

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF
THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND
SECTION 8(1) OF THE PUBLIC PROTECTOR ACT, 1994**



**PUBLIC PROTECTOR
SOUTH AFRICA**

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**INVESTIGATION INTO ALLEGATIONS OF UNDUE DELAY AND
MALADMINISTRATION BY THE WHOLESALE AND RETAIL SECTOR
EDUCATION AND TRAINING AUTHORITY AND THE DEPARTMENT OF
SMALL BUSINESS DEVELOPMENT IN DELIVERING INFRASTRUCTURE AND
EQUIPMENT PERTAINING TO THE INFORMAL TRADERS *UPLIFTMENT*
PROJECT IN THE WESTERN CAPE**

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LIST OF ACCRONYMS

| ACCRONYMS/ABBREVIATIONS | DESCRIPTION |
|--------------------------------|---|
| Complainant | Ms Zelda Baxter |
| Constitution | The Constitution of the Republic of South Africa, 1996 |
| DTIC | Department of Trade Industry and Competition, formerly the Department of Trade and Industry |
| IMEDP | Informal and Micro Enterprise Development Programme |
| MoU | Memorandum of Understanding |
| Public Protector Act | Public Protector Act, 1994 |
| The Report | The Report in terms of section 8(1) of the Public Protector Act |
| The Public Protector | Public Protector of the Republic of South Africa |
| W&RSETA | Wholesale and Retail Sector Education and Training Authority |

1. INTRODUCTION

- 1.1 This is a report of the Public Protector issued in terms of section 8(1) of the Public Protector Act, 1994, which provides that “The Public Protector may, subject to the provisions of subsection (3), in the manner he or she deems fit, make known to any person any finding, point of view or recommendation, in respect of a matter investigated by the Public Protector”.
- 1.2 The report relates to an investigation into allegations of undue delay and maladministration by the functionaries of the Wholesale and Retail Sector Education and Training Authority (W&RSETA) and those of the Department of Small Business Development (the Department), to deliver the infrastructure and equipment relating to the Informal Traders *Upliftment Project* (the *Upliftment Project*), during the 2015/2016 financial year.
- 1.3 The Public Protector’s mandate is derived from section 182(1) of the Constitution of the Republic of South Africa (the Constitution) and the Public Protector Act, 1994 (the Public Protector Act), to promote accountability, transparency and fairness in the public sector. The Public Protector continuously reviews and monitors the information gathered from complaints lodged with the office, with the view to identifying the most probable underlying root causes of the problems, complaints and undesired events within relevant public bodies or authorities.
- 1.4 The aim is to formulate and establish corrective actions to at least mitigate, if not eliminate, those root causes and to produce significant long-term improvements in the public administration.
- 1.5 The point of departure is that, any complaint might be a symptom of an underlying organisational failure, *inter alia* in areas such as systems,

procedures and human error. By addressing the underlying deficiencies in the systems that are the causes of the complaints, the Public Protector aims to reduce the number of individual complaints, in turn, working collaboratively with stakeholders to get the problems resolved and provide constructive feedback that will enable it to address the root causes of complaints and prevent recurrence.

2. THE COMPLAINT

2.1 The complaint was lodged with the Public Protector on 01 August 2019, by Ms Zelda Baxter (the Complainant), who is an informal trader within the Breede Valley Local Municipality (the Municipality), alleging that:

2.1.1 During 2015/16, W&RSETA, in partnership with the Department of Trade Industry and Competition (the DTIC, formerly the Department of Trade and Industry), launched the Informal Traders *Upliftment Project*, partnering with the Municipality in which the latter played a facilitative and supportive role within the project;

2.1.2 The *Upliftment Project* was meant to develop the capacity of informal traders, by amongst others, identifying the training, coaching and mentoring needs of the informal traders and to provide infrastructure and equipment support to the identified informal traders. The Complainant was one of the identified informal traders meant to benefit from the *Upliftment Project*;

