

CLOSING 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**

Report No: 06 of 2020/2021

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CLOSING REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION AND IMPROPER CONDUCT IN CONNECTION WITH THE DECISION BY THE FORMER MINISTER OF ENERGY, MS TINA JOEMAT-PETTERSSON TO APPROVE THE SALE OF TEN (10) MILLION BARRELS OF THE STRATEGIC FUEL RESERVES HELD BY THE STRATEGIC FUEL FUND ASSOCIATION

1. INTRODUCTION

- 1.1. This is my closing report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa Act, [Act No. 108 of 1996] (the Constitution) and published in terms of section 8(1) of the Public Protector Act, [Act No. 23 of 1994] (the Public Protector Act).
- 1.2. The report relates to an investigation conducted following two (2) complaints lodged by the Democratic Alliance (DA) Member of Parliament, Mr Pieter van Dalen and the Freedom Front-Plus (FF-Plus) Member of Parliament, Adv Anton de Waal Alberts on 31 May 2016 and 01 June 2016 respectively.
- 1.3. Copies of the closing report are provided to the following persons in terms of section 8(3) of the Public Protector Act, 1994:
 - 1.3.1. Mr Pieter van Dalen and Adv Anton de Waal Alberts, (the Complainants in the matter);
 - 1.3.2. The Minister of Mineral Resources and Energy, Mr Gwede Mantashe;
 - 1.3.3. The Chairperson of the Strategic Fuel Fund Association's Board of Directors, Ms Nelisiwe Magubane;
 - 1.3.4. The Chief Executive Officer of the Central Energy Fund, Dr Ishmael Poolo for conveyance to the Central Energy Fund (SOC) Ltd Board of Directors;
 - 1.3.5. The former Minister of Energy and current Chairperson of Parliament's Portfolio Committee on Police, Ms Tina Joemat-Pettersson, MP;
 - 1.3.6. The Chief Executive Officer of the Strategic Fuel Fund Association, Mr Godfrey Moagi; and

1.3.7. The former Acting Chief Executive Officer of the Strategic Fuel Fund Association, Mr Sibusiso Gamede.

1.4. THE COMPLAINTS

1.4.1. The allegations by Adv Alberts and Mr Pieter van Dalen are that, the decision by Ms Joemat-Pettersson to rotate and then subsequently sell ten (10) million barrels of strategic fuel reserves held by the SFF in a closed bidding process in 2015 and 2016, which was kept as South Africa's reinsurance policy in the event of a sudden fuel crisis, was irrational and in contravention of the provisions of section 54(2)(d) of the Public Finance Management Act No.1 of 1999, as well as the Central Energy Fund Act No. 38 of 1977.

1.4.2. Adv Alberts referred to an article written by Ms Carol Paton, published in the *Business Day* newspaper dated 26 May 2016, with the caption "**South Africa's strategic fuel stock sold off in secret**". The article reads thus:

"The Strategic Fuel Fund (SFF), the guardian of SA's strategic crude oil stocks, has sold 10-million barrels of crude — close to its entire stockpile — in a closed tender at rock-bottom prices without obtaining permission from the Treasury. Strategic stockpiles are a country's reinsurance policy in the event of a sudden supply crisis. The fund is required to hold stock for 20 days cover.

It now has 300,000 barrels, less than a day of cover. The sale took place with the permission of Energy Minister Tina Joemat-Pettersson, but without that of Finance Minister Pravin Gordhan, whose concurrence is needed under the Central Energy Fund Act. A state-owned entity is also required to obtain Treasury approval for the sale of any significant state asset, according to the Public Finance Management Act (PFMA). All transactions must be transparent and competitive in accordance with the act.

The Treasury was not informed of the sale and yesterday was tight-lipped on the transaction. CE of the fund Sibusiso Gamede and Joemat-Pettersson contend that the transaction was "a rotation" of stocks rather than a sale. Gamede says that a stock "rotation" does not require Treasury permission and has been done once before, in 1999". (sic)

2. Based on the analysis of the complaint and the allegations contained therein, the following issue was identified to inform and focus the investigation:

2.1. Whether the decision by the former Minister of Energy, Ms Joemat-Pettersson to approve the sale of ten (10) million barrels of the strategic fuel reserves held by the Strategic Fuel Fund Association was irrational, and if so, whether the conduct constituted maladministration and improper conduct; and

2.2. Whether the sale of ten (10) million barrels of the strategic fuel reserves held by the Strategic Fuel Fund Association was conducted in accordance with legislation regulating the sale of significant assets and any other prescripts applicable to the Strategic Fuel Fund Association, and if not so, whether the conduct constituted maladministration and improper conduct.

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. The Public Protector is also given power to resolve disputes through conciliation, mediation, negotiation, advising the complainant regarding appropriate remedies or any other means that may be expedient under the circumstances.

3.5 In the matter of the ***President of the Republic of South Africa v 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:

3.5.1 The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the Constitution (paragraph 71);

3.5.2 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 (paragraph 82);

- 3.5.3 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 (paragraph 100 and 101):
- (a) Conduct an investigation;
 - (b) Report on that conduct; and
 - (c) To take remedial action.
- 3.5.4 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or *prima facie* findings (paragraph 104);
- 3.5.5 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 (Paragraph 105 o);
- 3.5.6 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 (paragraph 107 and 108); and
- 3.5.7 *Prima facie* evidence which point to serious misconduct is a sufficient and appropriate basis for the Public protector to take remedial action (paragraph 112).
- 3.6 The Public Investment Corporation is an organ of state listed in Part B of Schedule 3 of the Public Finance Management Act, 1999 [Act No. 1 of 1999] and therefore its conduct amounts to conduct in state affairs, and, as a result the matter falls within the Public Protector's mandate to investigate. The Public Protector's power and jurisdiction to investigate, report and take appropriate remedial action 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 relating to allegations of improper conduct or maladministration.
- 4.1.3. The investigation process included an exchange of documentation between the Public Protector and the former Acting Chief Executive Officer of the Central Energy Fund (SOC) Ltd and now the Chief Executive Officer of the Strategic Fuel Fund Association, Mr Godfrey Moagi, the former Acting Chief Executive Officer of the Central Energy Fund, Mr Sakhiwo Makhanya and the Acting Chief Executive Officer of the Strategic Fuel Fund Association, Mr Thabane Zulu.
- 4.1.4. Correspondence was exchanged between the Public Protector and Mr Navenda Ncwana on instruction of the former Acting Chief Executive Officer of the Strategic Fuel Fund Association, Mr Godfrey Moagi. All relevant documents and correspondence were obtained and analysed, in particular, copies of Ministerial Directives of October and November 2015, which guided the rotation and subsequent sale of the strategic fuel reserves held by the Strategic Fuel Fund Association.
- 4.1.5. Relevant laws, policies and related prescripts were also considered and applied throughout the investigation.
- 4.1.6. Subpoenas in terms of section 7(4) and (5) of the Public Protector Act, 1994 were issued to Messrs Tseliso Maqubela and Vukani Khulu, who I had reason to believe would be of assistance in the investigation of this matter.

4.1.7. A notice issued in terms of the provisions of section 7(9)(a) of the Public Protector Act, 1994, was issued to the former Chief Executive Officer of the Strategic Fuel Fund Association, Mr Sibusiso Gamede, with a view to affording him the opportunity to respond to those aspects of the investigation which in my view might implicate him to his detriment or an adverse finding pertaining to him may result.

4.1.8. A supplementary notice issued in terms of the provisions of section 7(9)(a) of the Public Protector Act, 1994, was issued to the former Chief Executive Officer of the Strategic Fuel Fund Association, Mr Sibusiso Gamede, with a view to affording him a further opportunity to respond to those aspects of the investigation which in my view might implicate him to his detriment or an adverse finding pertaining to him may result.

4.2. **Approach to the investigation**

4.2.1. Like every Public Protector investigation, 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 improper conduct?

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 or not the decision by the former Minister of Energy to approve the sale of the strategic fuel reserves was rational.

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 former Minister of Energy and employees of the Strategic Fuel Fund Association to prevent maladministration and improper conduct.

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

4.3. **The Key Sources of information**

4.3.1. **Documents**

4.3.1.1. A copy of the Complainants' complaint documents dated 30 May 2016 and 31 May 2016 respectively;

4.3.1.2. A copy of a Ministerial Directive issued to the Strategic Fuel Fund Association for the Management of Crude Oil and Petroleum Strategic Stocks for the Republic of South Africa dated 7 August 2014;

4.3.1.3. A copy of a letter from the former Chief Executive Officer of the Strategic Fuel Fund Association, Mr Sibusiso Gamede dated 6 October 2015, addressed to the former Minister of Energy, Ms Joemat-Pettersson requesting the withdrawal of the Ministerial Directive of 3 August 2015 and the reinstatement of the Ministerial Directive of 14 July 2014;

4.3.1.4. A copy of a response letter from the former Minister of Energy, Ms Joemat-Pettersson dated 8 October 2015, addressed to the former Chief Executive Officer of the Strategic Fuel Fund Association, Mr Sibusiso Gamede;

- 4.3.1.5. A copy of a letter from the former Chief Executive Officer of the Strategic Fuel Fund Association, Mr. Sibusiso Gamede dated 11 November 2015 addressed to the former Minister of Energy, Ms Joemat-Pettersson requesting a Ministerial Directive to sell ten (10) million barrels of strategic fuel reserves;
- 4.3.1.6. A copy of a response letter from the former Minister of Energy, Ms Joemat-Pettersson dated 12 November 2015, in connection with a Request for a Ministerial Directive to sell ten (10) million barrels of strategic fuel reserves submitted by the former Chief Executive Officer of the Strategic Fuel Fund Association, Mr Sibusiso Gamede;
- 4.3.1.7. A copy of a letter from the former Chief Executive Officer of the Strategic Fuel Fund Association, Mr Sibusiso Gamede dated 30 November 2015 addressed to the former Minister of Energy, Ms Joemat-Pettersson requesting approval for the rotation, sale and purchase of strategic fuel reserves transaction with Venus Rays Trade (Pty) Limited in line with the Ministerial Directive of 12 November 2015;
- 4.3.1.8. A copy of an Agency Agreement dated 20 April 2012, entered into between the Department of Energy, duly represented by the Deputy Director-General of the Department of Energy, Ms Thandeka Zungu;
- 4.3.1.9. Copies of a Draft Strategic Stocks Petroleum Policy and Draft Strategic Stocks Implementation Plan published in Government Gazette No. 36220 dated 8 March 2013;
- 4.3.1.10. A copy of a letter from the former Minister of Energy, Ms Joemat-Pettersson dated 7 December 2015, addressed to the former Chief Executive Officer of the SFF, Mr Sibusiso Gamede approving the rotation and sale transaction between the Strategic Fuel Fund Association, Venus Trade (Pty) Limited, Vittol Energy Group (Pty) Limited, and Taleveras Oil SA (Pty) Limited and GNI/Enviroshore in line with the Ministerial Directive of 12 November 2015;

4.3.1.11. Copies of letters from the former Chief Executive Officer of the Strategic Fuel Fund Association, Mr Sibusiso Gamede dated 13 October 2015, inviting the following entities to submit proposals for the rotation of strategic fuel reserves:

4.3.11.1. Golden Nest International Group (Pty) Limited;

4.3.11.2. Mercuria Group (Pty) Limited;

4.3.11.3. Vittol Energy Group (Pty) Limited;

4.3.11.4. Skydeck Trading SA (Pty) Limited; and

4.3.11.5. Total SA (Pty) Limited.

4.3.1.12. A copy of a letter from the former Minister of Energy, Ms Joemat-Pettersson addressed to Ambassador Bheki Gila dated 15 January 2015, approving the Strategic Fuel Fund Association's proposed Optimization Plan;

4.4.

