.5.7 As indicated, this own accord intervention to inspect Lillian Ngoyi hospital was made with a view to establish whether or not the alleged state of affairs within the public healthcare facilities in the GP resulted in improper conduct or maladministration.

**INSPECTION IN LOCO AND INTERVIEWS CONDUCTED WITH MS THETHIWE MOLEFI (MS MOLEFI), THE ACTING FACILITY MANAGER: LILIAN NGOYI COMMUNITY HEALTH CENTRE (LILLIAN NGOYI), HOSPITAL MANAGEMENT AND ORGANISED LABOUR**

**PROFILE OF LILLIAN NGOYI HEALTH CARE CENTRE**

5.5.8 On 19 August 2020, during the site inspection conducted by the team, Ms Molefi profiled the hospital as follows:

5.5.8.1 The Centre serves as a day-care centre with eighteen (18) primary care providers, eight (8) midwives, thirteen (13) professional nurses and ten (10) doctors.

5.5.8.2 Lillian Ngoyi Community Health Centre comprised of the following wards: Mother and Child, Dental, Accidental and Emergency, Chronic, Acute, X-ray and Pharmacy Departments.
5.5.8.3 There was a total number of eighteen (18) beds at the Centre which were based at the labour wards.

5.5.9 During the inspection *in loco* conducted by the Public Protector team, the following observations were made at Lillian Ngoyi:

**Infrastructure**

5.5.9.1 The maternity ward had no hot water, in addition the geyser and the heaters were not functional. The picture below depicts maintenance monitoring tools for defect/faults reported at the District level:

![Maintenance monitoring tools](image)

5.5.9.2 The telephone lines, printer and copier were also not working and Mr Moses Mphahlele, a Nursing Assistant, who is a labour representative of the National Union of Public Service and Allied Workers (NUPSAW), submitted that due to the phone lines being non-operational, the staff are
allocated R400 airtime which is insufficient for the management of the community health centre.

**Industrial Relations and Communication**

5.5.9.4 There was an undue delay with the filling of various posts at the facility.

5.5.9.5 The Facility Manager's post was vacant.

**PPE**

5.5.9.6 The quality of the PPE provided to Lillian Ngoyi were not as per the specifications requested by the hospital management, as they were of poor quality.

**Transport**

5.5.9.7 The response time by ambulances was also an issue.

**Risk Management**

5.5.9.8 There is no Risk Committee and Occupational Health and Safety Committee at Lillian Ngoyi.

**Procurement**

5.5.9.9 The procurement is done at the District Office of Health by a person who is at level six (6) and there is no consultation with the user.

**Laundry**
5.5.9.10 There was dirty linen on the beds and the patients had to wait over three (3) hours to be attended to by the Doctors.

5.5.9.11 The picture below depicts dirty linen left unattended in the corridor at Lillian Ngoyi:

![Image of dirty linen left unattended in the corridor at Lillian Ngoyi]

**Diet/Food**

5.5.9.12 There was no nutritional food available for patients who stayed overnight, they would be fed bread only.

5.5.9.13 Provision of frozen food was stopped at Lillian Ngoyi and was never resumed.

**SUBMISSIONS BY MS MOLEFI, THE ACTING FACILITY MANAGER, OF THE LILIAN NGOYI COMMUNITY HEALTH CENTRE**

**Infrastructure**
5.5.10 During the site visit Ms Molefi indicated that due to the geysers and heaters not working at the Centre, the nurses were forced to use kettles to heat water for patients as it was winter time and cold.

**Medical Equipment**

5.5.11 According to Ms Molefi the procurement and maintenance of medical equipment is centralized at the district level. There is an undue delay in the procurement of medical equipment such as Blood Pressure monitors (BP) and Electrocardiogram (ECG) machines which negatively impacts on the delivery of health care by the facility.

**Procurement**

5.5.12 During the deliberations with Ms Molefi, also indicated that the procurement official who is at the district office will instruct the Centre regarding what to procure instead of enquiring or delivering what the Centre submitted in terms of their needs analysis, quality and procurement specifications.

**Diet/Food**

5.5.13 Interviews held with the staff at the Lillian Ngoyi Community Health Centre during the visit, revealed that patients in the maternity wards were not provided with nutritious meals on admission and some patients would go hungry as they would only be provided with bread and/or cereal for the night. The Staff also indicted that the Centre initially provided frozen food to patients but the Health Inspector from the Department stopped the provision of food (frozen meals) as it was not of good quality and there was no alternative food source provided.

**Donations**
5.5.14 Ms Molefi advised the team that there was a donation of tents to the Centre from a Non-Profit Organisation called ANOVA.

5.5.15 On 14 September 2020, Ms Molefi indicated that after the intervention and inspection by the Public Protector’s visit, the challenges at Lillian Ngoyi were resolved as follows:

**Infrastructure**

5.5.16 During the site visit Ms Molefi indicated that due to the geysers and heaters not working at the Centre, the nurses were forced to use kettles to heat water for patients as it was winter time and cold. In the response letter captured above, Ms Molefi submitted that new geysers and heaters were installed at the Community Centre on 04 to 08 September 2020.

5.5.17 Regarding telephone lines, printer and copier that were not working and the allocation of R400 airtime which is insufficient, Ms Molefi’s response letter submitted that the Information Communications Technology (ICT) infrastructure, i.e telephone lines as at 17 August 2020 were operational and landlines were installed in all departments on 28 October 2020. Further that a requisition order was placed with supply chain and a purchase order was made for the supply of a printer and a copier.

**Industrial Relations and Communication**

5.5.18 Regarding the undue delay with the filling of various posts and the Facility Manager’s post was vacant, no response was received.

**Risk Management**

5.5.19 Regarding the lack of a Risk Committee and Occupational Health and Safety Committee at Lillian Ngoyi, the response received was that the facility has established its own wellness and OHS Committee activities.
Diet/Food

5.5.20 Regarding the lack of nutritious meals at the facility, Ms Molefi submitted that frozen meals were ordered and the facility was awaiting delivery but there was no time frame provided.

Waiting times

5.5.21 Regarding patients waiting for long before a consultation, he response from Ms Molefi was that tea and lunch schedules were circulated by the chief medical officer, Dr Ruiz, who will monitor the doctors as per allocation in order to avoid patients having to wait for long periods before they are attended to.

Response to the Notice in terms of the provisions of section 7(9)(a) of the Public Protector Act, 1994.

5.5.22 On 24 February 2021, the Public Protector issued a notice in terms of section 7(9)(a) of the Public Protector Act to Chief Director: Johannesburg Metropolitan Health District Mrs Mogeru Morewane and Mr Arnold Malotana and to all implicated parties and those with direct interest on this matter, with a view to afford them an opportunity to respond to the allegations against them, particularly in relation to the role each played in this matter. Section 7(9)(a) of the Public Protector Act provides that:

“If it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter being investigated and that such implication may be to the detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector
shall afford such person an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances”.

5.5.23 The Public Protector now turns to consider the responses submitted regarding the section 7(9) notices (hereinafter referred to as notice/s). The office has made an effort to deal with each and every aspect raised in the responses but where it appears that it has not done so, that should not be misconstrued as an admission of any kind of the averments contained therein.

5.5.24 A response to the notice was received by the Public Protector from Chief Director: Johannesburg Metropolitan Health District: Mrs Mogeru Morewane dated 03 March 2021 was consistent with the response received previously and she responded as follows:

5.5.24.1 Regarding the lack of hot water in the labour ward, broken geysers and heaters at the facility, Mrs Morewane in her response submitted that new geysers and heaters were installed at the facility during 04 to 08 September 2020 and evidence was provided in this regard in the form of pictures.

5.5.24.2 On the allocation of R400 airtime to the facility because the telephones lines are not working or functional, as well as the lack of a printer and copier because they were also not working, Mrs Morewane indicated that the ICT infrastructure like the telephone lines were operational as of 17 August 2020 and the landlines were installed in all Departments on 28 October 2020.

5.5.24.3 Further that a photocopier was delivered on 10 December 2020 and the cell phone is a backup as landline is now functional, therefor the R400.00 airtime is sufficient.

5.5.24.4 On the vacancy of the Facility manager’s position, Mrs Morewane in her response submitted that the above-mentioned position was advertised but
the facility could not attract a suitable candidates and the post has since been re advertised. A copy of advertisement was provided.

5.5.24.5 The Public Protector is in possession a copy of the advertisement for the position of Assistant Manager however the advertisement had a wrong specification and re-advertisement no longer requires Nursing Administration and Education.

5.5.24.6 Regarding the undue delay to fill various positions, Ms Morewane indicated her response that the filling of vacant positions was affected by lock down however the process of filling posts is underway. The shortlisting for both clinical and support posts has commenced.

5.5.24.7 In support of the above, GDoH submitted a copy of a memorandum dated 23 March 2021 requesting approval to appoint nine (9) candidates as Professional Grade 1 Nurses and the approval was granted by Mrs Morewane on 01 April 2021.

5.5.24.8 There was also another memorandum dated 15 April 2021 submitted Mrs Morewane requesting the approval to appoint three (3) candidates for the position of staff nurse.

5.5.24.9 With regards to the PPE which was provided to Lillian Ngoyi Community Centre which was not as per the specifications request by management, Mrs Morewane, in her response submitted that all PPE was procured centrally in the provincial office and the specifications are drawn by the provincial Supply Chain Management (SCM) unit. All health facilities are ordering PPE from a central warehouse as identified by the Provincial Health Department and further that all facilities are only placing orders at the District Stores which also orders from the provincial stores.

5.5.24.10 With regards to the delay in response time by ambulances, it was submitted by Mrs Morewane that is an ongoing communication with the EMS managers for onsite escalation of delays in response time.
5.5.24.11 Regarding the lack of a Risk Committee and Occupational health and Safety Committee at Lillian Ngoyi. In her response, Mrs Morewane submitted that the facility has since established its own wellness and OHS Committee activities and the evidence in this regard was requested 13 July 2021 but was not provided on. Mrs Morewane responded that the Lillian Ngoyi does not have a Risk Management Committee and Occupational Health Committee.

5.5.24.12 In relation to the procurement process which is being administered by a person who is at level six (6) at the District office and also the lack of consultation with the user. In her response, Mrs Morewane indicated that procurement of all PPE is centralized at the Provincial office, therefore the personnel at the facility are not doing any procurement. All facilities are only placing orders at the District Stores which also orders from the provincial stores. Procurement is done by the Provincial office.

5.5.24.13 On the dirty linen on the beds, in response thereto Mrs Morewane submitted that clean linen is supplied to the facility and a supervisor has been assigned to oversee and manage linen however no evidence in this regard was provided.

5.5.24.14 GDoH submitted a copy of a laundry list to the Public Protector on 27 July 2021 as proof of how laundry is managed. The laundry list offers a description, an indication of whether the laundry is clean or dirty, the quantity and also whether the linen or laundry was received or sent. It was observed also that the laundry list is dated in top, dates are 01 March 2021 and 03 March 2021. It was further communicated that a roster is used and signed whenever linen is taken to the laundry for washing.

5.5.24.15 Below is a picture of the linen as provided by the Lillian Ngoyi hospital:
5.5.24.16 On the lack of nutritional food at the facility and patients staying overnight being served with bread only, Mrs Morewane submitted that tea and lunch is now served to the patients that are admitted to the facility and Cooked frozen meals were also ordered.

5.5.24.17 Below is a picture of the conventional oven and cooked frozen meals as provided by the Lillian Ngoyi Hospital:
5.5.24.18 Regarding the termination of the supply of frozen food at Lillian Ngoyi, Ms Morewane submitted that cooked frozen meals were ordered and a conventional warmer was installed on 9 January 2021. The cook – freeze food was delivered on 12 February 2021. Below is a picture of an order form which was provided as evidence, the order form was to Masakhane CookFreeze indicating a delivery date of 17 February 2021 and the order was made by Sibongile Lesejane on 10 February 2021.
5.5.24.19 Regarding patients waiting for three (3) hours before being attended to by the Doctors. In her response, Mrs Morewane indicated that there are ten (10) fulltime Doctors within the clinic and the Chief Medical Officer Dr Ruiz monitors the Doctors as per allocation in order to avoid patients having to wait for long periods before they are attended to.

5.5.24.20 The Public Protector obtained from evidence from GDoH on 27 July 2021 in the form of time sheets completed by the doctors on duty.

5.5.24.21 According to ideal clinic framework the facilities must monitor the prescribed waiting times and ensure that the time that a patient spends in the facility is no longer than 3 hours. The evidence provided indicates that the facility is monitoring the waiting times and the longest time patients spent at the facility was 105 and the benchmark for CHC is 180.

Response to the Notice in terms of the provisions of section 7(9)(a) of the Public Protector Act, 1994.
5.5.25 Mr Malotana’s response to the notice in respect of Lillian Ngoyi Community Centre dated 19 March 2021 is as follows.

5.5.26 Mr Malotana disagreed with the allegations that there were administrative deficiencies by the GDoH that led to systemic challenges in the delivery of primary health care services at Lillian Ngoyi Community Health Centre. He argued that the applicable tool that must be used to evaluate primary healthcare is the WHO Primary Health Care Evaluation tool which sets out the relevant criteria for the evaluation of primary health care – the four (4) criteria are stewardship, resource generation, financing and incentive and delivery of care. Mr Malotana does not agree with the above-mentioned allegations.

5.5.27 Regarding the lack of supply of hot water and heaters in the labour ward, Mr Malotana in his response indicated that new geysers and heaters have since been installed.

5.5.28 Mr Malotana disagreed that there was an undue delay in the procurement of medical equipment which is endangering and compromising the lives of people who depend on the Hospital for health care. He contended that the procurement is aimed at replacing specific equipment. The existing equipment is then used to render services. Where and if this fails, the facility has the option to refer patients to other healthcare facilities that can assist.

5.5.28.1 On the lack of an OHS and risk management committee at the facility nor staff members being offered any training on OHS by the District. Mr Malotana indicated in his response that the above was corrected and evidence to that effect was requested but was not availed.

5.5.28.2 Regarding the dirty linen that was observed on the beds and also left unattended on the corridor, Mr Malotana indicated in his response the above has been corrected.
5.5.28.3 The evidence indicates that a linen roster has been designed and every time linen is taken to the laundry room, it is recorded as in the roster.