2.1.3 The informal traders were required to obtain price quotations from suppliers, in line with the requirements of the *Upliftment Project*. The price quotations were sourced from different suppliers during September 2015, through the facilitation and support of the Municipality's Local Economic Development Division and submitted to W&RSETA;

- 2.1.4 As the initiator of the *Upliftment Project*, W&RSETA assumed the role of Procurement Agent in this regard, mandated to ensure that all participants received their requested infrastructure and equipment support. However, the Complainant and other informal traders did not receive the infrastructure and equipment support as promised during the 2015/16 financial year; and
- 2.1.5 She and other informal traders do not know what was happening or what happened to the *Upliftment Project*, as there was no communication provided by either the functionaries of W&RSETA or those of the Department, which took over the project from the DTIC.
- 2.2 In essence, the Complainant alleged that W&RSETA and the Department unduly delayed delivering the infrastructure and equipment support promised to the informal traders.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

- 3.1 The Public Protector is an independent constitutional institution established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.
- 3.2 Section 182(1) of the Constitution provides that:

“The Public Protector has the power, as regulated by national legislation-

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

3.3 Section 182(2) directs that the Public Protector has the additional powers and functions prescribed by national legislation.

3.4 Section 6(4)(c)(ii) of the Public Protector Act provides that, the Public Protector “*shall be competent at any time prior to, during or after an investigation, if he or she deems it advisable, to refer any matter which has a bearing on an investigation, to the appropriate public body or authority affected by it or to make an appropriate recommendation regarding the redress of the prejudice resulting from or make any other appropriate recommendation he or she deems expedient to the affected public body or authority.*”

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

4. ISSUE IDENTIFIED FOR INVESTIGATION

4.1 Based on the analysis of the complaint, information and documents received during the preliminary enquiries, the following issue was identified to inform and focus the investigation:

4.1.1 Whether the Department and W&RSETA unduly delayed in delivering the infrastructure and equipment pertaining to the *Upliftment Project*, and if so, whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution, and undue delay in terms of sections 6(4)(a)(ii) and 6(5)(b) of the Public Protector Act, 1994.

5. THE INVESTIGATION

5.1 The Investigation Process

5.1.1 The investigation was conducted in terms of section 182(1) of the Constitution read with sections 6 and 7 of the Public Protector Act. The Public Protector Act confers on the Public Protector the sole discretion to determine the format and procedure to be followed in conducting any investigation.

5.1.2 The investigation process included correspondence exchanged with the Complainant, the W&RSETA and the Department. Meetings were also held with the Complainant and the functionaries of the W&RSETA and those of the Department. Documents obtained during the course of the investigation were analysed and evaluated, including consideration and application of the relevant law and prescripts.

5.2 The approach to the investigation

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

5.2.1.1 What happened?

5.2.1.2 What should have happened?

5.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to improper conduct and/or maladministration?

5.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally

focused on whether the functionaries of the W&RSETA and those of the Department unduly delayed in delivering the infrastructure and equipment pertaining to the *Upliftment Project* and if so, whether such conduct therefore constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and undue delay in terms of sections 6(4)(a)(ii) and 6(5)(b) of the Public Protector Act, 1994.

5.3 Key sources of information

- 5.3.1 The complaint form, dated 01 August 2019;
- 5.3.2 Allegations letter addressed to Mr MC Thomas, the Municipal Manager, dated 23 April 2021;
- 5.3.3 Response from the Municipality, dated 07 May 2021;
- 5.3.4 Allegations letters addressed to Mr Mkhwanazi, the Chief Executive Officer of the W&RSETA, dated 28 May 2021;
- 5.3.5 Response from the W&RSETA to the Public Protector, dated 25 June 2021;
- 5.3.6 Allegations letter addressed to the, Mr Mkhumane, the Director-General of the Department from the Public Protector, dated 05 July 2021;
- 5.3.7 Response from the W&RSETA to the Public Protector, dated 04 October 2021;
- 5.3.8 Response from the Department to the Public Protector, dated 03 November 2021;
- 5.3.9 Memorandum of Agreement signed on 26 March 2014, between the W&RSETA and the Department;
- 5.3.10 Copy of the *Partnership Agreement between the DTI and W&RSETA of 2014*;
and
- 5.3.11 Copy of the *Memorandum of Agreement between the Department and W&RSETA of 2018*.

