

**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**

**IRREGULAR APPOINTMENT OF THE MINISTERIAL ADVISERS**

REPORT NUMBER: 13 of 2021/22

ISBN NUMBER: 978-1-77630-038-9

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION AND  
IMPROPER CONDUCT IN CONNECTION WITH THE APPOINTMENT OF THE  
MINISTERIAL ADVISERS BY THE NATIONAL DEPARTMENT OF TRANSPORT**

---

## Table of Contents

LIST OF ACRONYMS.....	3
EXECUTIVE SUMMARY .....	4
<b>1. INTRODUCTION.....</b>	<b>188</b>
<b>2. THE COMPLAINT.....</b>	<b>188</b>
<b>3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR.....</b>	<b>22</b>
<b>4. THE INVESTIGATION .....</b>	<b>Error! Bookmark not defined.7</b>
<b>5. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS .....</b>	<b><u>31</u></b>
<b>6. FINDINGS .....</b>	<b>75</b>
<b>7. REMEDIAL ACTION.....</b>	<b>82</b>
<b>8. MONITORING.....</b>	<b>83</b>

---

**LIST OF ACRONYMS**


---

<b>DG</b>	<b>Director General</b>
<b>AGCEO</b>	<b>Acting Group Chief Executive Officer</b>
<b>AGCFO</b>	<b>Acting Group Chief Executive Officer</b>
<b>Constitution</b>	<b>The Constitution of the Republic of South Africa No. 108 of 1996</b>
<b>Dispensation Policy</b>	Dispensation for the Appointment and Remuneration of Persons (Special Advisers) appointed to Executive Authorities on Grounds of Policy Considerations in terms of section 12A of the Public Service Act, 1994 issued by the Department of Public Service and Administration with effect from 1 April 2019
<b>Guide for Members of the Executive</b>	<b>Guide for Members of the Executive was approved by the President of the Republic of South Africa and was effective from 20 November 2019</b>
<b>LRA</b>	<b>Labour Relations Amendment Act 6 of 2014</b>
<b>Ministerial Handbook</b>	<b>Handbook for Members of the Executive and Presiding Officers, adopted by Cabinet on 07 February 2007</b>
<b>NCR</b>	<b>National Credit Act 34 of 2005</b>
<b>PFMA</b>	<b>Public Finance Management Act 1 of 1999</b>
<b>PPA</b>	<b>Public Protector Act 23 of 1994</b>
<b>PPSA</b>	<b>Public Protector South Africa</b>
<b>PSA</b>	<b>Public Service Act 103 of 1994</b>
<b>PSR</b>	<b>Public Service Regulations of 2016</b>

---

## Executive Summary

- (i) This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).
- (ii) The report communicates findings and the appropriate remedial action that the Public Protector is taking in terms of section 182(1)(c) of the Constitution, following an investigation in connection with allegations of maladministration and improper conduct in the irregular appointment of Ministerial Advisers by the National Department of Transport (the Department).
- (iii) The investigation was conducted following a complaint lodged on 5 August 2020 by a group calling themselves the anonymous concerned members of staff (the Complainants) in connection with allegations of maladministration and improper conduct in the irregular appointment of Ministerial Advisers by the Department.
- (iv) In essence, the allegations are that the Minister of Transport, Mr. Fikile Mbalula, and the Director General of the Department, Mr. Moemi (the Director General), irregularly appointed Advisers in the Ministry of Transport. The officials so appointed are alleged to be, *inter alia*, Messrs. L Venkile, K Khoza and B Mpondo, and Ms. T Mpondo respectively.
- (v) With regard to the appointment of Mr. B Mpondo, it is specifically alleged that he was appointed as the Adviser to the Minister in 2019 and subsequently moved to a different post within the Department and effectively appointing him as a Department official without following the requisite Human Resources Management Policy and this has paved the way for Mr. Mpondo to be seconded to Passenger Rail Agency of South Africa (PRASA) as an Administrator.
- (vi) It has also been alleged that Mr. Mpondos's appointment as an Adviser was not confirmed by the Department of Public Service and Administration (DPSA) as the

---

Minister did not issue a confirmation letter which is a requirement in terms of the regulations. According to the anonymous Complainants, this rendered the secondment of Mr. Mpondo to PRASA to be irregular.

- (vii) Further thereto, it has also been alleged that Mr. Mpondo was appointed to PRASA as an Administrator by the National Treasury and it has been alleged that he started working at PRASA without any confirmation letter from Treasury.
- (viii) The anonymous Complainants further alleged that before Mr. Mpondo was appointed as an Adviser in the Department, his company, SAFIRI, was appointed irregularly as a service provider on many occasions by Mr. Mawethu Vilana, the former Deputy Director General responsible for the Integrated Transport Branch who they believed to be Mr. Mpondo's friend.
- (ix) With regard to the appointment of Mr. Lawrence Venkile, it is specifically alleged that he was appointed as the Adviser to the Minister in 2019 and similarly to the allegation above, his appointment was not confirmed by the Minister of Public Service and Administration (MPSA) which is a requirement in terms of the regulations.
- (x) It has been alleged that since Mr. Venkile joined the Ministry of Transport, his appointment and salary have been at the Deputy Director General (DDG) level. However it is alleged that his appointment at a DDG level was not approved by the MPSA.
- (xi) It has also been alleged that Mr. Venkile has no relevant tertiary qualifications and only possesses a matric certificate and a computer literacy diploma although he has been appointed to advise the Minister of Transport on the country's transport system.
- (xii) Further thereto, it has also been alleged that Mr. Venkile was in 2011 employed by the Department and left it whilst he was being investigated by the HAWKS with regard to tender irregularities regarding the Investor Conference which was held at the ICC

in Cape Town. The Complainants do not understand how then he can be appointed for this position of Ministerial Adviser.

- (xiii) With regard to the appointment of Mr. Khoza, it is specifically alleged that he was also appointed as the Adviser to the Minister and was also remunerated at a DDG level and similarly to the allegation above, his appointment was not confirmed by the MPSA which is a requirement in terms of the regulations.
- (xiv) With regard to the appointment of Ms. Thandiwe Mpondo, it is specifically alleged that she was appointed immediately after the elections as a Parliamentary Liaison Officer in the Ministry of Transport and at the time of her appointment she was appointed at a Deputy Director level whilst she only had a matric certificate. It is further alleged that when she completed her Diploma in Administration in April 2020 and through the Director General's instruction, her position was suddenly elevated to that of a Senior Manager.
- (xv) The anonymous Complainants further alleged that in making these appointments the Director General failed to ensure that proper processes and procedures were followed and prescripts and regulations adhered to.
- (xvi) It has also been alleged that the above appointed Ministerial Advisers have been interfering in the administration of the Department. It is alleged that Mr. Venkile has been involved in the running of the Department to a point that he gives instructions to officials even on procurement related issues; calls meetings and officials are required to report to him.
- (xvii) According to the anonymous Complainants, this has paralysed the reporting systems, performance management and work flow management processes in the Department.
- (xviii) It is the anonymous Complainants' contention that the Director General has wrongly allowed for the political office meddling into the administration as Mr. Venkile was

---

appointed as the Chairperson of the task team that is organizing the National Taxi Indaba which is supposed to be the function of the Public Transport branch.

- (xix) It has also been alleged that the Director General has also enabled Ms. Mpondo to interfere in the administration of the Department as she gives ministerial instructions with financial implications directly to staff members in the Department and its Entities, completely ignoring the Public Finance Management Act, 1999 (PFMA) and regulations. It is alleged that Ms. Mpondo expects the officials to report to her and to directly write reports to her ignoring the reporting protocols in the Department.
- (xx) Further thereto, it has been alleged that Ms. Mpondo also does the same thing in her interaction with the Department's Entities and they believe that she has collapsed the standing protocols that govern the workflow between the administration and the political office.
- (xxi) It has also been alleged that the Director General has completely isolated his permanent DDGs who head the core branches and he runs the office with a handful of selected Senior Managers who agree with everything he says and completely ignore the reporting hierarchy, directly instructs and call meetings with junior level managers, completely ignoring the Executive Managers.
- (xxii) It is further alleged that the Director General rules by fear, arrogance and belittles Senior Managers in front of staff members from his office and also uses intimidation to deal with those that disagree with him. It is further alleged that he threatens to fire officials or move them to other branches. It is alleged that in a meeting with the Public Transport branch, the Director General threatened to move all Chief Directors in the Public Transport branch to the Maritime branch so that he can appoint his own people. This is because they disagreed with the Director General on many illegal transactions relating to public transport that he wants to undertake.
- (xxiii) The Complainants also alleged that the Director General appointed Advocate Makgatho, with no experience to act as the DDG and his excuse was that the

permanent DDG of Public Transport Branch, Mr. Mathabatha Mokonyane, is in the North West Province as part of the clean-up team deployed after North West Province was placed under administration. However, the same DDG was also involved in the clean-up process in the Limpopo Province when the Province was placed under administration, but continued to play a role as the DDG. According to the anonymous Complainants, the regulations are clear that the DDG is the one who should appoint an acting person and not the Director General.

(xxiv) Further thereto, it is also alleged that for the first time in the history of the Department of Transport, the Director General appointed himself in the SANRAL Board as a shareholder representative which role has always been allocated to the Roads branch. According to the Complainants, this is an indication that the Director General has no confidence in the officials who work in the Roads branch.

(xxv) **Based on the analysis of the complaints as well as media reports and information that came to my attention from various sources, the following issues were identified to inform and focus the investigation:**

- a. Whether the appointments of Messrs. Venkile, Khoza and Mpondo respectively, were contrary to the provisions of the Public Service Act and other prescripts applicable to the National Department of Transport;
- b. Whether Messrs. Venkile and Khoza respectively were irregularly paid salaries which are equivalent to that of a Deputy Director General (DDG) level even though their appointments were not approved by the Minister of Public Service and Administration;
- c. Whether Mr. Mpondo's secondment to PRASA was done contrary to the provisions of the Public Service Act, and other prescripts applicable to the National Department of Transport; and



- d. Whether Ms. Thandiwe Mpondo was elevated to the position of Senior Manager contrary to the provisions of the Public Service Act and other prescripts applicable to the National Department of Transport.
- (xxvi) The investigation was conducted in terms of section 182(1) of the Constitution and sections 6 and 7 of the Public Protector Act. It included an exchange of documentation and correspondence between the Public Protector and Minister Mbalula, the Minister of Public Service and Administration, Mr. Senzo Mchunu, the Department of Public Service And Administration, Mr. Moemi, the Director General of the Department of Transport, Mr. Dondo Mogajane, the Director General of the National Treasury, Mr. Lauzarus Mkhabela, the Acting Group Chief Financial Officer of PRASA and Ms. Thandeka Mabija, the Acting Group Chief Executive Officer of PRASA.
- (xxvii) All relevant documents and correspondence were obtained and analysed and relevant laws, policies and related prescripts were considered and applied throughout the investigation.
- (xxviii) Notices in terms of section 7(9) of the Public Protector Act were issued to Minister Mbalula and the Director General on 11 March 2021.
- (xxix) Responses to the notice were received from Minister Mbalula and the Director General of the Department of Transport on 25 March 2021.
- (xxx) Having considered the submissions made and evidence uncovered during the investigation against the relevant regulatory framework, the Public Protector makes the following findings:
- 1. Regarding whether the appointments of Messrs. L Venkile, K Khoza and B Mpondo respectively, were contrary to the provisions of the Public Service Act and other prescripts applicable to the National Department of Transport:**

- (aa) The allegation that the appointments of Messrs. Venkile, Khoza and Mpondo respectively, were contrary to the provisions of the Public Service Act and other prescripts applicable to the National Department of Transport **is substantiated**.
- (bb) The appointments were done contrary to the Dispensation for the Appointment and Remuneration of Persons (Special Advisers) Appointed by the Executive Authorities on Ground of Policy Consideration in terms of section 12A of the Public Service Act which states that the Executive Authorities must submit proposals/recommendations for the appointment of individual Special Advisers to the MPSA for approval of the individual's compensation level **before** the appointment/upgrade is effected.

**Mr. L Venkile's appointment as a Special Adviser**

- (cc) Mr. Venkile was appointed by Minister Mbalula before approval by the MPSA. Mr. Venkile's offer of contract of appointment is dated 1 June 2019 and approval was made by Minister Mchunu on 27 August 2019. Minister Mchunu further informed Minister Mbalula that he noted that Minister Mbalula had already appointed Mr. Venkile as his Special Adviser and informed him that Mr. Venkile should not have been appointed prior to the confirmation of his compensation level and advised Minister Mbalula that the appointment of Mr. Venkile be effected after approval had been obtained.

**Mr. Khoza's appointment as a Special Adviser**

- (dd) Mr. Khoza was appointed by Minister Mbalula before approval by Minister Mchunu. Mr. Khoza's offer of contract of appointment is dated 21 March 2020 and the approval was made by Minister Mchunu on 11 November 2020.

**Mr. Mpondo's appointment as a Special Adviser**

- (ee) The evidence reflects that Mr. Mpondo was appointed by Minister Mbalula before approval by Minister Mchunu. His offer for contract of appointment is dated 15 November 2019 and no approval was made by Minister Mchunu.

- (ff) On 5 December 2019, the Minister terminated Mr. Mpondo's employment contract as the Special Adviser and simultaneously offered him a contract of employment as a Project Manager in the Department and subsequently seconded him as an Acting Group Chief Executive Officer to PRASA.
- (gg) To remedy the irregular appointments Minister Mbalula has submitted the contracts of Employment and Performance Agreements of both Mr. Venkile and Mr. Khoza to the MPSA for record purposes and he has been updated regarding the progress on security clearance.
- (hh) It must also be noted that to safeguard the Department against irregular appointments and overpayments as the Minister urgently needed the services of Special Advisers the contracts of employment of Messrs. Mpondo, Venkile and Khoza had inserted clause that stipulated that:

*“...This appointment is subject to the approval of the Minister of Public Service and Administration and the Dispensation for the appointment and Remuneration of Persons (Special Adviser) Appointed by the Executive Authority (EA) on Ground of policy Consideration in terms of section 12A of the Public Service Act (PSA) 1994...”*

- (ii) The conduct of Minister Mbalula 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.

**2. Regarding whether Messrs. L Venkile and K Khoza respectively were irregularly paid salaries which are equivalent to that of a Deputy Director General (DDG) level even though their appointments were not approved by the Minister of Public Service and Administration:**

- (aa) The allegations of whether Messrs. Venkile and Khoza respectively were irregularly paid salaries which are equivalent to that of the DDG level whilst their appointment were not approved by the MPSA is substantiated.

