

**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**

***“Allegations of improper conduct and maladministration in relation to  
the secondment and the subsequent appointment of Mr Vincent Mothibi  
as the Chief Executive Officer of the Northern Cape Gambling Board”***

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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER  
CONDUCT AND MALADMINISTRATION BY THE FORMER MEMBER OF THE  
NORTHERN CAPE EXECUTIVE COUNCIL RESPONSIBLE FOR FINANCE,  
ECONOMIC DEVELOPMENT AND TOURISM, MR M LEKWENE IN RELATION TO  
THE SECONDMENT AND THE SUBSEQUENT APPOINTMENT OF MR VINCENT  
MOTHIBI AS THE CHIEF EXECUTIVE OFFICER OF THE NORTHERN CAPE  
GAMBLING BOARD**

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## **Executive Summary**

- (i) This is a 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 23 of 1994 (the Public Protector Act).
- (ii) The report communicates the findings of the Public Protector and appropriate remedial action taken in terms of section 182(1)(c) of the Constitution, following an investigation into allegations of improper conduct and maladministration in relation to the secondment and the subsequent appointment of Mr Vincent Mothibi as the Chief Executive Officer (the CEO) of the Northern Cape Gambling Board (Gambling Board) by Mr Maruping Lekwene, the former Member of the Northern Cape Executive Council for Finance, Economic Development and Tourism (MEC).
- (iii) The complaint was lodged anonymously at the Northern Cape Provincial Office of the Public Protector South Africa in Kimberley, on 3 August 2020.
- (iv) In the main, the Complainant alleged that the secondment of Mr Mothibi as the Chief Executive Officer of the Gambling Board was improper in that:
  - (a) Mr Mothibi was seconded to the Gambling Board as the Chief Executive Officer for a period of three (3) years instead of the prescribed twelve (12) months;
  - (b) Mr Mothibi did not meet the requirements or competencies to be seconded to the position of the Chief Executive Officer;
  - (c) There was no prior agreement between the Gambling Board and the Department of Economic Development and Tourism (the Department) to second Mr Mothibi to act in the position of the Chief Executive Officer; and

- (d) That no appointment process was followed in accordance with the legal prescripts of the Gambling Board.
  
- (v) In essence, the Complainant alleged that the secondment of Mr Mothibi as the Chief Executive Officer of the Gambling Board, by the MEC was not in accordance with the laws and prescripts regulating the secondment of employees in the Public Service.
  
- (vi) It transpired during the investigation that the MEC further appointed Mr Mothibi for a period of twelve (12) months as the Chief Executive Officer of the Gambling Board, with effect from 1 January 2020 to 31 December 2020. Further, that the current MEC for Finance, Economic Development and Tourism, Mr A Vosloo, extended the fixed term contract with Mothibi to 31 March 2021, or until the post is permanently filled, whichever comes first.
  
- (vii) Based on the analysis of the complaint, the following issues were identified for the investigation:
  - (a) Whether the secondment of Mr Mothibi to act as the CEO of the Gambling Board by Mr M Lekwene, the former Northern Cape MEC for Finance, Economic Development and Tourism for a period of three (3) years with effect from 2 September 2019 was not accordance with the relevant laws and prescripts regulating the secondment of employees in the Public Service; and if yes, whether the conduct of the MEC was improper and constitutes maladministration; and
  
  - (b) Whether the appointment of Mr Mothibi as the CEO of the Gambling Board by the Mr M Lekwene, the former Northern MEC for Finance, Economic Development and Tourism with effect from 1 January 2020 to 31 December 2020 was not accordance with the relevant laws and prescripts regulating the appointment of the CEO of the Gambling Board; and if yes,

whether the conduct of the MEC was improper and constitutes maladministration.

- (viii) 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 correspondence with the former and current MECs for Finance, Economic Development, an analysis of the relevant documents and information obtained during the investigation and consideration and application of the relevant laws and prescripts.
- (ix) The MEC and Mr Mothibi were afforded an opportunity to respond to the evidence obtained during the investigation, in terms of section 7(9) of the Public Protector Act. The responses received were also considered during the investigation.
- (x) Having considered the evidence and information obtained during the investigation, the Public Protector makes the following findings:

**(a) Regarding whether the secondment of Mr Mothibi to act as the CEO of the Gambling Board by Mr M Lekwene, the former MEC for Finance, Economic Development and Tourism for a period of three (3) years with effect from 2 September 2019 was not accordance with the relevant laws and prescripts regulating the secondment of employees in the Public Service; and if yes, whether the conduct of the MEC was improper, and constitutes maladministration**

- (aa) The allegation that Mr Lekwene's secondment of Mr Mothibi to act as the Chief Executive Officer, in his former capacity as the MEC for Finance, Economic Development and Tourism, for a period of three (3) years with effect from 2 September 2019 was not in accordance with the relevant laws and prescripts regulating the secondment of employees in the Public Service, is substantiated.

- (bb) Mr Mothibi did not have the requisite academic qualifications for the position of the CEO, as stated in the official Job Description of the Gambling Board as a minimum requirement for the position.
- (cc) Even if Mr Mothibi did have the requisite qualifications for the position of CEO, the period of secondment exceeded the maximum of 12 calendar months prescribed by the Public Service Regulations. It also exceeded the contractual period of Mr Mothibi's appointment at the Department, which was only for six months, expiring in December 2019. There was no decision taken by the Minister authorising secondment for a period longer than 12 months as stipulated by the Public Service Regulations.
- (dd) There was no agreement concluded between the Department and the Gambling Board in respect of Mr Mothibi's secondment as required by the Public Service Regulations.
- (ee) The decision by the MEC to second Mr Mothibi was in violation of section 15(3) of the Public Service Act, 1994 and Regulation 62 of the Public Service Regulations.
- (ff) The conduct of the MEC in this regard was therefore improper and constitutes maladministration.
- (gg) The conduct of the MEC further violated the provisions of section 136 of the Constitution and paragraphs 2.1 and 2.3 of the Executive Ethics Code as it was made in violation of the law, and was therefore not made in good faith, in the best interest of good governance and consistent with the integrity of his office as MEC.