5.4 Legislation and other prescripts

- 5.4.1 The Constitution of the Republic of South Africa, 1996;

- 5.4.2 The Public Protector Act No 23 of 1994; and
- 5.4.3 The White Paper on Transforming Public Service Delivery (“Batho Pele Principles”), 1997.

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

- 6.1 Whether the Department and the W&RSETA unduly delayed in delivering the infrastructure and equipment pertaining to the *Upliftment Project*, and if so, whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution, and undue delay in terms of sections 6(4)(a)(ii) and 6(5)(b) of the Public Protector Act, 1994**

Common cause issue

- 6.1.1 The Complainant is an Informal Trader operating within the Breede Valley Municipality. She participated and successfully completed the *Upliftment Project* Training Programme on 20 January 2016, as reflected in the copy of a certificate issued to her.

Issue in dispute

- 6.1.2 The Public Protector is called upon to determine whether there was undue delay by the W&RSETA and the Department to deliver the infrastructure and equipment support, promised to the informal traders as part of the *Upliftment Project*.

The Complainants' version

- 6.1.3 The Complainant contended that she and other informal traders did not receive the infrastructure and equipment support as promised during the 2015/16 financial year.
- 6.1.4 It is the view of the Complainant that the informal traders were not informed by functionaries of both the W&RSETA and the Department about the reasons for the delay in the delivery of the *Upliftment Project*. It is the Complainant's further submission that there was no communication provided to them by those responsible to ensure that the beneficiaries of the project were made aware of the cause of the delay in delivering the promised infrastructure and equipment support.

W&RSETA's version

- 6.1.5 An allegations letter dated 05 May 2021, was sent to the Chief Executive Officer of the W&RSETA, Mr Tom Mkhwanazi (Mr Mkhwanazi).
- 6.1.6 In his response, dated 19 July 2021, Mr Mkhwanazi, *inter alia*, stated that:
- 6.1.6.1 The *Upliftment Project* was a partnership project between the W&RSETA and the Department, which had two key deliverable elements, namely, the training of the informal traders and the provision of infrastructure and equipment to the identified informal traders.
- 6.1.6.2 In an attempt to ensure the effective implementation of the *Upliftment Project*, the *Upliftment Project* Steering Committee was established, comprising of officials from the W&RSETA and the DTIC. Late in 2016, challenges were experienced when the Project Manager was suspended,

which impacted on the delivery of the infrastructure and equipment pertaining to the *Upliftment Project*;

6.1.6.3 He further stated that the *Upliftment Project* Steering Committee members, who were based at the W&RSETA offices, were reallocated to other projects in the DTIC and full oversight over the performance and progress of the project was lost, resulting in project deliverables falling behind schedule. Soon thereafter, the *Upliftment Project* became redundant since the members started focusing on other projects and the *Upliftment Project* Steering Committee was disbanded with all the members subsequently having left; and

6.1.6.4 Mr Mkhwanazi indicated that at the time of relocating the members of the *Upliftment Project* Steering Committee back to the Department, training of informal traders had already been completed by the W&RSETA. The project period was extended and extra project funding was provided by the W&RSETA, however, there was still no progress on the project.

6.1.6.5 In August 2018, a Memorandum of Understanding (MoU) was prepared by the W&RSETA and submitted to the Department, which took over the *Upliftment Project* from the DTIC. However, the MoU was not signed by the responsible functionaries of the Department. A second MoU was sent to the Department during November 2018, which was eventually signed in April 2019. Due to the late signing of the MoU (two months prior to the project closure date), there was not enough time for the implementation of the outstanding deliverables, payment and infrastructure provisions.