4.3.1.13. A copy of a letter from the former Chief Executive Officer of the Strategic Fuel Fund Association, Mr Sibusiso Gamede dated 19 October 2015, inviting Enviroshore (Pty) Limited to submit proposals for the rotation of strategic fuel reserves;

4.3.1.14. A copy of a letter from the former Chief Executive Officer of the Strategic Fuel Fund Association, Mr Sibusiso Gamede dated 23 October 2015, inviting Zittatu Oil and Gas Investment Holdings (Pty) Limited to submit proposals for the rotation of strategic fuel reserves;

4.3.1.15. A copy of a letter from former Chief Executive Officer of the Strategic Fuel Fund Association, Mr Sibusiso Gamede dated 30 October 2015, inviting Taleveras Oil SA (Pty) Limited to submit proposals for the rotation of strategic fuel reserves;

- 4.3.1.16. A copy of a letter from the former Chief Executive Officer of the Strategic Fuel Fund Association, Mr Sibusiso Gamede dated 2 November 2015, inviting Taleveras Petroleum Trading DMCC to submit proposals for the rotation of strategic fuel reserves;
- 4.3.1.17. A copy of a letter from the former Chief Executive Officer of the Strategic Fuel Fund Association, Mr Sibusiso Gamede dated 24 November 2015, inviting Venus Rays Trade (Pty) Limited and Mbongeni Investments South Africa (Pty) Limited to submit an expression of interest for participation in the rotation, sale and purchase of strategic fuel reserves; and
- 4.3.1.18. Copies of the Strategic Fuel Fund Board of Directors' minutes of meetings held on 13 October 2015, 23 November 2015 and 27 January 2016 respectively;
- 4.3.1.19. A copy of media statement titled "Minister of Energy requests review of Central Energy Fund Governance Processes" issued by the Ministry of Energy on 14 July 2016; and
- 4.3.1.20. A copy of an Optimization Plan dated 17 November 2014, submitted by Ambassador Bheki Gila to the former Minister of Energy, Ms Tina Joemat-Pettersson for approval;
- 4.3.1.21. A copy of Allen and Overy South Africa (LLP)'s Report titled "CEF (SOC) Ltd-SFF Association Contract Review" dated 20 December 2016; and
- 4.3.1.22. A copy of a media statement issued by the Central Energy Fund (SOC) Ltd dated 22 August 2019;

4.3.2. Correspondence sent and received

- 4.3.2.1. A copy of a letter from the Public Protector dated 30 May 2017 addressed to the former Acting Group Chief Executive Officer of the Central Energy Fund, Mr Godfrey Moagi;
- 4.3.2.2. A copy of a response letter from the Acting Group Chief Executive Officer of the Central Energy Fund (SOC) Ltd, Mr Godfrey Moagi dated 23 June 2017, addressed to the Public Protector;
- 4.3.2.3. A copy of a response letter from the Acting Group Chief Executive Officer of the Central Energy Fund (SOC) Ltd, Mr Godfrey Moagi dated 27 June 2017, addressed to the Public Protector;
- 4.3.2.4. A copy of a letter from the Public Protector dated 28 August 2018, addressed to the former Acting Group Chief Executive Officer of the Central Energy Fund (SOC) Ltd, Mr Godfrey Moagi;
- 4.3.2.5. A copy of a letter from the Public Protector dated 12 March 2019, addressed to the Acting Chief Executive Officer of the Central Energy Fund (SOC) Ltd, Mr Sakhiwo Makhanya;
- 4.3.2.6. A copy of a letter from the Public Protector dated 10 July 2019 addressed to the Acting Chief Executive Officer of the Strategic Fuel Fund Association, Mr Godfrey Moagi;
- 4.3.2.7. A copy of the Public Protector's notice issued in terms of section 7(9)(a) of the Public Protector Act, 1994, addressed to the former Chief Executive Officer of the Strategic Fuel Fund Association, Mr Sibusiso Gamede;

4.3.2.8. A copy of a response from the former Chief Executive Officer of the Strategic Fuel Fund Association, Mr Sibusiso Gamede to the Public Protector's notice issued in terms of section 7(9)(a) of the Public Protector Act, 1994, dated 26 September 2019, addressed to the Public Protector;

4.3.2.9. A copy of the Public Protector's supplementary notice issued in terms of the provisions of section 7(9)(a) of the Public Protector Act, 1994, addressed to the former Chief Executive Officer of the Strategic Fuel Fund Association, Mr Sibusiso Gamede;

4.3.3. **Interviews conducted**

4.3.3.1. Meeting with the Member of the Central Energy Fund (SOC) Ltd Board of Directors and current Deputy Director-General of the Department of Mineral Resources and Energy, Petroleum Products Division, Mr Tseliso Maqubela and the Central Energy Fund (SOC) Ltd Group Advisory Stakeholder Manager, Mr Vukani Khulu on 31 October 2019; and

4.3.3.2. Virtual meeting with the former Chairperson of the Central Energy Fund (SOC) Ltd, Mr Luvo Makasi and the Public Protector on 09 July 2020.

4.3.4. **Websites consulted/ electronic sources**

4.3.4.1. www.treasury.gov.za;

4.3.4.2. www.publicprotector.org;

4.3.4.3. www.cefgroup.co.za;

4.3.4.4. <https://www.timeslive.co.za/news/south-africa/2016-05-26-south-africas-strategic-fuel-stock-sold-off-in-secret/>;

4.3.4.5. <https://businesstech.co.za/news/energy/124859/government-secretly-sold-off-r5-billion-worth-of-sa-oil-reserves-and-got-ripped-off/>;

4.3.4.6. <https://www.iol.co.za/news/politics/tina-joemat-pettersson-resigns-as-mp-8523397>;

4.3.4.7. <https://www.iol.co.za/business-report/economy/fuel-fund-chair-and-chief-resign-in-a-huff-2041239>;

4.3.4.8. <https://www.dispatchlive.co.za/news/business/2016-07-04-fuel-funds-bosses-quit/>;

4.3.4.9. <https://www.cefgroup.co.za/news-room/media-statements/item/18-statement-issued-by-the-central-energy-fund-on-the-sff-rotation-of-strategic-stocks>

4.3.5. **Legislation and other prescripts**

4.3.5.1. The Constitution of the Republic of South Africa, 1996;

4.3.5.2. The Public Protector Act, 1994 (Act No. 23 of 1994);

4.3.5.3. The Public Finance Management Act, 1999 (Act No. 1 of 1999);

4.3.5.4. The National Energy Act, 2008 (Act No. 34 of 2008);

4.3.5.5. The Central Energy Fund Act, 1997 (Act No. 38 of 1977);

4.3.5.6. The National Treasury: PFMA Regulations of 15 March 2005;

4.3.5.7. The National Treasury Practice Note of 13 July 2006;

4.3.5.8. The Strategic Fuel Fund Association's Delegation of Authority Policy SFF-01;

4.3.5.9. The SFF Procurement Policy (SFF-03);

4.3.6. **Case law**

4.3.6.1. *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);*

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 decision by the former Minister of Energy, Ms Joemat-Pettersson to approve the sale of ten (10) million barrels of the strategic fuel reserves held by the Strategic Fuel Fund Association was irrational, and if so, whether the conduct constituted maladministration and improper conduct;**

Issues that are Common Cause

5.1.1. It is common cause that, the Minister of Energy has oversight responsibilities over the Strategic Fuel Fund Association and the Central Energy Fund (SOC) Ltd, which are either classified as Schedule 2 or 3 in the Public Finance Management Act, 1999, whose measurable purposes is to enhance the Department of Energy's objectives through policies and directives, promoting its legislative mandate and leading to the creation of an environment conducive to investment and the improvement of the quality of life of South Africans.

5.1.2. It is also common cause that on 13 January 2012, the Department of Energy and Strategic Fuel Fund Association entered into an Agency Agreement in terms of which the Strategic Fuel Fund Association was appointed as the Department of Energy's lawful agent to, *inter alia*,

5.1.2.1. Manage the strategic stocks;

5.1.2.2. Trade in, replacing, selling; and

5.1.2.3. Storing of the strategic stocks in the name of the Principal (the Department of Energy).

5.1.3. It is further common cause that, on 20 April 2012, the Department of Energy (the Principal), duly represented by the Acting Deputy Director-General, Ms Thandeka Zungu and the Strategic Fuel Fund Association (the Agent), duly represented by Ms Adila Osman, concluded an Agency Agreement, in terms of which the Strategic Fuel Fund Association was appointed as a lawful Agent to, *inter alia*:

“Manage the Strategic Stocks including, trade in, replacing, selling, and storing same in accordance with the applicable legislation (including, *inter alia* but not limited to the Central Energy Act, 1977, the Public Finance Management Act, 1999 (PFMA) and the PFMA Regulations as amended) as well as policies on Strategic Stock that may be issued or determined by the Minister from time to time”.

5.1.4. It is also common cause that, the former Minister of Energy, Ms Tina Joemat-Pettersson approved the sale of the strategic fuel reserves held by the Strategic Fuel Fund Association.

Issue in Dispute

- 5.1.5. The issue for determination was whether the decision by the former Minister of Energy, Ms Joemat-Pettersson to approve the sale of ten (10) million barrels of the strategic fuel reserves held by the Strategic Fuel Fund Association was irrational.
- 5.1.6. Messrs Van Dalen and Alberts alleged that, the decision by the former Minister of Energy, Ms Joemat-Pettersson to approve the sale of ten (10) million barrels of the strategic fuel reserves held by the SFF in a closed bidding process in 2015 and 2016, which was kept as South Africa's reinsurance policy in the event of a sudden fuel crisis, was irrational.
- 5.1.7. Adv Alberts referred to an article written by Ms Carol Paton published in the *Business Day* newspaper dated 26 May 2016, with the caption "**South Africa's strategic fuel stock sold off in secret**". The article reads thus:

"The Strategic Fuel Fund (SFF), the guardian of SA's strategic crude oil stocks, has sold 10-million barrels of crude — close to its entire stockpile — in a closed tender at rock-bottom prices without obtaining permission from the Treasury. Strategic stockpiles are a country's reinsurance policy in the event of a sudden supply crisis. The fund is required to hold stock for 20 days cover.

It now has 300,000 barrels, less than a day of cover. The sale took place with the permission of Energy Minister Tina Joemat-Pettersson, but without that of Finance Minister Pravin Gordhan, whose concurrence is needed under the Central Energy Fund Act.

A state-owned entity is also required to obtain Treasury approval for the sale of any significant state asset, according to the Public Finance Management Act (PFMA). All transactions must be transparent and competitive in accordance with the act.

The Treasury was not informed of the sale and yesterday was tight-lipped on the transaction. CE of the fund Sibusiso Gamede and Joemat-Pettersson contend that the transaction was "a rotation" of stocks rather than a sale. Gamede says that a stock "rotation" does not require Treasury permission and has been done once before, in 1999".

- 5.1.8. In accordance with the provisions of section 7(4)(a) of the Public Protector Act, 1994, a letter was issued to the ACEO of the CEF, Mr Godfrey Moagi on 30 May 2017, requesting the submission of documentation and information pertinent to the sale of strategic fuel reserves, which letter was responded to on 23 June 2017.
- 5.1.9. It was also established that in March 2013, the Department of Energy, by notice (Notice 192 of 2013) in Government Gazette No. 36220 dated 8 March 2013, published Draft Strategic Stocks Petroleum Policy and Draft Strategic Stocks Implementation Plan premised on the recommendations from Cabinet's approved Energy Master Plan of 2007 for public comments.
- 5.1.10. In addition, it was noted that on implementation of the policy, the Strategic Fuel Fund Association's operations would extend nationwide and storage would also include products. Further that, in the medium term the Strategic Fuel Fund Association would require additional skills for implementing the policy. As a corollary to this, the Strategic Fuel Fund Association's model of operation and funding operational costs would require a different business model if the Strategic Fuel Fund Association was to realise its strategic objective of financial independence from State funding.
- 5.1.11. It was also noted that, on 7 August 2014, following the publication of the Draft Strategic Stocks Petroleum Policy and Draft Strategic Stocks Implementation Plan, the former Minister of Energy, Ms Tina Joemat-Pettersson issued a Ministerial Directive titled "**Department of Energy Ministerial Directive Issued**

to the SFF Management of Crude Oil and Petroleum Strategic Stocks for the Republic of South Africa”.