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

**(b) Regarding whether the appointment of Mr Mothibi as the CEO of the Gambling Board by the former MEC for Finance, Economic Development and Tourism with effect from 1 January 2020 to 31 December 2020 was not in accordance with the relevant laws and prescripts regulating the appointment of the Chief Executive Officer of the Gambling Board; and if yes, whether the conduct of the MEC was improper and constitutes maladministration**

(aa) The allegation that the appointment of Mr Mothibi as the Chief Executive Officer of the Gambling Board, by the MEC for a period of twelve months, retrospective from 1 January 2020 until 31 December 2020 was not in accordance with the relevant laws and prescripts regulating the appointment of the Chief Executive Officer of the Gambling Board, is substantiated.

(bb) Mr Mothibi did not meet the minimum requirements of the position as he only has a National Diploma in Personnel Management instead of a Bachelor's degree in Commerce, Law or Public Administration. No recruitment process was followed.

(cc) The Northern Cape Gambling Act, the *Regulations regarding the Chief Executive Officer* made in terms of section 10(5) of the Northern Cape Gambling Act, promulgated on 9 December 2009 (NCGA Regulations) and the Human Resources Policies and Procedures of the Northern Cape Gambling Board (Policy) do not provide for the MEC to appoint the chief executive officer of the Gambling Board. Only the Board can make such appointment.

- (dd) The temporary appointment of Mr Mothibi as the chief executive officer was therefore unlawful and improper. It also constitutes maladministration.
- (ee) The conduct of the MEC furthermore violated the provisions of section 136 of the Constitution and paragraphs 2.1 and 2.3 of the Executive Ethics Code as it was made in violation of the law, and was therefore not made in good faith, in the best interest of good governance and consistent with the integrity of his office as MEC.
- (ff) The conduct of the MEC accordingly constitutes improper as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.
- (xi) The appropriate remedial action taken in terms of section 182(1)(c) of the Constitution is the following:

**(a) The Premier of the Northern Cape Province:**

- (aa) To take appropriate steps in respect of disciplinary action against Mr Lekwene for his improper conduct relating to the irregular secondment and the subsequent irregular appointment of Mr Mothibi as the Chief Executive Officer of the Northern Cape Gambling Board, in terms of the applicable legislation and prescripts, within thirty (30) days from the date of this report.
- (bb) Submit a report to the Northern Cape Provincial Legislature on the action taken against the MEC as referred to in paragraph 7.5.1.1 above within 60 days from the date of this report.



**(b) The Northern Cape MEC for Finance, Economic Development and Tourism to:**

- (aa) Institute proceedings for judicial review of the secondment and appointment of Mr Mothibi as the Chief Executive Officer of the Northern Cape Gambling Board, within thirty (30) business days from the date of this report.
  
- (bb) Submit a report on the progress made with instituting the judicial review proceedings to the Northern Cape Executive Council, the Northern Cape Provincial Legislature and the Northern Cape Gambling Board within 60 days from the date of this report.

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND MALADMINISTRATION BY THE FORMER MEMBER OF THE NORTHERN CAPE EXECUTIVE COUNCIL RESPONSIBLE FOR FINANCE, ECONOMIC DEVELOPMENT AND TOURISM, MR M LEKWENE IN RELATION TO THE SECONDMENT AND THE SUBSEQUENT APPOINTMENT OF MR VINCENT MOTHIBI AS THE CHIEF EXECUTIVE OFFICER OF THE NORTHERN CAPE GAMBLING BOARD**

**1. INTRODUCTION**

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

1.2 The report is submitted in terms of sections 8(1) and 8(3) of the Public Protector Act to the following persons, to inform them of the outcome of my investigation and the remedial action taken:

1.2.1 Ms Newrene Claudine Klaaste, the Speaker of the Northern Cape Provincial Legislature;

1.2.2 Dr Zamani Saul, the Premier of the Northern Cape; and

1.2.3 Mr Abraham Vosloo, the Member of the Northern Cape Executive Council for Finance, Economic Development and Tourism.

1.3 At the time of the conclusion of the investigation on 10 May 2021, the Northern Cape Gambling Board had disbanded and the process of appointing a new Board had not been concluded.

1.3 Copies of the report are also provided to:

- 1.3.1 Mr Maruping Lekwene, the Member of the Northern Cape Executive Council for Health who was formerly the Northern Cape MEC for Finance, Economic Development and Tourism (MEC); and
- 1.3.2 Mr V Mothibi who was seconded and later appointed as the Chief Executive Officer of the Northern Cape Gambling Board.
- 1.4 The report pertains to an investigation into allegations of improper conduct and maladministration in relation to the secondment, with effect from 2 September 2019 and the subsequent appointment of Mr Vincent Mothibi as the Chief Executive Officer (CEO) of the Northern Cape Gambling Board (Gambling Board) by Mr Maruping Lekwene, in his former capacity as the Northern Cape MEC for Finance, Economic Development and Tourism.