---

### **Remuneration of Mr. Venkile**

- (bb) In terms of Mr. Venkile's offer of appointment, he was at a salary range of R1 446 378.00 and this appointment was subject to the approval of the MPSA and the Dispensation.
- (cc) Mr. Venkile was appointed by Minister Mbalula before approval by the MPSA. Mr. Venkile's offer of contract of appointment is dated 1 June 2019 and approval was made by Minister Mchunu on 27 August 2019.
- (dd) Mr. Venkile was appointed with the condition that his offer of appointment and salary determination was subject to the determination by the MPSA and that should the salary payment end up being an overpayment same will be recovered from him.
- (ee) The Department has indicated in its response to the Public Protector that it deems the payment of remuneration to Mr. Venkile to have resulted in overpayment by the Department. Mr. Venkile has conceded to this position and has accordingly undertaken to pay back the money determined as a salary overpayment .He has requested that the Department should enter into an agreement with him on a repayment plan as the figure is too onerous to be repaid all at once. Mr. Venkile has acknowledged that he will pay back the money determined as a salary overpayment and the Department will commence to recoup the overpayments from Mr. Venkile from 1 April 2021.
- (ff) Mr. Venkile has rendered his services to the Minister during his tenure.

### **Remuneration of Mr. Khoza**

- (gg) In terms of Mr. Khoza's offer of appointment, he was at compensation level III, at a salary range of R1 521 591.00 – R1 714 074 and this appointment was subject to the approval of the MPSA and the Dispensation.
- (hh) Mr. Khoza was appointed by Minister Mbalula before approval by the MPSA. Mr. Khoza's offer of contract of appointment is dated 21 March 2020 and approval was made by Minister Mchunu on 11 November 2020.

- (ii) The MPSA confirmed the appointment of Mr. Khoza with the same salary determination as what the department provisionally offered to Mr. Khoza with the proviso that same be subjected to approval by the MPSA.
- (jj) Mr. Khoza has rendered his services to the Minister during his tenure.
- (kk) Minister Mbalula and the Director General undertook to recovery all overpayments that have been effected on Mr. Khoza's salaries and also assured the investigating team that Mr Khoza will pay back all monies that were not due to him that are regarded as overpayment.

#### **Remuneration of Mr. Mpondo**

- (ll) In terms of Mr. Mpondo's offer of appointment, he was at salary level 15 with a salary range of R1 5 21 5921 – R1 714 074 and this appointment was subject to the approval of the MPSA and the Dispensation.
- (mm) Mr. Mpondo was appointed by Minister Mbalula before approval by the MPSA. Mr. Mpondo's offer of contract of appointment is dated 15 November 2019 and no approval was made by Minister Mchunu.
- (nn) On 5 December 2019, the Minister terminated Mr. Mpondo's employment contract as the Special Adviser and simultaneously offered him a contract of employment as the Project Manager in the Department of Transport and subsequently seconded him as an Acting Group Chief Executive Officer of PRASA.
- (oo) Mr. Venkile has agreed that he is indebted to the Department to the amount of R 455 984.50 which is made of calculations that were done for the period of 1 June 2019 to August 2019 for the salary that was paid to him and from 1 September 2019 to March 2021 which is the difference between the salary level 15 (DDG) and salary level 14 (Chief Director). Mr. Venkile will pay installments of R 11 999, 60.

- (pp) Mr. Mpondo never received any salaries from the Department of Transport as a Ministerial Adviser as this process was abandoned when it became apparent to the Minister that the Minister needed his service as a as an Administrator at PRASA.
- (qq) To safeguard the Department against irregular appointments and overpayments as the Minister urgently needed the services of Special Advisers the contracts of employment of Messrs. Mpondo, Venkile and Khoza had the following clause inserted to them:

*“...This appointment is subject to the approval of the Minister of Public Service and Administration and the Dispensation for the appointment and Remuneration of Persons (Special Adviser) Appointed by the Executive Authority (EA) on Ground of policy Consideration in terms of section 12A of the Public Service Act (PSA) 1994...”*

- (rr) The conduct of Minister Mbalula 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.

**3. Regarding whether Mr. Mpondo’s secondment to the PRASA was done contrary to the provisions of the Public Service Act and other prescripts applicable to the National Department of Transport:**

- (aa) The allegation that Mr. Mpondo’s secondment to PRASA was done contrary to the provisions of the Public Service Act and other prescripts applicable to the National Department of Transport **is substantiated**.
- (bb) On 25 August 2020, in the case between *UnitedBehind v the Department of Transport and others* case number 2058/2020, Judge Nathan Erasmus, of the Western Cape High Court in Cape Town, declared unlawful and set aside Minister Mbalula’s appointment of Mr. Mpondo as an acting Chief Executive Officer and Accounting Authority of PRASA.
- (cc) Mr. Mpondo has rendered his services as an Administrator of PRASA.

(dd) Regarding the appointment of Mr. Mpondo's as a Project Manager in the Minister's office Judge Erasmus in the court case between *UnitedBehind v the Department of Transport and others* was of the view that Mr. Mpondos's appointment as Project Manager in the Minister's office was also unlawful and reviewable under section 6(2) of PAJA and should be set aside.

(ee) This allegation of irregular secondment of Mr. Mpondo to PRASA has already been dealt with by the Courts and we will not pursue it any further.

**4. Regarding whether Ms. Thandiwe Mpondo, was elevated to the position of Senior Manager contrary to the provisions of the Public Service Act and other prescripts applicable to the National Department of Transport:**

(aa) The allegation that Ms. Thandiwe Mpondo was elevated to the position of Senior Manager contrary to the provisions of the Public Service Act and other prescripts applicable to the National Department of Transport is **not substantiated**.

(bb) There were no irregularities in the appointment of Ms. Mpondo to the position of Director Parliamentary and Cabinet Support in the office of the Minister. The position of Parliamentary Officer at level 13 is one of the positions provided for on the staff establishment for the private office of Members of the Executive as well as administrative support to be provided by the Department.

(cc) Ms. Mpondo has an Advanced Diploma in Public Administration of which she was awarded by the University of the Western Cape on 7 April 2020 which is an NQF Level 7 qualification which is a requirement to be appointed into the Senior Management Service of the Public Service.

(dd) The conduct of the Director General does not constitute 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.

**5. The appropriate remedial action taken in terms of section 182(1)(c) of the Constitution is the following:**

**The Minister of Transport must take urgent and appropriate steps:**

- (a) To ensure, when making future Special Adviser appointments, that he submits proposals/recommendations for the appointment of individual Special Advisers to the Minister for the Public Service and Administration for approval of the individual's compensation level **before** the appointment/upgrade is effected; and
- (b) To ensure that all future contracts of employment, Performance Agreements and security clearance of Special Advisers are submitted to the Minister of Public Service and Administration for record purposes as required by the Dispensation Policy.

**The Director General of the Department of Transport must take urgent and appropriate steps:**

- (c) To ensure that all the overpayments, salaries and emoluments that were paid to Mr. Venkile by the Department before his position as Special Adviser to the Minister of Transport was approved by the Minister of Public Service and Administration, are recovered in full, as per the agreement concluded with Mr Venkle and provided to the public Protector.
- (d) To ensure that the Department recovers in full and/or enters into a repayment agreement with Mr. Khoza in order to recover all outstanding overpayments that were made to him as a result of the remuneration irregularly received prior to the concurrence of his remuneration level by the MPSA.



---

**The Minister of Public Service and Administration must take urgent and appropriate steps**

- (e) To ensure that all Ministers and Deputy Ministers receive awareness and training regarding the procedures and processes to be followed in the appointment of Ministerial Special Advisers.

---

## **REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION AND IMPROPER CONDUCT IN CONNECTION WITH THE APPOINTMENT OF THE MINISTERIAL ADVISERS BY THE NATIONAL DEPARTMENT OF TRANSPORT**

### **1. INTRODUCTION**

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

1.2. The report is submitted in terms of section 8 of the Public Protector Act to the following to note the outcome of this investigation and implementation of the remedial action:

1.2.1. The Minister of Transport, Mr Fikile April Mbalula; and

1.2.2. The Director General of the Department of Transport, Mr Alec Moemi.

1.3. **A copy of the report is also submitted to:**

1.3.1. The Minister of Public Service and Administration, Mr Senzo Mchunu.

1.4. This report relates to an investigation into allegations of maladministration and improper conduct in the irregular appointment of Ministerial Advisers by the National Department of Transport (the Department).

### **2. THE COMPLAINT**

2.1. On 5 August 2020, a complaint was lodged by a group calling themselves the anonymous concerned members of staff (the Complainants) in connection with the allegations of maladministration and improper conduct in the irregular appointment of Ministerial Advisers by the Department.

- 2.2. The Complainants alleged that the Minister of Transport, Mr. Fikile Mbalula, and the Director General of the Department, Mr. Moemi (the Director General), irregularly appointed Advisers in the Ministry of Transport. The officials so appointed are alleged to be, *inter alia*, Messrs. L Venkile, K Khoza and B Mpondo, and Ms. T Mpondo respectively.
- 2.3. In essence, the Complainants alleged that:
- 2.3.1 Mr. Mpondo was appointed as the Adviser to the Minister in 2019 and subsequently moved to a different post within the Department and effectively appointing him as a Departmental official without following the requisite Human Resources Management Policy and this has paved the way for Mr. Mpondo to be seconded to Passenger Rail Agency of South Africa (PRASA) as an Administrator;
- 2.3.2 The appointment of Mr. Mpondo as an Adviser was not confirmed by the Department of Public Service and Administration (DPSA) as the Minister did not issue a confirmation letter which is a requirement in terms of the regulations. According to the anonymous Complainants, this rendered the secondment of Mr. Mpondo to PRASA irregular;
- 2.3.3 Furthermore, Mr. Mpondo was appointed to the PRASA as an Administrator by the National Treasury and started working without any confirmation letter from National Treasury;
- 2.3.4 Before Mr. Mpondo was appointed as an Adviser in the Department, his company, SAFIRI, was appointed irregularly as a service provider on many occasions by Mr. Mawethu Vilana, the former Deputy Director General, responsible for the Integrated Transport Branch whom they believed to be Mr. Mpondo's friend;
- 2.3.5 In respect of the appointment of Mr. Venkile, he was appointed as the Adviser to the Minister in 2019 and similarly to the allegation above, his appointment

- 
- was not confirmed by the Minister of Public Service and Administration (MPSA) which is a requirement in terms of the regulations;
- 2.3.6 Since Mr. Venkile joined the Ministry of Transport, his appointment and salary have been at the Deputy Director General (DDG) level even though his appointment at the DDG level was not approved by the MPSA;
- 2.3.7 Mr. Venkile did not possess the relevant tertiary qualifications and only possessed a matric certificate and a computer literacy diploma at the time of his appointment, although he has been appointed to advise the Minister of Transport on the country's transport system;
- 2.3.8 Further thereto, Mr. Venkile was in 2011 employed by the Department and left whilst he was being investigated by the HAWKS with regard to tender irregularities regarding the Investor Conference which was held at the International Convention Centre in Cape Town. The Complainants do not understand how then he can be appointed to this position of the Ministerial Adviser;
- 2.3.9 With regard to the appointment of Mr. Khoza, he was also appointed as the Adviser to the Minister and was also remunerated at a DDG level although his appointment was not confirmed by the MPSA, which is a requirement in terms of the regulations;
- 2.3.10 Ms. Thandiwe Mpondo was appointed immediately after the elections as a Parliamentary Liaison Officer in the Ministry of Transport and at the time of her appointment, she was appointed at a Deputy Director level whilst she only possessed a matric certificate. When she completed her Diploma in Administration in April 2020 and through the Director General's instruction, her position was suddenly elevated to that of a Senior Manager;

- 2.3.11 In making these appointments, the Director General failed to ensure that proper processes and procedures were followed and prescripts and regulations were adhered to;
- 2.3.12 The above appointed Ministerial Advisers have been interfering in the administration of the Department. Mr. Venkile has been involved in the running of the Department to a point that he gives instructions to officials even on procurement related issues. He calls meetings and officials are required to report to him;
- 2.3.13 This improper conduct has purportedly paralysed the reporting systems, performance management and work flow management processes in the Department;
- 2.3.14 The Director General has wrongly allowed for the political office meddling into the administration as Mr. Venkile was appointed as the Chairperson of the task team that is organizing the National Taxi Indaba which is supposed to be the function of the Public Transport branch;
- 2.3.15 The Director General has also enabled Ms. Mpondo to interfere in the administration of the Department as she gives ministerial instructions with financial implications directly to staff members in the Department and its Entities, completely ignoring the Public Finance Management Act, 1999 (PFMA) and regulations. She expects the officials to report to her and to directly write reports to her, ignoring the reporting protocols in the Department;
- 2.3.16 Further thereto, Ms. Mpondo also does the same thing in her interaction with the Department's Entities and they believe that she has collapsed the standing protocols that govern the workflow between the administration and the political office;
- 2.3.17 The Director General has completely isolated his permanent DDGs who head the core branches. He runs the office with a handful of selected Senior Managers who agree with everything he says and completely ignores the

reporting hierarchy. He directly instructs and call meetings with junior level managers, completely ignoring the Executive Managers;

- 2.3.18 In addition, the Director General rules by fear, arrogance and belittles Senior Managers in front of staff members from his office. He also uses intimidation to deal with those that disagree with him. He threatens to fire officials or move them to other branches, for example, in a meeting with the Public Transport branch, the Director General threatened to move all Chief Directors in the Public Transport branch to the Maritime branch so that he can appoint his own people due to their disagreement with the Director General on many illegal transactions relating to public transport that he wanted to undertake;
- 2.3.19 The Director General appointed Advocate Makgatho with no experience, to act as the DDG and his excuse was that the permanent DDG of Public Transport Branch, Mr. Mathabatha Mokonyane, was in the North West Province as part of the clean-up team deployed after North West Province was placed under administration. However, the same DDG was also involved in the clean-up process in the Limpopo Province when the Province was placed under administration, but continued to play a role of the DDG. The regulations are clear that the DDG is the one who should appoint an acting person and not the Director General; and
- 2.3.20 Further thereto, for the first time in the history of the Department of Transport, the Director General appointed himself in the SANRAL Board as a shareholder representative which role has always been allocated to the Roads branch. According to the Complainants, this is an indication that the Director General has no confidence in the officials who work in the Roads branch.

### **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.<sup>1</sup> 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.”<sup>2</sup>*

---

<sup>1</sup> [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].

<sup>2</sup> *Supra* at para [73].