- 5.1.12. In terms of Paragraph 3 of the Ministerial Directive of 7 August 2014, the Strategic Fuel Fund Association was expected to acquire and manage the country’s strategic stocks on behalf of the Government in accordance with the directive and any other subsequent policy documents promulgated pursuant to the provisions of the National Energy Act, 2008.
- 5.1.13. It was further noted from the Ministerial Directive of 7 August 2014, that in order for the Strategic Fuel Fund Association to continually hold crude oil stocks and petroleum products, the Strategic Fuel Fund Association was required to submit an Optimization Proposal/Plan within six (6) months.
- 5.1.14. In addition, it was noted that the trading of strategic stocks would be permissible under a regime to be determined by the Department of Energy and approved by the Minister of Energy. Further to that, the Strategic Fuel Fund Association was required to enter into negotiations and conclude agreements with the oil refineries, petroleum wholesalers and other designated organisations as the Minister may determine before the crisis occurs.
- 5.1.15. Consistent with the Ministerial Directive, on 17 November 2014, the former Chief Executive Officer of the Strategic Fuel Fund Association, Ambassador Bheki Gila, submitted an Optimization Plan for approval in accordance with the Ministerial Directive of 7 August 2014, requesting the former Minister of Energy, Ms Joemat-Pettersson to approve, *inter alia*:
- 5.1.15.1. *The leasing out of the Basrah Crude Oil in tank two (2) for six (6) months with an option of an extension for another six (6) months in the event the market conditions remained unchanged;*
- 5.1.15.2. *The leasing of Iraqi Basrah Light Crude Oil to the lessee of the tank;*

- 5.1.15.3. *Payment of United States Dollar (USD) 10 cents per barrel per month for six (6) months by the lessee of the tank aggregating to one million one hundred and twenty five thousand dollars (USD1.125 million) per month, which was a complete reversal of the period when SFF did not derive revenues from the tanks or that when it did, it garnered a pittance of USD three (3) cents for the past five to ten years;*
- 5.1.15.4. *Holding the lessee's barrel in tank two in lien for the Basrah on the basis that the grade proposed to be in the tank was compatible with the Basrah Light Crude Oil which was in the tank;*
- 5.1.15.5. *Returning of the barrel in specie at the end of the six (6) months or extended rollover period;*
- 5.1.15.6. *Holding over the lessee's crude oil in tank two (2) as guarantee for the rented barrel; and*
- 5.1.15.7. *At no stage should the lessee's barrels be lesser than the quantum of the rented strategic stock.*
- 5.1.16. On 15 January 2015, the former Minister of Energy, Ms Joemat-Pettersson approved the proposed Optimization Plan and emphasised that the plan must be executed in a manner that both addresses the need of the country to have strategic stocks reserve that can respond adequately to the country's needs when such needs arise and also as a catalyst towards ensuring financial self-sustainability of the Strategic Fuel Fund Association as an organisation.
- 5.1.17. The information also indicates that, in September 2015, Ambassador Bheki Gila resigned as the Chief Executive Officer of the Strategic Fuel Fund Association and as a consequence, Mr Gamede was appointed as the Acting Chief Executive Officer of the Strategic Fuel Fund Association.

5.1.18. Following his appointment, on 6 October 2015, Mr Gamede wrote a letter to the former Minister of Energy titled **“Request for the Withdrawal of Ministerial Directive of 3 August 2015”**. In the letter of 6 October 2015, Mr Gamede stated as follows:

“For the SFF to adequately fulfil its mandate of Energy Security, it is fundamental that the SFF be accorded the responsibility to “acquire, monitor and manage national strategic energy feedstocks and carriers” as provided for in terms of section 17 of the National Energy Act, 2008.

Before 1994, SFF was tasked with the functions to acquire, monitor and manage national strategic energy feedstocks and carriers of crude oil in South Africa, both Commercial and strategic purposes. SFF was able to sustain its operations as it was engaging in multifunction’s, such as ownership of infrastructure, trading storage and supplying crude oil to commercial traders.

Since 1994, SFF’s function was limited to storage of only Strategic Stock and all other functions were confiscated. Private companies were allowed to procure and store for commercial purposes.

This had an inordinate impact on SFF as it curtailed its income generating abilities and exposed SFF to market fluctuations; for example when the market was in backwardation, SFF could not find customers to lease vacant tank space. This meant that SFF could not generate any income to cover expenses.

To ensure sustainability and future growth of SFF, the Minister was requested through a Directive, to allow SFF to engage in commercial activities that would ensure that the SFF is financially independent and sustainable. The growth plans of SFF are dependent on a business model that allows the SFF to venture into other economic activities within the Energy sector.

It is therefore our humble request to have the Ministerial Directive of the 3rd August 2015 rescinded and the Ministerial Directive of 7th July 2014 reinstated in order for the SFF to be able to comply with its mandate.

The Business Model proposed will involve:

- 1. SFF trading in commercial stock,*
- 2. Investing in Storage and Pipeline Infrastructure,*
- 3. Oil pollution services,*
- 4. Storage facility management services, and*
- 5. The rotation of strategic stock.*

Strategic Stock

SFF proposes to rotate the Strategic Stock under the following conditions with the Ministerial approval:

- 1. When the crude oil prices are on the rise;*
- 2. There must be a positive margin for the SFF, meaning selling price greater than purchase price; and*
- 3. That risk assessment will be conducted prior to any potential transaction being entered into by the SFF.*

Apart from the revenue enhancement benefit on stock rotation, product integrity will be maintained through the rotation. When the crude market prices are down, the SFF will explore the opportunity to procure or replenish additional barrels used to ensure that optimal stock level is maintained at all times.

In order for the above to be implemented successfully, the SFF would establish a Trading Department headed by a General Manager (GM) reporting directly to the CEO of the SFF. The key responsibilities of the GM, will include but not limited to, providing a monthly report on trading activities to the Honourable Minister".(sic)

5.1.19. The evidence indicates that on 8 October 2015, the former Minister of Energy, Ms Joemat-Pettersson responded to Mr Gamede's request and in her letter she stated as follows:

"Your letter request that I grant the Strategic Fuel Fund a renewed Ministerial Directive, based on a business model that would include, SFF Trading in commercial stock, investing in Storage and Pipeline Infrastructure, Oil Pollution Control and Management, Storage facility management services as well as Rotation of Strategic stock.

I hereby accordingly grant the SFF the Ministerial Directive as requested. The following conditions will apply:

- 1. Any rotation of strategic stock will be undertaken with a Ministerial Approval, preceded by a detailed due diligence undertaken by the SFF, and supported with a comprehensive motivation to Minister;*
- 2. The integrity of our Strategic Stock levels must be assured in all instances;*
- 3. Trading division should be established within the SFF and must be appropriately staffed with skilled personnel and resources to undertake trading activities which must generate revenue for the SFF;*
- 4. The SFF shall provide a Monthly Report to the Minister and Department on all activities in relation to the Directive herewith granted".(sic)*

5.1.20. The information further indicates that, following the former Minister of Energy, Ms Tina Joemat-Pettersson granting the Strategic Fuel Fund Association a renewed Ministerial Directive, on 11 November 2015, Mr Gamede wrote a further letter to the former Minister of Energy, Ms Joemat-Pettersson titled **“Request for selling of strategic stocks in Saldanha”**.

5.1.21. In the letter, Mr Gamede stated that, the Strategic Fuel Fund Association was storing ten comma three (10.3) million barrels of crude oil in Saldanha on behalf of the Republic of South Africa. Most of the crude oil stored in Saldanha had been sitting for many years and to some extent it was losing its relevance with the changing market conditions.

5.1.22. He further submitted a proposal to review the replacement of the stock holding quantity with fresh stock to ensure that the security of supply was not impacted negatively by the feedstock that was in line with future petroleum refining trends, and thus requested the Minister to direct that the Strategic Fuel Fund Association:

5.1.22.1. *Sell the entire quantity of 10.3 million barrels;*

5.1.22.2. *Every barrel would be sold at the prevailing market price; and*

5.1.22.3. *The proceeds from the sold stock would be used to purchase the 10.3 million barrels of crude oil from the open market.*

5.1.23. In concluding the letter, Mr Gamede stated that, it was envisaged that the following benefits would be accrued to South Africa with regards to ensuring the security of supply:

5.1.23.1. *The SFF would access fresh stock of crude oil in the open market that would be in line with the changing crude diet and invariably replacing the old crude oil stock;*

- 5.1.23.2. *The quality would be improved with new stock thus increasing its refining relevance(fit for purpose); and*
- 5.1.23.3. *The current stock level of 10.3 million barrels would be sold at prevailing market process and would be replenished when the market prices are favourable for the SFF to acquire such barrels. This would ensure that the SFF creates value that will yield a positive net margin on the selling and buying initiative of crude oil. (sic)*
- 5.1.24. It was established that, on 12 November 2015, the former Minister of Energy approved the sale plan of the strategic stock holding as submitted, as part of the security of supply mandate as per the Ministerial Directive and emphasised that the sale plan must be executed in a manner that both addresses the needs of the country to have strategic stocks reserve that can respond adequately to the needs when such need arise, but also as a catalyst towards ensuring financial self-sustainability of the SFF as an organisation which in effect gave way to the sale of the strategic fuel reserves.

Application of the relevant laws and prescripts

- 5.1.25. **The Constitution, 1996** which is the supreme law of the Republic. Section 2 of the Constitution, 1996 provides that *“this Constitution is the supreme law of the Republic, law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled”*.
- 5.1.26. The evidence discussed above indicates that, the Executive Authority as owner/shareholder is concerned with appropriate returns on investments and ensuring financial viability of state owned entities falling under his/her department.

5.1.27. Further that, based on the motivation and Optimization Plan submitted by Ambassador Gila and a request for the approval of sale of the strategic fuel reserves by Mr Gamede respectively, the former Minister of Energy, Ms Tina Joemat-Pettersson approved the rotation and the sale of the strategic fuel reserves with a view to ensuring the fulfilment of the Strategic Fuel Fund Association's mandate, as well as financial self-sustainability and future growth of the entity.

Conclusion

5.1.28. Based on the information and evidence obtained during the investigation and with the application of the legal framework to the facts of the matter, it can be concluded that;

5.1.28.1. The approval of the sale of the strategic fuel reserves by the former Minister of Energy, Ms Tina Joemat-Pettersson was premised on a sale proposal submitted by the former Acting Chief Executive Officer of the Strategic fuel Fund Association, Mr Sibusiso Gamede;

5.1.28.2. Further that, the approval was taken with a view to ensuring the sustainability and future growth of Strategic Fuel Fund Association, as well as to ensuring that the Strategic Fuel Fund Association becomes financially independent and sustainable;

5.2. **Regarding whether the sale of ten (10) million barrels of the strategic fuel reserves held by the Strategic Fuel Fund Association was conducted in accordance with legislation regulating the sale of significant assets and any other prescripts applicable to the Strategic Fuel Fund Association, and if not so, whether the conduct constituted maladministration or improper conduct:**

Common Cause Issues

- 5.2.1. It is common cause that the National Government of South Africa is the owner of the Strategic Stocks and Strategic Assets which have been managed over the years by the Strategic Fuel Fund Association (the Agent) for the Department of Energy (the Principal) for the benefit of the National Government.
- 5.2.2. It is also common cause that, in 2015 and 2016 respectively, the former Minister of Energy, Ms. Joemat-Pettersson authorised, through Ministerial Directives dated 3 August 2015 and 12 November 2015 respectively, rotated and subsequently sold ten (10) million barrels of strategic fuel reserves held by Strategic Fuel Fund Association.

Issue in Dispute

- 5.2.3. The issue for determination is whether the sale of ten (10) million barrels of strategic fuel reserves held by the Strategic Fuel Fund Association in 2015 and 2016 respectively, was conducted in accordance with the provisions of section 54(2)(d) of Public Finance Management Act No. 1 of 1999, and any other prescripts applicable to the Strategic Fuel Fund Association.
- 5.2.4. In their complaints, Mr van Dalen, MP and Adv. Alberts, MP alleged that the sale of ten (10) million barrels of strategic fuel reserves in 2015 and 2016 respectively which was held by the Strategic Fuel Fund Association as South Africa's reinsurance policy in the event of a sudden fuel crisis was conducted in a manner that contravened the provisions of section 54(2)(d) of the Public Finance Management Act no.1 of 1999, as well as the Central Energy Fund Act, 1977 (Act No. 38 of 1977).