## **2. THE COMPLAINT**

- 2.1 The complaint was lodged anonymously at the Northern Cape Provincial Office of the Public Protector South Africa in Kimberley, on 3 August 2020.
- 2.2 In the main, the Complainant alleged that the secondment of Mr Mothibi as the CEO of the Gambling Board was improper in that:
  - 2.2.1 Mr Mothibi was seconded to the Gambling Board as the CEO for a period of three (3) years, whilst the prescribed period is a maximum of 12 months;
  - 2.2.2 Mr Mothibi did not meet the requirements or competencies to be seconded to the position of the CEO;
  - 2.2.3 There was no prior agreement between the Gambling Board and the Department of Economic Development and Tourism (the Department) to second Mr Mothibi to act in the position of the CEO; and

- 2.2.4 No recruitment process was followed in accordance with the legal prescripts of the Gambling Board.
- 2.3 In essence, the Complainant alleged that the MEC's secondment of Mr Mothibi to act as the CEO of the Gambling Board, was not in accordance with the laws and prescripts regulating the secondment of employees in the Public Service.
- 2.4 It transpired during the investigation that the MEC further appointed Mr Mothibi for a period of twelve (12) months as the Chief Executive Officer of the Gambling Board, with effect from 1 January 2020 to 31 December 2020. Further, that the current MEC for Finance, Economic Development and Tourism, Mr A Vosloo, extended the fixed term contract with Mothibi to 31 March 2021, or until the post is permanently filled, whichever comes first.

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

- 3.1 The Public Protector is an independent constitutional institution established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.
- 3.2 Section 182(1) of the Constitution provides that:
- “The Public Protector has the power as regulated by national legislation –*
- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*
  - (b) to report on that conduct; and*
  - (c) to take appropriate remedial action.”*
- 3.3 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by national 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 and to resolve disputes through conciliation, mediation, 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>*

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

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

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

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<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].

- 3.6.3 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 that effect, if it is the best attempt at curing the root cause of the complaint (paragraph 68);
- 3.6.4 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow (paragraph 69);
- 3.6.5 Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to (paragraph 70);
- 3.6.6 The Public Protector's power to take remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made (paragraph 71);
- 3.6.7 Implicit in the words "take action" is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And "action" presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in the words suggests that she has to leave the exercise of the power to take remedial action to other institutions or that it is the power that is by its nature of no consequence (paragraph 71(a));
- 3.6.8 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (paragraph 71(d)); and

- 3.6.9 “Appropriate” means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (paragraph 71(e)).
- 3.7 In the matter of the *President of the Republic of South Africa v Office of the Public Protector and Others, Case No 91139/2016 (13 December 2017)*, the Court held as follows when confirming the powers of the Public Protector:
- 3.7.1 The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the Constitution (para 71);
- 3.7.2 The Public Protector has the 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);
- 3.7.3 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 (paragraphs 100 and 101):
- a) Conduct an investigation;
  - b) Report on that conduct; and
  - c) To take remedial action.
- 3.7.4 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or *prima facie* findings. (para 104);
- 3.7.5 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);
- 3.7.6 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 (paragraphs 107 and 108); and

3.7.7 *Prima facie* evidence which point to serious misconduct is a sufficient and appropriate basis for the Public Protector to take remedial action (paragraph 112 of the judgment).

3.8 Members of the Executive Council of a provincial government are organs of state and their conduct amount to conduct in state affairs, and as a result, the matter falls within the jurisdiction of the Public Protector.

3.9 The Public Protector's power and jurisdiction to investigate and take appropriate remedial action in this matter, was not disputed by any of the parties.

## **4. THE INVESTIGATION**

### **4.1 Methodology**

4.1.1 The investigation was conducted in terms of section 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 improper conduct or maladministration?
- 4.2.1.4 In the event of improper conduct or maladministration, 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. In this particular case, the factual enquiry principally focused on whether the secondment of Mr Mothibi to act as the CEO of the Gambling Board with effect from 2 September 2019 and his subsequent appointment as the CEO of the Gambling Board with effect from 1 January 2020 by the former MEC for Finance, Economic Development and Tourism, Mr M Lekwene, was in accordance with the relevant laws and prescripts regulating the secondment of employees in the Public Service and the appointment of the CEO of the Gambling Board; and if not, whether the conduct of the MEC was improper and constitutes maladministration
- 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 MEC to prevent improper conduct and maladministration.
- 4.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and/or maladministration where possible and appropriate.

### **4.3 On analysis of the complaint, the following issues were identified for investigation:**

4.3.1 Whether the secondment of Mr Mothibi to act as the CEO of the Gambling Board by Mr M Lekwene, the former Northern Cape MEC for Finance, Economic Development and Tourism for a period of three (3) years with effect from 2 September 2019 was not accordance with the relevant laws and prescripts regulating the secondment of employees in the Public Service; and if yes, whether the conduct of the MEC was improper and constitutes maladministration; and

4.3.2 Whether the appointment of Mr Mothibi as the CEO of the Gambling Board by the Mr M Lekwene, the former Northern MEC for Finance, Economic Development and Tourism with effect from 1 January 2020 to 31 December 2020 was not accordance with the relevant laws and prescripts regulating the appointment of the CEO of the Gambling Board; and if yes, whether the conduct of the MEC was improper and constitutes maladministration.

### **4.4 The Key Sources of information**

#### **4.4.1 Documents and correspondence exchanged**

4.4.1.1. A copy of the temporary employment contract of Mr Mothibi as Senior Manager: Enterprise Development of the Northern Cape Department of Economic Development and Tourism, dated 12 July 2019.

4.4.1.2 A copy of the letter of the secondment of Mr Mothibi to act as the CEO of the Gambling Board, dated 30 August 2019.