The Department's version

- 6.1.7 The Public Protector sent an allegations letter dated 05 July 2021, to the Director-General of the Department, Mr Lindokuhle Mkhumane (Mr Mkhumane). In his response dated 21 July 2021, Mr Mkhumane stated that:
- 6.1.7.1 In terms of the *Partnership Agreement* signed between the former Chief Executive Officer of the W&RSETA, Mr Joel Dikgole (Mr Dikgole) and the former Director-General of the DTIC, Mr Lionel October (Mr October), on 26 March 2014 and 30 March 2014 respectively, the W&RSETA was to act as the Implementing and Managing Agent for the roll-out of the *Upliftment Project Pilot Phase* nationally, including the Western Cape;
- 6.1.7.2 Upon the establishment of the Department, the DTIC handed over a number of unfinished projects and the *Upliftment Project* was one of them. The Department inherited the administrative function relating to the *Upliftment Project* through the transfer of administrative functions from the DTIC, by Proclamation 41 of 08 July 2014 and continued to administer the *Upliftment Project Pilot Phase* nationally, with the W&RSETA, in terms of the same agreement and arrangements held with the DTIC;
- 6.1.7.3 The W&RSETA continued with the roll out of the *Upliftment Project Pilot phase* nationally, until the expiry of the *Partnership Agreement*, which was entered into between the DTIC and the W&RSETA and inherited for continuity by the Department;
- 6.1.7.4 The expiry of the *Partnership Agreement* required the Department and the W&RSETA to negotiate a new *Partnership Agreement*. He further stated that the negotiations for a new *Partnership Agreement* between the Department and the W&RSETA could not be finalised as the W&RSETA was placed under administration. Any further financial and contractual

arrangements or agreements were placed on hold, until the financial status of the W&RSETA was resolved. The placing of the W&RSETA under administration disrupted the continued roll-out of the *Upliftment Project* and not all beneficiaries projected to benefit from the project were reached with the relevant funding and support;

6.1.7.5 The Department commenced with the roll-out of its Informal and Micro Enterprise Development Programme (IMEDP), in September 2017 and received a request to assist the continuation and sustenance of the *Upliftment Project* in 2018. However, due to challenges related to Supply Chain Management processes as prescribed by National Treasury, the IMEDP could not be utilised to sustain or implement the *Upliftment Project*; and

6.1.7.6 Accordingly, funding provided by National Treasury in terms of the *Upliftment Project*, specified as unused and unspent funds were transferred back to the National Revenue Fund. Furthermore, that the contractual arrangements were not concluded between the Department and the W&RSETA, to continue with the implementation of the *Upliftment Project*.

6.1.8 Mr Mkhumane submitted an additional response dated 02 November 2021, wherein he further stated that:

6.1.8.1 Approval for a budget allocation of seventeen million rand (R17 000 000), was sought to complete the outstanding commitments of the *Upliftment Project* from the IMEDP budget vote. The funding request was subsequently approved and concurrence from National Treasury in support thereof was also received;

6.1.8.2 A meeting was held on 18 October 2021, between the Municipality and the Complainant to facilitate the implementation of the programme. During the

meeting, the Complainant did not show interest to complete the IMEDP *Application Form* after her participation in the workshop and she refused to sign the attendance register. The failure by the Complainant to submit the application form was confirmed with the Municipality on 22 October 2021;

6.1.8.3 Attempts were made by the Municipality's Local Economic Development officials to persuade the Complainant to submit the Application Form, without success. The process of implementing the programme was projected to be finalised by December 2021; and

6.1.8.4 A total of twenty-four (24) beneficiaries were assisted by the Department and the Municipality, in completion of their IMEDP *Application Forms*.

Engagement between the Investigation Team, W&RSETA and the Department

6.1.9 On 14 September 2021, a meeting was held between the W&RSETA, the Department and the Investigation Team, in an attempt to determine how the matter could be resolved. It was agreed that a session will be held to reconsider other areas and revisit the Partnership Agreement with the W&RSETA, to deal with outstanding commitments towards supporting informal businesses outside the *Upliftment Project*.