- 5.2.5. In accordance with the provisions of section 7(4)(a) of the Public Protector Act, 1994, on 30 May 2017, a document request letter was issued to the Acting Chief Executive Officer of the Central Energy Fund (SOC) Ltd, Mr Godfrey Moagi (Mr Moagi), requesting the submission of documentation and information pertinent to the sale of the strategic fuel reserves.
- 5.2.6. On 23 June 2017, Mr Moagi responded to the request and stated that the Central Energy Fund (SOC) Ltd was not involved in the sale of the strategic fuel reserves/strategic crude oil.
- 5.2.7. It was established from the information received during the investigation that, on 15 October 2014, the Strategic Fuel Fund Association (the Company) and the Central Energy Fund (SOC) Ltd (Shareholder) concluded a Shareholders Performance Agreement (Shareholder Compact) which set out, *inter alia*, the roles and responsibilities of the parties.
- 5.2.8. In terms of Clause 9.1 of the Shareholder Compact, the Strategic Fuel Fund Association's Board of Directors was expected, from time to time, to determine the amount of funding necessary in order to allow the company to conduct, promote and expand the business successfully.
- 5.2.9. In addition, it was established that in terms of Clause 9.5.3 of the Shareholder Compact, that the Central Energy Fund (SOC) Ltd's Group Chairperson or his/her nominee was elected as a representative of the Shareholder, as well as the point of contact in dealings with the company.
- 5.2.10. It was further established that, in terms of Clause 10 of the Shareholder Compact, the company undertook, for the duration of the Shareholder Compact, not to, *inter alia*:

- 5.2.10.1. Enter into any transactions as envisaged in section 54(2) of the Public Finance Management Act, 1999 without the approval of the Shareholder.(sic) (Own Emphasis)
- 5.2.11. The evidence indicates that, on 7 August 2014, following the publication of the Draft Strategic Stocks Petroleum Policy and Draft Strategic Stocks Implementation Plan, the former Minister of Energy, Ms Tina Joemat-Pettersson issued a Ministerial Directive titled **“Department of Energy Ministerial Directive Issued to the SFF Management of Crude Oil and Petroleum Strategic Stocks for the Republic of South Africa”**.
- 5.2.12. In terms of Paragraph 3 of the Ministerial Directive of 7 August 2014, the Strategic Fuel Fund Association was expected to acquire and manage the country’s strategic stocks on behalf of the Government in accordance with the directive and any other subsequent policy documents promulgated pursuant to the provisions of the National Energy Act, 2008.
- 5.2.13. It was further noted from the Ministerial Directive of 7 August 2014, that in order for the Strategic Fuel Fund Association to continually hold crude oil stocks and petroleum products, the Strategic Fuel Fund Association was required to submit an Optimization Proposal/Plan within six (6) months.
- 5.2.14. In addition, it was noted that the trading of strategic stocks would be permissible under a regime to be determined by the Department of Energy and approved by the Minister of Energy. Further to that, the Strategic Fuel Fund Association was required to enter into negotiations and conclude agreements with the oil refineries, petroleum wholesalers and other designated organisations as the Minister may determine before the crisis occurs.

5.2.15. Consistent with the Ministerial Directive, on 17 November 2014, the former Chief Executive Officer of the Strategic Fuel Fund Association, Ambassador Bheki Gila, submitted an Optimization Plan for approval in accordance with the Ministerial Directive of 7 August 2014, requesting the former Minister of Energy, Ms Joemat-Pettersson to approve, *inter alia*:

5.2.15.1. *“The leasing out of the Basrah Crude Oil in tank two (2) for six (6) months with an option of an extension for another six (6) months in the event the market conditions remained unchanged;*

5.2.15.2. *The leasing of Iraqi Basrah Light Crude Oil to the lessee of the tank;*

5.2.15.3. *Payment of United States Dollar (USD) 10 cents per barrel per month for six (6) months by the lessee of the tank aggregating to one million one hundred and twenty five thousand dollars (USD1.125 million) per month, which was a complete reversal of the period when SFF did not derive revenues from the tanks or that when it did, it garnered a pittance of USD three (3) cents for the past five to ten years;*

5.2.15.4. *Holding the lessee’s barrel in tank two in lien for the Basrah on the basis that the grade proposed to be in the tank was compatible with the Basrah Light Crude Oil which was in the tank;*

5.2.15.5. *Returning of the barrel in specie at the end of the six (6) months or extended rollover period;*

5.2.15.6. *Holding over the lessee’s crude oil in tank two (2) as guarantee for the rented barrel; and*

5.2.15.7. *At no stage should the lessee’s barrels be lesser than the quantum of the rented strategic stock”. (sic)*

- 5.2.16. On 15 January 2015, the former Minister of Energy, Ms Joemat-Pettersson approved the proposed Optimization Plan and emphasised that the plan must be executed in a manner that both addresses the need of the country to have strategic stocks reserve that can respond adequately to the country's needs when such need arises and also as a catalyst towards ensuring financial self-sustainability of the Strategic Fuel Fund Association as an organisation.
- 5.2.17. The information also indicates that, in September 2015, Ambassador Bheki Gila resigned as the Chief Executive Officer of the Strategic Fuel Fund Association and as a consequence, on 12 August 2015, Mr Gamede was appointed as the Acting Chief Executive Officer of the Strategic Fuel Fund Association.
- 5.2.18. According to the information and documentation received during the investigation, on 6 October 2015, the Acting Chief Executive Officer of the Strategic Fuel Fund Association, Mr Gamede wrote a letter addressed to the former Minister of Energy, Ms. Joemat-Pettersson, titled ***“Request for the withdrawal of Ministerial Directive of 3 August 2015”***.
- 5.2.19. The purpose of the letter referred to above, was amongst others, to request the former Minister of Energy, to allow the Strategic Fuel Fund Association, through a Ministerial Directive, to engage in commercial activities that would ensure that the Strategic Fuel Fund Association is financially independent and sustainable, taking into account that the future growth plans of the Strategic Fuel Fund Association were dependent on a business model that allows the Strategic Fuel Fund Association to venture into other economic activities within the Energy sector.
- 5.2.20. Further thereto, to request that Ministerial Directive of 3 August 2015, be annulled and that the Ministerial Directive of 7 July 2014 be reinstated in order for the Strategic Fuel Fund Association to be able to fulfil its mandate of Energy Security contemplated in section 17 of the National Energy Act, 2008 (Act No. 34 of 2008).

5.2.21. In a letter referred to in paragraph 5.2.18 above, Mr Gamede, submitted a Business Model which would involve the Strategic Fuel Fund Association trading in commercial stock, investing in Storage and Pipeline Infrastructure, oil pollution services, storage facility management services, and the rotation of strategic stock. The letter reads as follows:

“For the SFF to adequately fulfil its mandate of Energy Security, it is fundamental that the SFF be accorded the responsibility to “acquire, monitor and manage national strategic energy feedstocks and carriers” as provided for in terms of section 17 of the National Energy Act, 2008.

Before 1994, SFF was tasked with the functions to acquire, monitor and manage national strategic energy feedstocks and carriers of crude oil in South Africa, both Commercial and strategic purposes. SFF was able to sustain its operations as it was engaging in multifunction’s, such as ownership of infrastructure, trading storage and supplying crude oil to commercial traders.

Since 1994, SFF’s function was limited to storage of only Strategic Stock and all other functions were confiscated. Private companies were allowed to procure and store for commercial purposes. This had an inordinate impact on SFF as it curtailed its income generating abilities and exposed SFF to market fluctuations; for example when the market was in backwardation, SFF could not find customers to lease vacant tank space. This meant that SFF could not generate any income to cover expenses.

To ensure sustainability and future growth of SFF, the Minister was requested through a Directive, to allow SFF to engage in commercial activities that would ensure that the SFF is financially independent and sustainable. The growth plans of SFF are dependent on a business model that allows the SFF to venture into other economic activities within the Energy sector.

It is therefore our humble request to have the Ministerial Directive of the 3rd August 2015 rescinded and the Ministerial Directive of 7th July 2014 reinstated in order for the SFF to be able to comply with its mandate.

The Business Model proposed will involve:

- 1. SFF trading in commercial stock,*
- 2. Investing in Storage and Pipeline Infrastructure,*
- 3. Oil pollution services,*
- 4. Storage facility management services, and*
- 5. The rotation of strategic stock.*

Strategic Stock

SFF proposes to rotate the Strategic Stock under the following conditions with the Ministerial approval:

- 1. When the crude oil prices are on the rise;*
- 2. There must be a positive margin for the SFF, meaning selling price greater than purchase price; and*
- 3. That risk assessment will be conducted prior to any potential transaction being entered into by the SFF.*

Apart from the revenue enhancement benefit on stock rotation, product integrity will be maintained through the rotation. When the crude market prices are down, the SFF will explore the opportunity to procure or replenish additional barrels used to ensure that optimal stock level is maintained at all times.

In order for the above to be implemented successfully, the SFF would establish a Trading Department headed by a General Manager (GM) reporting directly to the CEO of the SFF. The key responsibilities of the GM, will include but not limited to, providing a monthly report on trading activities to the Honourable Minister". (sic)

5.2.22. Regarding the rotation of the strategic stock, it was noted from the above-mentioned letter that Mr Gamede proposed that the rotation would be conducted under the following conditions with the Ministerial approval:

5.2.22.1. *When the crude oil prices are on the rise;*

5.2.22.2. *There must be a positive margin for the SFF, meaning selling price greater than purchase price; and*

5.2.22.3. *That risk assessment will be conducted prior to any potential transaction being entered into by the SFF. (sic)*

5.2.23. Mr Gamede continued by stating that, apart from the revenue enhancement benefit on stock rotation, product integrity will be maintained through the rotation and that when the crude market prices are down, the Strategic Fuel Fund Association will explore the opportunity to procure or replenish additional barrels used to ensure that optimal stock level is maintained at all times.

5.2.24. In concluding the letter, Mr Gamede stated that, in order for the above to be implemented successfully, the Strategic Fuel Fund Association would establish a Trading Department headed by a General Manager (GM) reporting directly to the Chief Executive Officer of the Strategic Fuel Fund Association and whose key responsibilities would, include but not limited to, providing a monthly report on trading activities to the Minister of Energy.

5.2.25. On 8 October 2015, the former Minister of Energy, Ms Joemat-Pettersson responded to the request and accordingly granted the withdrawal of the Ministerial Directive of 3 August 2015, on conditions that:

5.2.25.1. *Any rotation of the strategic stock would be undertaken with a Ministerial Approval, preceded by a detailed due diligence undertaken by the SFF, and supported with a comprehensive motivation to the Minister;*

5.2.25.2. *The integrity of the strategic stock levels should be assured in all instances;*

5.2.25.3. *A trading division should be established within the SFF and must be appropriately staffed with skilled personnel and resources to undertake trading activities which must generate revenue for the SFF; and*

5.2.25.4. *The SFF provides a monthly report to the Minister and the Department on all activities in relation to the Directive so granted. (sic)*

5.2.26. It was established from the information and documentation received during the investigation that, on 13 October 2015, the Strategic Fuel Fund Association's Board of Directors held a meeting in which the withdrawal of a Ministerial Directive of 3 August 2015 and the granting of a new Ministerial Directive on the rotation of strategic stock was discussed.

5.2.27. According to the minutes of the Strategic Fuel Fund Association's Board of Directors' meeting held on 13 October 2015, the Board noted that it required a project plan and an action plan with regards to how the new Directive would be implemented setting out the short, medium and long term intentions, the resources that would be required and the decisions needed from the Board to ensure the implementation of the Directive.

5.2.28. It was also established from the minutes that, the Board noted that the Strategic Fuel Fund Association did not have the funds to implement some of the activities of the new Directive and that clarification was required from the Minister regarding the funding of the strategic stocks and the infrastructure.