4.4.1.3 A copy of the letter of the appointment of Mr Mothibi as the CEO of the Gambling Board dated 17 February 2020.

4.4.1.4 Letter from Mr Abraham Vosloo, the current MEC for Finance, Economic Development and Tourism, dated 7 September 2020.

4.4.1.5 E-mail from Ms Selloane Sehloho, Human Resource Official at Gambling Board dated 16 October 2020.

4.4.1.6 A copy of the Job Description of the position of the CEO of the Gambling Board.

4.4.1.7 A copy of Mr Vincent Mothibi's CV.

#### **4.4.2 Legislation and other prescripts**

4.4.2.1 The Constitution of the Republic of South Africa, 1996.

4.4.2.2 The Public Protector Act 23 of 1994.

4.4.2.3 The Public Finance Management Act 1 of 1999 (PFMA)

4.4.2.4 The Public Service Act 103 of 1994. (Public Service Act)

4.4.2.5 The Public Service Regulations, 2016. (Public Service Regulations)

4.4.2.6 The Executive Ethics Code published in terms of the Executive Members' Ethics Act 82 of 1998;

4.4.2.7 The Northern Cape Gambling Act 3 of 2008. (Northern Cape Gambling Act)

4.4.2.8 The Regulations regarding the Chief Executive Officer made in terms of section 10(5) of the Northern Cape Gambling Act, which were promulgated on 9 December 2009.

#### 4.4.2.9 Human Resources Policies and Procedures of the Northern Cape Gambling Board.

### 4.4.3 Jurisprudence considered

4.4.3.1 *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11; 2016 (3) SA 580 (CC).*

4.4.3.2 *The President of the Republic of South Africa v Office of the Public Protector and Others, Case No 91139/2016 (13 December 2017).*

4.4.3.3 *Oudekraal Estates (Pty) Ltd v City Of Cape Town & Others 2004 (6) SA 222 SCA.*

4.4.3.4 *The MEC for Health, Eastern Cape v Kirland Investments 2014 (3) SA 481 (CC).*

### 4.4.3 Notice issued in terms of section 7(9) of the Public Protector Act

4.4.4.1 A Notice was issued in terms of section 7(9) of the Public Protector Act to the MEC, Mr Lekwene on 23 December 2020, affording him an opportunity to respond to the evidence obtained during the investigation. He responded on 09 February 2021

4.4.4.2 A copy of the Notice issued in terms of section 7(9) of the Public Protector Act was provided to Mr Vincent Mothibi on 12 February 2021, affording him an opportunity to respond to the contents thereof. Mr Mothibi responded on 26 February 2021.

## **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 secondment of Mr Mothibi to act as the CEO of the Gambling Board by Mr M Lekwene, the former MEC for Finance, Economic Development and Tourism for a period of three (3) years with effect from 2 September 2019 was not accordance with the relevant laws and prescripts regulating the secondment of employees in the Public Service; and if yes, whether the conduct of the MEC was improper, and constitutes maladministration**

### Common cause or undisputed facts

- 5.1.1 From the evidence and information obtained during the investigation, it is common cause that Mr Mothibi was employed on a temporary basis as the Senior Manager: Enterprise Development of the Northern Cape Department of Economic Development and Tourism (Department) for a period of six (6) months with effect from 1 July 2019 to 31 December 2019.
- 5.1.2 On 30 August 2019, Mr Lekwene, in his capacity as the MEC for Finance, Economic Development and Tourism, informed the then Acting Head of the Department that he had decided to second Mr Mothibi to perform the functions of the CEO of the Gambling Board for a period of 36 months, with effect from 2 September 2019, or “*until the rationalisation process has been concluded*”.
- 5.1.3 It appears from Mr Mothibi’s CV obtained during the investigation that his highest academic qualification is a National Diploma Personnel Management obtained at the Peninsula Technikon in 1993.

Issues in dispute

- 5.1.4 The Complainant contended that the secondment of Mr Mothibi as the Chief Executive Officer of the Gambling Board was improper as he did not have the requisite academic qualifications. Further, that the period of secondment of Mr Mothibi as the Acting Chief Executive Officer of the Gambling Board was longer than the prescribed period of twelve months and that there was no prior agreement between the Department and the Gambling Board, as was required.
- 5.1.5 The *Competency Profile* of the official Job Description of the position of the CEO of the Gambling Board stipulates that the minimum requirement in terms of qualifications is a "Bachelor's degree in commerce, Law or Public Administration." (emphasis added)
- 5.1.6 In his response to the allegations during the investigation, Mr Abraham Vosloo, the current MEC for Finance, Economic Development and Tourism, in a letter dated 7 September 2020 stated, *inter alia* that:
- 5.1.6.1 Mr Mothibi was appointed on an extended contract by the Department from 1 July 2019 to 31 December 2019 and was seconded to act as the Chief Executive Officer of the Gambling Board.
- 5.1.6.2 Mr Mothibi was erroneously seconded for the period that exceeded the period of his contract of employment with the Department.
- 5.1.6.3 The secondment was not made on the request or concurrence of the Board, but on Mr Lekwene's discretion *to ensure the continued functionality of the Gambling Board as the entity fell within his executive authority.*"

5.1.6.4 The erroneous appointment was corrected by Mr Lekwene by appointing Mr Mothibi on a fixed term contract from 01 January 2020 to 31 December 2020, or when the rationalisation process is finalised, whichever happened first.