5.5.29 On the lack of nutritious food to be served on patients, Mr Malotana indicated that the facility currently provides nutritious food to patients.

5.5.29.1 Regarding the lack of evidence to indicate that the Lillian Ngoyi Hospital registered and declared donations made by ANOVA as required by the treasury regulations, Mr Malotana submitted that the Provincial Government established a Committee to manage all donations received for Covid-19. All donations are properly managed and recorded as required and will all be reported in the financial statements and evidence was produced in this regard.

5.5.29.2 A copy of spreadsheet indicating donations was provided as well as presentations however no donation from Anova could be found in the evidence.

5.5.30 Lastly, Mr Malotana submitted in his response that the Department is prepared to admit that there was lack of supply of hot water and heaters in the labour ward, there was no provisioning of nutritious food to patients at the facility, the health centre staff were neither aware of the OHS nor were they trained by the District in that regard and there was dirty linen on the corridor which was not in line with the health hygiene standards. Mr Malotana submitted that these were problematic but, as indicated, they have been addressed.

*Response to the Notice in terms of the provisions of section 7(9)(a) of the Public Protector Act, 1994.*
5.5.31 In response to infrastructure challenges at Lillian Ngoyi Community Centre, dated 28 May 2021 from Mr Thulani Mdadane, the HOD of DID responded as follows:

5.5.31.1 Regarding the lack of hot water in the labour ward and broken heaters and geyser, Mr Mdadane submitted that new geysers and heaters were installed on 04 September 2020.

5.5.31.2 Regarding the allegations that the telephone lines, printer and copier were not working, Mr Mdadane indicated that this is the competency of the GDoH.

5.5.31.3 The Lillian Ngoyi Community Centre has a maintenance plan and a copy thereof was provided to the Public Protector.

Applicable Legal Framework

Constitution

5.5.32 Section 195(1) of the Constitution, 1996 provides amongst other things that:

“Public Administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(a) .....,
(b) Efficient, economic and effective use of resources must be promoted;
(c) .....;
(d) .....;
(e) People’s needs must be responded to....;
(f) Public administration must be accountable ..........;
(g) ......; and
(h) Good human-resource management and …... to maximise human potential, must be cultivated.

5.5.33 According to section 195 (1) (b), the Department and Lillian Ngoyi has an obligation to ensure that procurement processes of PPE was done in a manner that is efficient, economic and effective.

5.5.34 The Department is required to account for the effective usage of the departmental resources and efficient administration of hospitals. In this instance, procurement is centralised at the provincial level and the Department is responsible for the timeous distribution of medical supplies thereof to various hospitals.

5.5.35 The Department and District must cultivate good human resource management to maximise human potential by recruiting and selecting appropriate human capital in terms of the required need of the hospital. During the pandemic the recruitment and selection of human capital for the Covid-19 was not maximised as there was a delay by the Department and District to appoint a Facility Manager as the post was vacant at the time and Ms Molefi was acting in the position during the time of inspection.

5.5.36 Section 237 of the Constitution provides that all constitutional obligations must be performed diligently and without delay.

5.5.37 It follows that according to the above provision, the Department and the District also had a responsibility to ensure that the performance of the hospitals in Gauteng was conducted diligently and without delay. As such the provided or distributed PPE was of substandard quality not as per the specifications. Further that the geyser and heaters were not operational and required repairs.
5.5.38 Section 27 read with 195 (1) (e) of the Constitution provides *inter alia:*

1) *Everyone has the right to have access to –*

(a) *health care services……….;*

(b) *…;*

(c) *…;*

2) *The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.*

5.5.39 While the positive obligations imposed on the government by section 27(1) and (2) of the Constitution entitle the people of GP to claim healthcare on demand. However, it requires the government to develop a comprehensive and workable plan to meet its obligations.

5.5.40 The Constitution requires that regardless of the resources constraints the state must take reasonable legislative and other measures, within its available resources to ensure the progressive realisation of the right to health care.

5.5.41 Accordingly the Department and the District have a responsibility to provide everyone with access to timely, equitable, acceptable, and affordable health care of appropriate quality\(^{26}\). Therefore, the Department must provide healthcare in line with the resources constraints without decreasing the value of health care provided to everyone.

5.5.42 The Department must ensure that heaters and geysers must be repaired or replaced timeously. There was also dirty linen on the beds and the patients had to wait over three (3) hours to be attended to by the Doctors. This needs to be curbed in order for Lillian Ngoyi to provide quality healthcare services, and in order to avoid service delivery failures.

5.5.43 Under the circumstances and during this Covid-19 pandemic era, the hospitals are required to provide health care and adequate provisioning of PPE. The medical staff should be sufficiently protected to enable them to attend to patients timeously to curb the escalation of the Covid-19.

5.5.44 The WHO health systems framework has six (6) pillars of building blocks of health system with aims and desirable attributes for member states 27:

![Diagram of WHO health systems framework]

5.5.45 The building blocks contribute to the strengthening of health systems in countries that are affiliated with the WHO. Cross cutting components such as leadership, governance and health information systems provide for the basis of the overall policy and regulation of all the other system blocks. Medical products and technologies, and services delivery reflect on the availability and distribution of care.

27 www.who.int/healthinfo/systems/WHO_MBHSS_2010_fullweb
5.5.46 The compliance of member states with the six (6) building blocks of health systems according to WHO, will lead to improved health, efficiency, responsiveness, social and financial risk protection. Therefore, if administration and governance structures are put in place and adequately monitored by the Department the health care challenges observed in the hospitals would be minimized or eradicated.

5.5.47 Accordingly the Department and the District have a responsibility to provide everyone with access to timely, equitable, acceptable, and affordable health care of appropriate quality. Therefore, the Department must provide healthcare in line with the resources constraints without decreasing the value of health care provided to everyone.

5.5.48 The Department is required to ensure that the telephone lines, printer and copiers are repaired and replaced timeously so that Lillian Ngoyi can provide quality healthcare to avoid service delivery failures. In this instance any delays in attending to patients by Doctors and the dirty lined had the possibility of causing the spread of Covid-19 to increase and further collapsing the already congested health care system.

5.5.49 Section 76(1) (a) of the Public Finance Management Act 1 of 1999 (PFMA) states that “The National Treasury must make regulations or issue instructions applicable to departments, concerning any matter that must be prescribed for departments in terms of this Act.

5.5.50 In terms of paragraph 3.1 of the National Treasury Instruction No.05 of 2020/21
“Accounting officers and accounting authorities must put in place the following additional procurement and expenditure measures to address the programme of preventing the spread of the Covid-19 virus: Internal system for financial control, risk management and reporting in order to account for the funds used for the Covid-19 disaster;

5.5.51 It follows that the Department has an obligation to put in place additional procurement and expenditure measures to address the programme of preventing the spread of the Covid-19 virus. The Department and the hospitals are legally bound to provide and maintain a working environment that is safe and without risk to the health of the medical staff by providing PPEs to the medical staff whilst controlling, maintaining, managing and monitoring finances of the Institution in accordance with the prescribed vote, to avoid wasteful and irregular expenditure.

5.5.52 The responsibility of ensuring that adequate and quality PPE are procured and delivered to the GP hospitals timeously lies solely with the Department in order to curb the pandemic and safeguard the health and safety of all workers. In this instance the procured PPE was inadequate and was of poor and substandard quality.

5.5.53 Paragraph 3.2 of the National Treasury Instruction note 5 of 2020/21 provides as follows:

“National Treasury SCM Instruction Note 3 of 2016/17-Prevention and Combating Abuse in the Supply Chain Management System, paragraph 8.1, states that accounting officers/authorities must only deviate from inviting competitive bids in cases of emergency and sole supplier status. These deviations do not require the approval of the relevant treasury approval. Paragraph 8.2 thereof further states that emergency procurement may occur when there is a serious and unexpected situation
that poses an immediate risk to health, life, property or environment which call an agency to action and there is insufficient time to invite competitive bids”.

5.5.54 Paragraph 3.4 of the National Treasury Instruction note 5 of 2020/21 provides as follows:

“The emergency procurement provisions provide for accounting officers/authorities to procure the required goods or services by other means, such as price quotations or negotiations in accordance with Treasury Regulation 16 A6.4. The reasons should be recorded and approved by the accounting officer/authority or his/her delegate.”

5.5.55 Based on the above provision the Department is allowed to deviate from competitive bidding process in an emergency situation and in this instance an unexpected situated of Covid-19 that posed immediate health risk qualified as an emergency.

5.5.56 The Treasury Practice Note make provision in emergency situations for the Department to deviate from normal procurement processes in the procurement of medical equipment’s that are normally above the procurement threshold. The Department is not barred from using other means of procurement such as price quotations or negotiations in such defined emergency situations.

5.5.57 In this instance Lillian Ngoyi were without quality PPE which is vital to adequate healthcare and containment of the spread of Covid-19 pandemic.

5.5.58 The National Health Act Norms and Standards Regulations applicable to different categories of health establishments, issued as per Government Gazette 67 No. 41419 dated 02 February 2018 (Regulations were
promulgated with the purpose to promote and protect the health and safety of users and health care personnel. The Regulations stipulates inter alia the following:

**Infection prevention and control programmes**

“Regulation 8(1) of the NHA provides that the health establishment must maintain an environment, which minimises the risk of disease outbreaks, the transmission of infection to users, health care personnel and visitors.

(2) For the purposes of sub-regulation (1), a health establishment must-
(a) ....;
(b) .....;
(c) ensure there is clean linen to meet the needs of users; and
(d) ensure that health care personnel are protected from acquiring infections through the use of personal protective equipment and prophylactic immunisations”.

5.5.59 According to the abovementioned regulation, the hospital has an obligation maintain an environment, which minimises the risk of disease outbreaks, the transmission of infection to users, health care personnel and visitors and to further to minimise the abovementioned risk by ensuring that health care personnel are protected from acquiring infections through the use of personal protective equipment. To further ensure there is clean linen to meet the needs of users.

5.5.60 In this case, there was dirty linen on the beds and corridors which was observed. As well as the PPE that was procured was not as per specification as well

**Medical equipment**
5.5.61  “Regulation 13(1) of the NHA provides that the Health establishments must ensure that the medical equipment is available and functional in compliance with the law.

(2)  For the purpose of sub-regulation (1) the health establishment must ensure that equipment is:

(a) licensed where required from the relevant licensing body; and
(b) in accordance with the essential equipment list in all clinical service areas”.

5.5.62  In terms of the regulation, a health establishment must ensure that the medical equipment is available and functional in compliance with the law.

5.5.63  In this instance, the facility had not received the Blood Pressure monitors (BP) and Electrocardiogram (ECG) medical equipment despite a request for procurement being sent to the District Office of Health.

Transport management

5.5.64  “Regulation 16(1) of the NHA provides that the health establishment must ensure that vehicles used to transport users and health care personnel are safe and well maintained.

(2)  For the purposes of sub-regulation (1), a health establishment must ensure that;

(a) vehicles, owned or used, are licensed and maintained; and

(b) drivers have valid driver’s license and or public transport driving permit”.

Waiting times
5.5.65 “Regulation 22 of the NHA provides that the health establishment must monitor waiting times against the National Core Standards for Health Establishments in South Africa”.

5.5.66 According to the ideal clinic framework, a patient waiting time: Monitor adherence to the facility’s prescribed waiting times and ensure that the time that a patient spends in the facility is no longer than 3 hours.

5.5.67 It follows that the GDoH has an obligation to observe and adhere to the above mentioned Regulations of the NHA, which are intended to govern the state of health facilities in the Gauteng Province.

5.5.68 Personnel Circular Minute 23 of 2020 with reference number 3/3/P signed on 06 April 2020 by (former Head of the Department of Health) Professor Mkhululi Lukhele titled “Covid-19 containment measures appointment process”:

Clause 2: Under discussion on 19 March 2020 the Human Resource Management, Acting Deputy Director General announced a management decision to deviate from the normal recruitment and selection processes in response to the spread of Covid-19:

“To implement the appointment process of additional employees to respond to the COVID-19 management took a decision based on the following measures:

- Head of Health Facilities to deviate by not advertising the required positions related to the COVID-19 appointments.
- Shortlisting for the positions not to be conducted.
- Interviewing not to be held.

Management also took a decision to appoint additional employees for the

28 Page 11 of the ideal clinic framework version 19.
COVID outbreak by following the processes of:

- Walk in application for health professionals.
- Appointment or administration support staff from the runner-up previously received applications.
- Appointments to be processed over and above the appointed existing permanent staff. The additional employees’ appointment in response to the COVID-19 to be appointed on fix term contract for a period of 12 months (twelve months).
- All employees appointed in response to the COVID-19 outbreak to be terminated after the period of 12 months (twelve months).
- Human Resource appointment function for the COVID-19 response to be decentralized to all Health Facilities, including District Health Services.

This circular therefore serves as a directive to that should guide the appointment of additional staff during the Covid-19 lockdown.

For any clarity please contact Human Resource Administration at Central Office”.

M. LUKHELE
HEAD OF DEPARTMENT
DATE: 2020/04/06

In terms of the above 57 (4) read with Circular Minute 23 of 2020, the circular allows for the executive authority to employ persons additional to the establishment and further dispense with normal recruitment processes where a temporary increase in work occurs or is necessary for any other reason to temporarily increase the staff of the department.

In this instance, it was of paramount importance for the Department to issue a directive for hospitals to employ additional temporary Covid-19 staff for a period of twelve (12) months by deviating and not following the
normal recruitment and selection process. The additional Covid-19 temporary staff were appointed to assist the facility in the fight of the scourge of the Covid-19 pandemic.

5.5.71 In this instance, there was an undue delay by Lillian Ngoyi to appoint a Facility Manager, as the post was vacant.

5.5.72 The National Treasury Regulation issued in terms of the PFMA dated 31 May 2000 paragraph 21.2 provides for the acceptance of gifts, donations and sponsorship to the state as follows:

“21.2.1 The accounting officer may approve the acceptance of any gift, donation or sponsorship to the state, whether such gifts, donations or sponsorships are in cash or kind;

21.2.1 ....;

21.2.3 ....;

21.2.4 All gifts, donations or sponsorship received during the course of the financial year must be disclosed as a note to the annual financial statements of the institution.”