5.2.29. As a consequence thereof, it was agreed that the Acting Chief Executive Officer, would draft a letter to the Minister on behalf of the Board of Directors, which would be circulated to the Board members for review and would be signed by the Interim Chairperson prior to submission to the Minister, addressing the following issues:

5.2.29.1. *How the strategic stock and the infrastructure activities were proposed to be funded; and*

5.2.29.2. *Clarification regarding the term of the Directive as the SFF would need to expend money on implementing the activities in the Directive and if the Directive is linked to a specific term it would assist with the planning in relation thereto. (sic)*

5.2.30. In addition, it was noted by the Strategic Fuel Fund Association Board of Directors that the Strategic Fuel Fund Association was required to develop a policy for the rotation of stock and that the policy needed to be approved at Board level whereafter it could be submitted to the Minister.

5.2.31. The information received indicates that, on 11 November 2015, the Acting Chief Executive Officer of the Strategic Fuel Fund Association, Mr. Gamede wrote a letter to the Minister of Energy, Ms. Joemat-Petterson, titled **“Request for selling of strategic stocks in Saldanha”**.

5.2.32. Mr Gamede averred in the letter referred to above that, the Strategic Fuel Fund Association is storing approximately ten coma three (10.3) million barrels of crude oil in Saldanha on behalf of the Republic of South Africa. Most of the crude oil currently stored in Saldanha has been sitting for many years and to some extent it is losing its relevance with the changing market conditions.

5.2.33. He further submitted a proposal to review the scenario of replacing the current stock holding quantity with fresh stock to ensure the security of supply is not impacted negatively by the feedstock that is in line with future petroleum refining trends, and thus requested the Minister to direct that the Strategic Fuel Fund Association:

5.2.33.1. *Sell the entire quantity of 10.3 million barrels;*

5.2.33.2. *Every barrel would be sold at the prevailing market price; and*

5.2.33.3. *The proceeds from the sold stock would be used to purchase the 10.3 million barrels of crude oil from the open market.(sic)*

5.2.34. In concluding the letter, Mr. Gamede stated that, it is envisaged that the following benefits would be accrued to South Africa with regards to ensuring the security of supply:

5.2.34.1. *“The SFF would access fresh stock of crude oil in the open market that would be in line with the changing crude diet and invariably replacing the old crude oil stock;*

5.2.34.2. *The quality would be improved with new stock thus increasing its refining relevance(fit for purpose); and*

5.2.34.3. *The current stock level of 10.3 million barrels would be sold at prevailing market process and would be replenished when the market prices are favourable for the SFF to acquire such barrels.*

This would ensure that the SFF creates value that will yield a positive net margin on the selling and buying initiative of crude oil.(sic)

- 5.2.35. On 12 November 2015, following the request to sell strategic stocks in Saldanha by the Acting Chief Executive Officer of the Strategic Fuel Fund Association, the Minister of Energy responded and commenced by stating that, she is approving the Strategic Fuel Fund Association's proposed sale plan of current strategic stock holding as submitted, as part of the security of supply mandate as per the Ministerial Directive of 3 August 2015.
- 5.2.36. The Minister emphasised in the letter referred to above, that the plan must be executed in a manner that both addresses the needs of the country to have strategic stock reserves that can respond adequately to the needs when such need arise, but also as a catalyst towards ensuring financial self-sustainability of the Strategic Fuel Fund Association as an organisation.
- 5.2.37. It was noted that, on 23 November 2015, the Strategic Fuel Fund Association's Board of Directors held a meeting in which the strategic plan in terms of the new Ministerial Directive and the rotation of strategic stock policy were discussed.
- 5.2.38. It was also noted from the minutes of the meeting of 13 October 2015, that the strategic plan in terms of the new Ministerial Directive was expected to be submitted in a meeting scheduled at the end of January 2016. With regard to the rotation of strategic stock policy, it was noted that the Strategic Fuel Fund Association was still in the process of developing the policy and further that same was also expected to be submitted by the end of January 2016.
- 5.2.39. Regarding the selling and replacing of strategic stocks, it was established that the Strategic Fuel Fund Association's Board of Directors resolved that;

- 5.2.39.1. *“Every sale should essentially be back-to-back with a purchase in the sense that SFF should first identify the purchase opportunity before it actually makes the sale;*
- 5.2.39.2. *It should be ensured that the selling price should be such that the margin between the selling price and the purchase price should be sufficient to cover all the incidental costs of the sale and thereafter the SFF should still make a profit margin;*
- 5.2.39.3. *It should be ensured that all purchases are of the appropriate quality, which can be utilised in the South African refineries, and is in line with the clean fuels policy;*
- 5.2.39.4. *Any purchase or sale has to be pre-approved by the SFF Board;*
- 5.2.39.5. *The SFF Supply Chain Management (SCM) needs to ensure that any prospective purchaser, seller or agent should be on the supply database; and*
- 5.2.39.6. *All Procurement and SCM Policies need to be strictly adhered to.(sic)*
- 5.2.40. It was further established from the minutes that it was reported that the Strategic Fuel Fund Association would obtain a better price for the sale of the strategic stocks if the Strategic Fuel Fund Association utilised the negotiated process with players in the market as opposed to following the tender route subject to the Strategic Fuel Fund Association adhering to procurement processes.
- 5.2.41. Regarding the Trading Division, it was established that the Board noted that the Strategic Fuel Fund Association needed specialised skills within the Strategic Fuel Fund Association to ensure that the right price, quality etc. is obtained.

5.2.42. In this regard, it was reported that the Strategic Fuel Fund Association did not have the required skills as the General Manager: SHEQ & Risk Mr Mayaphi and the Chief Operating Officer, Mr Nkutha were traders previously and that the Strategic Fuel Fund Association would be recommending in its detailed proposal for the establishment of the trading division to the BARC and Board of Directors in January 2016, that both Messrs Mayaphi and Nkutha head the division and further that there were two employees of the Strategic Fuel Fund Association whom Vitol Energy (Pty) Limited and Mercuria Group (Pty) Limited have undertook to train as traders.

5.2.43. Following the approval by the former Minister of Energy, Ms Tina Joemat-Pettersson authorising the rotation of the strategic stock, the following entities were invited by Mr Gamede to submit proposals in connection with the rotation of strategic stock:

#	Entity Name	Invitation Date
1	Golden Nest International Group (Pty) Limited;	13 October 2015
2	Mercuria Group (Pty) Limited	13 October 2015
3	Vittol Energy Group (Pty) Limited	13 October 2015
4	Skydeck Trading SA (Pty) Limited	13 October 2015
5	Total SA (Pty) Limited	13 October 2015
6	Enviroshore (Pty) Limited	19 October 2015
7	Zittatu Oil and Gas Investment Holdings (Pty) Limited	23 October 2015
8	Taleveras Oil SA (Pty) Limited	30 October 2015
9	Taleveras Petroleum Trading DMCC	02 November 2015

5.2.44. It was further established that, on 24 November 2015, Mr Gamede invited Venus Rays Trade (Pty) Limited and Mbongeni Investments South Africa (Pty) Limited to submit their Expression of Interest for participation in the rotation, sale and purchase of the South African strategic crude oil reserves.

5.2.45. Furthermore, it was established that, on 30 November 2015, Mr Gamede addressed a letter to the former Minister of Energy, Ms Tina Joemat-Pettersson requesting the approval of Venus Rays Trade (Pty) Limited's proposal on the basis that (according to him) it was found to be sound and acceptable upon assessment.

5.2.46. Further that, given the size of the transaction, the Strategic Fuel Fund Association's Management was required in terms of the Central Energy Fund (SOC) Ltd's Policy and Limits of Authority to submit the proposal and its recommendations to the Strategic Fuel Fund Association's Board for consideration and approval.

5.2.47. Further thereto, Mr Gamede stated that for mitigation of all risks associated with this type of transaction, the transaction would be subject to the following conditions:

5.2.47.1. *The transaction would require the SFF Board Approval;*

5.2.47.2. *A Sale and Purchase Agreement with Venus Trade;*

5.2.47.3. *Venus Trade provides the SFF with a Letter of Credit from a reputable financial institution; and*

5.2.47.4. *SFF must verify the Letter of Credit with the relevant financial institution.*

5.2.48. On 7 December 2015, the former Minister of Energy, Ms Tina Joemat-Pettersson responded to the letter and accordingly approved the request in terms of Ministerial Directive of 12 November 2015, pursuant to the assurance that the Acting Chief Executive Officer of the Strategic Fuel Fund Association had perused the proposals was satisfied with the propositions made by Venus Rays Trade (Pty) Limited, Vitol Energy (Pty) Ltd, Taleveras Oil SA (Pty) Ltd and GNI/Enviroshore.

- 5.2.49. It was noted from a media statement titled ***“Minister of Energy requests review of Central Energy Fund Governance Processes”*** issued by the Ministry of Energy that, on 14 July 2016, the former Minister of Energy, Ms Tina Joemat-Pettersson, in the capacity as Shareholder of the Central Energy Fund Group of Companies held a meeting with the Boards of the Central Energy Fund (SOC) Ltd, the Strategic Fuel Fund Association, iGas, the Petroleum Agency SA and the African Exploration Mining and Finance Corporation.
- 5.2.50. According to the media statement, the former Minister of Energy, Ms Tina Joemat-Pettersson shared her concerns around governance lapses in the Group and the need to strengthen both governance and oversight responsibility of the Central Energy (SOC) Ltd over its subsidiaries.
- 5.2.51. It was also noted that the former Minister of Energy, Ms Tina Joemat-Pettersson directed that a thorough review of contracts concluded by the Strategic Fuel Fund Association in the 2014/2015 financial year, including all contracts and transactions entered into in terms of the Ministerial Directive issued to the Strategic Fuel Fund Association, inclusive of the strategic stock rotation and storage and leasing agreements be conducted with a view to establishing whether these transactions were implemented in accordance with the conditions set out in the Ministerial Directive, as well as whether due process was followed.
- 5.2.52. Consequently, an investigation was commissioned and an entity named and styled Allen and Overy (South Africa) LLP was appointed to conduct an investigation.
- 5.2.53. I have taken note of the findings made by Allen and Overy (South Africa) LLP issued on 20 December 2016, which included, amongst others that;
- 5.2.53.1. *“Internal procurement policies were not followed, in that the bidding process was closed and not authorised by the Central Energy Fund (SOC) Ltd’s Board of Directors; and*

- 5.2.53.2. *The former Acting Chief Executive Officer of the Strategic Fuel Fund Association requested approval for the sale of the strategic fuel reserves from the former Minister of Energy, Ms Tina Joemat Pettersson without, first, obtaining the approval of the Central Energy Fund (SOC) Ltd's Board of Directors".*
- 5.2.54. It was established that, on 30 May 2017, the Acting Chief Executive Officer of the Central Energy Fund (SOC) Group, Mr Godfrey Moagi stated before Parliament's Portfolio Committee on Energy that, the Central Energy Fund (SOC) Ltd was not aware of the sale of the strategic fuel reserves and became aware of the sale when an amount of approximately two hundred and eighty million United States Dollars (\$280 million dollars) was transferred into the entity's bank account.
- 5.2.55. Regarding to procurement processes, the Acting Chief Executive Officer of the Central Energy Fund (SOC) Ltd stated that, key findings indicated that there was no clear allocation of responsibilities for the procurement process and emphasised that the process should have been authorised by the Central Energy Fund (SOC) Ltd's Board of Directors. Further that the National Treasury was not notified as required by the provisions of the Public Finance Management Act, 1999.
- 5.2.56. It was noted that, following the receipt of a confidential forensic investigation report submitted by Allen and Overy (South Africa) LLP, the Chairperson of the Central Energy Fund Group's Board of Directors, Mr Luvo Makasi filed an application in the Western Cape High Court on 12 March 2018, seeking to set aside the decisions to conclude the agreements and the contracts emanating from the approval by the former Minister of Energy, Ms Tina Joemat-Pettersson of the sale of the strategic fuel reserves.

Mr Sibusiso Gamede's response to a section 7(9)(a) Notice

5.2.57. On 26 September 2019, Mr Sibusiso Gamede submitted a response, which I have considered, to the section 7(9)(a) notice which I have issued.