- 3.5.1 In the above-mentioned constitutional matter, Mogoeng CJ, stated, amongst other things, the following, when confirming the powers of the Public Protector:
- 3.5.2 *“Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (paragraph 65);*
- 3.5.3 *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);*
- 3.5.4 *Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the 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);*
- 3.5.5 *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);*
- 3.5.6 *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);*
- 3.5.7 *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);*

3.5.8 *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);*

3.5.9 *She has the power to determine the appropriate remedy and prescribe the manner of its implementation (paragraph 71(d); and*

3.5.10 *“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).”*

3.6 *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:*

3.6.1 *“The constitutional power is curtailed in the circumstances wherein there is conflict with obligations under the Constitution (para 71);*

3.6.2 *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);*

3.6.3 *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;*

3.6.4 *The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or prima facie findings (para 104);*

3.6.5 *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);*

3.6.6 *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 (para 107 and 108); and*

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

3.7 The Department and Ministry of Transport are organs of state and their conduct amounts to conduct in state affairs and as a result, the matter falls squarely within the ambit of the Public Protector's mandate.

3.8 The jurisdiction of the Public Protector was not disputed by the Department and the Ministry of Transport in this matter.

---

## 4 THE INVESTIGATION

### 4.1 Methodology

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

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

### 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 amount 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 regulate the standard that should have been met by the Department 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 maladministration, where possible and appropriate.

**4.3 Based on analysis of the allegations as well as information that came to the Public Protector’s attention from various sources, the following issues were identified and investigated:**

4.3.1. Whether the appointments of Messrs. Venkile, Khoza and Mpondo respectively, were contrary to the provisions of the Public Service Act, 1994 and other prescripts applicable to the National Department of Transport;

4.3.2. Whether Messrs. Venkile and Khoza respectively were irregularly paid salaries which are equivalent to that of a Deputy Director General (DDG) level even though their appointments were not approved by the Minister of Public Service and Administration;

4.3.3. Whether Mr. Mpondo’s secondment to PRASA was done contrary to the provisions of the Public Service Act, 1994 and other prescripts applicable to the National Department of Transport; and

4.3.4. Whether Ms. Thandiwe Mpondo was elevated to the position of Senior Manager contrary to the provisions of the Public Service Act, 1994 and other prescripts applicable to the National Department of Transport.

**4.4 The Key Sources of Information**

**4.4.1. Documentation**

4.4.1.1. Contract of Employment of Mr. Venkile dated 1 June 2019;

4.4.1.2. Correspondence dated 24 June 2019, titled “*Confirmation of appointment of a Special Adviser to the Minister of Transport: Mr. Phila Lawrence Venkile*”, from Minister Mbalula to Minister Mchunu;

- 4.4.1.3. Correspondence from Mr. Venkile to Minister Mbalula dated 25 August 2020 titled, *“Adjustment of my Compensation Level in line with final determination by Minister of Public Service and Administration;”*
- 4.4.1.4. Correspondence from Minister Mchunu to Minister Mbalula regarding the appointment of Mr. Venkile dated 27 August 2019;
- 4.4.1.5. Correspondence from Minister Mchunu to Minister Mbalula regarding the appointment of Mr. Venkile dated 27 November 2019;
- 4.4.1.6. Correspondence from Minister Mbalula to Minister Mchunu regarding the appointment of Mr. Venkile dated 16 October 2019;
- 4.4.1.7. Contract of Employment of Mr. Khoza dated 21 March 2020;
- 4.4.1.8. Correspondence from Minister Mchunu to Minister Mbalula regarding the appointment of Mr. Khoza dated 11 November 2020;
- 4.4.1.9. Contract of Employment of Mr. Mpondo dated 15 November 2020;
- 4.4.1.10. Correspondence between Mr. Mbalula to Ms. Thabethe, the Acting Company Secretary of PRASA dated 9 December 2019; and,
- 4.4.1.11. Correspondence between Mr. Dondo Mogajane, the Director General of the National Treasury and Mr. Moemi, the Director General of the Department dated 19 December 2019.

#### **4.4.2. Correspondence exchanged**

- 4.4.2.1. A letter from the Complainants dated 05 August 2020;
- 4.4.2.2. Correspondence received from Minister Mchunu dated 4 December 2020;
- 4.4.2.3. Correspondence received from Minister Mbalula dated 14 December 2020;
- 4.4.2.4. Correspondence received from Mr. Moemi, the Director General of the Department dated 15 February 2021;
- 4.4.2.5. Correspondence received from Mr. Mkhabela, the acting Chief Financial Officer of PRASA dated 4 March 2021;
- 4.4.2.6. Correspondence received from Ms. Thandeka Mabija, the acting Group Executive Officer of PRASA dated 29 March 2021;
- 4.4.2.7. Notices in terms of section 7(9) of the Public Protector Act issued to Minister Mbalula and the Director General on 11 March 2021;

- 4.4.2.8. Responses to the notices received from Minister Mbalula and the Director General on 25 March 2021;and
- 4.4.2.9. Correspondence was received from Mr Sipho Ndaba, the Corporate Executive: Support Audit Services of the Auditor General of South Africa dated 11 May 2021.

#### **4.4.3. Legislation and other prescripts**

- 4.4.3.1. The Constitution;
- 4.4.3.2. The Public Protector Act;
- 4.4.3.3. The Public Service Act;
- 4.4.3.4. Public Service Regulations of 2001;
- 4.4.3.5. Public Service Regulations of 2016;
- 4.4.3.6. Public Finance Management Act, 1999
- 4.4.3.7. The Dispensation for the Appointment and Remuneration of Persons (Special Advisers) appointed to Executive Authorities on Grounds of Policy Considerations in terms of section 12A of the Public Service Act, 1994 issued by the Department of Public Service and Administration with effect from 1 April 2019;
- 4.4.3.8. The Handbook for Members of the Executive and Presiding Officers, adopted by Cabinet on 07 February 2007 (Ministerial Handbook);
- 4.4.3.9. The Guide for Members of the Executive was approved by the President of the Republic of South Africa and was effective from 20 November 2019;
- 4.4.3.10. The Labour Relations Amendment Act, 2014;
- 4.4.3.11. The National Credit Act, 2005; and
- 4.4.3.12. Legal Succession to the South African Transport Services Act, 1989.

#### **4.4.4. Case Law**

- 4.4.4.1. *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* (CCT143/15; CCT171/15) [2016] ZACC 11; (2016) (5) BCLR 618 (CC); 2016 (3) SA 580 (CC) (31 March 2016).

4.4.4.2. *UnitedBehind v the Department of Transport and others* case number 2058/2020 (25 August 2020).

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

**5.1. Regarding whether the appointments of Messrs. L Venkile, K Khoza and B Mpondo respectively were contrary to the provisions of the Public Service Act, 1994 and other prescripts applicable to the National Department of Transport:**

*Common cause issue*

5.1.1. It is not disputed that Messrs. L. Venkile, K. Khoza and B. Mpondo were appointed as the Special Advisers to Minister Mbalula between 2019 and 2020.

*Issues in dispute*

5.1.2. The issue for determination is whether the appointments of Messrs. Venkile, Khoza and Mpondo respectively, were contrary to the provisions of the Public Service Act and other prescripts applicable to the Department.

5.1.3. The Complainants alleged that the appointments of Messrs. Venkile, Khoza, Mpondo were not confirmed by the DPSA, as the Minister of Public Service and Administration (MPSA) did not issue confirmation letters which is a requirement in terms of the regulations.

5.1.4. On 14 December 2020, Minister Mbalula responded to the Public Protector and denied the allegations of maladministration and improper conduct in the appointment of his Advisers. Minister Mbalula stated that he has no authority to

---

appoint persons on the grounds of policy considerations as outlined in section 12A of the Public Service Act, 1994.

- 5.1.5. According to the Minister, he does not get involved in processing the appointments of Advisers or staff in his office and this process is dealt with by his Chief of Staff and the Director General. He averred that he was advised by the Director General that all the applicable legal prescripts were adhered to in the appointment of Ministerial staff.
- 5.1.6. The Minister referred the investigating team to the response by the Director General on the matter.
- 5.1.7. On 14 December 2020, the Director General responded to the investigating team and stated that the appointments were in accordance with Departmental processes, procedures and prescripts.

#### **Appointment of Mr. Lawrence Venkile**

- 5.1.8. The Director General stated that Mr. Venkile was appointed in terms of section 12A of the Public Service Act as well as the Dispensation for the Appointment and Remuneration of Persons (Special Advisers) Appointed to Executive Authorities on Grounds of Policy Consideration in terms of Section 12A of the Public Service Act (the Dispensation). He indicated that the Dispensation does not specify the minimum requirements for the appointment of the Special Advisers.
- 5.1.9. He indicated that in terms of item 11 of the Dispensation, the Executive Authorities must submit recommendations for the appointment of individual Special Advisers to the MPSA for approval of the individual's compensation level and the letter of the MPSA dated 7 August 2020 is proof that such determination was made.
- 5.1.10. With regard to the allegation that Mr. Venkile possessed no relevant tertiary qualifications and only possessed a matric certificate and a computer literacy diploma, although appointed to advise the Minister of Transport on the countries transport system, the Director General indicated that the Dispensation does not



---

provide for minimum entry requirements into the post, but only provides for the determination to be made by the MPSA.

- 5.1.11. He said that the MPSA made such a determination and granted his concurrence, and believed that Mr. Venkile had such a tremendous experience in the Transport sector as he previously served as an Acting Chief Operations Officer of the Department and also served as an Executive at the PRASA and on several Ministerial Committees, including the seminal National Taxi Task Team Secretarial of 1996 under the leadership and tutelage of former late Minister Dullar Omar. He submitted that his experience is vast in the Transport field and adds a lot of value to the insights of the Minister from an Advisory point of view.
- 5.1.12. The Director General also provided the investigating team with the contract of offer of appointment for Mr. Venkile effective from 1 June 2019 as a Special Adviser to the Minister, subject to the approval of the MPSA and the Dispensation.
- 5.1.13. The MPSA responded to the Public Protector in a letter dated 4 December 2020, with regard to the appointment of Mr. Venkile. According to the MPSA, he received correspondence from Minister Mbalula requesting approval of compensation level III for Mr. Venkile's appointment.
- 5.1.14. In the correspondence dated 24 June 2019, titled "*Confirmation of appointment of a Special Adviser to the Minister of Transport: Mr. Phila Lawrence Venkile*", Minister Mbalula informed MPSA that he had exercised the powers and duties vested in him as the Executive Authority for the Department in terms of section 3(7) of the Public Service Act, as amended and appointed Mr. Venkile to be his Special Adviser and that Mr. Venkile was appointed in terms of section 12A of the Public Service Act, as amended, as a full-time Special Adviser on contract, which shall not exceed his term of office as the Executive Authority for the Department.
- 5.1.15. Minister Mbalula further informed the MPSA that in compliance with the Ministerial Handbook, 2009, the letter served to seek the MPSA's concurrence for the awarding of compensation level III due to Mr. Venkile's extensive managerial experience and complexity of advice to be given to him by Mr. Venkile will be

comparable to that given by the Deputy Director General in the Public Service. According to Minister Mbalula, Mr. Venkile possessed a grade 12 certificate, a Diploma in Computer Theory at the institute for Commercial and Industrial Education and a Certificate in Basic Programming.

- 5.1.16. Minister Mbalula further informed MPSA that according to item 11 of the Dispensation, the Executive Authorities must submit proposals/recommendations for the appointment of individual Special Advisers to the MPSA for approval of the individual's compensation level before the appointment is effected. (own emphasis)
- 5.1.17. In conclusion, Minister Mbalula informed the MPSA that it was in view of this directive that he sought his approval to remunerate Mr. Venkile on the first notch of compensation level III – R 1 446 378 per annum, given the level of advice he will require from him.
- 5.1.18. The MPSA responded to the correspondence of Minister Mbalula in a letter dated 27 August 2019 and informed him that he evaluated Mr. Venkile's candidature in terms of the Dispensation and approved the awarding of compensation level II to Mr. Venkile as his fulltime Special Adviser.
- 5.1.19. The MPSA drew Minister Mbalula's attention to paragraph 11 of the Dispensation that requires Executive Authorities to submit proposals/ recommendations for the appointment of individuals Special Advisers to his office for approval of individual's compensation level before the appointment/upgrade is effected. He noted that Minister Mbalula had already appointed Mr. Venkile as his Special Adviser and wished to inform him that Mr. Venkile should not have been appointed prior to confirmation of his compensation level and therefore advised that Mr. Venkile's appointment be affected after concurrence has been obtained. (Own emphasis)
- 5.1.20. The MPSA also highlighted item 10 of the Dispensation that requires Minister Mbalula to enter into a contract of employment with Mr. Venkile, limited to the term of the Political Principal. He further pointed at item 12 of the Dispensation that Minister Mbalula must enter into and sign a performance agreement with Mr.

- Venkile and that copies of the new contract of employment and performance agreement must be submitted to the DPSA for record purposes within 30 days after signing.
- 5.1.21. The MPSA further informed Minister Mbalula that a full security clearance for Mr. Venkile must still be obtained and submitted to the DPSA for record purposes once it was made available.
- 5.1.22. On 16 October 2019, another correspondence was sent by Minister Mbalula to the MPSA requesting the latter to approve Mr. Venkile's appointment as a Special Adviser at compensation level III because of his vast experience with retrospect from 1 June 2019.
- 5.1.23. On 27 November 2019, the MPSA responded to Minister Mbalula and informed him that he noted his request for approval for the revision of Mr. Venkile's compensation from level II to level III and also his request for approval of the appropriate compensation level to be granted retrospectively from 1 June 2019, as Minister Mbalula's fulltime Special Adviser.
- 5.1.24. The MPSA advised Minister Mbalula that paragraph 11 of the Dispensation requires Executive Authorities to submit proposals/recommendations for the appointment of individual Special Advisers to his office for approval of the individual compensation level before the appointment or upgrade is affected, hence he does not accede to Minister Mbalula's request for his approval to retrospectively grant the compensation levels of Mr. Venkile and Mr. Mbindwane from 1 June 2019, as this will be in contravention of the applicable policy provisions and that Mr. Venkile and Mr. Mbindwane should not have been appointed prior to approval being granted to him. (Own emphasis)
- 5.1.25. The MPSA further informed Minister Mbalula that he approved the awarding of remuneration of Mr. Venkile in line with item 25 of the Dispensation of his experience as indicated in his Curriculum Vitae.

5.1.26. In another correspondence dated 15 February 2021, the Director General stated that Mr. Venkile was appointed with a condition as part of his offer of employment that his appointment and salary determination were subject to the determination by the MPSA and that should the salary payment be overpayment, same shall be recovered from him.

### **Appointment of Mr. K Khoza**

5.1.27. According to the Director General, Mr. Khoza was appointed in terms of section 12A of the Public Service Act as well as the Dispensation. He further submitted that the Dispensation does not specify the minimum requirements for the appointment of Special Advisers.