5.1.7 On 17 February 2020, Mr Lekwene addressed a letter to Adv Steenkamp, the Chairperson of the Gambling Board, stating, *inter alia*, that:

*“The Board is hereby advised that Mr Mothibi’s secondment to perform the functions as Acting Chief Executive Officer of the Northern Cape Liquor Board (sic) for a period of 36 months is ultra vires the Public Service Act.”*

5.1.8 Mr Lekwene further stated that it was his duty to rectify the irregular secondment and further that Mr Mothibi’s secondment was dependent on his employment with the Department, which ended on 31 December 2019. He therefore appointed Mr Mothibi on a contract basis to perform the functions of the CEO of the Gambling Board for a period of 12 months, retrospectively as from 1 January 2020 to December 2020, or until the rationalisation process has been concluded, whichever comes first.

5.1.9 In his response to the notice issued in terms of section 7(9) of the Public Protector Act, dated 9 February 2021, Mr Lekwene acknowledged that his secondment of Mr Mothibi was made in error, but stated that he corrected it by means of Mr Mothibi’s interim appointment as the CEO, which according to him, he was by law entitled to do.

5.1.10 Mr Mothibi contended in his response to the Notice issued in terms of section 7(9) that his secondment to perform the functions of the CEO of the Gambling Board was discussed with him by Mr Lekwene and he agreed.

5.1.11 In his opinion, the secondment was in accordance with the provisions of the Public Service Act and the Public Service Regulations. It was his understanding that the purpose of his secondment was to deal with the rationalisation process

of the Gambling Board. He stated that he does not agree with Mr Lekwene's view that his secondment was "*irregular*" and that Mr Lekwene was misguided and ill-advised in this regard.

5.1.12 Mr Mothibi further stated that the Job Description of the Gambling Board of the position of the CEO is not "*a prescribed requirement*" and that all that is required by the Northern Cape Gambling Act, 2008 is that the Board must appoint a person that is suitably qualified and experienced as the CEO. According to him, he has more than 25 years of experience in the Public Service and a three year Diploma and relevant experience is regarded as equivalent to a Bachelor Degree.

5.1.13 No evidence was found of an agreement between the Department and the Gambling Board relating to Mr Mothibi's secondment. Mr Mothibi indicated in his response that he was warmly welcomed when he arrived at the Gambling Board and congratulated on his appointment.

*Application of the relevant law*

5.1.14 Regulation 39 of the Public Service Regulations 2016 (as amended), made by the Minister of Public Service and Administration in terms of section 41 of the Public Service Act, 1994, provides, *inter alia*, that for each post or group of posts in a department, the executive authority shall establish a job description and job title that indicate, with appropriate emphasis on service delivery-

5.1.14.1 the main objectives, activities and functions of the post; and

5.1.14.2 the inherent requirements of the job.

5.1.15 In this matter, the Job Description of the position of the CEO of the Gambling Board stipulates that the minimum inherent requirement for the job, in terms of



qualifications, is a "Bachelor's degree in commerce, Law or Public Administration.

5.1.16 Section 15(3)(a) of the Public Service Act provides that the executive authority of a department may second an employee of the department to another department, any other organ of state, another government or any other body-

- (i) *"For a particular service or period not exceeding the prescribed period; and*
- (ii) *On the prescribed condition (if any) and such other conditions as agreed between the relevant functionary of the body concerned and the executive authority."*

5.1.17 Regulation 62(1) of the Public Service Regulations, 2016, provides that 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*
- (c) *An agreement has been concluded between the receiving and the seconding department, organ of state, other government or any other body.* (emphasis added)

5.1.18 "*Minister*" means in terms of section 1 of the Public Service Act and the Regulations, the Minister of Public Service and Administration.

5.1.19 In this case the evidence shows that Mr Mothibi did not have the requisite qualifications in terms of the inherent requirements of the position of CEO, as determined by the Job Description.

5.1.20 There is no evidence that the Minister determined that there were operational reasons that justified Mr Mothibi's secondment of the Gambling Board for a period of more than 12 months. The MEC did not have the authority in terms of the Public Service Regulations to second Mr Mothibi for a period of longer than 12 months.

5.1.18 There was also no agreement concluded between the Department and the Gambling Board in respect of Mr Mothibi's secondment as the CEO.

5.1.21 The conduct of Members of the Provincial Executive Council is primarily regulated by section 136 of the Constitution. Section 136 provides that:

*(1) "Members of the Executive Council of a province must act in accordance with a code of ethics prescribed by national legislation.*

*(2) Members of the Executive Council may not-*

*(a) undertake any other paid work;*

*(b) act in a way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or*

*(c) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person."*

5.1.22 The Executive Ethics Code was published in terms of section 2(1) of the Executive Members Ethics Act, 1998 (EMEA) on 28 July 2000.

5.1.23 Paragraph 2.1 of the Executive Ethics Code provides that Members of the Executive must to the satisfaction of the President or the Premier, as the case may be-

5.1.23.1 Perform their duties and exercise their powers diligently and honestly;

5.1.23.2 Fulfil all the obligations imposed upon them by the Constitution and law;

5.1.23.3 Act in good faith and in the best interest of good governance; and

5.1.23.4 Act in all respects in a manner that is consistent with the integrity of their position or the government.

5.1.24 Paragraph 2.3 of the Executive Ethics Code provides *inter alia*, that Members of the Executive may not act in a way that is inconsistent with their position.

### Conclusion

5.1.25 Mr Mothibi did not have the requisite academic qualifications for the position of the CEO, as stated in the official Job Description of the Gambling Board as a minimum requirement for the position.

5.1.19 Even if Mr Mothibi did have the requisite qualifications for the position of CEO, the period of secondment exceeded the maximum of 12 calendar months prescribed by the Public Service Regulations. It also exceeded the contractual period of Mr Mothibi's appointment at the Department, which was only for six months, expiring in December 2019. There was no decision taken by the Minister authorising secondment for a period longer than 12 months as stipulated by the Public Service Regulations.