5.2.58. At the outset of his response dated 26 September 2019, Mr Gamede stated that, he considers the ten (10) days period afforded to him to respond wholly inadequate to enable him to properly safeguard his rights in the face of the wide ranging accusations contained in the notice based on allegations made by the politicians with a manifestly political agenda and by individuals with self-agendas to humiliate and undermine the democratic government generally and the former Minister of Energy, Ms Tina Joemat-Pettersson in particular.

5.2.59. Mr Gamede, at most challenged the procedure of my investigation and the evidence I have considered. He states in paragraph 22 of his response that:

"I wish to record that the notice demonstrates a complete lack of understanding (or even attempt at understanding) how the strategic stock was managed by the SFF, the key legislation and prescripts, the governance of the SFF and the role and powers of the Minister of Energy, the Department of Energy, CEF and SFF in relation to the management of strategic stock". (sic)

5.2.60. He continued by stating that before a request was made to the Minister to issue a Directive authorising the rotation of the Strategic Stock, the Minister had granted SFF with a Directive for "*Optimization of the Strategic Stock*" which was issued on 7 August 2014.

5.2.61. Further that, the request for the optimization of the strategic stock was made by the previous Chief Executive Officer of the Strategic Fuel Fund Association, Ambassador Bheki Gila, which was premised, inter alia, on the following factors:

- 5.2.61.1. *Sustainability of the SFF;*
- 5.2.61.2. *Optimal holding of strategic stock;*
- 5.2.61.3. *Holding of optimal feedstock for operational refineries in South Africa; and*
- 5.2.61.4. *Ensuring that the feedstock grades are suitable for the domestic refinery production needs of the country in order to mitigate crude oil disruptions.*
- 5.2.62. On 7 August 2014, the Minister of Energy, Ms Tina Joemat-Pettersson approved the Optimization Request and issued a Directive on an even date. Further that on 17 November 2014, the Strategic Fuel Fund Association submitted to the Minister an Optimization Plan as required by the Directive, which was accordingly approved on 15 January 2015.
- 5.2.63. Mr Gamede continued by stating that the Strategic Fuel Fund Association commenced with the implementation of the Optimization Plan by allocating three hundred thousand (300 000) barrels of crude oil to Envirosure and entering in a Swop agreement with Taleveras, which were later cancelled. Further that, on 3 August 2015, the former Minister withdrew the Directive.
- 5.2.64. He stated that upon his appointment as the Acting Chief Executive Officer of the Strategic Fuel Fund Association, discussions and meetings with the Ministry (ostensibly the Ministry of Energy), the Strategic Fuel Fund's Board and the Central Energy Fund (SOC) Ltd's Board were held in which the future of the Strategic Fuel Fund Association was discussed, following concerns and reservations on the withdrawal of the Optimization Directive which impacted on the future sustainability of the Strategic Fuel Fund Association on the basis that the Strategic Fuel Fund Association's only income was derived from crude oil tank rentals when the market was in "contango" (when the oil prices were low) which increased the demand for storage.

- 5.2.65. Mr Gamede further stated that the issues affecting the Strategic Fuel Fund Association were also discussed with the Board of Directors of both the Strategic Fuel Fund Association and Central Energy Fund (SOC) Ltd, following to which he was mandated by the Strategic Fuel Fund Association's Board of Directors to engage the Minister of Energy to request the withdrawal of her letter issued on 3 August 2015.
- 5.2.66. He continues in his response that, prior to writing the letter referred to herein, the Strategic Fuel Fund Association undertook a strategic assessment and evaluation of the trends in the management of the strategic reserves in South Africa. This he said was also aimed at analysing the global trends in the management of strategic reserves and practices and crafting a business model for the Strategic Fuel Fund Association to effectively ensure that appropriate crude and petroleum products are stored as strategic reserves.
- 5.2.67. In conducting the exercise, a number of factors were considered, which included the international developments, the needs of the country, the rationale of holding strategic stock, investment requirements and the availability of infrastructure. He stated that the assessment and evaluation exercise conducted revealed that;
- 5.2.67.1. *The strategic crude oil reserves in South Africa have never been released since the formation of the SFF;*
- 5.2.67.2. *The oil market disruptions experienced in South Africa post 1994, emanated from petrol and diesel shortages which occurred due to unplanned shutdowns of refineries and not as a result of crude shortages;*
- 5.2.67.3. *The South African refineries experience a drop due to the lack of investment when migrating to Cleaner Fuels 1 (CF 1). This placed the country to be a net importer of petroleum products; and*

- 5.2.67.4. *Moreover, the many unplanned refinery shutdowns due to maintenance caused disruptions in the oil market and revealed that the domestic refinery industry was not as robust as it was thought to be.(sic)*
- 5.2.68. He continued by stating that, as an organisation (the Strategic Fuel Fund Association) entrusted with ensuring security of supply, there was a need to develop a robust strategy and business model that would improve the country's security supply.
- 5.2.69. As a consequence, it was concluded that the strategy and business model at the time of holding only crude oil as strategic reserves was unsustainable, and that what was required was a business model that would allow the country to;
- 5.2.69.1. *Migrate from CF 1 to CF 2 without any disruptions;*
- 5.2.69.2. *Regular rotation of crude oil reserves and refreshment of the current stock to ensure that the strategic crude reserves kept by the country are those crude oil types that are used by the refineries;*
- 5.2.69.3. *The country to keep petroleum product reserves; and*
- 5.2.69.4. *To invest in both crude and white product infrastructure.(sic)*
- 5.2.70. Based on the assessment conducted, he was directed by the Board of the Strategic Fuel Fund Association Strategic Fuel Fund Association to write a letter to the Minister requesting her to withdraw the letter issued on 3 August 2015 and grant Strategic Fuel Fund Association a new Directive for the rotation of the strategic crude oil stock.
- 5.2.71. Furthermore, he stated that in order to refresh and rotate the strategic stock, the Strategic Fuel Fund Association had to sell the current stock and replace it with new stock which was used by the South African refineries.

- 5.2.72. As a consequence, a letter was written to the Minister requesting her approval to sell the current stock and the Minister exercised her powers in accordance with the provisions of the Constitution, 1996, the NEA of 2008, the CEF Act, 1977, the PFMA, 1999, as well as the Agency Agreement in approving the sale of the strategic stock.
- 5.2.73. With regard to the process followed in the rotation of the strategic crude reserves, Mr Gamede stated that the process was fair, equitable, transparent, competitive and cost-effective and in line with the Public Finance Management Act: Regulations of 15 March 2005, as well as Clause 12.1 of the Strategic Fuel Fund Association's Procurement Policy which allowed negotiation without prior tendering in situation where:
- “Open tendering or close competitive tendering is not suitable, where a supplier or service provider is the only supplier or service provider and also where the supplier or service provider is a preferred supplier or service provider”. (sic)*
- 5.2.74. He continued by stating that the process to rotate the strategic crude reserves was confirmed by the Chief Financial Officer of Strategic Fuel Fund Association (unnamed) as provided for in the Strategic Fuel Fund Association Procurement Policy.
- 5.2.75. Further that, to ensure that the process followed in the rotation of strategic stock and in line with Strategic Fuel Fund Association Procurement Policy, legal instruments and other legal prescripts, he requested the Internal Audit Department of Central Energy Fund (SOC) Ltd, led by Mr Thabani Khanyile, which was contracted to provide internal audit service to Strategic Fuel Fund Association to audit transactions.

- 5.2.76. In addition, he stated that the report of the Internal Audit, found, *inter alia*, that the process followed was in line with the Ministerial Directive and that there was no violation of the Public Finance Management Act, 1999 and other legal prescripts.
- 5.2.77. Regarding the approvals obtained and compliance with legislative prescripts in connection with the rotation of the strategic crude stock, he stated that the rotation of the stock was accordingly approved by the former Minister of Energy, Ms Tina Joemat-Pettersson as well as by the Strategic Fuel Fund Association's Board of Directors in a meeting held on 5 February 2015, as well as by the Central Energy Fund's Board of Directors and that the legality of the rotation was confirmed by the Central Energy Fund (SOC) Ltd's Board of Directors.
- 5.2.78. Further that, all proposals submitted by service providers were evaluated on the same terms and that the report containing the Request for Proposals, as well as adjudication method employed was submitted to the former Minister of Energy and the Board of Directors of both the Strategic Fuel Fund Association and Central Energy Fund (SOC) Ltd for consideration.
- 5.2.79. In substantiating the approval and the legality of the rotation of the crude stock by the Central Energy Fund's Board of Directors, Mr Gamede referred me to a media release issued by the Central Energy Fund (SOC) Ltd dated 22 August 2019, published on its corporate website and which reads thus:

"The Board of the Central Energy Fund has noted the article in the Business Day of 26th May 2016, titled "Strategic Stock sold off secretly". We wish to correct the impression created by the article that there are issues based on the misunderstanding of the management of strategic stock.

The article makes particular incorrect assertions, which if not corrected may create uncertainty in an already volatile oil market. We have to emphasise that Strategic Stocks are managed through Ministerial Directives and this case was no different.

The notion that the country is put at risk through this rotation is factually incorrect.

We wish to re-iterate that no approval is required from the Minister of Finance (MOF) to sell or rotate strategic fuel stocks. It should also be noted that when the SFF started the process of the rotation of strategic stocks, the country had 21 days reserves of strategic stocks.

After the December 2015 rotation, the country now has access to 90 days reserves which is 30 days more than the required volumes. This allows for South Africa to be able to absorb any market variations and provides a buffer for 3 months in the case of any eventuality.

We wish to reiterate that the integrity of the Strategic Stocks is secured and that the Group will be able to respond to any challenge should it arise". (sic)

5.2.80. Mr Gamede further stated that, following adverse media reports relating to the manner in which the rotation of the crude stock was conducted, a meeting was held (date not mentioned) between himself, the Chief Financial Officer of the Strategic Fuel Fund Association, Mr Sivuyile Ngqongwa, the Central Energy Fund (SOC) Ltd's Acting Chief Executive Officer, Mr Siphamandla Mthethwa, the Group Stakeholder Advisory Manager, Mr Vukani Khulu, the Central Energy Fund (SOC) Ltd's Board Member and representative of the Department of Energy, Mr Tseliso Maqubela and two unnamed officials of the National Treasury.

5.2.81. In the meeting referred to herein above, so states Mr Gamede, the circumstances surrounding the rotation of the strategic stock, including the rationale for rotating the strategic stock, the process that was followed and the policy and legislative instruments that were applied, as well as all other information pertinent to the rotation was discussed. He further stated that it was concluded in the meeting, *inter alia*, that;

5.2.81.1. *All documents pertaining to the rotation of the strategic stock would be furnished to the National Treasury;*

5.2.81.2. *A joint statement would be issued by the National Treasury and the CEF on the rotation of the strategic stock and on the PFMA;*

5.2.81.3. *It was not the responsibility of the National Treasury to issue a section 54(2) compliance letter, but that the Department of Energy and the Ministry would have to issue the letter;*

5.2.82. Regarding the information and presentation made by the National Treasury, the initial assessment by the National Treasury officials was that there was no violation of the PFMA or any of the Treasury's Regulations;

5.2.83. However, Treasury would after assessing the information and documents submitted to it make a final determination on the applicability of section 54(2) and on the question of compliance or non-compliance.

5.2.84. In addition, he stated that following the meeting, as well as the submission of documentation and information pertinent to the rotation of the strategic crude stock to the National Treasury and the Department of Energy there has never been any finding by the National Treasury, the Department and the Central Energy Fund (SOC) Ltd relating to the non-compliance to legislation, in particular the PFMA, and policies, as well as other prescripts regulating the management of the rotation of the strategic stock.