5.5.73 The accounting officer may approve the acceptance of any gift, donation or sponsorship to the state, whether such gifts, donations or sponsorships are in cash or kind.

5.5.74 Therefore it is clear that all gifts, donations or sponsorships received during the course of the financial year must be disclosed as a note to the annual financial statements of the institution. There is no evidence in the Office of the Public Protector’s possession indicating that the donation of tents at Lillian Ngoyi from ANOVA was registered and declared in the donations register to the GDoH.
Management of buildings and grounds

5.5.75 Regulation 14(1) of the National Health Act 61 of 2003 dated 02 February 2018 provides that the health establishment and their grounds must meet the requirements of the building regulations. For the purposes of sub-regulation (1), a health establishment must inter alia have a maintenance plan for buildings and the ground in terms of sub-regulation 14 (2)(b).

5.5.76 Regulation 14(1) and (2)(b) requires the hospital to have a maintenance plan to deal with infrastructure challenges faced by Lillian Ngoyi Health Centre is the lack of maintaining facilities, i.e. geysers, heaters and IT infrastructure. In this instance, it should be noted that the Public Protector’s office’s intervention led to the repairing of the above mentioned facilities at Lillian Ngoyi Community Health Centre. It cannot be ascertained if Lillian Ngoyi has a maintenance plan in place as required by the NHA regulation.

5.5.77 The Lillian Ngoyi Community Centre has a maintenance plan which shows that the Community Centre has a budget of R1500 000.00 and there was maintenance scheduled for July to October 2020/21.

Conclusions

5.5.78 It can be concluded from observations made during the on-site visits that were undertaken by the PPSA investigation team as recorded above and the submissions of hospital management and GDoH that GDoH has failed to ensure appropriate conditions for the enjoyment and delivery of health care services for the community of Gauteng.

5.5.79 All recorded systemic deficiencies such as the lack of hot water in the maternity ward, the broken geysers and the heaters at the facility, as well as like the telephone lines which were not working, patients waiting for too
long, dirty linen on the beds, lack of nutritional food had a negative impact on the level of care that is provided to patients at the hospital.

5.5.80 The GDoH failed to provide ICT infrastructure, physical infrastructure such as geysers, nutritional food and other support in the form of OHS which are all necessary to sustain an efficient and effective health facility.

5.5.81 It can further be deduced from interactions with staff, union representatives and with hospital management and the GDoH, that the GDoH failed to adequately administer Lillian Ngoyi Community Centre in the manner envisaged by the Constitution and the NHA, which would promote access to quality healthcare and enable the staff to provide effective access to the healthcare services to which the community is entitled to.

5.6 Whether the allegations of administrative deficiencies by the GDoH led to systemic challenges in the delivery of primary health care services at Charlotte Maxeke Johannesburg Academic Hospital and if yes, whether such failure amounts to improper conduct and maladministration

Common Cause Issues

5.6.1 On 20 August 2020, the Public Protector conducted an inspection in loco at Charlotte Maxeke Hospital (Charlotte Maxeke) in Johannesburg.

5.6.2 During the inspection, the team were assisted by the Chief Executive Officer of the Charlotte Maxeke hospital, Ms Gladys Bogoshi (Ms Bogoshi) who took the team around the premises of the health facility.

5.6.3 The GDOH is responsible for the delivery of public healthcare services throughout the province of GP to ensure that the Province’s healthcare system is functional.
5.6.4 The procurement of PPE is centralised at various depots/warehouses and upon request by the hospitals, depots/warehouses will issue orders for collection by the hospitals.

*Issues in dispute*

5.6.5 In June and July 2020 media reports repeatedly highlighted the challenges faced by public and healthcare practitioners on the frontline fighting the deadly Corona virus.

5.6.6 The widespread negative reports across the media spectrum, all painted a grim picture about the deteriorating service delivery conditions at various health facilities within GP. The Office of the Public Protector authorised an immediate own intervention/investigation into the allegations to establish the authenticity of the claims made in the press statements.

5.6.7 As indicated, this own accord intervention to inspect Charlotte Maxeke Hospital was made with a view to establish whether or not the alleged state of affairs within the public healthcare facilities in the GP resulted in improper conduct or maladministration.

**INSPECTION IN LOCO AND INTERVIEWS CONDUCTED WITH MS GLADYS BOGOSHI (MS BOGOSHI), THE CEO OF THE CHARLOTTE MAXEKE HOSPITAL (CHARLOTTE MAXEKE), HOSPITAL MANAGEMENT AND ORGANISED LABOUR**

**PROFILE OF CHARLOTTE MAXEKE HOSPITAL**

5.6.8 On 19 August 2020 during the site inspection conducted by the team, Ms Bogoshi profiled the hospital as follows:

5.6.8.1 The hospital has a staff compliment of 5000 staff members.
5.6.8.2 The hospital also receives referrals from fourteen (14) hospitals in Gauteng and other provinces.

5.6.8.3 The hospital serves as a training centre for Witwatersrand University, Sefako Makgatho University and the University of Johannesburg.

5.6.8.4 There is a total of 300 beds designated for Covid-19 patients.

5.6.8.5 The hospital was divided into four Covid-19 (4) zones green (low risk), orange (medium exposure risk) red (high risk), and yellow (PUI). PPE is distributed in line with the zone the staff were placed in at the hospital.

5.6.9 During the inspection in loco conducted by Office of the Public Protector team, the following observations were made at Charlotte Maxeke Hospital:

**Industrial Relations and Communication**

5.6.9.1 The staff members were not allowed to utilize special leave when they contracted Covid-19 and employees who were tested were expected to pay their medical bills.

5.6.9.2 The staff members were required to work overtime and this resulted in staff being fatigued.

5.6.9.3 There was a delay in the filling of the specialized posts i.e. clinical heads, due to the centralization of recruitment at provincial office and budgetary constraints.

**PPE**

5.6.9.4 The delivery and collection of PPE was centralized at the provincial office and that resulted in service delivery delays. The Depot is situated in
Centurion and there is no dedicated motor vehicle to collect the PPE, as a result the hospital utilizes the laundry truck for collection.

5.6.9.5 The procured PPE was not as per the specification and had to be returned to the depot. The hospital was not requested to provide specifications for the PPE as it is only required to collect PPE, which was substandard quality.

5.6.9.6 The Public Protector received the below picture from Dr Feroza Motara, Head of Clinic Unit, Accident and Emergency on 20 August 2020 to illustrate the substandard quality of PPE that was distributed to staff at Charlotte Maxeke:

![Picture of substandard PPE]

5.6.9.7 The PPE was distributed according to the different risk zones and it was a “one size fits all” approach.

5.6.9.8 There was no medical soap or scrub and as such the medical staff had to use green soap.
5.6.9.9 There was Covid-19 testing of employees at the staff clinic as at 04 April 2020.

**Medical Equipment**

5.6.9.10 During the discussions held with the Office of the Public Protector team, Ms Bogoshi indicated that for the hospital to procure and service medical equipment, she has to submit a requisition to the Department for approval. However there are delays in the approval of requisitions for medical equipment by the Department, which submission was confirmed by Prof Adam Mohammed, Head of Internal Medicine who added that the hospital does not have a strategic plan in terms of replacing old medical equipment. Even though the hospital complied with all the procurement processes, medical equipment would not be procured.

5.6.9.11 Ms Bogoshi further indicated that the operational budget allocated to the hospital is not sufficient to procure and maintain equipment in the hospital.

5.6.9.12 She submitted that there were delays in the procurement and maintenance of medical equipment i.e. Magnetic Resonance Imaging (MRI), there was no oxygen and Radiology machines, and the Hospital is currently using old machines which are costly to maintain. Even though numerous request were submitted to the province for the procurement of the said medical equipment, the hospital still does not have the medical equipment due to of lack of contract management and the delay in the procurement of medical equipment.

**Waste Disposal**
5.6.10 It was observed that the medical waste is kept in the toilets at the Covid-19 zoned areas pending collection by Buhle Waste Management. There is a delay and inconsistency in the delivery and collection of medical waste at the hospital.

5.6.11 There was a challenge in Buhle Waste Management providing medical waste boxes to the Hospital and as a result, the hospital was only provided with plastic liners. The waste disposal is such that there number of boxes must equal the numbers of plastic liners, in this case there was less boxes compared with plastic liners.

**Risk Management**

5.6.12 Risk assessment was not conducted.

5.6.13 Ms Patience Phirwa, of Denosa confirmed that OHS training was conducted on 20 August 2020 to assist family members that tested positive for Covid-19.

5.6.14 It was observed that there was no space or ward to accommodate psychiatric patients at the Hospital and they were accommodated on beds in an open space.

**Laundry**

5.6.15 The Laundry was not checked for sharp medical waste objects prior to being delivered to the Laundromat unit.
Delegation

5.6.16 During the hospital visit on 20 August 2020, Ms Bogoshi affirmed that the R 500 000 threshold allocated to the hospital as operational budget is limiting the hospital with regards to procurement of goods and services.

SUBMISSIONS BY MS GLADYS BOGOSHI (MS BOGOSHI), THE CEO OF THE CHARLOTTE MAXEKE HOSPITAL

5.6.17 In a response letter dated 29 September 2020 from Ms Bogoshi, she responded as follows:

Industrial Relations and Communications

5.6.17.1 Regarding the staff members not being allowed to utilize special leave when they contracted Covid-19 and further that the employees who were tested for Covid-19 were expected to pay their medical bills, Ms Bogoshi indicated that Covid-19 leave was managed as per Department of Public Service and Administration (DPSA) Circular 11 of 2020, Personnel Circular Minute 14 of 2020 and its Addendum.

5.6.17.2 Further that communication to employees on testing procedures was done through managers and Employee Health Wellness Programme (EHWP)
services. In addition there was testing of employees at the staff clinic from 04 April 2020.

5.6.17.3 In an email dated 09 December 2020 from Ms Lindiwe Mgomezulu of Charlotte Maxeke Hospital addressed to the Public Protector, it was clarified therein that the National Health Laboratories is responsible for testing employees for Covid-19 and that all the employees that were irregularly billed were assisted, in that the irregular charges on their medical aids were subsequently reversed.

5.6.17.4 On the issue of staff members being required to work overtime and this resulted in staff being fatigued, Ms Bogoshi submitted that overtime was voluntary.

5.6.17.5 On the delay by the hospital to fill the specialized posts i.e. clinical positions, Ms Bogoshi indicated that it was due to the centralization of recruitment at provincial office. However, she further clarified that facilities could continue with replacement of staff on the existing staff establishment except for the filling of the Head of Department or Head of Clinical unit posts which are approved by the Member of Executive Council and the Head of Department respectively.

PPE

5.6.17.6 Ms Bogoshi confirmed that the delivery and collection of PPE was centralized at the provincial office and that caused service delivery delays. She further indicated that the PPE utilised by staff members especially in the emergency department, was of substandard quality and was tearing off.
Medical Equipment

5.6.17.7 Ms Bogoshi submitted that there were delays regarding the procurement and maintenance of medical equipment i.e. Magnetic Resonance Imaging (MRI), Radiology and Oxygen machines. Even though numerous request were submitted to the province for the procurement of the medical equipment, the hospital was yet to receive delivery of the requested medical equipment.

Waste Disposal

5.6.17.8 Ms Bogoshi submitted that Buhle Waste Management was inconsistent with regard to waste collection and further that they supplied fewer consumables compared to what was ordered, to the extent that the hospital ended up using plastic liners which were not protected by solid health care waste boxes. The toilet was designated as a storage area for waste management as a transitional storage for waste boxes.

RESPONSE FROM THE ACTING HEAD OF DEPARTMENT GAUTENG DEPARTMENT OF HEALTH: MR ARNOLD MALOTANA

5.6.18 A meeting was held on 25 November 2020 with the Acting HoD Mr Malotana to discuss this investigation and to obtain clarity on some of the issues raised in the investigation.

5.6.19 In addition to the above-mentioned meeting, a letter was written and sent to the Acting HoD on 23 November 2020 and the response is captured below.

5.6.20 In a letter dated 20 November 2020 submitted to the Office of the Public Protector by the Acting Head of Department Gauteng Department of Health, Mr Arnold Malotana, indicated that the issue of unpaid salaries of
Covid-19 contract workers was resolved in an Alternative Dispute Resolution held on 19 October 2020 between Dr George Mukhari management and the office of the Public Protector.

5.6.21 In a meeting held on 25 November 2020 with the Acting Head of Department of Health, Mr Arnold Malotana (Mr Malotana), he denied the allegation that hospitals were not consulted prior to the construction of ABT structures to house Covid-19 patients.

5.6.22 On 26 November 2020 the Head of Infrastructure, Dr Sifiso Maseko, submitted an unsigned report titled "Covid-19 readiness draft infrastructure assessment Gauteng Department of Health dated 06 April 2020". The report details the identified hospitals across GP to accommodate Covid-19 patients. A task team was deployed by the GDoH to assess the required infrastructure for the Covid-19 needs analysis in those hospitals and made recommendations.

5.6.23 It was noted that according to the above-mentioned report, on 04 April 2020 a site inspection was conducted at the following hospitals:

5.6.23.1 Bara Hospital: In attendance was Dr Lesia, Dr M Tsitsi (Head: Internal Medicine), Mr I Pisto (DID: Maintenance).

5.6.24 On 06 April 2020 a site inspection was conducted at the following hospitals:

5.6.24.1 Dr George Mukhari Hospital: In attendance was Dr Lebethe, Dr S Sewanywa (Senior Clinical Executive), Mr T Tarivinga (Resident Engineer), Mr V Chakane (DID: Maintenance). Prior to the inspection being undertaken, a meeting was held with the hospital’s executive management and the GDoH to consider the specific needs of the hospital; and

5.6.24.2 Jubilee hospital: In attendance was Dr Modise and V Chakane.
5.6.25 Evidence in the Office of the Public Protector’s possession indicates that the CEOs of the above-mentioned hospitals were part of the task team deployed by the GDoH to assess the infrastructure needs analysis assessment and site inspection.

5.6.26 Mr Malotana indicated that in terms of the delegations to the CEOs of the Hospitals, the threshold for procurement purposes is set at R500 000. It was clarified that the threshold is set by the Treasury Regulations.