5.1.28. The Director General asserted that Mr. Khoza was a suitably qualified person to be appointed to the post. He further informed the investigating team that a letter requesting the concurrence and determination was sent to the MPSA on 21 March 2020, within the week of his appointment. However, this was only responded to after an enquiry by the Public Protector.

5.1.29. The Director General also provided the investigating team with the contract of offer of appointment for Mr. Khoza dated 21 March 2020 as a Special Adviser to Minister Mbalula, subject to the approval of the MPSA and the Dispensation.

5.1.30. He indicated that Mr. Khoza was offered the appointment, subject to the fulfilment of the provisions of the Dispensation. The Department made this a condition of appointment and inserted the clause in the appointment letter to this effect, which reads as follows:

*“... This appointment is subject to the approval of the Minister of Public Service and Administration and the Dispensation for the Appointment and Remuneration of Persons (Special Adviser) Appointed by the Executive Authority (EA) on Ground of policy consideration in terms of Section 12A of the Public service Act(PSA), 1994...”*

- 5.1.31. The Director General further reported that the MPSA confirmed the appointment of Mr. Khoza with the same salary determination as what the Department had provisionally offered to him with the provision that same be subjected to the approval by the MPSA.
- 5.1.32. In the correspondence dated 6 March 2020, titled “*Confirmation of appointment of a Special Adviser to the Minister of Transport: Mr. Kaiser Khoza*”, Minister Mbalula informed the MPSA that he exercised the powers and duties vested in him as the Executive Authority for the Department in terms of section 3(7) of the Public Service Act, as amended and appointed Mr. Khoza to be his Special Adviser and that he was appointed in terms of section 12A of the Public Service Act, 1994, as amended, as a full-time Special Adviser on contract, which shall not exceed his term of office as the Executive Authority for the Department.
- 5.1.33. Minister Mbalula further informed the MPSA that, in compliance with paragraph 26 of the Dispensation, the letter served to seek the MPSA’s concurrence for the awarding of compensation level III due to Mr. Khoza’s extensive managerial experience and complexity of advice to be given to him by Mr. Khoza which will be comparable to that given by the Deputy Director General in the Public Service.
- 5.1.34. According to Minister Mbalula, Mr. Khoza possessed a grade 12, BJuris, LLB degree; short courses, Certificate in Corporate Governance King III, Certificate in Ethical Conduct, Certificate in Corporate Governance King IV, Certificate in Environment Impact Assessment Management, Certificate in Advanced Legislative Drafting, Certificate in Legislative Drafting and Certificate in Housing Finance Executive Programme.
- 5.1.35. Minister Mbalula further informed the MPSA that according to item 11 of the Dispensation, the Executive Authorities must submit proposals/ recommendations for the appointment of individual Special Advisers to the MPSA for approval of the individual’s compensation level before appointment is affected.
- 5.1.36. In conclusion, Minister Mbalula informed the MPSA that it was in view of this directive that he sought his approval to remunerate Mr. Khoza on the first notch of

compensation level III–R 1 521 591 per annum, given the level of advice he will require from him.

- 5.1.37. The Director General also provided the investigating team with a response dated 11 November 2020, wherein he informed Minister Mbalula that the matter could not be finalised sooner due to the fact that supporting documentation were only received on 21 October 2020.
- 5.1.38. On 11 November 2020, Minister Mchunu approved the awarding of compensation level III to Mr. Khoza. The MPSA also informed Minister Mbalula that a contract of employment be entered into with Mr. Khoza, limited to the term of the Political Principal and Mr. Khoza to sign a performance agreement and a full security clearance to be obtained within 12 months after appointment and submitted to the DPSA for record purposes.

#### **Appointment of Mr. Bongisizwe Mpondo**

- 5.1.39. According to the Director General, Mr. Mpondo was recruited initially as a Special Adviser in line with the requirements of Section 12A of the Public Service Act and regulations. He was appointed on 15 November 2019 and in line with the process of appointment, which requires the Executive Authority to seek concurrence and salary determination from the MPSA. However, this process was shortly abandoned when Mr. Mpondo resigned from the position to take up the contract position of Project Manager in the Ministry, additional to the establishment in lieu of the Ministerial directive to second him to PRASA as the Acting Group Chief Executive.
- 5.1.40. The Director General also provided the investigating team with the contract of offer of appointment for Mr. Mpondo dated 15 November 2019 as a Special Adviser to the Minister, subject to the approval of the MPSA and the Dispensation.
- 5.1.41. On 4 December 2020, the MPSA responded to the Public Protector's correspondence with regard to the appointment of Mr. Mpondo and stated that he

could not comment on that appointment as a Special Adviser as they had no records of him being appointed as such.

- 5.1.42. The Director General also provided the investigating team with the contract of appointment offer for Mr. Mpondo as a Special Adviser to the Minister which was dated and signed by Minister Mbalula on 15 November 2019. According to the offer, the contract was subject to four conditions that included the signing of a Performance Agreement with the Minister within three months from the date of assumption of duty and the signing of employment contract within five working days from the date of assumption of duty, which was accepted on the same day.
- 5.1.43. In a correspondence dated 15 February 2021, the Director General informed the investigating team that Mr. Mpondo was offered the position of an Adviser to the Minister with this offer being subject to the MPSA's approval. Mr Mpondo is said to have duly accepted the offer as the Minister was going to seek concurrence with the MPSA, and then it became clear to them that the situation of the Board of PRASA was in an untenable situation and the Minister abandoned this process.
- 5.1.44. A civil society organisation, UnitedBehind, challenged the appointment of Mr. Mpondo and in the case between *UnitedBehind v the Department of Transport and others* case number 2058/2020, Judge Erasmus, in paragraph 61 of the judgment, stated that when Mr. Mpondo was offered an appointment as the Project Manager and secondment to PRASA as an acting Group Chief Executive Officer, the termination of the first agreement as a Special Adviser to the Minister and his appointment as a Project Manager was clearly a strategy to place him in a position to be seconded in terms of section 15 of the Act. However, he was not an existing employee capable of secondment.
- 5.1.45. Judge Erasmus further stated in paragraph 64 of the judgment that he was of the view that not only was Mr. Mpondo's appointment as the acting GCEO unlawful, but also his appointment as Project Manager in the Minister's office and this is reviewable under section 6(2) of PAJA and should be set aside.

- 5.1.46. Notices in terms of section 7(9) of the Public Protector Act were issued to Minister Mbalula and the Director General on 11 March 2021. Responses to the notice were received from them on 25 March 2021.
- 5.1.47. With regard to the appointment of the Ministerial Advisers, Minister Mbalula reiterated that the process of appointing the Advisers is dealt with by the Chief of Staff and Director General and on the strength of their advice, he was informed that all the applicable prescripts were adhered to in the appointment and placement of the Ministry staff.
- 5.1.48. Minister Mbalula further submitted that the Chief of Staff who was in charge of all these appointments at the time, Mr. Kagiso Moleme left the employ of the Ministry at the end of July 2020.
- 5.1.49. Minister Mbalula also submitted that the contracts of employment and Performance Agreements were duly submitted to the MPSA for record purposes and the MPSA updated regarding the progress on security clearance.
- 5.1.50. He also referred the investigating team to a response of the Director General in which he stated that the Department will update its internal recruitment policies to ensure that in future, recruitment of the Advisers will await determination of the MPSA no matter how long this will take “(although this may have a detrimental effect on effective service delivery and expose a sitting Minister with a possibility of prolonged exposure to critical decision making without the requisite advice)”.
- 5.1.51. Regarding the appointment of Mr. Mpondo as the Ministerial Adviser, the Director General reiterated that the Minister opened negotiations with Mr. Mpondo with a view to offering him an appointment as his Adviser and Mr. Mpondo was amenable to this and accepted the offer. He further stated that Minister Mbalula was in the process of approaching the MPSA for his concurrence and determination, but this process was abandoned when it became apparent that the Minister would need the services of Mr. Mpondo at PRASA.



- 5.1.52. He further reiterated that although a contract subject to the approval of the MPSA existed in that there was an offer and acceptance, this was never fulfilled and never materialized as Mr. Mpondo was never on the Persal of the Department as the Adviser to the Minister.
- 5.1.53. A response was also received from Mr Siphon Ndaba, the Corporate Executive: Support Audit Services of the Auditor General of South Africa (AGSA) dated 11 May 2021 regarding the appointment of the Ministerial Special Advisers. He informed the investigating team that these appointments were tested as part of the 2019/20 PFMA audit cycle and the findings of the non-compliance with section 39(1) and section 44(1) of the Public Service Regulations were raised.

*Application of the relevant laws and prescripts*

- 5.1.54. With regard to the appointments made, the issue for determination by the Public Protector was whether applicable laws and prescripts were complied with as well as whether the appointments of Messrs. Venkile, Khoza and Mpondo respectively, were done in terms of the provisions of the Public Service Act and other prescripts applicable.

**The Public Service Act (PSA), 1994**

- 5.1.55. Section 1 of the Public Service Act defines an employee as a person contemplated in section 8 of the Act, but it excludes a person appointed under section 12A.
- 5.1.56. Section 12A of the PSA which deals with appointment of persons on grounds of policy considerations provides that such Executive Authorities, as the Cabinet may determine, may appoint one or more persons under a contract, whether in a full-time or part-time capacity-

*“ to advise the executive authority on the exercise or performance of the executive authority's powers and duties;*

- a. to advise the executive authority on the development of policy that will promote the relevant department's objectives; or*

*b. to perform such other tasks as may be appropriate in respect of the exercise or performance of the executive authority's powers and duties.”*

5.1.57. It is further stated that the maximum number of persons that may be appointed by an executive authority under this section and the upper limits of the remuneration and other conditions of service of such persons shall be determined by the Cabinet in the national sphere of government.

5.1.58. Section 12A also states that “*the special contract contemplated in subsection (1) shall include any term and condition agreed upon between the relevant executive authority and the person concerned, including-*

*a. the contractual period, which period shall not exceed the term of office of the executive authority;*

*b. the particular duties for which the person concerned is appointed; and*

*c. the remuneration and other conditions of service of the person concerned.”*

**Dispensation for the Appointment and Remuneration of Persons (Special Advisers) appointed to Executive Authorities on grounds of Policy Considerations in terms of section 12A of the Public Service Act, 1994 Issued by the Department of Public Service and Administration with effect from 1 April 2019 (the Dispensation)**

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

- 5.1.60. The Dispensation also provides that the Executive Authorities must submit proposals/recommendations for the appointment of individual Special Advisers to the MPSA for approval of the individual's compensation level **before** the appointment/upgrade is effected. (own emphasis)
- 5.1.61. It is further stated that Executive Authorities must ensure that the Special Adviser obtains the necessary security clearance **before** he/she is appointed and requests received without necessary security clearance will not be entertained. (own emphasis)
- 5.1.62. Messrs. Venkile, Khoza and Mpondo were appointed **before** the approval by the MPSA which is in contravention of the Dispensation. (own emphasis)

### **The Public Service Regulations of 2001**

- 5.1.63. Regulation 57(4) of the Public Service Regulations provides that the employment of a person additional to the establishment in terms of sub regulation (2)(a) and (b) shall not exceed 12 consecutive calendar months unless otherwise directed by the Minister. The Minister relied on this regulation to appoint Mr. Mpondo as a Project Manager of the Department of Transport for a period of 12 Months.
- 5.1.64. Section 198B. (1) of the Labour Relations Act provides that:
- “For the purpose of this section, a ‘fixed term contract’ means a contract of employment that terminates on— (a) the occurrence of a specified event; (b) the completion of a specified task or project...”*
- 5.1.65. Judge Erasmus, in the court case of *UnitedBehind v the Department of Transport and others* further, stated that not only was Mr. Mpondo's appointment as the acting Group CEO unlawful, but also his appointment as Project Manager in the Minister's office and according to him this is reviewable under section 6(2) of PAJA and should be set aside.

---

**The Conclusions that could be made based on the application of the law to the facts**

- 5.1.66. Regarding whether the appointments of Messrs. Venkile, Khoza and Mpondo respectively were contrary to the provisions of the Public Service Act and other prescripts applicable to the National Department of Transport.

**Mr. L Venkile's appointment as a Special Adviser**

- 5.1.67. The evidence obtained during the investigation indicates that Mr. Venkile was appointed by the Department before approval by the MPSA as is required by item 11 of the Dispensation. Mr. Venkile's offer of contract of appointment is dated 1 June 2019 and approval was made by the MPSA on 27 August 2019. The MPSA further informed Minister Mbalula that he noted that the latter had already appointed Mr. Venkile as his Special Adviser. He informed Minister Mbalula that Mr. Venkile should not be appointed prior to the confirmation of his compensation level and advised him that the appointment of Mr. Venkile be effected after concurrence was obtained.

**Mr. Khoza's appointment as a Special Adviser**

- 5.1.68. The evidence obtained provides that Mr. Khoza was appointed by the Department before approval by the MPSA as required by item 11 of the Dispensation. Mr. Khoza's contract of appointment offer is dated 21 March 2020 and approval was made by the MPSA on 11 November 2020.
- 5.1.69. Even though the appointment of Mr. Khoza as a Special Adviser was subject to the approval by the MPSA, the evidence indicates that he was nevertheless appointed prior to such approval being obtained.
- 5.1.70. It is also noted in correspondence to Minister Mbalula from the MPSA that a contract of employment must be entered into with Mr. Khoza, limited to the term of the Political Principal and that Mr. Khoza were to sign a Performance Agreement and a full security clearance be obtained within 12 months after his appointment and submitted to the DPSA for record purposes. It is noted that Mr. Khoza was

appointed during March 2020 and approval was made by the MPSA on 11 November 2020.

- 5.1.71. It was established that Minister Mbalula submitted the contracts of employment and Performance Agreements of Mr. Khoza to the MPSA for record purposes and further updated him regarding the progress on security clearance after the MPSA approved Mr Khoza's appointment.