- 5.2.85. Regarding compliance with section 54(2) of the PFMA, 1999, Mr Gamede stated that before the rotation of the strategic stock was considered, an assessment was conducted on previous transactions of similar nature and it was found that during the sale of the strategic reserves in 1999, this requirement did not apply. Further that when the former Minister of Minerals and Energy (Ms Phumzile Mlambo-Ngcuka) issued a Directive to trade in the strategic stock in 2004, this requirement did not apply.
- 5.2.86. Mr Gamede continued by stating that, when the former Minister of Energy, Ms Joemat-Pettersson, issued the Directive for the rotation of strategic stock, it was concluded that this requirement did not apply on the basis that the transaction was not an outright sale but a rotation with the intention of replenishing the strategic reserves with the right crude oil suitable for the production of petroleum products utilised in the South African market. However, when the issue was raised, the National Treasury was accordingly informed.
- 5.2.87. He concedes, in the response that the PFMA requires that relevant particulars of the transaction (ostensibly the sale of assets) must be submitted to the entity's executive authority for approval. Further that, in authorising the rotation of the strategic stock, the former Minister of Energy acted in accordance with the powers afforded to her in terms of the provisions of sections 17 and 18 of the National Energy Act, 2000 (Act 34 of 2008).
- 5.2.88. In this regard, Mr Gamede referred me to the former Minister of Energy's Budget Speech of 16 May 2016, in which the Minister stated that;

“Accordingly, in 2015, we issued a ministerial directive for the rotation of strategic stocks by the Strategic Fuel Fund and this has resulted in the increased revenue base for SFF, whilst at the same time maintaining stocks within our storage tanks for security of supply.”

This is in place through long term lease and contractual agreements with the buyers. The estimated revenue to accrue from this process is around R 170 million per annum, significantly boosting the balance sheet of the SFF. Through the rotation of strategic stocks and trading initiatives the SFF has further consolidated its ability to be self- sustainable.

This has also allowed us to replace the unsuitable stock that we have been storing in our tanks which has been both uneconomical and did not contribute to security of supply. The SFF will continue to ensure that it is able to respond to any shock in the market, whilst optimally making use of the opportunities presented in an evolving oil sector”.(sic)

5.2.89. He further asserted that, the rotation of the strategic stock was conducted in accordance with the provisions of sections 66(1), 112(2) and (5), as well as section 115 of the Companies Act, 2008 (Act 71 of 2008), in that:

5.2.89.1. *“The business and affairs of the SFF at the time of the rotation of the strategic stock were managed by and under the directions of the Board of Directors;*

5.2.89.2. *The rotation of the strategic stock was approved by a properly constituted Board of the SFF in its meeting held on the 5th of February 2015. The Board in this meeting passed a resolution approving the rotation of the strategic stock; and*

5.2.89.3. *The rotation of the strategic stock was approved by the Minister of Energy representing the government of South Africa, the owner of the strategic reserves”. (sic)*

5.2.90. With regard to compliance with the National Treasury Regulations and Strategic Fuel Fund Association Policies, Mr Gamede stated that, the process followed in the rotation of the strategic stock complied with the requirements and provisions of the National Treasury Regulations in that:

- 5.2.90.1. *“The supply chain management system used was fair, equitable, transparent, competitive and cost-effective;*
- 5.2.90.2. *The rotation of the stock was at a market value as per the oil price, particularly for the Bonny Light. At the time of the rotation there was no international market price for Basrah as Iraq had stopped producing it. Furthermore, the quality and physical condition of Basrah had deteriorated over the years. However, the price determined was at a profit after storing for more than ten (10) years”. (sic)*
- 5.2.91. In addition, Mr Gamede stated that the rotation of the strategic stock was conducted in compliance with the provisions of section 217 of the Constitution read with Clause 12.1 of the Strategic Fuel Fund Association Procurement Policy.
- 5.2.92. He stated that at the time of the rotation of the strategic stock, the Strategic Fuel Fund Association did not have the Strategic Stock Rotation Policy, however, he emphasised that the rotation of the strategic stock was conducted in accordance with and in compliance with applicable policies, laws and prescripts.
- 5.2.93. Following the receipt of the response to a section 7(9)(a) Notice, on 7 October 2019, a further letter issued in terms of the provisions of section 7(4)(a) of the Public Protector Act, 1994, was issued to Mr Navenda Ncwana of the Central Energy Fund (SOC) Ltd, requesting additional documentation referred to by Mr Gamede in his response.
- 5.2.94. On 8 October 2019, Mr Ncwana responded to the letter and submitted the documents requested. It was established that, during the Central Energy Fund (SOC) Ltd’s Executive Committee (EXCO) meeting held on 18 February 2016, Mr Gamede requested the Central Energy Fund SOC Ltd’s Group Internal Audit, to conduct a review of the processes followed during the rotation and sale of the strategic fuel reserves with a view to ascertain whether proper processes were adhered to.

- 5.2.95. Following the finalisation of the review, the Central Energy Fund SOC Ltd's Group Internal Audit, concluded that the sale of the strategic fuel reserves was accordingly approved and/or authorised by the former Minister of Energy, Ms Tina Joemat-Pettersson, however, the sale transaction amount was above the Strategic Fuel Fund Association Limit of Authority.
- 5.2.96. As a consequence, it was recommended that the Strategic Fuel Fund Association should update its Limit of Authority for the rotation and sale of the strategic fuel reserves.
- 5.2.97. It was also noted that the Central Energy Fund SOC Ltd's Group Internal Audit concluded that the process was conducted without considering the Group Materiality Framework, which required the approval of the Central Energy Fund SOC Ltd, as the holding company, of any transaction above R 102, 9 million. Further, that concurrence from the National Treasury should have been sought, through condonation, considering the materiality and significance of the transaction.
- 5.2.98. On 31 October 2019, an interview was conducted with Mr Tseliso Maqubela, who at the time of the sale of strategic fuel reserves by the Strategic Fuel Fund Association, was a Member of the Central Energy Fund (SOC) Ltd's Board of Directors in addition to his role as the Deputy Director-General for the Department of Energy: Petroleum Regulation Division.
- 5.2.99. Prior to the interview, on 30 October 2019, Mr Maqubela made a submission in which he stated that his involvement in the sale of the strategic fuel reserves began following a media report published in the *Business Day* newspaper on 26 May 2016, in connection with the sale thereof.

- 5.2.100. In his submission, Mr Maqubela stated that he was requested during the Central Energy Fund (SOC) Ltd's Board meeting held on an unspecified date in May 2016, by Mr Archie Lucas, who at the time was an Advisor to the former Minister of Energy, Ms Joemat-Pettersson, to clarify the rotation and sale of fuel reserves to the media, albeit, not being provided with facts surrounding the transaction.
- 5.2.101. He also stated that the extent of non-compliance with prescripts by Mr Gamede became apparent during the ensuing investigations, including a forensic investigation conducted by Allan and Overy LLP, which was commissioned by the then Acting Chief Executive Officer of the Central Energy Fund (SOC) Ltd, Mr Godfrey Moagi, who subsequently became the Acting Chief Executive Officer of the Strategic Fuel Fund Association.
- 5.2.102. Furthermore, Mr Maqubela stated that the investigation conducted by Allan and Overy (South Africa) LLP concluded that the sale of the strategic fuel reserves by the Strategic Fuel Fund Association was conducted contrary to the provisions of the Public Finance Management Act, 1999, and was thus unlawful.
- 5.2.103. In an interview held on 31 October 2019, Mr Maqubela confirmed that he was appointed as a Member of the Central Energy Fund (SOC) Ltd's Board of Directors representing the Shareholder (DoE), by the Minister of Energy.
- 5.2.104. Mr Maqubela stated that the standard process to be followed in the sale of asset(s) held by an entity in which the state is the majority shareholder, was that the disposing entity would submit a request to the Minister of Energy as the majority shareholder in the entity and/or the Deputy-Director General of the Department and the Deputy-Director General in the capacity of the Chief Operating Officer responsible for SOE's oversight.

- 5.2.105. He continued by stating that, in the case of the Strategic Fuel Fund Association, he should have been involved from the beginning as the Deputy-Director General responsible for SOE's oversight, however, the process was different in the sense that all correspondence was directly between Mr Gamede and the former Minister of Energy, Ms Joemat-Pettersson. As a consequence, all the approvals and determinations were granted without following the process outlined above.
- 5.2.106. Mr Maqubela continued by stating that in the Board meeting referred to herein, details surrounding the rotation and sale of the strategic fuel reserves were required of the Chairperson of the Strategic Fuel Fund Association's Board of Directors, Mr Riaz Jawodeen, who was at the time also a Member of the Central Energy Fund (SOC) Ltd's Board of Directors. He further stated that the Central Energy Fund's Board, as the holding company, was not made aware of the rotation nor the sale of the strategic fuel reserves by the Strategic Fuel Fund Association.
- 5.2.107. Regarding a meeting held on 5 February 2016 between the Strategic Fuel Fund Association, Central Energy Fund (SOC) Ltd and the National Treasury, wherein the section 54(2) "*compliance letter*" was discussed, Mr Maqubela stated that the discussions with the National Treasury only took place after an article was published in the *Business Day* newspaper which prompted the Minister of Finance to seek clarity on what was reported in the media.
- 5.2.108. Mr Maqubela confirmed that the Central Energy Fund (SOC) Ltd's Board was never informed of the rotation nor the sale of the strategic fuel reserves held by the Strategic Fuel Fund Association and further that the latter became aware of the sale when money was transferred into the entity's bank account.

- 5.2.109. In closing, Mr Maqubela stated that the former Minister of Energy, Ms Tina Joemat-Pettersson had, prior to the rotation and sale of the fuel reserves, requested the Strategic Fuel Fund Association to submit the Stock Rotation Policy, which never happened. However, she continued to approve the rotation and sale of the strategic fuel reserves.
- 5.2.110. Similarly, on 30 October 2019, prior to an interview conducted on 31 October 2019, with the Central Energy Fund (SOC) Ltd Group's Stakeholder Advisory Manager, Mr Vukani Khulu (Mr Khulu), made a submission in which he stated that, during December 2015 or January 2016, the Strategic Fuel Fund Association sold strategic stock with the aim of replacing same with newer stock following the approval, through a Ministerial Directive, by the former Minister of Energy.
- 5.2.111. In his submission, he continued by stating that during an Executive Council (EXCO) meeting, in which the Central Energy Fund SOC Ltd's Corporate Plans to be submitted to the Department of Energy and the National Treasury in February 2016 were discussed, no mention was made of the sale of the strategic stock.
- 5.2.112. In addition, Mr Khulu confirmed a statement made by Mr Maqubela that the Central Energy Fund (SOC) Ltd only became aware of the sale of the strategic fuel reserves when money was transferred into the entity's bank account.
- 5.2.113. Mr Khulu further stated in his submission that, following the former Acting Chief Executive Officer of the Central Energy Fund (SOC) Ltd's queries directed at Mr Gamede relating to the process followed in connection with the sale of the fuel reserves, Mr Gamede argued that he had the Ministerial determination and as such it was not necessary to obtain the Central Energy Fund (SOC) Ltd's approval in the disposing the fuel reserves held by the Strategic Fuel Fund Association.

- 5.2.114. During the interview held on 31 October 2019, Mr Khulu stated that his active role started on 26 May 2016, as the spokesperson for the company (Central Energy Fund (SOC) Ltd), following an article published by the *Business Day* newspaper in which it was reported that the Strategic Fuel Fund Association had sold the strategic fuel reserves in secret.
- 5.2.115. He continued by stating that he was never part of the procurement processes connected with the rotation and sale of the strategic fuel reserves. Mr Khulu stated that he was not part of the Central Energy Fund's Board of Directors meeting held on 5 February 2016, wherein the circumstances surrounding the rotation and sale of the strategic fuel reserves was discussed and a resolution taken to approve same, as he was not a Member of the Board, but of the Executive Council.
- 5.2.116. Regarding the process to be followed in the sale of assets by an organ of the State, Mr Khulu stated that a Ministerial Directive or approval must be sought by the holding company from the Executive Authority.
- 5.2.117. Regarding a meeting held with the National Treasury, Mr Khulu stated that he attended same in the capacity of the company's communication personnel. He also stated that the issues discussed in the meeting related to the basic understanding and/or interpretation of section 54(2) of the Public Finance Management Act, 1999, by the Central Energy Fund (SOC) Ltd and Strategic Fuel Fund Association, in particular in connection with the concurrence of the National Treasury in the sale of assets.
- 5.2.118. On 3 December 2019, pursuant to a response to a section 7(9)(a) notice dated 26 September 2019, and following interviews with Messrs Maqubela and Khulu, a supplementary section 7(9)(a) notice was issued to Mr Gamede, affording him a further opportunity to respond to information obtained which appeared to be to his detriment, however, Mr Gamede did not respond to the notice.