5.6.27 Mr Malotana acknowledged challenges relating to the threshold of R500 000 and clarified that discussions have been initiated to review the threshold.

5.6.28 According to Mr Malotana, the discussions held with the National Health Council also included the reclassification of hospitals into three (3) categories, and the big hospitals would be classified as National Hospitals and would be allowed to procure independently.

5.6.29 Mr Malotana acknowledged that the Supply Chain Management (SCM) at the Provincial Office is dysfunctional due to the incompetence of the SCM practitioners.

5.6.30 Furthermore, Mr Malotana conceded that there were no quality controls at the depots for verification of the quality and specifications of the PPE.

5.6.31 **Response to the Notice in terms of the provisions of section 7(9)(a) of the Public Protector Act, 1994.**

5.6.32 On 24 February 2021, the Public Protector issued a notice in terms of section 7(9)(a) of the Public Protector Act to Ms Gladys Bogoshi, Mr Arnold Malotana and to all implicated parties and those with direct interest on this
matter with a view to afford them an opportunity to respond to the allegations against them, particularly in relation to the role each played in this matter. Section 7(9)(a) of the Public Protector Act provides that:

“If it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter being investigated and that such implication may be to the detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector shall afford such person an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances”.

5.6.33 The Public Protector now turns to consider the responses submitted regarding the section 7(9) notices (hereinafter referred to as notice/s). The office has made an effort to deal with each and every aspect raised in the responses but where it appears that it has not done so, that should not be misconstrued as an admission of any kind of the averments contained therein.

5.6.34 The Public Protector received a response to the section 7(9) notice from the CEO of Charlotte Maxeke Hospital, Ms Bogoshi dated, 03 March 2021 and she responded as follows:

5.6.35 Regarding staff members not being allowed to utilize special leave when they contracted Covid-19 and further that employees who were tested for Covid-19 were expected to pay their medical bills, Ms Bogoshi referred to her previous response dated 14 September 2020 addressed to the Public Protector including the response dated 24 September 2020 which states as follows:

“Covid-19 leave was managed as per DPSA Circular 11 of 2020 and Personal Circular Minute 14 20 of 2020 and addendum 1 to Personnel Circular Minute 14 of 2020.”
Special Leave was granted to employees who displayed symptoms of COVID-19 or were in close contact of a positive case and where waiting for results.

Sick Leave was granted to employees who tested positive for Covid-19 and presented with illness or symptoms and a medical practitioner has certified that the employee must be isolated to prevent the spread of Covid-19.

Sick leave for Covid-19 was captured with persal code as per DPSA Directive Persal Notice 361 – Covid-19 – New Leave Sub Category Codes."

5.6.36 Further that the Public Protector must also consider the following towards the final report:

5.6.37 That Personnel Circular Minute 33 of 2020: National State of Disaster: Persal Codes for Covid-19 Leave – Persal Notice Number 301 was communicated to staff on 02 June 2020 and Human Resources received clarification on the implementation of the Circular after the DPSA presentation via email on 09 September 2020.

5.6.38 In an email dated 09 December 2020 from the office of the Directorate of the CEO of Charlotte Maxeke Hospital, Ms Lindiwe Mgomezulu, indicated that the NHLS is responsible for testing employees for Covid-19. Therefore all the employees that were irregularly billed were assisted in that the irregular charges on their medical aids were subsequently reversed.

5.6.39 The Public Protector is in possession of a list of staff members at the Hospital whose medical bills were reversed by the NHLS.
5.6.40  In support of the above-mentioned assertion that special leave was granted as per circular 14 of 2020, the Public Protector was provided with copies of nine approved Covid-19 applications. The leave was captured as special leave under code 691 Covid-19 special leave (work days).

5.6.41  Ms Bogoshi in her response agreed that the staff members were required to work overtime and this resulted in staff being fatigued. However she explained that the staff members were required to work overtime due to shortage of staff and delays in approval as well as the creation of Covid-19 posts but Ms Bogoshi also indicated that overtime was voluntary.

5.6.42  On the delay to fill the specialized posts i.e. clinical heads, due to the centralization of recruitment at provincial office and budgetary constraints, Ms Bogoshi submitted that the statement should be separated into two categories:

5.6.42.1  Regarding the delay to fill the specialized posts, such as nursing posts, the hospital could not find suitable candidates and as a result headhunting was done. In addition to the above, the specialized clinical posts were recruited through the Circular 52 of 2009 and the Covid-19 specialists positions were created late whilst the need was urgent as at March 2020. One specialist resumed in May 2020 and another in August 2020 while the critical care unit had no posts and / or the establishment only one (1) Head of Unit.

5.6.43  The Public Protector is in possession of a memorandum dated 13 July 2020 titled “creation and recruitment of staff for Covid-19 phase two project” was approved by Prof Lukhele former Head of Department on 22 July 2020. At paragraph 1(b) states that the purpose of the memorandum was to approve the creation of temporary positions in health institutions within the various clusters, Covid-19 quarantine sites and other areas of care.
5.6.44 In the background of the memorandum it states that the declaration of the Covid-19 pandemic as a national disaster has necessitated the need for the expedited mass recruitment of health workers. The increase of the numbers of staff will require more positions to be created on persal due to the rapid spread of the infections and the speed in which GDoH must appoint additional staff, a decision by senior management has been taken that they will deviate from the normal process of appointing.

5.6.45 The memorandum further stated that any delays in appointing additional personnel will have dire consequences in the spread of the Covid-19. The HoD mandated hospitals and health facilities to appoint health workers in line with circular minute 23 of 2020.

5.6.46 The abovementioned memorandum and circular 23 of 2020, were implemented to expedite the mass recruitment of health workers, as it was anticipated that delays in appointing additional personnel will have dire consequences in the spread of the Covid-19.

5.6.47 Ms Bogoshi also submitted that the Public Protector must also consider her previous responses which stated that the centralization was in relation to the recruitment of the Covid-19 clinical staff but facilities continued with replacement of staff in their existing staff establishment except for the filling of Head of Department or Head of Clinical Unit posts which are finalized or approved by the MEC and Head of Department of Health respectively as per delegations. The Directorate: HRM continued with its endeavours to fill vacant funded posts in all categories within the Hospital albeit all challenges.

5.6.48 In a response letter dated 03 August 2021 from Ms Bogoshi, she indicated that the positions were filled as follows:
<table>
<thead>
<tr>
<th>Post</th>
<th>Department</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Head of Clinical Unit</td>
<td>Charlotte Maxeke Orthopaedics</td>
<td>2020-08-01</td>
</tr>
<tr>
<td>Head Clinical Department (Medical)</td>
<td>Charlotte Maxeke Ophthamology</td>
<td>2020-10-01</td>
</tr>
<tr>
<td>Head Clinical Unit (Medical)</td>
<td>Charlotte Maxeke Surgery</td>
<td>2020-09-01</td>
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<tr>
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<td>Charlotte Maxeke Surgery</td>
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<tr>
<td>Head Clinical Unit (Medical)</td>
<td>Charlotte Maxeke Surgery</td>
<td>2020-11-01</td>
</tr>
<tr>
<td>Head Clinical Department (Medical)</td>
<td>Charlotte Maxeke Radiation Oncology</td>
<td>2021-02-15</td>
</tr>
<tr>
<td>Head Clinical Unit (Medical)</td>
<td>Charlotte Maxeke Paediatrics</td>
<td>2021-02-01</td>
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<tr>
<td>Head Clinical Unit (Medical)</td>
<td>Charlotte Maxeke Internal Medicine Department</td>
<td>2021-02-01</td>
</tr>
<tr>
<td>Head Clinical Unit (Medical)</td>
<td>Charlotte Maxeke Anaesthesia Department</td>
<td>2020-10-01</td>
</tr>
</tbody>
</table>

5.6.49 Ms Bogoshi in her response agreed that the delivery and collection of PPE was centralized at the provincial office and that resulted into service delivery delays. The Depot is situated in Centurion and the Hospital does not have a dedicated motor vehicle to collect the PPE, as a result the hospital utilizes the laundry truck for collection.
5.6.50 Further that the procured PPE was not as per the specification and had to be returned to the depot. The hospital was not requested to provide specifications for the PPE as it is only required to collect PPE, which was substandard.

5.6.51 There was Covid-19 testing of employees at the staff clinic as at 04 April 2020.

5.6.52 The Occupational Health reporting presentation submitted on 05 August 2021 by Mr Du Preez indicates that as from 01-30 April number of staff administered with FLU vaccine, number of Staff screened for Covid-19, number of staff tested Positive, number of Staff with Covid-19 admitted and number of Staff with Covid-19 in ICU.

5.6.53 Regarding the distribution of PPE to the different risk zones, Ms Bogoshi explained that PPE was distributed according to the different risk zones however, not all PPE sizes could be issued according to end user requests since the Central depots would not always have all the different sizes as would have been requested by the hospital.

5.6.54 Regarding the lack of medical soap or scrub and as a result the medical staff had to use green soap, Ms Bogoshi in her response confirmed that there was no medical soap at the time of the visit by the Public Protector. Further that the shortage of the hibiscrub, which is a contract item was a national outcry at that time and the contracted supplier could not receive the necessary ingredients to manufacture the hibiscrub from abroad due to Covid-19 restrictions.

5.6.55 Furthermore, since the pandemic was unforeseen, the projections estimates by the hospital Pharmacy and the demand of the hibiscrub outweighed the available supplies. The hospital was nevertheless kept afloat by donations from various stakeholders.
5.6.56 Regarding the delays in the procurement and maintenance of medical equipment despite numerous request being sent to GDoH. In her response Ms Bogoshi requested that the statement be rephrased and the following be considered:

5.6.56.1 The management of the hospital agreed with the statement however “there were issues regarding the procurement and maintenance (repairs done at Provincial level) of the MRI, Radiology, Oxygen and machines due to lack of contracts with service providers. Despite request made to procure the machines, there has been no movement and this affects service delivery”. Ms Bogoshi requests the Public Protector to consider that the MRI, has always been in the Procurement Plan for the past three (3) financial years but was not procured due to the unavailability of active contracts which should be preceded by a provincial/national tender process.

5.6.57 According to the procurement plan in respect of advertised competitive bids (goods, works or services in excess of R500 000 including all applicable taxes) for the 2020/21 financial year provided by Ms Bogoshi, it indicates that as of 15 October 2020, a new tender to be scheduled and Bid Specification Committee (BSC) nomination was requested.

5.6.58 In terms of the evidence provided by Mr Malotana in the initial response of March 2021, the Director: Acquisition and Contract Management: Ketlareng Rose Phashe submitted as follows to the delays in the procuring of the Radiology for Charlotte Maxeke Hospital that a the tender was advertised and cancelled due to challenges raised by the industry, the specifications as well as the evaluation criteria were reviewed by the BSC and the probity auditors report from GPT, was incomplete therefore the BAC referred it back to Gauteng Provincial Treasury (GPT). Lastly, she stated that tender will be advertised.
5.6.59 Regarding the CEO’s delegation to approve maintenance contracts is limited to R500 000 and anything beyond that resides with GDoH’s Bid Adjudication Committee (DBAC). The total value of maintenance contracts including Radiology Equipment is estimated at R27.5 million hence the matter was referred through a DBAC submission to Central Office.

5.6.60 The DBAC submission was signed off by Ms Bogoshi on 01 June 2020 and was subsequently presented to the DBAC on 23 July 2020.

5.6.60.1 Further that during the inspection, there were reports by the Chief Engineer of challenges with oxygen supply pressures and the oxygen manifold was successfully replaced on 18 March 2020. After the replacement the reading on the manifold was 4.2 bars which is the required standard but the clinical areas normally utilise about 3.2 bars. This suggested that the hospital had more than enough oxygen supply. However, on 4 June 2020 the technicians started noticing a dip in the readings. The reading was around 3.2 bars.

5.6.60.2 The Public Protector was provided with a picture of the completed manifold as proof that it was successfully replaced.

5.6.60.3 The contractor (Base Engineering) that was installing the oxygen manifold was called on site to adjust the regulators to the required pressure of 4.2 bars. A few days later the pressure fell again to around 3 bars. A meeting was called between DID, the installer and the manufacture of the manifold (Lewthwaite Engineering). The outcome of this meeting was to increase the diameter of the manifold components. This would have resulted in an increase flow thus having more bars. This happened during the second shutdown which was on 17 June 2020.

5.6.60.4 During the shutdown when no users were connected to the wall, Afrox noticed that there’s still oxygen consummation. Afrox advised that there might be a leak in the pipeline. Lewthwaite Engineering adjusted all
components and regulators to get the required pressure to the hospital. Immediately when the system was switch on, the technicians noticed that there was still consumption without end-users being connected. This again suggested that the might be a leak in the pipeline. However, the system was put back online at a higher pressure of 4.5 bars. The end-users were subsequently put back online and everything was working fine.

5.6.60.5 On 18 June 2020 the pressure suddenly went high to 6 bars. Base engineering was called on site to rectify the high pressure to the required one. On 03 July 2020, Industrial General Distribution (IGD) was dispatched from DID Acting Chief Director's office to trace and solve the oxygen problem at Charlotte Maxeke Hospital. The contractor arrived onsite with Afrox, to investigate the suspected oxygen leak in the pipeline and they decided to measure hospital consumption. They found out that the consumption is too high and they installed a high flow bi-pass which resolve the problem.

5.6.60.6 The tri-flow arrived onsite and the contractor was given 21 October 2020, as the interruption date to install from 12PM to 16PM which happened successfully till to date.

5.6.61 There has been further correspondence (emails) between Charlotte Maxeke Johannesburg Academic Hospital (CMJAH) and the GDoH's SCM Offices regarding progress on the matter.

5.6.62 Regarding the medical waste being kept in the toilet at the Covid-19 zoned areas pending collection by Buhle Waste Management as well as the delay and lack of consistency in the delivery and collection of waste, Ms Bogoshi indicated in her response that the inconsistencies in relation to the delivery and collection of medical waste is purely attributed to poor supplier performance. As well as the number of boxes not being equal to
the total number of red bag linings provided to the hospital by Buhle Waste Management.