**Mr. Bongisizwe Mpondo's appointment as a Special Adviser**

- 5.1.72. The evidence obtained indicates that Mr. Mpondo was appointed by the Department as a Special Adviser before approval was granted by the MPSA as required by item 11 of the Dispensation. His contract of appointment offer is dated 15 November 2019 and no approval was made by the MPSA.
- 5.1.73. On 5 December 2019, Minister Mbalula terminated Mr. Mpondo's contract of appointment as a Special Adviser and simultaneously offered him a contract of appointment as the Project Manager in the Department for a fixed term period of 12 months and thereafter seconded as Acting Group CEO of PRASA.
- 5.1.74. Regarding the appointment of Mr. Mpondo as a Project Manager in the Minister's office, Judge Erasmus in *UnitedBehind v the Department of Transport and others* was of the view that Mr. Mpondos's appointment as Project Manager in the Minister's office was also unlawful and this is reviewable under section 6(2) of PAJA and should be set aside.
- 5.1.75. Minister Mbalula submitted the contracts of employment and Performance Agreements of Mr. Venkile to the MPSA for record purposes and updated regarding the progress on security clearance.
- 5.1.76. It is noted that the Ministerial Advisers contracts of appointment contained a condition and a clause was inserted in the appointment letter to this effect:

*"... This appointment is subject to the approval of the Minister of Public Service and Administration and the Dispensation for the Appointment and Remuneration of*

---

*Persons (Special Adviser) Appointed by the Executive Authority (EA) on Ground of policy consideration in terms of Section 12A of the Public service Act(PSA), 1994..."*

**5.2. Regarding whether Messrs. L Venkile and K Khoza respectively, were irregularly paid salaries which are equivalent to that of a Deputy Director General (DDG) level even though their appointments were not approved by the Minister of Public Service and Administration**

*Common cause issue*

5.2.1. It is not disputed that Messrs. Venkile, Khoza and Mpondo were employed as Special Advisers to the Minister and received a salary from the Department.

*Issues in dispute*

5.2.2. The issue for determination is whether Messrs. Mpondo, Venkile and Khoza respectively, were irregularly paid salaries which were equivalent to that of DDG level whilst their appointments were not approved by the MPSA.

**Remuneration of Mr. Mpondo**

5.2.3. On 14 December 2020, the Director General responded and informed the investigating team that the process of appointing Mr. Mpondo as a Special Adviser was abandoned with Mr. Mpondo's offer of employment as the Project Manager on a short-term contract. Mr. Mpondo was captured on the Persal system when he was appointed on the short-term contract and this did not need the concurrence of the MPSA.

5.2.4. In another correspondence dated 15 February 2021, the Director General stated that Mr. Mpondo was offered the position of the Special Adviser to Minister Mbalula with this offer being subject to the MPSA's approval. Mr. Mpondo had been consulted and duly accepted the offer as the Minister was going to seek concurrence with the MPSA, and then it became clear to them that the situation of

the Board of PRASA was in an untenable situation and the Minister abandoned this process.

- 5.2.5. According to the Director General, Minister Mbalula abandoned this process of seeking concurrence of the MPSA, having duly considered the possibility of the appointment of Mr. Mpondo and his secondment to the position of Acting Group CEO of PRASA and after due consultation by Minister Mbalula with the Minister of Finance and the Hon. President as well as Cabinet. Mr. Mpondo was subsequently offered a 12 month short-term contract as a Project Manager at the Department by the Minister on 5 December 2019 and was subsequently seconded to PRASA on 9 December 2019.
- 5.2.6. The Director General further stated that Mr. Mpondo was appointed as the Project Manager in the Department on a short-term contract of 12 months and the Department had solicited advice of the former Director General of the Public Service Commission, Dr. Mamphisweni. The advice was that the Minister could rely on the provisions of Regulation 57(4), Part 4 of Chapter of the Public Service regulation of 2016 read with section 198B 1(a) and (b) of the Labour Relations Amendment Act, 2014.
- 5.2.7. Mr. Mpondo was appointed by the Department before approval by the DPSA. Mr. Mpondo's contract of appointment offer is dated 15 November 2019 and no approval was made by the MPSA.
- 5.2.8. On 5 December 2019, Minister Mbalula terminated Mr. Mpondo's contract of appointment as a Special Adviser and simultaneously offered him a contract of employment as the Project Manager in the Department and was subsequently seconded to PRASA on 9 December 2019.

#### **Remuneration of Mr. Venkile**

- 5.2.9. According to the Director General, Mr. Venkile was appointed with the condition of his appointment being that his salary was subject to the determination by the

MPSA and that should the salary payment end up being overpayment, same should be recovered from him.

- 5.2.10. In the correspondence dated 24 June 2019, titled “*Appointment of Mr. P.L Venkile and Mr. B Mbindwane as a fulltime Special Advisers*”, Minister Mbalula informed the MPSA that his approval for Mr. Venkile’s appointment as a Special Adviser was noted and that his request of 24 June 2019 was to recommend that Mr. Venkile’s appointment be level III and he therefore requested the MPSA to reconsider his approval at a compensation of level III and not II.
- 5.2.11. Minister Mbalula further noted that Mr. Venkile’s remuneration level prior to his appointment far exceeded remuneration at level II. He further informed the MPSA that it was his considered view that his vast experience, not only in the Transport sector, but also at management, places his level of experience and expertise and complexity of advice commensurate to that of a DDG. Minister Mbalula further requested that the MPSA to approve Mr. Venkile’s remuneration with retrospective effect from 1 June 2019.
- 5.2.12. The MPSA responded to the correspondence of Minister Mbalula on 27 November 2019, in a document titled “*Appointment of Mr. P.L Venkile and Mr. B Mbindwane as a fulltime Special Advisers.*” He noted his request for approval for the revision of Mr. Venkile’s compensation from level II to III and also his request for his approval and for appropriate compensation levels be granted respectively from 1 June 2019, as Minister Mbalula’s fulltime Special Adviser.
- 5.2.13. He advised Minister Mbalula that paragraph 11 of the Dispensation requires the Executive Authorities to submit proposals/recommendations for the appointment of individual Special Advisers to his office for approval of the individual compensation level before the appointment or upgrade is affected, hence he did not accede to Minister Mbalula’s request for his approval of Mr. Venkile and Mr. Mbindwane’s compensation levels be granted retrospectively from 1 June 2019 as this would be in contravention of the applicable policy provisions and that Mr.



---

Venkile and Mr. Mbindwane should not have been appointed prior to approval being granted to him.

- 5.2.14. He further informed Minister Mbalula that he approved the awarding of Mr. Venkile in line with paragraph 25 of the Dispensation of his experience as indicated in his CV.
- 5.2.15. The MPSA informed Minister Mbalula that paragraph 22 of the Dispensation states that an Executive Authority may award higher packages within the approved compensation levels to serving Special Advisers or Special Advisers appointed based on the recruitment and retention of suitable persons and as such, he could award Mr. Venkile any remuneration package that fell within the approved compensation level II and such decision should be reported to him as the MPSA.
- 5.2.16. Mr. Venkile sent correspondence to Minister Mbalula in a letter dated 25 August 2020 titled, “*Adjustment of my Compensation Level in line with final determination by Minister of Public Service and Administration*” in which he conceded that given the *status quo*, he would need to accept the determination at compensation II and further agreed to the recovery of the excess earnings he received. He further informed Minister Mbalula that this places him in an untenable position which affects his livelihood and the level III remuneration was also a sacrifice.
- 5.2.17. In his correspondence, Mr. Venkile pleaded with the Minister and requested permission to make a suitable repayment plan.
- 5.2.18. As at the date of this Report, Mr. Venkile had accepted that he will pay back the money determined as a salary overpayment which is the difference between level III that was offered at the time of his appointment and salary level II that was approved by the MPSA. As indicated above, he further requested that the Department should enter into an agreement with him on a repayment plan as the figure is too onerous to be repaid all at once.
- 5.2.19. According to the Director General, although this is an unfortunate case of gross unfairness on the part of the employee in that the duties of Special Adviser were

performed during this period, the employee has however accepted that this was a condition of his appointment and therefore of his contract of employment. The Director General further informed the investigating team that the AGSA also looked at the condition set for appointment and Mr. Venkile has signed an Acknowledgment of Debt.

- 5.2.20. The Director General further indicated that this matter was attended to by the Department, consistent with the spirit, letter and provisions of the National Credit Act, 2005 and the commencement of the recovery of the monies owed by Mr. Venkile commenced from 01 April 2021.

#### **Remuneration of Mr. Khoza**

- 5.2.21. The Director General reported that the MPSA confirmed the appointment of Mr. Khoza with the same salary determination to what the Department provisionally offered to him with the condition that same be subjected to approval by the MPSA.
- 5.2.22. On 15 February 2021, the Director General further informed the investigating team that Mr. Khoza was offered an appointment on 21 March 2020, subject to the fulfilment of provisions of the Dispensations.
- 5.2.23. He further stated that the Department made the following a condition of appointment and inserted the clause in the appointment letter:

*“...This appointment is subject to the approval of the Minister of Public Service and Administration and the Dispensation for the appointment and Remuneration of Persons (Special Adviser) Appointed by the Executive Authority (EA) on Ground of policy Consideration in terms of section 12A of the Public Service Act (PSA) 1994...”*

- 5.2.24. He stated that as the MPSA confirmed the DDG Level III and Mr. Khoza has rendered his services to Minister Mbalula during his tenure, he did not deem it necessary to recoup any monies paid to him as they denied that this was an

overpayment to Mr. Khoza as the final determination was commensurate to what was offered.

- 5.2.25. Mr. Khoza was appointed by the Department before approval by the MPSA as his contract of appointment offer is dated 21 March 2020 and approval was only granted by the MPSA on 11 November 2020.
- 5.2.26. Notices in terms of section 7(9) of the Public Protector Act were issued to Minister Mbalula and the Director General on 11 March 2021. As indicated above, the responses to the notices were received from them on 25 March 2021.
- 5.2.27. Minister Mbalula in his response submitted that both Mr. Venkile and Mr. Khoza were appointed with a condition that their offers of employment and salary determinations were subject to the determination by MPSA and that should the salary payment end up being an overpayment same shall be recovered from them.
- 5.2.28. He further submitted that Mr. Venkile accepted that he will pay back the money deemed irregular as a consequence of both the fact that the MPSA approved a lower grade than that he was remunerated and on the remuneration paid over the period before approval was granted by the MPSA and the same will be conveyed to Mr. Khoza. Minister Mbalula further stated that as a result of consequence management, the Chief of Staff who was in charge of all these appointments at the time, Mr. Kagiso Moleme, left the employ of the Ministry at the end of June 2020.
- 5.2.29. Minister Mbalula also referred the investigating team to the response of the Director General who also restated that Mr. Venkile accepted that he will pay back the money and the same will be conveyed to Mr. Khoza.
- 5.2.30. He also provided the investigating team with a letter, from him to Mr. Venkile dated 15 March 2021, titled, "*Salary Overpayment Debt and Recovery*". In this correspondence, the Director General advised Mr. Venkile that he was indebted to the Department to the amount of R 455 984.50 as overpayment that occurred as a result of change in his appointment date and the review of his salary level as approved by the MPSA. It is further stated that the calculations were done for the

period of 1 June 2019 to August 2019 for the salary that was paid to him and from 1 September 2019 to March 2021 which is the difference between the salary level 15 (DDG) and salary level 14 (Chief Director) resulting in overpayment that is due back to the Department.

- 5.2.31. The Director General attached a spreadsheet that depicts that from April 2021 to May 2024, Mr. Venkile would pay installments of R 11 999.60. Minister Mbalula and the Director General also promised that this will also be done to Mr. Khoza.
- 5.2.32. The Director General also stated that the Department put a clause in both Mr. Venkile and Mr. Khoza's contracts of employment that they were appointed with a condition that their offers of employment and salary determinations were subject to the determination by MPSA and that should the salary payment end up being an overpayment, same shall be recovered from them. He emphasized that it is their contention that with such a condition, no harm would befall the Department as the risk was shifted by the Department to the prospective employee.
- 5.2.33. He said that it would therefore be illogical to conclude that the finding of irregularity will be made. He further averred that in the National Treasury guide for Accounting Officers and also the practice within the public service is to record such payments as over-payments and not irregular expenditure.
- 5.2.34. He further stated that they have taken the liberty to enquire with several government departments and entities as to how this is treated and there have been confirmation across the board that, even the AGSA does not treat such matters as irregular expenditure, but rather recoverable salary overpayments.
- 5.2.35. Whilst the Director General disagreed that the Department incurred an irregular expenditure, however, he stated that as the Department they offered to recover the amounts that were earned outside the condition of appointment.
- 5.2.36. He further contended that the declaration of irregular expenditure is unfair on the Department and could also be a very difficult remedial action to comply with administratively as well as the consideration of possible lawsuits that may follow.

- 5.2.37. With regard to the appointment of Mr. Mpondo as a Ministerial Adviser, the Director General averred that Mr. Mpondo was never appointed on Persal of the Department as an Adviser to the Minister and was never paid a cent in respect of him being offered the position of Adviser to the Minister as his appointment was abandoned when it became apparent that the Minister needed his services at PRASA.

**Application of the relevant laws and prescripts**

- 5.2.38. With regard to whether the salaries of Messrs. Venkile, Khoza and Mpondo were irregularly paid in that they were equivalent to DDG level whilst their appointment was not approved by the MPSA, were done in terms of the provisions of the Public Service Act and other prescripts applicable;

**The Public Service Act**

- 5.2.39. Section 12A of the Public Service Act which deals with the appointment of persons on grounds of policy considerations provides that such executive authorities as the Cabinet may determine, may appoint one or more persons under a contract, whether in a full-time or part-time capacity-

“

- a. to advise the executive authority on the exercise or performance of the executive authority's powers and duties;*
- b. to advise the executive authority on the development of policy that will promote the relevant department's objectives; or*
- c. to perform such other tasks as may be appropriate in respect of the exercise or performance of the executive authority's powers and duties.”*

- 5.2.40. It is further stated that the maximum number of persons that may be appointed by an Executive Authority under this section and the upper limits of the remuneration and other conditions of service of such persons shall be determined by the Cabinet in the national sphere of government. (Own emphasis)

- 5.2.41. Section 12A also states that the special contract contemplated in subsection (1) shall include any term and condition agreed upon between the relevant executive authority and the person concerned, including but not limited to the remuneration and other conditions of service of the person concerned. (Own emphasis)

**Dispensation for the Appointment and Remuneration of Persons (Special Advisers) appointed to Executive Authorities on Grounds of Policy Considerations in terms of section 12A of the Public Service Act, 1994 issued by the Department of Public Service and Administration with effect from 1 April 2019**

- 5.2.42. It is stated in the Dispensation that the provision to appoint Special Advisers in terms of Section 12A of the Public Service Act, 1994, as amended, is limited to two full-time equivalent positions for each Minister and Premier, unless Cabinet or the relevant Provincial Executive Council approves a higher number up to two additional full-time equivalents for each Minister and Premier because of work requirements. It is further stated that the President and Deputy President may appoint as many Special Advisers as they may see fit. Cabinet may also reduce the number of Special Advisers that Ministers and Premiers may employ.
- 5.2.43. It is also stated that the Executive Authorities must submit proposals/recommendations for the appointment of individual Special Advisers to the MPSA for approval of the individual's compensation level **before** the appointment/upgrade is effected. (Own emphasis)

**The Public Finance Management Act**

- 5.2.44. Section 1 of the PFMA provides for the following definitions: -
- (a) *“irregular expenditure means expenditure other than unauthorized expenditure, incurred in contravention or that is not in accordance with a requirement of any applicable legislation, including this Act; or, the State Tender Board Act, 1968, or any regulations made in terms of that act; or any provincial legislation providing for procurement procedures in that provincial government.”*