- 5.1.20 There was no agreement concluded between the Department and the Gambling Board in respect of Mr Mothibi's secondment as required by the Public Service Regulations.
- 5.1.21 The MEC's decision to second Mr Mothibi to act as the Chief Executive Officer of the Gambling Board for a period of three (3) years was not in accordance Regulation 62 of the Public Service Regulations, 2016. It was therefore improper and constitutes maladministration.
- 5.1.22 The conduct of the MEC in this regard was in violation of the Public Service Act and the Public Service Regulations and was accordingly not in the best interest of good governance and not consistent with the position of a Member of the Executive Council. It was therefore also in violation of section 136 of the Constitution and paragraphs 2.1 and 2.3 of the Executive Ethics Code.
- 5.2. Regarding whether the appointment of Mr Mothibi as the CEO of the Gambling Board by the former MEC for Finance, Economic Development and Tourism with effect from 1 January 2020 to 31 December 2020 was not in accordance with the relevant laws and prescripts regulating the appointment of the Chief Executive Officer of the Gambling Board; and if yes, whether the conduct of the MEC was improper and constitutes maladministration.**

Common cause issues or undisputed facts

- 5.2.1 On 17 February 2020, the MEC appointed Mr Mothibi as the Chief Executive Officer of the Gambling Board for a period of twelve (12) months from 1 January 2020 until 31 December 2020. The current MEC, Mr A Vosloo, extended the contract entered into between Mr Mothibi and the former MEC from 1 January 2021 to 31 March 2021 or until the post is permanently filled.

- 5.2.2 It is also common cause that Mr Mothibi's initial contract of employment of six (6) month's with the Department ended on 31 December 2019 and the contract was not renewed or extended.
- 5.2.3 The requirements for the position of Chief Executive Officer of the Gambling Board, as stated in the Job Description Document obtained from the Gambling Board, includes:
- 5.2.3.1 A Bachelor's degree in Commerce, Law or Public Administration; and
- 5.2.3.2 Ten (10) years relevant experience in public administration of which five (5) years must be at managerial level and the Applicant must have sound knowledge of public finance and financial laws.
- 5.2.4 It appears from the CV of Mr Mothibi that he has a National Diploma in Personnel Management obtained at the Peninsula Technikon in 1993.

Issues in dispute

- 5.2.5 In a letter dated 17 February 2020 addressed to Adv Steenkamp, the Chairperson of the Gambling Board, the MEC stated that Mr Mothibi's employment contract with the Department of Economic Development and Tourism ended on 31 December 2019 and his secondment was dependent upon his employment.
- 5.2.6 The MEC further, stated that in order to rectify the irregular secondment of Mr Mothibi referred to in paragraph 5.1 above, Mr Mothibi was appointed on a fixed contract basis as the Chief Executive Officer of Gambling Board for a period of 12 months, retrospectively as from 1 January 2020 until 31 December 2020, or until the rationalisation process was concluded, whichever came first.

- 5.2.7 In an email dated 16 October 2020, Ms Selloane Sehloho, the Human Resources Official of the Gambling Board, confirmed that Mr Mothibi assumed his duties as the Chief Executive Officer with effect from 2 September 2019.
- 5.2.8 It is not in dispute that no competitive recruitment process was followed by the Gambling Board in the appointment of Mr Mothupi as the CEO.
- 5.2.9 In his response to the Notice issued in terms of section 7(9) of the Public Protector Act, Mr Lekwene acknowledged that in terms of the *Regulations* of the Gambling Board, *“the Board is entitled to make a permanent appointment of the CEO.”* He further stated that he as he did not want to interfere with the powers of the Board in this regard, he appointed an interim CEO, as due to the rationalisation process the Board could not do so and as it had failed to do so for some time. He also referred to a resolution taken by the Northern Cape Executive Council on 11 November 2015 in respect of the 2015/2016 proposed budget allocations that a moratorium was placed on the filling of all vacant posts in all departments and public entities except for critical frontline service delivery recruitments. The Board therefore, according to him, could not exercise its authority to appoint the CEO.
- 5.2.10 Further, that this intervention was made in consultation with the Chairperson of the Board, *“who should have processed them through the Board”*. *Because I did not make permanent (sic) of the CEO, I deny that I acted improper and that my action constituted maladministration and thus resulted in irregular expenditure.”*
- 5.2.11 Mr Lekwene also expressed the view that the Gambling Board’s official Job Description of the position of the CEO is not a prescribed requirement in terms of the minimum requirements for the position. In his view Mr Mothibi’s three year diploma and his experience as manager in the public service made him suitable for employment as the CEO.
- 5.2.12 He concluded that he acted in good faith and denied that his conduct was in violation of section 136 of the Constitution and the Executive Ethics Code.

5.2.13 Mr Mothibi stated in his response to the contents of the Notice issued in terms of section 7(9) of the Public Protector Act, relating his appointment as the CEO of the Gambling Board that his understanding was that the appointment was temporary and not permanent as there was a moratorium on the filling of vacant posts in all departments and public entities at the time. He reiterated that his three year diploma coupled with his experience in the public service made him suitable to be appointed as the CEO of the Gambling Board.

Application of relevant law

5.2.14 Section 10(1)(a) of the Northern Cape Gambling Act 3 of 2008 provides that the Board must appoint a suitably qualified and experienced person as Chief Executive Officer, who subject to the direction and control of the Board, is responsible for all financial and administrative responsibilities pertaining to the functions of the Board and is accountable to the Board. No provision is made in the Act for the MEC to appoint a CEO, either in permanent or temporary capacity.