5.6.63 In a further response letter dated 03 August 2021, Ms Bogoshi submitted that a meeting was held between the hospital Infection Control team and Buhle Waste on 21 June 2020, copy of the minutes was obtained.

5.6.64 Ms Bogoshi submitted an action plan from the Infection Control Manager Dr Malebati to address non-collection and compliance by Buhle Waste service provider.

5.6.65 On the allegation that the risk assessment that was not conducted. Ms Bogoshi submitted that she does not agree with the statement because risk assessments were conducted in the hospital since May 2020 and they were conducted in hot spots areas within the hospital namely: ICU, Renal Wards, Oncology, Folateng, Theatre, Security Services, Area 357 and Pharmacy.

5.6.66 The Public Protector is in possession of a copy of the risk assessments conducted at Charlotte Maxeke and the following were sampled Folateng, Renal wards dated 23 June 2020 and for the security dated 24 June 2020.

5.6.67 Regarding the confirmation by Ms Patience Phirwa, of Denosa that OHS training was conducted on 20 August 2020 to assist family members that tested positive for Covid-19, Ms Bogoshi in her response clarified that the training of OHS Committee was conducted on 19 August 2020 and was conducted in order to equip staff on occupational health and safety issues.

5.6.68 On the laundry not being checked for sharp medical waste objects prior to being delivered to the Laundromat unit, Ms Bogoshi submitted that a meeting will be convened with all stakeholders to mitigate the issue of instruments left in the laundry after performing the procedures, further to develop an action plan based on the findings.
5.6.69 In the response letter of 03 August 2021, Ms Bogoshi submitted a copy of the quality improvement plan was formulated for theatre instruments found at the Laundry. In terms of the quality improvement plan, the problem was identified as poor adherence to Standard Operating Procedures (SOP’s) which led to the instruments, sharps, and other utensils found at the terminus of the shuts in the linen room. It was determined that the root cause was proper procedure for counting swabs, sharps and instruments not adhered to and the remedial action is the reinforcement of the correct procedure for checking instruments against the checklist peri-operatively.

5.6.70 In terms of the quality improvement plan the Operational Managers, Assistant Managers, shift leaders and Registered nurses are vested with the responsibility to ensure compliance and no instruments were found at the laundry department the past week. It was further stated that this is an ongoing exercise.

**Response to the Notice in terms of the provisions of section 7(9)(a) of the Public Protector Act, 1994.**

5.6.71 In his response letter dated 19 March 2021 Mr Malotana submitted as follows:

5.6.71.1 Regarding the evidence in the Office of the Public Protector’s possession, indicating inadequate communication channels between management and staff on the implementation of Personnel Circular 14 of 2020 in respect to special leave. Mr Malotana, in his response submitted that Ms Bogoshi followed established communication platforms to communicate with staff.

5.6.71.2 A copy of the presentation of circular 11 of 2020 dated 08 September 2020 explaining the circumstances under which special Leave shall or may be granted to employees.
5.6.71.3 The Public Protector is in possession of approved special leave applications for the staff members at the hospital.

5.6.71.4 Regarding the delay in the supply and distribution of PPE at the Hospital due to the centralisation of procurement at provincial level, as well as the substandard quality PPE, Mr Malotana in his response submitted that initially there were delays but those were corrected and although some of the PPE was of inferior quality, not all PPE procured was sub-standard.

5.6.71.5 On the failure by the hospital to secure and dispose of hazardous medical waste at the hospital. Mr Malotana argued that although the medical waste collection was sometimes delayed due to the sudden increase, it is not a fact that this caused or endangered staff or patients and he received no evidence to support the allegation.

Applicable Legal Framework

Constitution

5.6.72 Section 195(1) of the Constitution, 1996 provides amongst other things that:

“Public Administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(a) ……………………………,
(b) Efficient, economic and effective use of resources must be promoted;
(c) ……………………………;
(d) ……………………………;
(e) People’s needs must be responded to….;
(f) Public administration must be accountable ……..;
(g) …..; and
(h) Good human-resource management and ...... to maximise human potential, must be cultivated.

5.6.73 According to section 195 (1) (b), the Department and the Hospitals have an obligation to ensure that procurement processes of PPE was done in a manner that is efficient, economic and effective.

5.6.74 The Department is required to account for the effective usage of the departmental resources and efficient administration of hospitals. In this instance, procurement is centralised at the provincial level and the Department is responsible for the timeous distribution of medical supplies thereof to various hospitals.

5.6.75 The Department and the Charlotte Maxeke Academic Hospital must cultivate good human resource management to maximise human potential by recruiting and selecting appropriate human capital in terms of the required need of the hospital. During the pandemic the recruitment and selection of human capital for the Covid-19 was not maximised as there was a delay by the Department and Charlotte Maxeke Academic Hospital to appoint clinical heads of units, the delay was a result of recruitment being centralized at Province and budgetary constraints. Staff members were required to work overtime as a result of the delay to appoint additional staff members.

5.6.76 Section 237 of the Constitution provides that all constitutional obligations must be performed diligently and without delay.

5.6.77 The Department and the Charlotte Maxeke Academic Hospital also had a responsibility to ensure that the performance of the hospitals in Gauteng was conducted diligently and without delay. As such the distribution and collection of PPE and the distribution of such to various medical staff in the Charlotte Maxeke Academic Hospital was delayed.
5.6.78 Section 27 read with 195 (1) (e) of the Constitution provides *inter alia*:

1) *Everyone has the right to have access to* –

(a) *health care services* …………;

(b) ……;

(c) ..;

2) *The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.*

5.6.79 While the positive obligations imposed on the government by section 27(1) and (2) of the Constitution entitle the people of GP to claim healthcare on demand. However, it requires the government to develop a comprehensive and workable plan to meet its obligations.

5.6.80 The Constitution requires that regardless of the resources constraints the state must take reasonable legislative and other measures, within its available resources to ensure the progressive realisation of the right to health care.

5.6.81 Accordingly, the Department and Charlotte Maxeke Hospital have a responsibility to provide everyone with access to timely, equitable, acceptable, and affordable health care of appropriate quality. Therefore, the Department must provide healthcare in line with the resources constraints without decreasing the value of health care provided to everyone.

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5.6.82 The Department must ensure that medical equipment is procured timeously so that the hospitals can provide quality healthcare in order to avoid service delivery failures. In this instance any delays in the procurement of medical equipment has potential to affect service delivery in the provision of healthcare services.

5.6.83 Under the circumstances and during this Covid-19 pandemic era, the hospitals are required to provide health care and adequate provisioning of PPE. The medical staff should be sufficiently protected to enable them to attend to patients timeously to curb the escalation of the Covid-19.

5.6.84 The WHO health systems framework has six (6) pillars of building blocks of health system with aims and desirable attributes for member states 30:

![Diagram of WHO health systems framework]

5.6.85 The building blocks contribute to the strengthening of health systems in countries that are affiliated with the WHO. Cross cutting components such as leadership, governance and health information systems provide for the basis of the overall policy and regulation of all the other system blocks. Medical products and technologies, and services delivery reflect on the availability and distribution of care.

30 www.who.int/healthinfo/systems/WHO_MBHSS_2010_fullweb
5.6.86 The compliance of member states with the six (6) building blocks of health systems according to WHO, will lead to improved health, efficiency, responsiveness, social and financial risk protection. Therefore, if administration and governance structures are put in place and adequately monitored by the Department the health care challenges observed at Charlotte Maxeke Academic Hospital would be minimized or eradicated.

5.6.87 Accordingly the Department and the Charlotte Maxeke Academic Hospital have a responsibility to provide everyone with access to timely, equitable, acceptable, and affordable health care of appropriate quality. Therefore, the Department must provide healthcare in line with the resources constraints without decreasing the value of health care provided to everyone.

5.6.88 The Department is required to ensure that medical equipment is procured timeously so that the Charlotte Maxeke Academic Hospital can provide quality healthcare to avoid service delivery failures. In this instance any delays in the procurement of valuable medical machinery and equipment may have caused the spread of Covid-19 to increase and further collapsing the already congested health care system.

5.6.89 Section 25(2) of the National Health Act (NHA) 61 of 2003, as amended, lists a number of powers and obligations of the head of a provincial department, the most relevant of which are the following:

“(k) controlling and managing the cost and financing of public health establishments and public health agencies; …
(n) controlling the quality of all health services and facilities;
(p) provide and maintain equipment, vehicles and health care facilities in the public sector".
5.6.90 According to the abovementioned provision it is clear that the head of a provincial department has the obligation to control the quality of all health services and facilities. As a result, the centralization of the budget and procurement caused delays in the provision of service delivery especially regarding the procurement of PPE and medical equipment in GP hospitals.

5.6.91 Paragraph 3.1 of the Gauteng Provincial Treasury Circular 3 of 2019/2020 provides that all Covid-19 related PPE are to be centrally procured, warehoused and distributed.

5.6.92 The above-mentioned provision directs that all Covid-19 related PPE is to be centrally procured, warehoused and distributed.

5.6.93 In this instance, the Department centrally procured the PPE, placed it in the warehouses and distributed it therefrom. In addition, the hospital collected all the PPE from the warehouse.

5.6.94 Under the circumstances it is clear that centralisation of procurement of Covid-19 related PPE is mandatory.

5.6.95 Paragraph of the Gauteng Provincial Treasury instruction note 02 of 2020/21 decentralised the procurement of all Covid-19 related PPE as of 01 July 2020.

Paragraph 3.1 provides that “All Departments and Entities are required to procure own COVID-19 PPE requirements effective from 01 July 2020 in line with the current applicable SCM prescripts”

5.6.96 Section 76(1) (a) of the Public Finance Management Act 1 of 1999 (PFMA) states that “The National Treasury must make regulations or issue instructions applicable to departments, concerning any matter that must be prescribed for departments in terms of this Act.”
5.6.97 In terms of paragraph 3.1 of the National Treasury Instruction No.05 of 2020/21

“Accounting officers and accounting authorities must put in place the following additional procurement and expenditure measures to address the programme of preventing the spread of the Covid-19 virus: Internal system for financial control, risk management and reporting in order to account for the funds used for the Covid-19 disaster;

5.6.98 The Department has an obligation to put in place additional procurement and expenditure measures to address the programme of preventing the spread of the Covid-19 virus. The Department and the hospitals are legally bound to provide and maintain a working environment that is safe and without risk to the health of the medical staff by providing PPEs to the medical staff whilst controlling, maintaining, managing and monitoring finances of the Institution in accordance with the prescribed vote, to avoid wasteful and irregular expenditure.

5.6.99 The responsibility of ensuring that adequate and quality PPE are procured and delivered to the GP hospitals timeously lies solely with the Department in order to curb the pandemic and safeguard the health and safety of all workers. In this instance the procured PPE was inadequate and was of poor and substandard quality.

5.6.100 Paragraph 3.2 of the National Treasury Instruction note 5 of 2020/21 provides as follows:

“National Treasury SCM Instruction Note 3 of 2016/17-Prevention and Combating Abuse in the Supply Chain Management System, paragraph 8.1, states that accounting officers/authorities must only deviate from inviting competitive bids in cases of emergency and sole supplier status. These deviations do not require the approval of the relevant treasury
approval. Paragraph 8.2 thereof further states that emergency procurement may occur when there is a serious and unexpected situation that poses an immediate risk to health, life, property or environment which call an agency to action and there is insufficient time to invite competitive bids”.

5.6.101 Paragraph 3.4 of the National Treasury Instruction note 5 of 2020/21 provides as follows:

“The emergency procurement provisions provide for accounting officers/authorities to procure the required goods or services by other means, such as price quotations or negotiations in accordance with Treasury Regulation 16 A6.4. The reasons should be recorded and approved by the accounting officer/ authority or his/her delegate.”

5.6.102 Based on the above provision the Department is allowed to deviate from competitive bidding process in an emergency situation and in this instance an unexpected situated of Covid-19 that posed immediate health risk qualified as an emergency.

5.6.103 The Treasury Practice Note make provision in emergency situations for the Department to deviate from normal procurement processes in the procurement of medical equipment’s that are normally above the procurement threshold. The Department is not barred from using other means of procurement such as price quotations or negotiations in such defined emergency situations.

5.6.104 In this instance hospitals were without essential medical equipment that are vital to provision of adequate healthcare. This could have been
avoided if the Department had used other means to procure essential medical equipment’s as provided for by the Treasury regulations.

5.6.105 Paragraph 3 of the National Treasury Note 8 of 2007/2008 issued in terms of section 76 (4) (c) of the PFMA prescribes the threshold values within which accounting officers may procure goods, works and services by means of petty cash, verbal/written price quotations or competitive bids.

5.6.106 The process of procuring goods above R500 000 is legislated and regulated by the executive authority. The Accounting Officer of hospitals are delegated powers to only procure goods and services below R500 000. Any procurement of goods and services above the R500 000 threshold must be done through competitive bidding through the GDoH.

5.6.107 The hospitals are required to submit procurement plans annually and therefore it is the Department’s responsibility to ensure that the procurement needs of the hospitals are met in accordance with the submitted plans, to avoid and not compromise service delivery at the hospitals.

5.6.108 It is established that the CEO’s delegation is limited to R500 000 and as a result, the bulk of the procurement needs are above their threshold. Consequently, Hospitals submit their annual procurement plans to the Department, however there are delays in acquisition and delivery of the bulk procurement to meet the operational needs of the Hospitals.
Infection prevention and control programmes

5.6.109 “Regulation 8(1) of the NHA provides that the health establishment must maintain an environment, which minimises the risk of disease outbreaks, the transmission of infection to users, health care personnel and visitors.

(2) For the purposes of sub-regulation (1), a health establishment must-
(a) ...;
(b) ......;
(c) ......; and
(d) ensure that health care personnel are protected from acquiring infections through the use of personal protective equipment and prophylactic immunisation”.

5.6.110 According to the abovementioned regulation, the hospital has an obligation maintain an environment, which minimises the risk of disease outbreaks, the transmission of infection to users, health care personnel and visitors and to further to minimise the abovementioned risk by ensuring that health care personnel are protected from acquiring infections through the use of personal protective equipment.

5.6.111 In this case, the PPE provided was of poor quality, substandard quality to the extent that some of the PPE was tearing had to be returned to the Depot by the hospital.