- 5.2.45. For the purpose of determining whether irregular expenditure has been incurred, there must be a transgression of any of the following:
- (a) Public Finance Management Act (PFMA);
  - (b) Treasury Regulations;
  - (c) National Treasury Instructions issued in terms of section 76 of the PFMA;
  - (d) Provincial Treasury Instructions issued in terms of section 18(2)(a) of the PFMA;
  - (e) Internal policies of a department, constitutional institution or public entity, as approved by the Accounting Officer or Accounting Authority, whichever applicable; or
- 5.2.46. The salaries and emoluments that were paid to Messrs. Venkile and Khoza by the Department before their position as Special Advisers to the Minister of Transport were approved by the MPSA should be declared irregular because the Executive Authorities did not submit proposals/recommendations for the appointment of individual Special Advisers to the MPSA for approval of the individual's compensation level **before** the appointment/upgrade is effected.
- 5.2.47. The Director General has instituted the recovery process of monies and emoluments that Mr. Khoza and Mr. Venkile received as overpayments and as a result from April 2021 to May 2024, Mr. Venkile will pay back R 11 999, 60 each month until his debt is paid in full.
- 5.2.48. Minister Mbalula and the Director General also reported that the process of recovery of money that is considered as an overpayment will be effected against Mr. Khoza.
- 5.2.49. Correspondence with the subject line "Accounting treatment of salary overpayment of Ministerial Advisers" dated 30 March 2021 from Ms. Caria Ferreira, the Manager of the AGSA to the Director General was also received and states that:
- "In response to your enquiry on our final conclusion regarding the accounting treatment of remuneration of the Special Adviser please see below:*

*We are of the view that there was non-compliance with item 11 of the dispensation for the Appointment. Normally non-compliance with legislation will result in irregular expenditure and the amount would be disclosed as irregular expenditure. However, since the offer for contract appointment already included a clause that states that if the salary offered in this letter proves erroneous, the Department retains the right to make the necessary adjustments and recover any amount overpaid irrespective of the cause thereof we are of the view that this is a conditional appointment and therefore does not make the appointment irregular. It should only be treated as an over payment and a receivable should be raised to recover the overpayment.”*

**The Conclusions that could be made based on the application of the law to the facts**

- 5.2.50. Regarding whether Messrs. Mpondo, Venkile and Khoza respectively, were irregularly paid salaries which were equivalent to that of the DDG level whilst their appointment was not approved by the MPSA:

**Remuneration of Mr. Mpondo**

- 5.2.51. In terms of Mr. Mpondo’s offer of appointment, he was at salary level 15 with a salary range of R1 5 21 5921 – R1 714 074 and this appointment was subject to the approval of the MPSA.
- 5.2.52. Mr. Mpondo was appointed by the Department before approval by the MPSA. The contract of appointment offer of Mr Mpondo is dated 15 November 2019 and no approval was made by the MPSA.
- 5.2.53. His appointment as a Special Adviser was abandoned on 6 December 2019 by Minister Mbalula as he needed him to be seconded to PRASA as an Administrator.



---

### **Remuneration of Mr. Venkile**

- 5.2.54. In terms of Mr. Venkile's offer of appointment, he was at a salary range of level III, which amounted to R 1 446 378.00 and this appointment was also subject to the approval of the MPSA.
- 5.2.55. Mr. Venkile was appointed by the Department before approval by the MPSA. Mr. Venkile's contract of appointment offer is dated 1 June 2019 and approval was given by the MPSA on 27 August 2019. The approval was, however, on compensation level II as opposed to the level III that had been offered to Mr. Venkile upon his appointment as a Special Adviser.
- 5.2.56. Minister Mbalula requested the MPSA to approve Mr. Venkile's appointment as a Special Adviser at compensation level III because of his vast experience with retrospect from 1 June 2019. This request was however not acceded to by the MPSA.
- 5.2.57. Mr. Venkile was appointed with a condition that his appointment and salary determination were subject to the determination by the MPSA and that should the salary payment end up being an overpayment, same would be recovered from him. The Department indicated in its response to the Public Protector that it deems the payment of remuneration to Mr. Venkile to have resulted in overpayment by the Department. Mr. Venkile conceded to this position and has accordingly undertaken to pay back the money determined as a salary overpayment. (own emphasis)
- 5.2.58. According to the Director General, the commencement to recoup the overpayment from Mr. Venkile commenced from 1 April 2021.

### **Remuneration of Mr. Khoza**

- 5.2.59. In terms of Mr. Khoza's offer of appointment, he was at a salary level III at an amount ranging between R1 521 591.00 – R1 714 074 and this appointment was also subject to the approval of the MPSA.

- 5.2.60. Mr. Khoza was appointed by the Department before approval by the MPSA. Mr. Khoza's contract of appointment offer is dated 21 March 2020 and approval was made by the MPSA on 11 November 2020.
- 5.2.61. The MPSA confirmed the appointment of Mr. Khoza with the same salary determination as what the Department provisionally offered to Mr. Khoza with the proviso that same be subjected to approval by the MPSA.
- 5.2.62. Mr. Khoza has rendered his services to the Minister during his tenure.
- 5.2.63. Mr. Venkile agreed that he is indebted to the Department and undertook to pay back all monies that were not due to him that are regarded as overpayment.
- 5.2.64. Mr. Mpondo never received any salaries from the Department as a Ministerial Adviser as this process was abandoned when it became apparent to the Minister that the Minister needed his service as a as an Administrator at PRASA.
- 5.2.65. To safeguard the Department against irregular appointments and overpayment as the Minister urgently needed the services of Special Advisers, the contracts of employment of Messrs. Mpondo, Venkile and Khoza had this clause inserted:
- "... This appointment is subject to the approval of the Minister of Public Service and Administration and the Dispensation for the appointment and Remuneration of Persons (Special Adviser) Appointed by the Executive Authority (EA) on Ground of policy Consideration in terms of section 12A of the Public Service Act (PSA) 1994..."*
- 5.2.66. The Public Protector is of a view and in agreement with the AGSA's view that since the offer for contract of appointment already included a clause that states that if the salary offered proves erroneous, the Department retains the right to make the necessary adjustments and recover any amount overpaid. The salary that was paid to both Messrs Venkile and Khoza should be treated as an overpayment and be recovered from the parties concerned.

**5.3. Regarding whether Mr. Mpondo's secondment to PRASA was done contrary to the provisions of the Public Service Act, and other prescripts applicable to the National Department of Transport:**

Common cause issue

5.3.1. It is not disputed that Mr. Mpondo was appointed as the Project Manager in the Department and subsequently seconded to the PRASA as an Acting Group CEO.

Issues in dispute

5.3.2. The issue for determination is whether Mr. Mpondo's secondment to PRASA was done contrary to the provisions of the Public Service Act and other prescripts applicable to the Department.

5.3.3. On 14 December 2020, the Director General responded to the investigating team that Mr. Mpondo's appointment as the Project Manager in the Department was based on the advice of Dr. Mamphiswane. It was indicated that Minister Mbalula could rely on provisions of regulation 57(4), part 4 of Chapter 4 of the Public Service Regulations of 2016 read with section 198B 1(1) (a) and b of the Labour Relations Amendment Act. The Director General provided the investigating team with a short message service (sms) from Dr. Mamphisweni as proof that he advised the Director General that the above mentioned legislation could be used in appointing contract workers.

5.3.4. The Director General also provided the investigating team with a contract of employment between Minister Mbalula and Mr. Mpondo, titled, "*Permanent employment contract for a fixed term or a specific project in accordance with Chapter 5 of the Public Service Regulations, 2016, for members of Senior Management Service*" which they signed on 6 December 2019 for the position of Project Manager and Acting Group CEO of PRASA with effect from 6 December 2019 until further notice, but not exceeding a period of twelve (12) months.

5.3.5. The Director General stated that the secondment agreement was entered into with Mr. Mpondo and a copy was lodged with the then Acting Company Secretary of

PRASA and in the absence of the Board of Control at PRASA, the Minister assumed overall oversight responsibility of the entity.

- 5.3.6. He further indicated that the Minister relied on the provisions of section 15(2) and (3)(a) of the Public Service Act read with Regulation 62 of the Public Service Regulations of 2016. According to the Director General, it is an established practice within the Public Service where employees of departments can be seconded to entities. He further stated that this has been a standing practice that has been generally applied across the public service which states that:

*“Section 15*

*Transfer and secondment from and to public service*

*(2) If it is in the public interest and if the prescribed conditions (if any) have been complied with, the executive authority of a department may, with the approval of the employer concerned, approve the secondment of a person in the service of an organ of state, another government or any other body to the department-*

*...*

*(2) (a)The executive authority of a department may second an employee of the department to another department, any other organ of state, another government or other body...”*

*“Regulation 62*

*62. (1) A secondment in terms of section 15(2) or (3) of the Act may only take place if—*

*(a) the employee or person being seconded has the necessary competency;*

*(b) the period of secondment does not exceed 12 calendar months, unless due to operational reasons determined otherwise by the Minister; and...”*

- 5.3.7. According to the Director General, the secondment of Mr. Mpondo did not require the concurrence of the National Treasury or DPSA.

- 5.3.8. On 14 December 2020, Mr. Mogajane responded in writing to the Public Protector that the National Treasury's involvement in this matter was limited to the Department seeking approval to appoint a functionary other than the Board or controlling body as the accounting authority of a public entity.
- 5.3.9. The National Treasury attached correspondence between it and the Department in relation to the appointment of an accounting authority for PRASA in 2019, in terms of section 49(3) of the PFMA.
- 5.3.10. The Director General also provided the investigating team with correspondence from Minister Mbalula to President Ramaphosa dated 22 November 2019 following his engagement with him on 19 November 2019, titled, "*Briefing on the Performance of Passenger Rail Agency of South Africa (PRASA) Board and my intent to dissolve the Board*".
- 5.3.11. In the correspondence, he informed the President that he had an opportunity to look at the affairs of PRASA and its performance as a whole and it came to his attention that the interim Board had failed to discharge its fiduciary duties as there was a litany of issues of non-compliance with the prescripts that warranted immediate action and intervention into the affairs of the Board and the entity.
- 5.3.12. Minister Mbalula further informed the President that he had two options, of which option one involved work to fast track the appointment of the fulltime Board that is fully fledged in line with the Legal Succession to the South African Transport Service Act No 9 of 1998 and option 2 involved placing PRASA under administration in line with the provision of section 49(3) of the PFMA. He informed the President that he preferred option two considering the situation the entity was in and that he would consult the Minister of Finance to appoint an Administrator who should be a turn-around expert to assist in addressing the operational deficiencies of the entity.
- 5.3.13. In the correspondence to Minister Mboweni from Minister Mbalula dated 22 November 2019 titled "*Briefing on the performance of the Passenger Rail agency*

---

*of south Africa (PRASA) Board and my intent to dissolve the Board*”, Minister Mbalula referred to the two options.

- 5.3.14. In the correspondence, Minister Mbalula informed the National Treasury that he preferred option 2 considering the situation the entity was in and wished to consult with the Minister of Finance in invoking the provisions of section 49(3) of the PFMA in appointing an Administrator, who should be a turn-around expert to assist in addressing the operational deficiencies of the entity. He, therefore, requested the Minister’s concurrence in invoking the provisions of section 49(3) of the PFMA.
- 5.3.15. On 19 December 2019, Mr. Mogajane addressed correspondence to the Director General informing him that he must note that in terms of section 10(1) of the PFMA, section 49(3) is delegated to the National Treasury.
- 5.3.16. Mr. Mogajane further informed the Director General that the provisions set out in section 49(3) do not apply to placing a public entity under administration, it only provides for a functionary other than the Board of control or the chief executive officer of a public entity, set out in section 49(2) to be accountable in terms of the PFMA and given this, approval in terms of the PFMA was not required.
- 5.3.17. On 28 January 2020, Mr. Mogajane addressed another correspondence to the Director General, titled “*Appointment of the accounting Authority for the Passenger Rail Agency of South Africa*”.
- 5.3.18. In the correspondence, he informed him that he considered the significant deterioration in the financial governance of PRASA and the fact that the Board was not functional because all members were removed in November 2019, as exceptional and in view thereof in terms of section 49(3) of the PFMA, approved the Group Chief Executive Officer of PRASA, or a person acting in that position, to be the accounting authority for a period of 12 months and if the new Board was appointed in that period, the approval lapsed 90 days after the term of office of the majority of the Board members has commenced.

- 5.3.19. On 16 January 2020, the Director General addressed correspondence to Mr. Mogajane titled “*request to invoke the provisions of section 49(3) of the Public Finance Management Act, 1998 for the purpose of PRASA acting Group CEO*”.
- 5.3.20. In the correspondence, he informed Mr. Mogajane that Minister Mbalula appointed Mr. Mpondo on a short-term contract of 12 months within the Department in line with the provisions of the Public Service Act. The Director General further indicated that the Minister also, subsequent to this appointment, with due consideration of the Cabinet resolution of November 2019, decided to second Mr. Mpondo to PRASA as the Acting Group CEO, following the recall of Dr. Nkosinathi Sishi back to the Department.
- 5.3.21. He told Mr. Mogajane that, “*As duly indicated that the provisions of section 49 of the Public Finance Management Act 1999 (Act No 1 of 1999) are delegated by the Minister of Finance to yourself as the Director General of National Treasury in line with the provision of section 10 of the PFMA*”, he invoked the provisions of section 49(3) of the PFMA to cloth the Acting Group CEO, Mr. Mpondo, to assume the responsibility and functions of the Accounting Authority of PRASA, having duly considered the exceptional circumstances contained in the letter of the Minister of Transport to the Minister of Finance on the affairs of PRASA.
- 5.3.22. The Acting Group Chief Financial Officer of PRASA, Mr. Mkhabela was requested to provide documents and information to the investigating team on 16 February 2021, of which he submitted them on 4 March 2021.
- 5.3.23. Mr. Mkhabela provided the investigating team with the appointment letter of Mr. Mpondo as the Acting Group CEO of PRASA, which was addressed to Ms. Thabethe, the Acting Company Secretary of PRASA by Minister Mbalula dated 9 December 2019.
- 5.3.24. Another appointment letter was sent by Minister Mbalula to Mr. Mpondo on 9 December 2019, appointing him as the Accounting Authority of PRASA.