6.1.10 On 28 September 2021, Ms Dominique Vincent, the Acting Deputy Director of the Department, advised the Investigation Team that the Department was in the process of exploring other avenues to assist the Informal Traders through other incentives and that it will require authorisation from both the Director-General and the Chief Financial Officer of the Department as well as National Treasury.

- 6.1.11 On 06 October 2021, the Department advised the Investigation Team that Mr Mkhumane had approved that nineteen (19) outstanding beneficiaries of the *Upliftment Project* be assisted through the IMEDP, which is a hundred percent (100%) grant offered to informal micro-enterprises, from the minimum grant amount of five hundred rand (R500), to a maximum of ten thousand rand (R10 000), to assist in improving competitiveness and sustainability.
- 6.1.12 On 03 February 2022, the Complainant was contacted by the Investigation Team, inquiring on the status of the project and she indicated that all the informal traders, including herself, received the equipment on 19 January 2022. The successful delivery of the *Upliftment Project* was also reported in the local newspaper (The Standard, dated 02 February 2022).

Intervention Letter by the Public Protector

- 6.1.13 Both Messrs Mkhumane and Mkhwananzi were served with a copy of an intervention letter on 15 December 2022, affording them the opportunity to make inputs, comments or observations prior to the finalisation of the investigation.
- 6.1.14 In a response, dated 19 December 2022 Mr Mkhumane stated that the W&R SETA takes note of the recommendations and areas of improvement required going forward. He further indicated that a new MoU is envisaged to be concluded in January 2023.
- 6.1.15 In a letter dated 19 December 2022, from Ms Nomvula Makgotlho, the then Acting Director-General of the Department, requested an extension to respond to the intervention letter, however, no response has been received as at the date of this report.

Application of the relevant law

The Constitution of the Republic of South Africa, 1996

6.1.16 The Constitution is the supreme law of the Republic of South Africa and any law inconsistent with it, is invalid¹. Section 195(1) of the Constitution lays down the basic values and principles governing public administration as follows:

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

(f) *Public administration must be accountable.*

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

(2) *The above principles apply to-*

(a) *administration in every sphere of government;*

(b) *organs of state; and*

(c) *public enterprises.”*

6.1.17 The functionaries of the W&RSETA and those of the Department are obliged to, *inter alia*, exercise a high standard of professional ethics when rendering services to the public.

¹ Section 2 of the Constitution.

The White Paper on Transforming Public Service Delivery (“Batho Pele Principles”), 1997

6.1.18 In terms of principle 5 of the Batho Pele Principles, citizens should be given full and accurate information about the public services they are entitled to receive.

Analysis of the evidence

6.1.19 Upon the suspension of the Project Manager, oversight on the project did not continue.

6.1.20 The *Upliftment Project* Steering Committee members, who were based at the W&RSETA offices were reallocated to other projects, back within DTIC and full oversight over the performance and progress of the project was lost. This resulted in the project deliverables falling behind schedule and the *Upliftment Project* became redundant.

6.1.21 The parties conceded that there were challenges experienced with the continued roll-out of the project deliverables following the suspension of the Project Manager.

6.1.22 The challenges experienced with regard to the continuation of the roll-out of the project resulted in the Complainant and other informal traders not being informed about the causes of the delay in the implementation of the *Upliftment Project*, as the information was not shared with them.

6.1.23 The failure to share information with regard to the status of the project with the Complainant and other informal traders breached the promotion of the values and principles stipulated in section 195(1) of the Constitution, in particular, the provision that the public must be timeously provided with

accurate information and in a manner that would foster transparency in public administration.

6.1.24 Both the Chief Executive Officer and the Director-General, in their respective capacities as accounting officers of their institutions, should have ensured amongst others that:

(a) There were systems in place to properly and continuously evaluate the project to ensure that it is finalised as planned and the beneficiaries enjoy their benefits timeously.