Medical equipment

5.6.112 “Regulation 13(1) of the NHA provides that the Health establishments must ensure that the medical equipment is available and functional in compliance with the law.
(2) For the purpose of sub-regulation (1) the health establishment must ensure that equipment is:
(a) licensed where required from the relevant licensing body; and
(b) in accordance with the essential equipment list in all clinical service areas”.

5.6.113 In terms of the regulation, a health establishment must ensure that the medical equipment is available and functional in compliance with the law.

5.6.114 At the time of the visit by the Public Protector, the Hospital management advised that they had sent a procurement request for an MRI, Radiology and Oxygen machines and even though the request were submitted to the province for the procurement of the machines, the hospital still does not have the machines.

Transport management

5.6.115 “Regulation 16(1) of the NHA provides that the health establishment must ensure that vehicles used to transport users and health care personnel are safe and well maintained.

(2) For the purposes of sub-regulation (1), a health establishment must ensure that:
(a) vehicles, owned or used, are licensed and maintained; and
(b) drivers have valid driver’s license and or public transport driving permit”.

5.6.116 In this instance there hospital does not have a dedicated vehicle to collect PPE and as such uses Masakhane laundry truck.
5.6.117 It follows that the GDoH has an obligation to observe and adhere to the above mentioned Regulations of the NHA, which are intended to govern the state of health facilities in the Gauteng Province.

Waste disposal

5.6.118 National Health Act, 61 of 2003 Regulations 31 provides as follows-

“15. (1) All health care risk waste shall be stored in accordance with the provisions in the South African National Standard 10248-1: Management of healthcare waste…;

(2) ……;

(3) The health care risk waste intermediate storage area must, at a minimum, include the following:

(a) Easy access to the area;
(b) Well ventilated, illuminated and easy to clear;
(c) Regular collection to prevent accumulation and nuisance free;
(d) Space for storage of empty containers;
(e) Lockable door, where applicable, to ensure controlled access or under close supervision;
(f) ……;
(g) Easy to clean with smooth surfaces;
(h) Equipped with a spill kit; and
(i) Clear posting of the international biohazardous signage.

(4) The health care risk waste central storage area must, at a minimum, include the following:

(a) ……;
(b) ……;

31 Chapter 7 of the health care waste storage, signed on 06 May 2014 by the Minister of Health Dr A Motsoaledi
(c) Security from authorized entry;

(d) …;

(e) Good ventilation and lighting in terms of National Building Regulations and Standards Act, 1977 (Act No. 103 of 177);

(f) Smooth, impervious floor for easy cleaning with gulleys;

(g) Running water and washing facilities with water to be disposed off in a closed system;

(h) Rodent proof;

(i) Lockable with a permanent power supply;

(j) Protected from direct sunlight;

(k) Adequate refrigeration and freezers to store health care risk waste at the appropriate temperatures and time limits as stipulated in the provisions of the South African National Standard 10248-1…; and

(l) The name of the person in charge of the storage area and contact details displayed on or adjacent to the exterior doors or gates.”

5.6.119 Paragraph 9 (1) of the National Health Act, 61 of 2003 Regulation32 states that health establishment must ensure that waste is handled, stored, and disposed of safely in accordance with the law-

“(2) for the purposes of sub-regulation (1), the health establishment must –

(a) have appropriate waste containers at the point of waste generation; and

(b) implement procedures for the collection, handling, storage and disposal of waste.”

32Norms and standards regulations applicable to different categories of health establishments, signed on 15 January 2018 by the Minister of Health Dr A Motsoaledi
5.6.120 The above regulations clearly shows the manner in which medical waste should be handled, stored and disposed of in a safe manner. The Office of the Public Protector has evidence indicating that the hospitals did not store and dispose of medical waste in accordance with the above provisions.

5.6.121 During the inspection in loco at Charlotte Maxeke Hospital, the medical waste boxes were not stored in secured storage rooms but were outside in the corridors where they are accessible and visible to all. At Charlotte Maxeke the medical waste was stored in a toilet inside the hospital next to the wards and not in a lockable storage room.

5.6.122 Personnel Circular Minute 14 of 2020 with reference number 3/2/1/1 signed on 19 March 2020 by (former Head of the Department of Health) Professor Mkhululi Lukhele titled "management of sick or special leave in lieu of Covid -19 (Corona Virus) implications”-

Clause 3: The Covid -19 cases should be covered by the following leave:

3.1 Normal sick leave if tested positive or display symptoms of illness whilst at work;
3.2 .................;
3.3 .................;
3.4 .................; and
3.5 Special leave if an employee is compulsory quarantined by Employer.

5.6.123 The above circular depicts the types of leave which employees are entitled to should they contract or suspected to have contracted the Covid-19 pandemic. It follows that where an employee was on compulsory quarantine by the employer, they will be entitled to utilize special leave.
Normal sick leave was utilised if an employee tested positive or display symptoms of illness whilst at work.

5.6.124 It was established that the employees at Charlotte Maxeke Hospital who qualified for the special leave as per the circular were not impeded from utilising it as shown by evidence.

5.6.125 Clause 57(4) of the Public Service Regulations 2016 (Regulation) states that -

“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”.

5.6.126 Personnel Circular Minute 23 of 2020 with reference number 3/3/P signed on 06 April 2020 by (former Head of the Department of Health) Professor Mkhululi Lukhele titled “Covid-19 containment measures appointment process” -

Clause 2: Under discussion on 19 March 2020 the Human Resource Management, Acting Deputy Director General announced a management decision to deviate from the normal recruitment and selection processes in response to the spread of Covid-19:

“To implement the appointment process of additional employees to respond to the COVID-19 management took a decision based on the following measures:

- Head of Health Facilities to deviate by not advertising the required positions related to the COVID-19 appointments.
- Shortlisting for the positions not to be conducted.
- Interviewing not to be held.

Management also took a decision to appoint additional employees for the COVID outbreak by following the processes of:
- Walk in application for health professionals.
- Appointment or administration support staff from the runner-up previously received applications.
- Appointments to be processed over and above the appointed existing permanent staff. The additional employees’ appointment in response to the COVID-19 to be appointed on fix term contract for a period of 12 months (twelve months).
- All employees appointed in response to the COVID-19 outbreak to be terminated after the period of 12 months (twelve months).
- Human Resource appointment function for the COVID-19 response to be decentralized to all Health Facilities, including District Health Services.

This circular therefore serves as a directive to that should guide the appointment of additional staff during the Covid-19 lockdown.

For any clarity please contact Human Resource Administration at Central Office”.

M.LUKHELE
HEAD OF DEPARTMENT
DATE: 2020/04/06

In terms of the above 57 (4) read with Circular Minute 23 of 2020, the circular allows for the executive authority to employ persons additional to the establishment and further dispense with normal recruitment processes where a temporary increase in work occurs or is necessary for any other reason to temporarily increase the staff of the department.
In this instance, it was of paramount importance for the Department to issue a directive for hospitals to employ additional temporary Covid-19 staff for a period of twelve (12) months by deviating and not following the normal recruitment and selection process. The additional Covid-19 temporary staff were appointed to assist the hospitals in the fight of the scourge of the Covid-19 pandemic, especially in light of the staff members that tested positive for the pandemic and left a void whilst recuperating from Covid-19.

The undue delay to appoint Clinical staff/employee at Charlotte Maxeke caused service delivery failures.

Circular letter of 2020 signed on 21 April 2020 by (former Head of the Department of Health) Professor Mkhululi Lukhele titled “Mass screening, testing, medical surveillance and influenza vaccination of all Gauteng Department of Health employees ”provides as follows-

1. The Gauteng Covid-19 Provincial Command Council resolved to have all health care workers and support staff to be screened, tested and be subjected to medical surveillance programme as interventions for the current phase of the Covid-19 epidemic in South Africa.

2. The specific interventions to be conducted among all Gauteng Department of Health employees from now on until the 30 May 2020 are as follows:

   - Daily symptomatic screening of all employees
   - Baseline Polymerised Chain Reaction (PCR) test for each of the GDoH employees

Circular letter signed on 21 April 2020 was not numbered.
Medical Surveillance of GDoH employees using the attached medical surveillance tool (Appendix A)

Vaccination of all GDoH employees

3. The testing and medical surveillance will be conducted in the GDoH OHS and Wellness Centers indicated in the attached list (Appendix B) and all GDoH facilities.”

5.6.131 In order to ensure that employees are both risk free and suitable for the work that they are required to perform, the Gauteng Covid-19 Provincial Command Council issued a directive to the Department, wherein health care workers and support staff for Covid-19 were required to undergo testing at designated GDoH OHS and Wellness Centers.

5.6.132 The circular was clear in terms of advising staff to undergo Covid-19 testing at specified OHS Centres. Despite Staff testing at the approved centres, they were nonetheless medically billed through their respective medical aids by the Charlotte Maxeke hospital for the testing and medical surveillance even though the examinations were supposed to be free.

5.6.133 The office of the Public Protector is in possession of names of people whose medical bills reversed by NHLS.

Conclusions

5.6.134 It can be concluded from observations made during the on-site visits that were undertaken by the PPSA investigation team as recorded above and the submissions made by hospital management and the GDOH, that the GDoH has failed to ensure appropriate conditions for the enjoyment and delivery of health care services for the community of Gauteng.
5.6.135 All recorded systemic deficiencies such as poor quality PPE and delayed distribution and delivery of PPE, staff shortages, delay to procure medical equipment, lack of vehicles to collect PPE have a negative impact on the level of care that is provided to patients at the hospital.

5.6.136 The GDoH failed to provide medical equipment, human resources, secure and dispose of medical waste and other resources like PPE which are all necessary to sustain an efficient and effective health facility.

5.6.137 It was established that there is no dedicated ward for psychiatric patients at Charlotte Maxeke.

5.6.138 It can further be deduced from interactions with staff, union representatives and with hospital management and the GDoH, that the GDoH generally failed to adequately administer Charlotte Maxeke Academic hospital in the manner envisaged by the Constitution and the NHA, which would promote access to quality healthcare and enable the staff to provide effective access to the healthcare services to which the community is entitled to.

6. FINDINGS

Having regard to the evidence, and the regulatory framework setting the standard that should have been upheld by the Hospitals and the Department and the impact on the complainant, the Public Protector makes the following findings against the above Hospitals and the Department:
6.1 Regarding whether the allegations of administrative deficiencies by the GDoH led to systemic challenges in the delivery of primary health care services at Jubilee hospital and if yes, whether such failure amounts to improper conduct and maladministration:

6.1.1 The allegation that administrative deficiencies at the GDoH led to systemic challenges in the delivery of primary health care services at Jubilee hospital, is substantiated.

6.1.2 The PPSA investigation found that the allegation by Dr Modise that he was not consulted with regards to the construction of the Alternative Building Technology (ABT), is unsubstantiated. As the Covid-19 readiness draft infrastructure assessment report by the Gauteng Department of Health, indicates that a needs analysis was conducted at Jubilee Hospital on 06 April 2020 and Dr Modise was present as CEO of Jubilee Hospital. Although the CEO was consulted, the construction of the ABT did not necessarily satisfy the needs of the hospital in respect of adding or enhancing the ICU capacity and theatre equipment.

6.1.3 The PPSA investigation found that the allegation that the kitchen is small and not conducive to curb the spread of the virus, is substantiated, however it was established that there was not much that the hospital could have done as this is a structural issue. The hospital management communicated with staff regularly by way of memoranda and Covid-19 updates advising them to self-regulate by adhering to social distancing, to never sit together to have a meal, to always wash their hands with soap and water in order to mitigate the risk of infection.

6.1.4 Evidence obtained during the investigation undertaken by the Public Protector team revealed systemic deficiencies such as delays in the distribution of PPE to the hospital, there was also a shortage of certain items of PPE i.e. N95 masks. The evidence also indicates that there were
delays in the testing turnaround times but those improved over time as shown in evidence.

6.1.5 Personnel Circular 14 of 2020 permitted staff members who contracted Covid-19 to be granted special leave upon application and the hospital could not provide the evidence that they granted such applications to staff members who applied to counter the allegations by Organised Labour.

6.1.6 In terms of the “COVID-19 Disease: Infection Prevention and Control Guidelines” version 2 dated 21st May 2020, coveralls or gowns may be re-used as there is an acute shortage of PPE during the COVID-19 outbreak. As a result coveralls or gowns may re-used if they are not visibly contaminated or when providing care to same patient.

6.1.7 The allegation that Jubilee Hospital did not have a dedicated vehicle to collect PPE’s at the warehouse, is unsubstantiated. It was established that the hospital had sufficient fleet vehicles and the hospital had an option of requesting additional fleet vehicles from GDoH if required.

6.1.8 It is established that there were challenges with centralisation of procurement of PPE as shown by the delays in the supply and delivery of PPE.

6.1.9 All donations received by the hospital are required to be registered and declared with the National Treasury. The evidence at the PPSA’s possession indicates that the hospital did not declare such donations as required by the treasury regulations.

6.1.10 Based on the evidence in the Public Protector’s possession and the submissions made by the hospital management, the Public Protector finds that the GDoH experienced systemic challenges which impacted on the health care services.
6.1.11 Failure by GDoH to comply with standard set by law amounts to contravention of section 195 (1)(b) (e) (h) and 237 of the Constitution, section 27 (1) (a) and (2) of the Constitution, section 25 (2)(n)(p), Regulation 8(1)(2)(d) of the National Health Act, Regulation 13(1)(2)(a)(b) of the National Health Act, Regulation 16(1)(2)(a)(b) of the National Health Act, Regulation 19(1)(2)(a) of the National Health Act, National Treasury Regulation, Paragraph 21.2 of 31 May 2002, Personnel Circular 14 of 2020.

6.1.12 The conduct of the GDoH accordingly constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4) (a) (i) of the Public Protector Act.

6.2 Regarding whether the allegations of administrative deficiencies by the GDoH led to systemic challenges in the delivery of primary health care services at Dr George Mukhari Academic Hospital and if yes, whether such failure amounts to improper conduct and maladministration:

6.2.1 The allegation that administrative deficiencies at the GDoH led to systemic challenges in the delivery of primary health care services at Dr George Mukhari Academic Hospital, is substantiated.