- 5.3.25. A letter approving Mr. Mpondo's remuneration as the Acting Group CEO and Accounting Authority at PRASA was also sent by Minister Mbalula to Ms. Thabethe on 18 February 2020.
- 5.3.26. In the correspondence, Minister Mbalula informed Ms. Thabethe that he approved her request to pay Mr. Mpondo a total guaranteed remuneration package of R5 450 549.07 as the Acting Group CEO for a period of twelve (12) months commencing from 9 December 2019 to 8 December 2020.
- 5.3.27. Secondly, the Minister also approved the request to pay Mr. Mpondo's remuneration package of R2 358 096.96 from 9 December 2019 prorated for the months that he served as an Accounting Authority or until the appointment of a new Board of Control for PRASA.
- 5.3.28. The Acting Group Chief Executive Officer of PRASA, Ms. Thandeka Mabija, was also requested to provide documents and information to the investigating team on 26 February 2021, which she submitted them on 29 March 2021.
- 5.3.29. She provided all the documentation mentioned above from Mr Mkhabela, including correspondences confirming that the appointment of Mr Mpondo as Acting Group CEO and as the Accounting Authority of PRASA were made by Minister Mbalula on correspondences dated 9 December 2021.
- 5.3.30. In her correspondence, Ms. Mabija informed the investigating team that the Minister of Transport together with the Minister responsible for the National Treasury seconded or appointed Mr Mpondo as the interim Group CEO as per Court Order and that Mr Mpondo rendered a service at PRASA and was entitled to the salary paid to him.
- 5.3.31. As stated above, on 25 August 2020, in the case between *UnitedBehind v the Department of Transport and others* case number 2058/2020, Judge Erasmus, of the Western Cape High Court in Cape Town, declared unlawful and set aside Minister Mbalula's appointment of Mr. Mpondo as the Acting Group CEO and Accounting Authority of the PRASA.



- 5.3.32. The order also directed the Minister to appoint a permanent Board of Control within 60 days (two months) from the day of the judgment. In the interim, the Judge directed the National Treasury to appoint another functionary of a public entity as the Accounting Authority of PRASA within 7 (seven) days.
- 5.3.33. Lastly, Judge Erasmus also ordered the Minister of Transport to pay *Unitebehind's* legal costs.
- 5.3.34. Notices in terms of section 7(9) of the Public Protector Act were issued to Minister Mbalula and the Director General on 11 March 2021 and their responses received on 25 March 2021.
- 5.3.35. Minister Mbalula referred the investigating team to the response of the Director General. In his response, the Director General reiterated that Mr. Mpondo was appointed as a Project Manager in the Department on a short-term contract of 12 months and they had solicited the advice of Dr. Maphiswane as stated above.
- 5.3.36. He submitted that the investigation of the Public Protector was initiated after the matter was settled by the court and the investigation borders on the violation of the principle of double jeopardy. He also stated that not only did the Public Protector rely on the Judgement of the High Court, but also extended the scope of the findings and went beyond the findings of the court as according to the Director General the court did not order that the salary of Mr. Mpondo should be recovered.
- 5.3.37. He also averred that the court duly considered all factors, including the extenuating circumstances in this matter and the intent of the Minister in arriving at the findings and did not make any punitive orders. The Director General also requested and invited the investigating team to test the practice of the appointment and secondment of the Senior Managers from the Department to entities and the test should be applied across the various departments since 1994 to date, in order to determine if the Department was alone in this practice or was being isolated and targeted.

---

**Application of the relevant laws and prescripts**

- 5.3.38. With regard to whether Mr. Mpondo's secondment to the PRASA was done contrary to the provisions of the Public Service Act and other prescripts applicable to the National Department of Transport:

**The Public Service Act**

- 5.3.39. Section 1 of the Public Service Act defines an employee as a person contemplated in section 8 of the Act, but it excludes a person appointed under section 12A of the Public Service Act.
- 5.3.40. Section 15 of the Public Service Act provides that:

*“Section 15*

*Transfer and secondment from and to public service*

*(2) If it is in the public interest and if the prescribed conditions (if any) have been complied with, the executive authority of a department may, with the approval of the employer concerned, approve the secondment of a person in the service of an organ of state, another government or any other body to the department-*

*...*

*(2) (a) The executive authority of a department may second an employee of the department to another department, any other organ of state, another government or other body...”*

**Public Service Regulations, 2016**

- 5.3.41. Regulation 57(4) provides that the employment of a person additional to the establishment in terms of sub regulation (2) (a) and (b) shall not exceed 12 consecutive calendar months unless otherwise directed by the Minister. The Minister relied on this regulation to appoint Mr. Mpondo as a Project Manager of the Department of Transport for a period of 12 Months.
- 5.3.42. Regulation 62 of the Public Service Act provides that:

*“Regulation 62*

*62. (1) A secondment in terms of section 15(2) or (3) of the Act may only take place if—*

- (a) the employee or person being seconded has the necessary competency;*
- (b) the period of secondment does not exceed 12 calendar months, unless due to operational reasons determined otherwise by the Minister; and...*

**Legal Succession to the South African Transport Services Act 9 of 1989:**

5.3.43. The affairs of PRASA shall be managed in terms of the Legal Succession Act of which Section 24 thereof reads as follows:

*“(1) The affairs of the corporation shall be managed by a Board of Control of not more than 11 members including the Chairman, who shall be appointed and dismissed by the Minister.”*

5.3.44. With reference to the secondment of Mr. Mpondo to the PRASA, there has been a High Court judgement under case number 2058/2020, in the matter between *UnitedBehind v Minister of Transport* and others where it was ordered that:

5.3.44.1. The First Respondent's failure to appoint a Board of Control for PRASA (PRASA) and decision to appoint the third respondent as "*the Administrator of PRASA*" in lieu of a Board of Control for PRASA, is declared to be unlawful, and is reviewed and set aside.

5.3.44.2. The First Respondent's secondment and/or appointment of the Third Respondent as the Acting Group CEO and Accounting Authority of the PRASA was declared unlawful, and was reviewed and set aside.

5.3.44.3. The Second Respondent's decision of 28 January 2020 to approve that the Group Chief Executive Officer of PRASA, or person acting in that position, be the Accounting Authority of the PRASA was declared unlawful, and was reviewed and set aside.

- 5.3.44.4. The First Respondent was directed to appoint a Board of Control for PRASA, in accordance with section 24 of the Legal Succession to the South African Transport Services Act 9 of 1989, within sixty (60) days of the date of this order, or such other period as extended by the court on good cause shown.
- 5.3.44.5. Pending the appointment of the Board of Control under paragraph 4 above:
- 5.3.44.6. The Second Respondent (National Treasury) was directed to instruct or approve, within seven (7) calendar days of the date of this order, another functionary of a public entity to be the Accounting Authority for PRASA, in accordance with section 49(3) of the PFMA, and
- 5.3.44.7. The orders in paragraph 1, 2 and 3 were suspended until another functionary was appointed on the instruction or approval of the Second Respondent, in terms of paragraph 5.1 of the order.
- 5.3.45. The Court made its determination into the matter and declared the secondment of Mr. Mpondo as the Administrator of PRASA in lieu of a Board of Control for PRASA, to be unlawful, and was reviewed and set aside and his secondment and/or appointment as the Acting Group Chief Executive Officer and accounting authority of PRASA as unlawful, and was reviewed and set aside.

### **The Public Finance Management Act**

- 5.3.46. Section 1 of the PFMA provides for the following definitions: -
- (b) *“irregular expenditure means expenditure other than unauthorized expenditure, incurred in contravention or that is not in accordance with a requirement of any applicable legislation, including this Act; or, the State Tender Board Act, 1968, or any regulations made in terms of that act; or any provincial legislation providing for procurement procedures in that provincial government.”*
- 5.3.47. For the purpose of determining whether irregular expenditure has been incurred, there must be a transgression of any of the following:
- (a) Public Finance Management Act (PFMA);

- (b) Treasury Regulations;
- (c) National Treasury Instructions issued in terms of section 76 of the PFMA;
- (d) Provincial Treasury Instructions issued in terms of section 18(2)(a) of the PFMA;
- (e) Internal policies of a department, constitutional institution or public entity, as approved by the Accounting Officer or Accounting Authority, whichever applicable; or
- (f) Any applicable legislation.

5.3.48. For a constitutional institution, a government component, a trading entity, or a public entity listed in Schedules 2 or 3 to the PFMA applying Generally Recognised Accounting Practice (GRAP) or International Financial Reporting Standards (IFRS), to incur irregular expenditure, the non-compliance must be linked to a financial transaction. Although a transaction may trigger irregular expenditure, a constitutional institution, a government component, a trading entity or a public entity will only record irregular expenditure when a transaction is recognised as expenditure in the Statement of Financial Performance in accordance with the Generally Recognised Accounting Practice (GRAP) or the International Financial Reporting Standards (IFRS), whichever is applicable.

5.3.49. PRASA is also a public entity and a National Government Business Enterprise listed under Part B of Schedule 3 of the PFMA, and is wholly owned by the State. Its main objective and business is set out in section 23 of the Legal Succession Act, which reads as follows:

- (a) ensure that, at the request of the Department of Transport, rail commuter services are provided within, to and from the Republic in the public interest; and
  - (b) provide, in consultation with the Department of Transport, for long haul passenger rail and bus services within, to and from the Republic ...
- (2) The second objective and the secondary business of the corporation is to generate income from the exploitation of the assets acquired by it.
- (3) In carrying out its objectives and business, the corporation shall have due regard to key government social, economic and transport policy objectives.

5.3.50. Mr. Mpondo's secondment to PRASA was decided by the court and was declared unlawful.

**The Conclusions that could be made based on the application of the law to the facts**

5.3.51. Based on the information and evidence obtained during the investigation and the application of the legal framework to the facts of the matter, it can be concluded that there were irregularities in the manner in which Mr. Mpondo was seconded to the PRASA. The Court made its determination into the matter and declared the secondment of Mr. Mpondo as the Administrator of PRASA unlawful. The secondment was accordingly reviewed and set aside.

5.3.52. This allegation lodged by the Complainants have been a subject of a court process and any further investigation into this matter by the Public Protector will serve no judicious purpose as the court has already pronounced on the matter.

**5.4. Regarding whether Ms. Thandiwe Mpondo was elevated to the position of Senior Manager contrary to the provisions of the Public Service Act and other prescripts applicable to the National Department of Transport:**

**Common cause issue**

5.4.1. It is not disputed that Ms. Mpondo was appointed in the Ministry of Transport around July 2019 as a Parliamentary Liaison Officer, Deputy Director Level.

**Issues in dispute**

5.4.2. The issue for determination by the Public Protector is whether Ms. Mpondo was elevated to the position of a Senior Manager contrary to the provisions of the Public Service Act, Department Human Resource Policies and other prescripts applicable to the Department.

- 5.4.3. The Complainants alleged that at the time of her appointment, Ms. Mpondo was at a Deputy Director Level whilst she only had a matric certificate. It is further alleged that when she completed her Diploma in Administration in April 2020 and through the Director General's instruction, her position was suddenly elevated to that of a Senior Manager.
- 5.4.4. The Complainants also alleged that in making these appointments, the Director General failed to ensure that proper processes and procedures were followed and prescripts and regulations were adhered to.
- 5.4.5. On 14 December 2020, the Director General responded and informed the investigating team that the Directive on Compulsory, Mandatory training days and entry requirements for Members of Senior Management Services, sets the minimum entry requirements for posts of Director at level 13 of the public service and the key requirement is the possession of an undergraduate qualification (NQF 7) as recognised by SAQA.
- 5.4.6. He stated that Ms. Mpondo was appointed at the beginning of the term of the 6<sup>th</sup> Administration in line with the provisions of the Ministerial Handbook. He further said that at the time, she did not meet the requirement of entry into Senior Management Services (SMS) post at level 13 as she was not in possession of an NQF Level 7 qualification and only in possession of Grade 12 certificate, which qualified her entry into the public service, but not entry in to the SMS cohort.
- 5.4.7. He further stated that they wrote to the MPSA to request deviation from the Directive to enable Ms. Mpondo to be appointed into the SMS cohort. This request was declined by the MPSA and upon the decline, the Department offered Ms. Mpondo a lower offer of level 12 and she accepted to perform the duties of Level 13 at a Level 12 salary compensation level.
- 5.4.8. He submitted that Ms. Mpondo then proceeded to complete her NQF level 7 qualification, upon which she approached the Department to then upgrade her salary level to 13 as she met the minimum requirement into SMS cohort. This was then approved and her salary was upgraded to Level 13 of the public service.

- 5.4.9. On 15 February 2021, the Director General responded further in writing to the Public Protector that it was denied that Ms. Mpondo was already compensated at the Director Salary level 13 before her appointment to the same level. He further stated that Ms. Mpondo was paid as Deputy Director Salary level 12 from the inception of her employment into the Ministry of Transport until such time she qualified for entry into Level 13 and subsequently appointed as such. He indicated that Ms. Mpondo's subsequent appointment to level 13 did not require the approval of the DPSA as she was now qualified for the position.
- 5.4.10. The investigating team was also provided with her Curriculum Vitae and qualifications. The documents reflected that Ms. Mpondo has an Advanced Diploma in Public Administration which was awarded by the University of the Western Cape on 7 April 2020 which is an NQF Level 7 qualification, a requirement to be appointed into the Senior Management Service of the public service.
- 5.4.11. A request for approval to appoint Ms. Mpondo as a Director: Parliamentary and Cabinet Support in the office of the Ministry was approved by Minister Mbalula on 17 February 2020.
- 5.4.12. The request from the Director General recommended that the Minister should consider and approve the appointment of Ms. Mpondo, Deputy Director: Parliamentary and Cabinet Support, salary level 12, on contract linked to the term of Office of the Minister in capacity of Director: Parliamentary and Cabinet Support, salary level 13, R 1 057 326pa, in the Office of the Minister: Department of Transport, with effect from the date of obtaining the required Minimum Entry Requirements for Senior Management Service.
- 5.4.13. On 25 March 2021, the Director General also provided the investigating team with the contract of employment that was signed between Mr. Kagiso Moleme in his capacity as a Chief of Staff: Transport Ministry and Ms. Mpondo for the position of Parliamentary Officer at a salary level 12 of which contract is linked to the term of office of the Executive Authority which was signed by the parties on 24 June 2019.



---

**The application of the relevant laws and prescripts**

- 5.4.14. With regard to whether Ms. Mpondo was elevated to the position of Senior Manager contrary to the provisions of the Public Service Act, National Department of Transport Human Resource Policies and other prescripts applicable to the National Department of Transport:

**Executive Ethics Code Published by Proclamation in terms of section 2(1) of Executive Members' Ethics Act, 1998, as Amended**

- 5.4.15. According to the Code, Members are required at all times to ensure compliance with the Executive Ethics Code while they continue to hold office as a Member.