5.2.15 The MEC for Economic Development and Tourism must, in terms of section 10(5) of the Northern Cape Gambling Board Act, before a chief executive officer is appointed by the Board, make regulations regarding, *inter alia* the procedure to be followed by the Board in appointing the chief executive officer, and the term of office.

5.2.16 The former Northern Cape MEC for Finance, Economic Development and Tourism made the *Regulations regarding the Chief Executive Officer* in terms of section 10(5) of the Northern Cape Gambling Act, which were promulgated on 9 December 2009 (NCGA Regulations).

5.2.17 Regulation 2 of the NCGA Regulations, provides as follows:

*“2(1) When the Board appoints a chief executive officer, the Board must invite, through public invitation, applications for appointment as chief executive officer of the Board within 21 days of the publication of the said advertisement. “*

- 5.2.18 No provision is made in the NCGA Regulations for appointment of the chief executive officer of the Northern Cape Gambling Board by the MEC.
- 5.2.19 Regulation 2(4) of the NCGA Regulations provides that whenever the office of chief executive officer is vacant or the chief executive officer is absent or incapacitated or refuses or fails to act, the powers and functions of the chief executive officer may be exercised and performed by any person designated as the acting chief executive officer by the Board, but no such person may be the acting chief executive officer for a period exceeding 6 months in total.
- 5.2.20 There is no provision in the NCGA authorising the MEC to appoint an acting chief executive officer.
- 5.2.21 Paragraph 2.1.1. of the Human Resources Policies and Procedures (Policy) of the Northern Cape Gambling Board provides that the employment needs of the Board shall be met by recruiting and selecting of candidates for appointment according to their ability and qualifications to fulfil the job requirements.
- 5.2.22 It further provides that the Board will recruit and select the most suitable candidates for appointment to achieve its strategic and operational objectives through a workforce appointed on merit, equal employment opportunities and representativeness and processes characterized by the values of integrity, fairness, respect, accountability and competence to the best advantage of the Board and its stakeholders.



- 5.2.23 In terms of paragraph 2.2.4.2. of the Policy, the Board may invite candidates to an interview for the filling of vacant posts either by approaching persons directly, appointing agencies or by advertising in any local, national and international newspaper, printed media or other media.
- 5.2.24 Paragraph 2.2.4.5. of the Policy stipulates that when appointing employees and determining remuneration, the Board shall take into account the job requirements in terms of qualifications, experience, skills and other requirements contained in the Job Specification, statutory requirements and the representativeness of the personnel of the Board.
- 5.2.25 Paragraph 2.2.8 of the Policy provides that the Board may appoint persons in a part time capacity under such terms and conditions as it may determine.
- 5.2.26 There is no provision in the Policy authorising the MEC to make any appointments. All appointments have to be made by the Board through a recruitment process.
- 5.2.27 The provisions of section 136 of the Constitution and the Executive Ethics Code referred to in paragraphs 5.1.21 to 5.1.24 also apply to this issue.

### Conclusion

- 5.2.28 The appointment of Mr Mothibi in the position of Chief Executive Officer of the Gambling Board on a contract basis by the MEC was not in accordance with the provisions of the Northern Cape Gambling Act, the NCGA Regulations and the Policy.
- 5.2.29 No provision is made in the Northern Cape Gambling Act for the temporary appointment of a chief executive officer by the MEC. The appointment can only be made by the Board.

- 5.2.30 Mr Mothibi did not have the requisite academic qualifications for the position as he had a National Diploma in Personnel Management instead of a Bachelor's degree in Commerce, Law or Public Administration.
- 5.2.31 The Board did not appoint Mr Mothibi as contemplated by section 10 of the Northern Cape Gambling Act, Regulation 2 of the NCGA Regulations and no recruitment process was followed as required by the Policy.
- 5.2.32 The appointment of Mr Mothibi was therefore unlawful, improper and constitutes maladministration.
- 5.2.33 The conduct of the MEC in this regard was not in the best interest of good governance and consistent with the position of a Member of the Executive Council. It was therefore in violation of section 136 of the Constitution and paragraphs 2.1 and 2.3 of the Executive Ethics Code.

## **6. FINDINGS**

### **6.1 Regarding whether the secondment of Mr Mothibi to act as the CEO of the Gambling Board by Mr M Lekwene, the former MEC for Finance, Economic Development and Tourism for a period of three (3) years with effect from 2 September 2019 was not accordance with the relevant laws and prescripts regulating the secondment of employees in the Public Service; and if yes, whether the conduct of the MEC was improper, and constitutes maladministration**

- 6.1.1 The allegation that Mr Lekwene's secondment of Mr Mothibi to act as the Chief Executive Officer, in his former capacity as the MEC for Finance, Economic Development and Tourism, for a period of three (3) years with effect from 2 September 2019 was not in accordance with the relevant laws and prescripts regulating the secondment of employees in the Public Service, is substantiated.