6.2.2 Evidence obtained during the investigation undertaken by the Public Protector team revealed systemic deficiencies such the failure to remunerate contracted Covid-19 health care workers and the late creation of positions which was acknowledged by Dr Lebethe as shown by evidence.
6.2.3 There were delays in the procurement of medical equipment for Dr George Mukhari Academic Hospital, which was requested more than three (3) years ago.

6.2.4 It was established that the delays in the procurement of medical equipment was as a result of limited delegation to the CEO, as well as centralization of procurement and the ineffective and efficient SCM unit with GDoH.

6.2.5 Evidence in the Public Protectors possession revealed that systemic deficiencies such as the failure by the hospital to secure and dispose of medical waste in terms of the applicable provisions of the National Health Act is substantiated and hazardous medical waste can pose a threat to people’s health.

6.2.6 There was lack of contract management in respect of the waste disposal which likely resulted in the service provider benefiting for four(4) years without a competitive process being undertaken,

6.2.7 The failure to convene regular risk management meetings, which would assist more so during a pandemic in order to prepare for and mitigate emerging risks.

6.2.8 Based on the evidence in the Public Protector’s possession and the submissions made by the hospital management, the Public Protector finds that the GDoH experienced systemic challenges which impacted on the health care services.

6.2.9 Failure by GDoH to comply with standard set by law amounts to contravention of section 195(1), (e) and (h) of the Constitution, section 237 of the Constitution, section 27(1) (a) and (2) of the Constitution, section 25 (2) (k), (n) and (p) NHA; Section 38 (1) (a) (i) of PFMA; Section 38(1) of BCEA, Regulation 13(1)(2)(a)(b) of the National Health Act ; Regulation 15(1)(3)(a)(b)(c ) (d) (e)( g)(h)(i)(4)(c) (f)(g)(h)(i)(j)(k)(l) and

6.2.10 The conduct of the GDoH accordingly constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4) (a) (i) of the Public Protector Act.

6.3 Regarding whether the allegations of administrative deficiencies by the GDoH led to systemic challenges in the delivery of primary health care services at Steve Biko Academic Hospital and if yes, whether such failure amounts to improper conduct and maladministration:

6.3.1 The allegation that administrative deficiencies at the GDoH led to systemic challenges in the delivery of primary health care services at Steve Biko Academic Hospital, is substantiated.

6.3.2 Evidence in the Public Protector’s possession in respect of the condition assessment report from DID confirmed that the roof does leak but that DID conducts routine maintenance.

6.3.3 Evidence in the Public Protector’s possession revealed systemic deficiencies such as the failure to convene risk management meetings during the first (1) quarter of the 2020/21 financial year.

6.3.4 Further that the risk management committee was not comprised of both management and external members with the necessary blend of skills, competencies and attributes, neither was the Chairperson of the risk committee an external person as recommended by Chapter 13(24)(3) of the Public Sector Management Framework Act.

6.3.5 Evidence at Public Protector’s disposal affirms the allegation that there is ineffective communication of the risk strategy to all officials in the employ
of the hospital and Dr Mathebula, CEO also conceded that the communication lines could have been more effective.

6.3.6 There is no evidence in the Public Protector’s possession that there is an uneven provision of inappropriate PPE, as the distribution of the PPE is in line with its purpose.

6.3.7 The re-use and redistribution of cleaned and sanitised PPE is in compliance with version 2 of the Covid-19 disease: infection, prevention and control guidelines. Therefore the office could not find any wrongdoing with the reuse of the PPE by the hospital.

6.3.8 The hospital complied with the registration and declarations of donations in the donations register.

6.3.9 Based on the evidence in the Public Protector’s possession and the submissions made by the hospital management, the Public Protector finds that the GDoH experienced systemic challenges which impacted on the health care services.

6.3.10 Failure by GDoH to comply with standard set by law amounts to contravention of Section 38 (a) (i) of PFMA; section 6(2)(a) of PFMA, Paragraph 3.2.1 of the Treasury Regulations, Chapter 13(24)(2) of the Public Sector Framework.

6.3.11 The conduct of the GDoH accordingly constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4) (a) (i) of the Public Protector Act.

6.4 **Regarding whether the allegations of administrative deficiencies by the GDoH led to systemic challenges in the delivery of primary health care services at Chris Hani Baragwanath Academic Hospital and if**
yes, whether such failure amounts to improper conduct and maladministration:

6.4.1 The allegation that administrative deficiencies at the GDoH led to systemic challenges in the delivery of primary health care services at Chris Hani Baragwanath Academic Hospital, is substantiated.

6.4.2 Evidence in the Public Protector’s possession revealed systemic deficiencies such as broken taps in the kitchen and the ablution facilities in ward 59, however it has since been repaired,

6.4.3 There was an undue delay to fill vacant positions as a result of the late creation of positions,

6.4.4 The porters were unavailable at their workstations in the hospital to assist with the movement of patients to various wards within the hospital, however additional porters have been appointed.

6.4.5 Baragwanath hospital has a human resources capacity constraint challenge and as a result it cannot handle the influx of patients at the hospital.

6.4.6 Delays in the distribution of PPE i.e. stock of the non-sterile gowns, albeit temporary.

6.4.7 In terms of the “COVID-19 Disease: Infection Prevention and Control Guidelines” version 2 dated 21st May 2020, permits the re-use and redistribution of cleaned and sanitised. Therefore the Public Protector did not find wrongdoing with the reuse of the PPE by the hospital.

6.4.8 Contrary to the allegation that critical or emergency surgeries were deferred, it was established that after the first wave the surgical services
were fully restored. The PP is in possession of a current theatre list which indicates that surgeries are still being conducted.

6.4.9 Elective surgeries were deferred for patient’s safety as they are not life threatening and the Public Protector found the explanation to be reasonable under the circumstances.

6.4.10 There was no dedicated ward or specialised ward to house Covid-19 psychiatric patients, which meant that in the event that any psychiatric patient tested positive, there would be no ward to accommodate them.

6.4.11 It was established that there were challenges with the centralisation of procurement of PPE as shown by the delays in the supply and delivery of PPE.

6.4.12 Based on the evidence in the Public Protector’s possession and the submissions made by the hospital management, the Public Protector finds that the GDoH experienced systemic challenges which impacted on the health care services.

6.4.13 Failure by GDoH to comply with standard set by law amounts to contravention section 195 (1)(b), (e), (h) of the Constitution, section 27(1)(a) and (2) of the Constitution, Section 237 of the Constitution, section 25 (2)(k)(n)(p) National Health Act, section 57 (4) of the Public Service Regulation and personnel circular 23 of 2020 and Regulation 8(1)(2)(b)(d) of the National Health Act, Regulation 16(1)(2)(a)(b) of the National Health Act , Regulation 19(1)(2)(a)(j) of the National Health Act.

6.4.14 The conduct of the GDoH accordingly constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4) (a) (i) of the Public Protector Act.
6.5 Regarding whether the allegations of administrative deficiencies by the GDoH led to systemic challenges in the delivery of primary health care services at Lillian Ngoyi Community Health Centre and if yes, whether such failure amounts to improper conduct and maladministration:

6.5.1 The allegation that administrative deficiencies at GDoH led to systemic challenges in the delivery of primary health care services at Lillian Ngoyi Community Health Centre, is substantiated.

6.5.2 Evidence obtained revealed systemic deficiencies at Lillian Ngoyi Community Health Centre such as the lack of hot water in the labour ward, and

6.5.3 Broken geysers and heaters were found, however new geysers and heaters have since been installed at the facility after the intervention by the Public Protector in August 2020.

6.5.4 The allegations that the ICT infrastructure, such telephone lines were not working is substantiated, however Lillian Ngoyi remedied the above on 17 August 2020 when new telephone lines were installed and it is operational as of 28 October 2020.

6.5.5 The cell phone which was loaded with R400 airtime, is now used as a backup only, as the landlines are now functional.

6.5.6 The photocopiers which were also not functional have since been replaced as of 10 December 2020.

6.5.7 Evidence and observations made during the inspection in loco by the Public Protector revealed systemic deficiencies in that there is evidence substantiating the undue delay to fill various posts including the Facility manager’s post at Lillian Ngoyi hospital. The position of Facility Manager
was since advertised, but a suitable candidate could not be found. As a result, the post has since been re-advertised.

6.5.8 Mr Malotana and Mrs Morewane conceded that there was dirty linen on the beds, but since the inspection a Supervisor has been assigned to oversee and manage linen.

6.5.9 It was further observed during on-site inspection undertaken by PPSA investigation team that patients waited for over three (3) hours to be attended to by the Doctors, but after the on-site inspection the Chief Medical Officer, Dr Ruiz is monitoring the Doctors as per allocation in order to avoid patients having to wait for long periods before they are attended to.

6.5.10 The evidence in the Public Protector’s possession indicates that there was lack of nutritional food available for patients who stay overnight at Lillian Ngoyi Hospital. However subsequent to the intervention by the Public Protector, there is now provisioning of food and cooked frozen meals are served to the patients who are admitted to the facility overnight.

6.5.11 Mr Malotana and Mrs Morewane conceded that there is no Risk Management Committee and Occupational Health and Safety Committee at Lillian Ngoyi Hospital.

6.5.12 There is no evidence that the donations received by the Community Centre hospital from ANOVA were registered and declared in line with National Treasury.

6.5.13 Based on the evidence in the Public Protector’s possession and the submissions made by the hospital management, the Public Protector finds that the GDoH experienced systemic challenges which impacted on the health care services.
6.5.14 Failure by GDoH to comply with standard set by law amounts to contravention 195(1) (b), (e) and (h) of the Constitution, section 237 of the Constitution, section 27(1) (a) and (2) of the Constitution, Regulation 8(1)(2)(c ) (d) of the National Health Act, 13(1)(2)(a)(b) of the National Health Act, Regulation 16(1)(2)(a)(b) of the National Health Act, Regulation 22 of the National Health Act, paragraph 21.2 of the National Treasury 21 May 2020.

6.5.15 The conduct of the GDoH accordingly constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4) (a) (i) of the Public Protector Act.

6.6 Regarding whether the allegations of administrative deficiencies by the GDoH led to systemic challenges in the delivery of primary health care services at Charlotte Maxeke Johannesburg Academic Hospital and if yes, whether such failure amounts to improper conduct and maladministration:

6.6.1 The allegation that administrative deficiencies at GDoH led to systemic challenges in the delivery of primary health care services at Charlotte Maxeke Johannesburg Academic Hospital, is substantiated.

6.6.2 Evidence and observations made during the on-site inspection by the Public Protector revealed systemic deficiencies such as the delay in the creation of positions and filling of positions.

6.6.3 There were delays in the distribution of PPE and some of the PPE was of poor quality which had to be returned to the depot, as it was not as per the specifications. Mr Malotana conceded that initially there were delays with the supply and distribution of PPE, but those were corrected and although some of the PPE was of inferior quality, not all PPE procured was sub-standard.
6.6.4 There was a lack of medical soap or scrub and the staff had to use green soap. This was not disputed.

6.6.5 There were delays in the procurement and maintenance of medical equipment despite requests being made to the GDoH.

6.6.6 There is no dedicated ward to accommodate psychiatric patients at Charlotte Maxeke, as it was observed during the site visit that the psychiatric patients were accommodated in an open space.

6.6.7 It was established that the delays in the procurement of medical equipment was as a result of limited delegation to the CEO, as well as centralization of procurement and the ineffective and efficient SCM unit with GDoH.

6.6.8 There were delays in the storage, collection and disposal of medical waste at the hospital as a result of poor performance by the service provider.

6.6.9 There was lack of contract management in respect of the waste disposal which likely resulted in the service provider benefiting for four (4) years without a competitive process being undertaken.

6.6.10 The linen was not checked for sharp objects before being sent to the laundry room and this has the potential to cause harm the staff in the laundry room.

6.6.11 Contrary to the allegation that staff were not allowed to apply for special leave, it was evident that staff members applied for special leave and the said applications were processed as shown in evidence obtained.

6.6.12 It is established that there were challenges with centralisation of procurement of PPE as shown by the delays in the supply and delivery of PPE.

6.6.13 Based on the evidence in the Public Protector’s possession and the submissions made by the hospital management, the Public Protector finds
that the GDoH experienced systemic challenges which impacted on the health care services.

6.6.14 Failure by GDoH to comply with standard set by law amounts to contravention of section 195(1) (b), (e) and (h) of the Constitution, section 237 of the Constitution, section 27 (1) (a) and (2) of the Constitution, Section 25(2)(k)(n)(p) of the National Health Act, Clause 57(4) of PSR read with personnel circular 23 of 2020, Regulation 8(1)(2)(d) of the National Health Act 61 of 2003, Regulation 13(1)(2)(a)(b) of the National Health Act 61 of 2003, Regulation 15(1)(a)(b)(c) (d) (e) (g)(h)(i)(3)(4)(c)(e) (f)(g)(h)(i)(j)(k)(l) and Paragraph 9(1)(2)(a)(b) of the NHA 61 of 2003.

6.6.15 The conduct of the GDoH accordingly constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4) (a) (i) of the Public Protector Act.

7. REMEDIAL ACTION

7.1 The Public Protector notes and acknowledges the challenges and constraints faced by the GDoH, as well as the context within which health services are delivered in the Gauteng Province.

7.2 The appropriate remedial action that I am taking in pursuit of section 182(1)(c) of the Constitution is the following:

7.3 The Acting HoD of the Gauteng Department of Health must take appropriate steps to ensure that within 60 days of issuing this report:

7.3.1 The supply chain management unit is reassessed to determine if it has the capacity and capability to respond to the procurement needs of the
Hospitals within the Province. Upon completing the diagnostics, implement appropriate measures that will resolve the challenges within the system.

7.3.2 Undertake a diagnostics exercise to determine what is causing the delays within the supply chain management process. With regards to procuring, maintaining and delivery medical equipment to the Hospitals within the Province as per the demand and maintenance plan. Upon completing the diagnostics, implement appropriate measures that will resolve the challenges within the system.

7.3.3 Implement quality assurance measures or mechanism to guard against the provisioning of substandard items.

7.3.4 GDoH in collaboration with Department of e-Gov must ensure that they prevent delays in the late creation of positions at the different hospitals especially in the midst of a pandemic.