**Guide for Members of the Executive**

- 5.4.16. The Guide for Members of the Executive was approved by the President of the Republic of South Africa and was effective from 20 November 2019.
- 5.4.17. This document provides a guide for benefits, tools of trade and allowances to which Members and their families are entitled, in the execution of a Member's duties. This guide also seeks to provide administrative and support assistance to a Member (Minister) in ensuring good governance with due regard to cost effectiveness and efficiency.
- 5.4.18. Chapter 3 of the Guide deals with Staff in the Office of the Member (Private Office) and it provides, amongst others, that:
- 5.4.18.1. The Ministerial staff directly serving the Member shall comprise employees who render support to the Member in the Office of the Member.
- 5.4.18.2. The complement and manner in which the services of persons or employees are obtained in the office of the Member will be determined in terms of the Public Service Act, 1994 and in accordance with this Guide.

5.4.18.3. The payment of allowances, to identified employees, shall be subject to the Cabinet decision as contemplated in clause XIX of PSCBC Resolution 3 of 1999 and the determination by the Minister responsible for the Public Service and Administration.

### **Public Service Regulation 2016**

5.4.19. Regulation 66(1) and provides for the filling of vacancies in the Office of an Executive Authority or Deputy Minister by means of, Appointment in terms of section 9 of the Act and also the term the term of office of the incumbent executive authority or Deputy Minister which will terminate at the end of the first month after the month in which the term of that executive authority or Deputy Minister terminates for any reason.

5.4.20. It is further stated that subject to the appointment criteria in regulation 67 (5) (b) and (d), an Executive Authority may fill a post in the Office of the Executive Authority or a Deputy Minister in that Executive Authority's portfolio, in terms of sub-regulation (1) without complying with regulation 65(1), (3) and (4). (own emphasis)

5.4.21. The Department relied on the above regulation in appointing Ms. Mpondo because according to the Public Service Regulation 66(1) and (2), the authority to approve filling of posts in the Office of the Executive Authority and Deputy Minister is vested in the Minister hence the Director General had to make a submission to the Minister for approval of a request for Ms. Mpondo to be appointed to the position of Director: Parliamentary and Cabinet Support in the Ministry.

5.4.22. The position of Parliamentary Officer at level 13 is one of the positions provided for on the staff establishment for the private office of Members of the Executive as well as administrative support to be provided by the Department. According to the Department, Ms Mpondo was appointed to the position of Director Parliamentary and Cabinet Support in the office of the Minister after she met the minimum requirements for the post upon obtaining the appropriate qualification at an NQF level 7.

**The Conclusions that could be made based on the application of the law to the facts**

- 5.4.23. Based on the information and evidence obtained during the investigation and the application of the legal framework to the facts of the matter, it can be concluded that there were no irregularities in the appointment of Ms. Mpondo to the position of Director Parliamentary and Cabinet Support in the office of the Minister.
- 5.4.24. The position of Parliamentary Officer at level 13 is one of the positions provided for on the staff establishment for the private office of Members of the Executive as well as administrative support to be provided by the Department.
- 5.4.25. Ms. Mpondo has an Advanced Diploma in Public Administration which was awarded by the University of the Western Cape on 7 April 2020 which is an NQF Level 7 qualification, as per requirement for appointment into the Senior Management Service of the Public Service.

**6. FINDINGS**

Having considered the evidence obtained during the investigation as against the relevant regulatory framework, the Public Protector make the following findings:

- 6.1. Regarding whether the appointments of Messrs. L Venkile, K Khoza and B Mpondo respectively, were contrary to the provisions of the Public Service Act and other prescripts applicable to the National Department of Transport.**
- 6.1.1. The allegation that the appointments of Messrs. Venkile, Khoza and Mpondo respectively, were contrary to the provisions of the Public Service Act and other prescripts applicable to the National Department of Transport **is substantiated**.

6.1.2. The appointments were done contrary to the Dispensation for the Appointment and Remuneration of Persons (Special Advisers) Appointed by the Executive Authorities on Ground of Policy Consideration in terms of section 12A of the Public Service Act which states that the Executive Authorities must submit proposals/recommendations for the appointment of individual Special Advisers to the MPSA for approval of the individual's compensation level **before** the appointment/upgrade is effected.

**Mr. L Venkile's appointment as a Special Adviser**

6.1.3. Mr. Venkile was appointed by Minister Mbalula before approval by the MPSA. Mr. Venkile's offer of contract of appointment is dated 1 June 2019 and approval was made by the MPSA on 27 August 2019. The MPSA further informed Minister Mbalula that he noted that Minister Mbalula had already appointed Mr. Venkile as his Special Adviser and informed him that Mr. Venkile should not have been appointed prior to the confirmation of his compensation level and advised Minister Mbalula that the appointment of Mr. Venkile be effected after approval had been obtained.

**Mr. Khoza's appointment as a Special Adviser**

6.1.4. Mr. Khoza was appointed by Minister Mbalula before approval by the MPSA. Mr. Khoza's offer of contract of appointment is dated 21 March 2020 and the approval was made by the MPSA on 11 November 2020.

**Mr. Mpondo's appointment as a Special Adviser**

6.1.5. The investigation revealed that Mr. Mpondo was appointed by Minister Mbalula before approval by the MPSA. His offer for contract of appointment is dated 15 November 2019 and no approval was made by the MPSA.

6.1.6. On 5 December 2019, the Minister terminated Mr. Mpondo's employment contract as the Special Adviser and simultaneously offered him a contract of employment as a Project Manager in the Department and subsequently seconded him as an Acting Group CEO to PRASA.

6.1.7. To remedy the irregular appointments Minister Mbalula submitted the contracts of Employment and Performance Agreements of both Mr. Venkile and Mr. Khoza to the MPSA for record purposes and he has been updated regarding the progress on security clearance.

6.1.8. It must also be noted that to safeguard the Department against irregular appointments and overpayments as the Minister urgently needed the services of Special Advisers the contracts of employment of Messrs. Mpondo, Venkile and Khoza had inserted clause that stipulated that:

*“... This appointment is subject to the approval of the Minister of Public Service and Administration and the Dispensation for the appointment and Remuneration of Persons (Special Adviser) Appointed by the Executive Authority (EA) on Ground of policy Consideration in terms of section 12A of the Public Service Act (PSA) 1994...”*

6.1.9. In making these appointments without first obtaining an agreement with the MPSA, Minister Mbalula’s conduct 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 Messrs. L Venkile and K Khoza respectively were irregularly paid salaries which are equivalent to that of a Deputy Director General (DDG) level even though their appointments were not approved by the Minister of Public Service and Administration:**

6.2.1. The allegations of whether Messrs. Venkile and Khoza respectively were irregularly paid salaries which are equivalent to that of the DDG level whilst their appointment were not approved by the MPSA is substantiated.

---

### **Remuneration of Mr. Venkile**

- 6.2.2. In terms of Mr. Venkile's offer of appointment, he was at a salary range of R1 446 378.00 and this appointment was subject to the approval of the MPSA and the Dispensation.
- 6.2.3. Mr. Venkile was appointed by Minister Mbalula before approval by the MPSA. Mr. Venkile's offer of contract of appointment is dated 1 June 2019 and approval was made by the MPSA on 27 August 2019.
- 6.2.4. Mr. Venkile was appointed with the condition that his offer of appointment and salary determination was subject to the determination by the MPSA and that should the salary payment end up being an overpayment same will be recovered from him.
- 6.2.5. The Department deemed the payment of remuneration to Mr. Venkile to have resulted in overpayment by the Department. Mr. Venkile has conceded to this position and has accordingly undertaken to pay back the money determined as a salary overpayment. He has requested that the Department should enter into an agreement with him on a repayment plan as the figure is too onerous to be repaid all at once. Mr. Venkile has acknowledged that he will pay back the money determined as a salary overpayment and the Department will commence to recoup the overpayments from Mr. Venkile from 1 April 2021.
- 6.2.6. Mr. Venkile has rendered his services to the Minister during his tenure.

### **Remuneration of Mr. Khoza**

- 6.2.7. In terms of Mr. Khoza's offer of appointment, he was at compensation level III, at a salary range of R1 521 591.00 – R1 714 074 and this appointment was subject to the approval of the MPSA and the Dispensation.
- 6.2.8. Mr. Khoza was appointed by Minister Mbalula before approval by the MPSA. Mr. Khoza's offer of contract of appointment is dated 21 March 2020 and approval was made by the MPSA on 11 November 2020.

- 6.2.9. The MPSA confirmed the appointment of Mr. Khoza with the same salary determination as what the department provisionally offered to Mr. Khoza with the proviso that same be subjected to approval by the MPSA.
- 6.2.10. Mr. Khoza has rendered his services to the Minister during his tenure.
- 6.2.11. Minister Mbalula and the Director General undertook to recovery all overpayments that have been effected on Mr. Khoza's salaries and also assured the investigating team that Mr Khoza will pay back all monies that were not due to him that are regarded as overpayment.

#### **Remuneration of Mr. Mpondo**

- 6.2.12. In terms of Mr. Mpondo's offer of appointment, he was at salary level 15 with a salary range of R1 5 21 5921 – R1 714 074 and this appointment was subject to the approval of the MPSA and the Dispensation.
- 6.2.13. Mr. Mpondo was appointed by Minister Mbalula before approval by the MPSA. Mr. Mpondo's offer of contract of appointment is dated 15 November 2019 and no approval was made by the MPSA.
- 6.2.14. On 5 December 2019, the Minister terminated Mr. Mpondo's employment contract as the Special Adviser and simultaneously offered him a contract of employment as the Project Manager in the Department and subsequently seconded him as an Acting Group CEO of PRASA.
- 6.2.15. Mr. Venkile has agreed that he is indebted to the Department to the amount of R455 984.50 which is made of calculations that were done for the period of 1 June 2019 to August 2019 for the salary that was paid to him and from 1 September 2019 to March 2021 which is the difference between the salary level 15 (DDG) and salary level 14 (Chief Director). Mr. Venkile will pay installments of R 11 999, 60.

6.2.16. Mr. Mpondo never received any salaries from the Department as a Ministerial Adviser as this process was abandoned when it became apparent to the Minister that the Minister needed his service as a as an Administrator at PRASA.

6.2.17. To safeguard the Department against irregular appointments and overpayments as the Minister urgently needed the services of Special Advisers the contracts of employment of Messrs. Mpondo, Venkile and Khoza, the Director General had the following clause inserted to them:

*“... This appointment is subject to the approval of the Minister of Public Service and Administration and the Dispensation for the appointment and Remuneration of Persons (Special Adviser) Appointed by the Executive Authority (EA) on Ground of policy Consideration in terms of section 12A of the Public Service Act (PSA) 1994...”*

6.2.18. Mr Khoza and Mr Venkile should not have been appointed and remunerated before concurrence was obtained from the MPSA. The conduct of Minister Mbalula, therefore 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 Mr. Mpondo’s secondment to the PRASA was done contrary to the provisions of the Public Service Act and other prescripts applicable to the National Department of Transport:**

6.3.1. The allegation that Mr. Mpondo’s secondment to PRASA was done contrary to the provisions of the Public Service Act and other prescripts applicable to the National Department of Transport **is substantiated.**

6.3.2. On 25 August 2020, in the case between *UnitedBehind v the Department of Transport and others* case number 2058/2020, Judge Nathan Erasmus, of the Western Cape High Court in Cape Town, declared unlawful and set aside Minister



---

Mbalula's appointment of Mr. Mpondo as an acting Chief Executive Officer and Accounting Authority of PRASA.

- 6.3.3. Mr. Mpondo has rendered his services as an Administrator of PRASA.
- 6.3.4. Regarding the appointment of Mr. Mpondo's as a Project Manager in the Minister's office Judge Erasmus in the court case between *UnitedBehind v the Department of Transport and others* was of the view that Mr. Mpondos's appointment as Project Manager in the Minister's office was also unlawful and reviewable under section 6(2) of PAJA and should be set aside.
- 6.3.5. This allegation of irregular secondment of Mr. Mpondo to PRASA has already been dealt with by the courts and the Public Protector will not pursue it any further.
- 6.4. Regarding whether Ms. Thandiwe Mpondo, was elevated to the position of Senior Manager contrary to the provisions of the Public Service Act and other prescripts applicable to the National Department of Transport:**
- 6.4.1. The allegation that Ms. Thandiwe Mpondo was elevated to the position of Senior Manager contrary to the provisions of the Public Service Act and other prescripts applicable to the National Department of Transport is **not substantiated**.
- 6.4.2. There were no irregularities in the appointment of Ms. Mpondo to the position of Director Parliamentary and Cabinet Support in the office of the Minister. The position of Parliamentary Officer at level 13 is one of the positions provided for on the staff establishment for the private office of Members of the Executive as well as administrative support to be provided by the Department.
- 6.4.3. Ms. Mpondo has an Advanced Diploma in Public Administration of which she was awarded by the University of the Western Cape on 7 April 2020 which is an NQF Level 7 qualification which is a requirement to be appointed into the Senior Management Service of the Public Service.

6.4.4. The conduct of the Director General does not constitute 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

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

#### **The Minister of Transport must take urgent and appropriate steps:**

- 7.1. To ensure, when making future Special Adviser appointments, that he submits proposals/recommendations for the appointment of individual Special Advisers to the Minister for the Public Service and Administration for approval of the individual's compensation level **before** the appointment/upgrade is effected; and
- 7.2. To ensure that all future contracts of employment, Performance Agreements and security clearance of Special Advisers are submitted to the Minister of Public Service and Administration for record purposes as required by the Dispensation Policy.

#### **The Director General of the Department of Transport must take urgent and appropriate steps:**

- 7.3. To ensure that all the overpayments, salaries and emoluments that were paid to Mr. Venkile by the Department before his position as Special Adviser to the Minister of Transport was approved by the Minister of Public Service and Administration, are recovered in full, as per the agreement concluded with Mr Venkile and provided to the public Protector.
- 7.4. To ensure that the Department recovers in full and/or enters into a repayment agreement with Mr. Khoza in order to recover all outstanding overpayments that

were made to him as a result of the remuneration irregularly received prior to the concurrence of his remuneration level by the MPSA.

**The Minister of Public Service and Administration must take urgent and appropriate steps**

- 7.5. To ensure that all Ministers and Deputy Ministers receive awareness and training regarding the procedures and processes to be followed in the appointment of Ministerial Special Advisers.

**8. MONITORING**

- 8.1. Minister Mbalula, Minister Mchunu and the Director General must, within three (3) months from the date of this report, provide my office with a progress report on implementation of the remedial action referred to in paragraph 7 above.



---

**ADV. BUSISIWE MKHWEBANE**  
**PUBLIC PROTECTOR OF THE**  
**REPUBLIC OF SOUTH AFRICA**  
**DATE: 07/06/2021**

**Assisted by: Mr. Khulile Mtiki: Senior Investigator: Investigations Branch**