- 6.1.2 Mr Mothibi did not have the requisite academic qualifications for the position of the CEO, as stated in the official Job Description of the Gambling Board as a minimum requirement for the position.
- 6.1.3 Even if Mr Mothibi did have the requisite qualifications for the position of CEO, the period of secondment exceeded the maximum of 12 calendar months prescribed by the Public Service Regulations. It also exceeded the contractual period of Mr Mothibi's appointment at the Department, which was only for six months, expiring in December 2019. There was no decision taken by the Minister authorising secondment for a period longer than 12 months as stipulated by the Public Service Regulations.
- 6.1.4 There was no agreement concluded between the Department and the Gambling Board in respect of Mr Mothibi's secondment as required by the Public Service Regulations.
- 6.1.5 The decision by the MEC to second Mr Mothibi was in violation of section 15(3) of the Public Service Act, 1994 and Regulation 62 of the Public Service Regulations, 2016.
- 6.1.3 The conduct of the MEC in this regard was therefore improper and constitutes maladministration.
- 6.1.4 The conduct of the MEC further violated the provisions of section 136 of the Constitution and paragraphs 2.1 and 2.3 of the Executive Ethics Code. As it was as the secondment was made in violation of the law, and was therefore not made in good faith, in the best interest of good governance and consistent with the integrity of his office as MEC.
- 6.1.5 The conduct of the MEC accordingly constitutes improper as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

**6.2 Regarding whether the appointment of Mr Mothibi as the CEO of the Gambling Board by the former MEC for Finance, Economic Development and Tourism with effect from 1 January 2020 to 31 December 2020 was not in accordance with the relevant laws and prescripts regulating the appointment of the Chief Executive Officer of the Gambling Board; and if yes, whether the conduct of the MEC was improper and constitutes maladministration**

6.2.1 The allegation that the appointment of Mr Mothibi as the Chief Executive Officer of the Gambling Board, by the MEC for a period of twelve months, retrospective from 1 January 2020 until 31 December 2020 was not in accordance with the relevant laws and prescripts regulating the appointment of the Chief Executive Officer of the Gambling Board, is substantiated.

6.2.2 Mr Mothibi did not meet the minimum requirements of the position as he only has a National Diploma in Personnel Management instead of a Bachelor's degree in Commerce, Law or Public Administration. No recruitment process was followed.

6.2.3 The Northern Cape Gambling Act, the NCGA Regulations and the Policy do not provide for the MEC to appoint the chief executive officer of the Gambling Board. Only the Board can make such appointment.

6.2.4 The temporary appointment of Mr Mothibi as the Chief Executive Officer was therefore unlawful and improper. It also constitutes maladministration.

6.2.5 The conduct of the MEC furthermore violated the provisions of section 136 of the Constitution and paragraphs 2.1 and 2.3 of the Executive Ethics Code. As it was made in violation of the law, and was therefore not made in good faith, in the best interest of good governance and consistent with the integrity of his office as MEC.

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

## 7. REMEDIAL ACTION

7.1 The appointment of a Chief Executive Officer of the Northern Cape Gambling Board is an administrative action.

7.2 In *Oudekraal Estates (Pty) Ltd v City Of Cape Town & Others 2004 (6) SA 222 SCA* the Supreme Court of Appeal ruled that until an administrative decision is set aside by a Court in proceedings for judicial review, it exists in fact and it has legal consequences that cannot be simply overlooked.

7.3 This principle was confirmed by the Constitutional Court in *The MEC for Health, Eastern Cape v Kirland Investments 2014 (3) SA 481 (CC)*. The Court found that if public officials or administrators can, without recourse to legal proceedings, be allowed to disregard administrative actions by their peers, subordinates or superiors if they consider them mistaken, this would be a license to self-help. It would be inviting officials to take the law into their own hands by ignoring administrative conduct they consider incorrect. The Court found that this would spawn confusion and conflict to the detriment of the administration and the public and that it would undermine the Court's supervision of the administration.<sup>3</sup>

7.4 It is not open to the MEC for Finance, Economic Development and Tourism or the Gambling Board to simply cancel the employment contract that was entered into with Mr Mothibi and that was later extended by the current MEC.

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<sup>3</sup> At para 89

A proper judicial review has to be brought to firstly review the decision to appoint him and to declare the appointment invalid.

7.5 Consequently, the appropriate remedial action that the Public Protector is taking in terms of section 182(1)(c) of the Constitution is the following:

**7.5.1 The Premier of the Northern Cape to:**

7.5.1.1 To take appropriate steps in respect of disciplinary action against Mr Lekwene for his improper conduct relating to the irregular secondment and the subsequent irregular appointment of Mr Mothibi as the Chief Executive Officer of the Northern Cape Gambling Board, in terms of the applicable legislation and prescripts, within thirty (30) days from the date of this report.

7.5.1.2 Submit a report to the Northern Cape Provincial Legislature on the action taken against the MEC as referred to in paragraph 7.5.1.1 above within 60 days from the date of this report.

**7.5.2 The Northern Cape MEC for Finance, Economic Development and Tourism to:**

7.5.2.1 Institute proceedings for judicial review of the secondment and appointment of Mr Mothibi as the Chief Executive Officer of the Northern Cape Gambling Board, in terms of thirty (30) business days from the date of this report.

7.5.2.2 Submit a report on the progress made with instituting the judicial review proceedings to the Northern Cape Executive Council, the Northern Cape Provincial Legislature and the Northern Cape Gambling Board within 60 days from the date of this report.

## 8 MONITORING

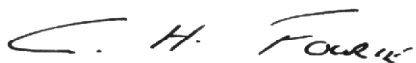
8.1.1 The Premier of the Northern Cape and the Northern Cape MEC for Finance, Economic Development and Tourism to submit an implementation plan to the Public Protector within 30 days from the date of this report on how the remedial action referred to in paragraphs 7.5.1 and 7.5.2 will be implemented.

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



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**ADV BUSISIWE MKHWEBANE**  
**PUBLIC PROTECTOR OF**  
**THE REPUBLIC OF SOUTH AFRICA**  
**DATE: 03 / 06 /2021**



Assisted by: Adv. C H Fourie  
Executive Manager:  
PII Coastal