7.3.5 Ensure that an independent review is conducted of the Lillian Ngoyi Risk Management function and provide advice on the applicable standards and risk management legislative framework.

7.3.6 Draft a monitoring tool that will ensure that staff receive in-service training on infection prevention and control every two (2) years.

7.3.7 Draft a monitoring tool that will ensure health risk care waste is managed appropriately.

7.3.8 Consider reviewing the delegation of authority in respect of respective CEO’s and implementation of the decentralised SCM policy as envisaged.

7.3.9 Submits an implementation report in respect of the remedial action.
7.4 In respect of Jubilee Hospital, Dr Sibongile Zungu Acting Head of the GDoH to take appropriate steps to ensure that within 30 working days:

7.4.1 That there is compliance with testing turnaround times of specimens as prescribed in the Ideal Clinic manual version 19 on page 286.

7.4.2 In the event that the hospital is allocated high volume of goods and the dedicated vehicle does not have the necessary capacity, provide additional fleet vehicles from GDoH.

7.4.3 Consider having an ABT structure to cater for the staff members during their lunch breaks for the duration of the Covid-19 pandemic.

7.4.4 Within 2022/23 MTEF the GDoH and where appropriate in consultation with DID as well as Gauteng Provincial Treasury (GPT) conducts a full conditional assessment of the hospital buildings in order to develop a cost based strategy for planning and budget allocation over the MTEF for refurbishment of the facility, subject to budget availability;

7.5 In respect of Dr George Mukhari Academic Hospital, Dr Sibongile Zungu Acting Head of the GDoH to take appropriate steps to ensure that within 30 working days:

7.5.1 Within 2022/23MTEF the GDoH and where appropriate in consultation with DID as well as Gauteng Provincial Treasury (GPT) that there is a designated medical waste storage space which is duly ventilated, has a lockable door to ensure controlled access, has clearly marked bio hazardous signage in that space, not exposed to direct sunlight and has a specific person in charge of the storage space with available contact details.
7.5.2 Within 2022/23 MTEF the GDoH and where appropriate in consultation with DID as well as Gauteng Provincial Treasury (GPT) conducts a full conditional assessment of the hospital buildings in order to develop a cost based strategy for planning and budget allocation over the MTEF for refurbishment of the facility, subject to budget availability;

7.5.3 Ensure that there is regular collection of bio hazardous waste with an adjustable roster, depending on the generated waste, that has clear timelines.

7.5.4 Consider taking disciplinary steps against those officials responsible for the late payment of contract health workers as well as the appointment of staff before positions were created.

7.5.5 Ensure that the hospital complies with Section 38(1) (a) (i) of PFMA and convenes regular risk management meetings, more so during a pandemic in order to prepare for and mitigate emerging risks.

7.6 **In respect of Steve Biko Academic Hospital, Dr Sibongile Zungu Acting Head of the GDoH to take appropriate steps to ensure that within 30 working days**

7.6.1 Within 2022/23 MTEF the GDoH and where appropriate in consultation with DID as well as Gauteng Provincial Treasury (GPT) implement the recommendations of the full conditional assessment of the hospital in respect of the roof repairs in order to develop a cost based strategy for planning and budget allocation over the MTEF for refurbishment of the facility, subject to budget availability;

7.6.2 That the hospital complies with Section 38(1) (a) (i) of PFMA and convenes regular risk management meetings, more so during a pandemic in order to prepare for and mitigate emerging risks.
7.6.3 Consider formulating a Risk Management committee that is comprised of both management and external members with the necessary blend of skills, competencies and attributes in order to ensure that is efficient and effective risk management and internal control as envisaged by the PFMA. It is advised that the Chairperson of the risk management committee is an external person as recommended by Chapter 13(24) (3) of the Public Sector Management Framework to ensure independence and objectivity.

7.7 In respect of Baragwanath Hospital, Dr Sibongile Zungu Acting Head of the GDoH to take appropriate steps to ensure that within 30 working days

7.7.1 For the duration of the Covid-19 pandemic, the ambulances are disinfected after the delivery of every patient by way of a fogging machine or other fast and effective disinfecting methods. It is considered crucial that the hospital continue to clean ambulances after every twelve hour shift.

7.7.2 Within 2022/23 MTEF the GDoH and where appropriate in consultation with DID as well as Gauteng Provincial Treasury (GPT) consider identifying a dedicated ward for Covid-19 positive psychiatric patients in order to develop a cost based strategy for planning and budget allocation over the MTEF for accommodation of psychiatric patients at the facility, subject to budget availability;

7.7.3 Ensure there are sufficient porters available at the hospital to assist in the movement of patients to various wards within the hospital and refrain from allowing untrained family members to escort patients.

7.7.4 Ensure that the human resource capacity challenges at the hospital is resolved amicably and in line with the Ideal Hospital Framework, Ideal Hospital Assessment Tool, Ideal Clinic Framework and Ideal Clinic Manual.
7.7.5 Conduct a work-study investigation which will assist in identification and resolution of challenges to human resources capacity at Baragwanath Hospital.

7.8 In respect of Lillian Ngoyi Community Centre, Dr Sibongile Zungu Acting Head of the GDoH to take appropriate steps to ensure that within 30 working days

7.8.1 That there are enough doctors on duty to provide medical care to the patients and have a dedicated roster to monitor adherence to the facility's prescribed waiting times in line with the Ideal Clinic Framework Version 19 of April 2020.

7.8.2 Ensure that a Risk Management committee is established and a risk assessment of the Lillian Ngoyi Community Health Centre is conducted with immediate effect. Following which regular risk assessments have to be conducted.

7.8.3 Ensure that all gifts, donations or sponsorship received during the course of the financial year must be disclosed as a note in the annual financial statements of Lillian Ngoyi Community Health Centre.

7.8.4 Ensure that a suitable candidate for the position of Facility Manager is appointed.

7.9 In respect of Charlotte Maxeke Academic Hospital, Dr Sibongile Zungu Acting Head of the GDoH to take appropriate steps to ensure that within 30 working days:

7.9.1 That all staff check and verify that laundry or linen from the wards do not have sharp objects such as surgical instruments that might be
contaminated before it is submitted to the laundry section, thereby putting laundry staff at risk of infections or harm.

7.9.2 Ensure that there is a designated medical waste storage space which is duly ventilated, has a lockable door to ensure controlled access, has clearly marked bio hazardous signage in that space, not exposed to direct sunlight and has a specific person in charge of the storage space with available contact details.

7.9.3 Ensure that there is regular collection of bio hazardous waste with an adjustable roster, depending on the generated waste, that has clear timelines.

7.9.4 Ensure that there is dedicated vehicle to collect goods such as PPE and in the event that the hospital is allocated high volumes additional fleet may be requested from GDoH.

7.9.5 Allocate vehicle/s to Charlotte Maxeke Hospitals to address its needs and transport challenges.

7.10 The HoD of the Gauteng Department of Infrastructure Development must take appropriate steps to ensure that:

7.10.1 Within sixty (60) working days of the date of this report provide a report of the maintenance plan of the Hospitals mentioned in this report detailing how often they have been maintained and what has been repaired to date.

7.10.2 Within sixty (60) working days of the date of this report provide a report for the planned construction, upgrade and maintenance of health facilities mentioned in this report and when they will be implemented.
7.10.3 Within thirty (30) working days of the issuing of this report indicate which projects the health facilities infrastructure management unit is working on that relate to the health facilities.

7.11 In respect of Jubilee Hospital, Dr Sibongile Zungu Acting Head of the GDoH to take appropriate steps to ensure that within 60 working days:

7.11.1 That there is compliance with testing turnaround times of specimen as prescribed in the Ideal Clinic manual version 19 on page 286.

7.11.2 In the event that the hospital is allocated high volume of goods and the dedicated vehicle does not have the necessary capacity, request additional fleet vehicles from GDoH.

7.11.3 Consider having an ABT structure to cater for the staff members during their lunch breaks for the duration of the Covid-19 pandemic.

7.12 In respect of Dr George Mukhari Academic Hospital, Dr Sibongile Zungu Acting Head of the GDoH to take appropriate steps to ensure that within 30 working days:

7.12.1 That there is a designated medical waste storage space which is duly ventilated, has a lockable door to ensure controlled access, has clearly marked bio hazardous signage in that space, not exposed to direct sunlight and has a specific person in charge of the storage space with available contact details.

7.12.2 Ensure that there is regular collection of bio hazardous waste with an adjustable roster, depending on the generated waste, that has clear timelines.
7.12.3 Consider taking disciplinary steps against those officials responsible for the late payment of contract health workers as well as the appointment of staff before positions were created.

7.12.4 Ensure that the hospital complies with Section 38(1) (a) (i) of PFMA and convenes regular risk management meetings, more so during a pandemic in order to prepare for and mitigate emerging risks.

7.13 In respect of Steve Biko Academic Hospital, Dr Sibongile Zungu Acting Head of the GDoH to take appropriate steps to ensure that within 30 working days:

7.13.1 That the hospital complies with Section 38(1) (a) (i) of PFMA and convenes regular risk management meetings, more so during a pandemic in order to prepare for and mitigate emerging risks.

7.13.2 Consider formulating a Risk management committee that is comprised of both management and external members with the necessary blend of skills, competencies and attributes in order to ensure that is efficient and effective risk management and internal control as envisaged by the PFMA. It is advised that the Chairperson of the risk management committee is an external person as recommended by Chapter 13(24) (3) of the Public Sector Management Framework to ensure independence and objectivity.

7.14 In respect of Baragwanath Hospital, Dr Sibongile Zungu Acting Head of the GDoH to take appropriate steps to ensure that within 30 working days:

7.14.1 For the duration of the Covid-19 pandemic, the ambulances are disinfected after the delivery of every patient by way of a fogging machine or other fast and effective disinfecting methods. It is considered crucial that the hospital continue to clean ambulances after every twelve hour shift.

7.14.3 Ensure there are sufficient porters available at the hospital to assist in the movement of patients to various wards within the hospital and refrain from allowing untrained family members to escort patients.

7.14.4 Ensure that the human resource capacity challenges at the hospital is resolved amicably and in line with the Ideal Hospital Framework, Ideal Hospital Assessment Tool, Ideal Clinic Framework and Ideal Clinic Manual.

7.15 In respect of Lillian Ngoyi Community Centre, Dr Sibongile Zungu Acting Head of the GDoH to take appropriate steps to ensure that within 30 working days:

7.15.1 That there are enough doctors on duty to provide medical care to the patients and have a dedicated roster to monitor adherence to the facility's prescribed waiting times in line with the Ideal Clinic Framework Version 19 of April 2020.

7.15.2 Ensure that a Risk management committee is established and a risk assessment of the Lillian Ngoyi Community Health Centre is conducted with immediate effect. Following which regular risk assessments have to be conducted.

7.15.3 Ensure that all gifts, donations or sponsorship received during the course of the financial year must be disclosed as a note in the annual financial statements of Lillian Ngoyi Community Health Centre.

7.15.4 Ensure that a suitable candidate for the position of Facility Manager is appointed.
7.16 In respect of Charlotte Maxeke Academic Hospital, Dr Sibongile Zungu Acting Head of the GDoH to take appropriate steps to ensure that within 30 working days:

7.16.1 That all staff check and verify that laundry or linen from the wards do not have sharp objects such as surgical instruments that might be contaminated before it is submitted to the laundry section thereby putting laundry staff at risk of infections or harm.

7.16.2 Ensure that there is a designated medical waste storage space which is duly ventilated, has a lockable door to ensure controlled access, has clearly marked bio hazardous signage in that space, not exposed to direct sunlight and has a specific person in charge of the storage space with available contact details.

7.16.3 Ensure that there is regular collection of bio hazardous waste with an adjustable roster, depending on the generated waste, that has clear timelines.

7.16.4 Ensure that there is dedicated vehicle to collect goods such as PPE and in the event that the hospital is allocated high volumes additional fleet may be requested from GDoH.

7.16.5 Within 2022/23 MTEF the GDoH and where appropriate in consultation with DID as well as Gauteng Provincial Treasury (GPT) consider identifying a dedicated ward for psychiatric patients in order to develop a cost based strategy for planning and budget allocation over the MTEF for accommodation of psychiatric patients at the facility, subject to budget availability;
In addition to the above, Dr Sibongile Zungu, Acting Head of the GDoH to ensure that within 30 working days:

7.17.1 The Supply chain management unit of the Department is reassessed to determine if it has the capacity and capability to respond to the procurement needs of the Hospitals within the Province. Upon completing the diagnostics, implement appropriate measures that will resolve the challenges within the system.

7.17.2 Undertake a diagnostics exercise to determine what is causing the delays within the supply chain management process. With regards to procuring, maintaining and delivery medical equipment to the Hospitals within the Province as per the demand and maintenance plan. Upon completing the diagnostics, implement appropriate measures that will resolve the challenges within the system.

7.17.3 Implement quality assurance measures or mechanism to guard against the provisioning of substandard items.

7.17.4 GDoH in collaboration with Department of e-Government must ensure that they prevent delays in the late creation of positions at the different hospitals especially in the midst of a pandemic.

7.17.5 Devise a plan on how it will resolve the Human resources capacity challenges at Baragwanath Hospital and conduct a work-study investigation which will assist in identification and resolution of challenges to human resources capacity.

7.17.6 Ensure that an independent review is conducted of Lillian Ngoyi Hospital’s Risk management function and provide advice on the applicable standards and risk management legislative framework.
8. **MONITORING**

8.1 The Acting HoD of the GDoH must submit an Implementation Plan to the office within thirty (30) working days from the date of this report indicating how the remedial action referred to in paragraph 7 above will be implemented.

The Office of the Public Protector wishes to bring to your attention that in line with the Constitutional Court Judgement in the matter of Economic Freedom Fighters v Speaker of the national Assembly and other; Democratic Alliance v Speaker of the national Assembly and others [2016]ZACC 11, and in order to ensure the effectiveness of the Office of the Public Protector, the remedial action prescribed in this Report are legally binding unless an *Interim Interdict* or *Court Order* is obtained directing otherwise.

ADV. BUSISIWE MKHWEBANE  
PUBLIC PROTECTOR OF THE  
REPUBLIC OF SOUTH AFRICA  
DATE: 01/10/2021

*Assisted by Gauteng Provincial Office*