(b) Oversight of a project should not be lost resulting in projects being abandoned on the basis of suspension of Project Managers as there must be measures in place to mitigate the occurrence of such a risk.

6.1.25 The Department was further required to regularly keep the Complainant and the other informal traders informed about the status of the *Upliftment Project* in line with principle 5 of the Batho Pele Principles, but this did not occur.

Conclusion

6.1.26 The evidence obtained established that the delay to deliver the infrastructure and equipment support to beneficiaries of the *Upliftment Project* was caused by the change of portfolio and the formation of a new Department, which inherited the administrative and operational functions from the DTIC. The further delay was as a result of the suspension of the Project Manager and the placing of the W&RSETA under administration without proper business continuity.

6.1.27 The functionaries of the W&RSETA and those of the Department engaged each other throughout the period in question, negotiating and signing the

MoU with the intention to deliver the infrastructure and equipment support, even before the complaint was reported to the Public Protector in 2019, however, it did not yield results timeously.

6.1.28 Some engagements and deliverables relating to the *Upliftment Project* could have been negatively impacted by the lockdown due to the COVID 19 pandemic, which may have restricted certain activities during the 2020/2021 financial year as contended by the W&RSETA and the Department. However, there were administrative inefficiencies that led to the delay to deliver the infrastructure and equipment support to the beneficiaries of the project.

6.1.29 The Department obtained funding amounting to R17 million to continue to deliver on the project. The additional funding obtained enabled the Complainant and other informal traders to receive their infrastructure and equipment support in January 2022.

6.1.30 No evidence was found demonstrating that during the course of the engagements between functionaries of the W&RSETA and those of the Department, there was communication or information provided to the Complainant and other informal traders relating to the progress on the project and the causes of the delay.

7 OBSERVATIONS

7.1 W&RSETA and the Department delayed to deliver the infrastructure and equipment support to the Complainant and other informal traders of the *Upliftment Project*, allegedly due to the Covid-19 pandemic restrictions, the suspension of the Project Manager and the placement of the W&RSETA under administration. However, the Public Protector is of the view that the

W&RSETA and the Department should have adopted measures to ensure business continuity.

7.2 Furthermore, the W&RSETA requested an additional amount to complete the outstanding commitments of the *Upliftment Project* and an amount of R17 million was approved during December 2021. The infrastructure and equipment was subsequently delivered to the Complainant and the other informal traders in January 2022.

7.3 Through the intervention of the Public Protector communication was re-established between the Department, the W&RSETA, the Complainant and the other informal traders. This intervention has ultimately resulted in the infrastructure and equipment being supplied to the beneficiaries of the project in January 2022.

8 INTERVENTION

8.1 It is therefore recommended, in terms of section 6(4)(c)(ii) of the Public Protector Act, that:

The Chief Executive Officer of W&RSETA

8.1.1 Develop standard operating procedures, which include timeframes, to ensure a clear process to manage future projects;

8.1.2 Develop a communication strategy to ensure effective communication and stakeholder engagement in relation to future projects; and

8.1.3 Develop business continuity plans, which includes a Risk Matrix, for all projects funded by the W&RSETA, to minimise the risk of delays in case of

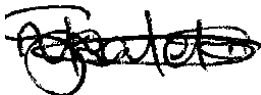
any eventuality to promote the values and principles stipulated in section 195(1) of the Constitution and the Batho Pele principles.

Director-General of the Department

- 8.1.4 Develop standard operating procedures, which include timeframes, to ensure a clear process to manage future projects;
- 8.1.5 Develop a communication strategy to ensure effective communication and stakeholder engagement in relation to future projects; and
- 8.1.6 Develop business continuity plans, which includes a Risk Matrix, all projects funded by the Department, to minimise the risk of delays in case of any eventuality to promote the values and principles stipulated in section 195(1) of the Constitution and the Batho Pele principles.

9 CONCLUSION

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



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

Assisted by: Adv Deon Barnard

Executive Manager: PII Coastal