Application of the relevant law and prescripts

- 5.2.119. **The Constitution, 1996** is the basis upon which all procurement practices within the public sector are developed. Section 217 of the Constitution demands that when an organ of state contracts for goods and services it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective.
- 5.2.120. **The Public Finance Management Act, 1999** [Act No. 1 of 1999] (PFMA) was enacted to regulate financial management in the national government and provincial governments; to ensure that all revenue, expenditure, assets and liabilities of those governments are managed efficiently and effectively; to provide for the responsibilities of persons entrusted with financial management in those governments; and to provide for matters connected therewith.
- 5.2.121. Section 54(2)(d) of the PFMA provides that before a public entity concludes any transaction for acquisition or sale of a significant asset, the accounting authority of that major public entity must promptly and in writing notify the National Treasury and submit relevant particulars of that transaction to its executive authority for approval.
- 5.2.122. **The National Energy Act, 2008** [Act No. 34 of 2008], is the key legislation regulating the acquisition and maintenance of national strategic energy feedstocks and carriers.
- 5.120.1. Section 17(1) thereof provides that *“the Minister may, in a prescribed manner, for the purposes of ensuring security of supply, direct any state-owned entity to acquire, maintain, monitor and manage national strategic energy feedstocks and carriers”*.

5.2.122.1. Section 17(2) of the National Energy Act, 2008, provides that *“the nominated state-owned entity must perform the functions contemplated in subsection (1) in accordance with the relevant published security of supply strategies or policies”*.

5.2.123. **The National Treasury Practice Note of 13 July 2006**, which regulates applications made under section 54 of the Public Finance Management Act, 1999 by public entities.

5.2.123.1. Paragraph 4.1 of NT: Practice Note of 2006 provides that *“A public entity should address an application in terms of section 54(2) and (51(1)(g) if applicable) directly to its Executive Authority and to the Minister of Finance, who is the head of National Treasury. Paragraph 4.2 of the NT: Practice Note of 13 July 2006 further provides that applications per 4.1 must be submitted simultaneously”*.

5.2.123.2. Paragraph 5.2.1 of the NT: Practice Note of 13 July 2006 provides that, *“For any such transaction that exceeds the significance limit of a subsidiary, an application to the Executive Authority must be made, which application must be accompanied by approval from the board of directors of the top most holding company”*.

5.2.123.3. Paragraph 5.2.2 of the NT: Practice Note of 13 July 2006 provides that, *“The top-most holding company may make an application to the Executive Authority on behalf of its subsidiary, provided that this is supported by a resolution to that effect by the board of that subsidiary”*.

5.2.124. **The Strategic Fuel Fund Association Delegation of Authority (SFF-01)** which provides for the procedure to be followed when disposing assets. Paragraph 4.12 provides as follows:

	General Manager	COO	CEO	Board
4.12 Sale of company assets				
Sale of land and buildings/immovable property		X	R	A
Sale of vehicles and items reserve value >R 5000	R	A		
All other sales >R 5000	R	A	N	
Determination of reserve value	X	N		
Note: The acquiring or sale of a significant asset require the approval of the National Treasury and DoE-(PFMA)				

Legend: A= Approve; R= Recommend; N= Notify; X=Applicable responsibility; C= Consult

5.2.125. **The Strategic Fuel Fund Association Procurement Policy (SFF-03)**, which provides for the procurement methods and threshold. Paragraph 7 of the Strategic Fuel Fund Association Procurement Policy provides for the following procurement methods and thresholds:

Threshold	Procurement System	Outcome
<R2 000.00 transaction	Petty Cash	Invoice
<R10 000.00 transactions	One (1) written quotation	Advertised for three (3) working days
>R10 000.00 but <R30 000.00	Three (3) written quotations	Advertised for seven (7) working days
>R30 000.00 but <R200 000.00	Three (3) written quotations	Advertised for fourteen (14) working days
>R200 000.00 <R500 000.00	Three (3) written quotations	Advertised for twenty one (21) working days
Transactions exceeding R500 000.00	Tender	Advertised for twenty one (21) working days

- 5.2.126. The evidence discussed above indicates that, the Strategic Fuel Fund Association was appointed as a lawful Agent by the Department of Energy to, *inter alia*, manage the strategic stocks, including trade in, replacing, selling and storing the strategic stocks in accordance with the applicable legislation, including but not limited to the Public Finance Management Act, 1999, the Public Finance Management Regulations and policies on Strategic Stock issued or determined by the Minister of Energy from time to time.
- 5.2.127. Further that, the Strategic Fuel Fund Association and the Central Energy Fund (SOC) Ltd (as the majority shareholder in the Strategic Fuel Fund Association) entered into a Shareholder Compact in terms of which the Strategic Fuel Fund Association undertook not to enter into any transactions as envisaged in section 54(2) of the Public Finance Management Act, 1999 without the approval of the Shareholder (Central Energy Fund (SOC) Ltd).
- 5.2.128. The evidence discussed also indicates that the Strategic Fuel Fund Association's Board of Directors resolved, in a meeting held on 13 October 2015, that any purchase or sale has to be pre-approved by the Board, ensure that any prospective purchaser, seller or agent should be on the supply database; and that all Procurement and SCM Policies needed to be strictly adhered to.
- 5.2.129. Further that, in order for the Strategic Fuel Fund Association to obtain a better price for the sale of the strategic stocks, the Strategic Fuel Fund Association should utilise the negotiated process with players in the market as opposed to following the tender route subject to the Strategic Fuel Fund Association adhering to procurement processes.

5.2.130. The evidence also indicates that the former Acting Chief Executive Officer of the Strategic Fuel Fund Association, Mr Gamede submitted a request for the sale of ten (10) million barrels of strategic fuel reserves which was accordingly approved by the former Minister of Energy, Ms Tina Joemat-Pettersson on conditions that;

5.2.130.1. The sale plan was executed in a manner that both addresses the needs of the country to have strategic stocks reserve that can respond adequately to the needs when such need arises and also as a catalyst towards ensuring financial self-sustainability of the Strategic Fuel Fund Association as an organisation.

Conclusion

5.2.131. Based on the information and documentation obtained during the investigation, and the application of the legal framework to the facts of the matter, it can be concluded that; the approval for the sale of the strategic fuel reserves held by the Strategic Fuel Fund Association was accordingly sought from the Executive Authority in terms of section 54(2)(d) of the Public Finance Management Act, 1999.

5.2.132. Notwithstanding the above, the procurement process employed during the sale of the strategic fuel reserves was not in line with the provisions of section 217 of the Constitution, 1996 read with the Strategic Fuel Fund Association Procurement Policy.

5.2.133. The Strategic Fuel Fund Association's Board of Directors only discussed the possibility of obtaining a better price for the sale of the strategic stocks if the Strategic Fuel Fund Association utilised the negotiated process with players in the market as opposed to following the tender route subject to the Strategic Fuel Fund Association adhering to procurement processes, however, a resolution in this regard was not taken during the meeting.

5.2.134. The Minister of Finance, as the head of the National Treasury, was not informed in writing of the transaction as envisaged in terms of paragraphs 4.1 and 4.2 of the National Treasury Practice Note of 13 July 2006. Further to that, the approval of the transaction was not sought from the Central Energy Fund (SOC) Ltd, as the majority shareholder in the Strategic Fuel Fund Association, as envisaged by Clause 10.1 of the Shareholder's Compact of 15 October 2014.

5.2.135. In the circumstances, I am persuaded to conclude that the contention by the former Acting Executive Officer of the Strategic Fuel Fund Association, Mr Sibusiso Gamede that the sale of the strategic fuel reserves held by the Strategic Fuel Fund Association was conducted in line with legislation and any other prescripts regulating the sale of assets applicable to the Strategic Fuel Fund Association has no merit and could not be supported by the information received and analysed during the investigation.

6. During the investigation of the matter, I made the following observations:

6.1. At the time of the sale of the strategic fuel reserves, the Strategic Fuel Fund Association did not have a policy regulating the rotation and sale of the fuel reserves. It is therefore essential that, the Strategic Fuel Fund Association develops a Rotation and Sale of Strategic Stock Policy and submit same to the Strategic Fuel Fund Association's Board of Directors for consideration whereafter it can be submitted to the Minister of Mineral Resources and Energy.

6.2. Following the lodging of complaints by Mr Van Dalen and Adv Alberts, Mr Gamede and the former Chairman of the Central Energy Fund (SOC) Ltd Group's Board of Directors, Mr Riaz Jawoodien, resigned from their positions with immediate effect following a debacle over an unauthorised bid to purchase Chevron SA by the Strategic Fuel Fund Association, without seeking nor obtaining permission from the shareholder as required by the provisions of the PFMA, 1999.

- 6.3. The former Chairperson of the Central Energy Fund (SOC) Ltd Group's Board of Directors, Mr Luvo Makasi, filed an Application under Case Number 21771/2018, in the High Court of South Africa (Western Cape Division), seeking an order setting aside the decisions to conclude agreements and transactions entered into between the Strategic Fuel Fund Association and service providers following the sale of the strategic fuel reserves on the basis that;
- 6.3.1. *The transactions and agreements were concluded absent of proper and competitive public procurement and sale processes and without any of the necessary approvals;*
- 6.3.2. *The strategic fuel reserves were disposed of at a time when crude oil prices were depressed;*
- 6.3.3. *The agreements did not create a proper (and beneficial) mechanism for the "rotation" of the strategic fuel reserves, which rotation was the ostensible justification for the impugned transactions;*
- 6.3.4. *The strategic fuel reserves were purportedly sold without any proper mechanism being in place for "rotation" or for SFF to repurchase the Oil Reserves (at favourable prices) if there were a pressing crisis. The buyers of the strategic fuel reserves could, if they elected to do so, sell the strategic fuel reserves back to SFF at the prevailing market prices. As the strategic fuel reserves, in the first instance, were sold at significantly reduced prices, the following would undoubtedly result:*
- 6.3.4.1. *In the best case, the country would suffer a large financial loss in order to repurchase the strategic fuel reserves at prevailing market rates or in the worst case, the country not being able to procure the necessary ten (10) million barrels of oil if there were an energy crisis, either at all or with sufficient haste to deal with the crisis;*

6.3.4.2. *The procurement and sale process was conducted by Mr Gamede, to the exclusion of (and without the knowledge of) the SFF Executive Management Team and the SFF Board of Directors (the SFF Board); and*

6.3.4.3. *He did so, in circumstances in which both he as well as the former Minister expressly stated that the SFF Board approval would be required to dispose of the strategic fuel reserves.*

6.4. It was noted that the sale of the strategic fuel reserves is also a subject of an investigation currently conducted by the South African Police Service's Directorate of Priority Crimes Investigations' Serious Economic Offences Unit in the Gauteng and Western Cape Provinces respectively.

7. REASONS FOR CLOSURE

7.1. In terms of section 7(1)(a) of the Public Protector Act, the Public Protector had to determine on the basis of what was found from the preliminary investigation, how the matter should be dealt with.

7.1.1. The issues raised by the Complainants are currently a subject of litigation in the Western Cape Division of the High Court under Case Number 21771/2018. As a corollary to this, I took a conscious decision to allow the judicial process to take its course and for the court to make a competent pronouncement on the matter, which the Public Protector would by law be bound to in any event.

7.2. In addition, the sale of the strategic fuel reserves is also a subject of an investigation currently conducted by the South African Police Service's Directorate of Priority Crimes Investigations' Serious Economic Offences Unit in the Gauteng and Western Cape Provinces respectively.

- 7.3. Further that, the pursuance of the matter and remedial action that I may consider should adverse findings be made from a further investigation will serve no judicious purpose on the basis that, the Accounting Authority and the Chief Executive Officer of the Strategic Fuel Fund Association would not be able to take any action against the former Chief Executive Officer of the Strategic Fuel Fund Association, Mr Sibusiso Gamede since he is no longer in the employ of the Strategic Fuel Fund Association.
- 7.4. Hence I am referring this matter in terms section 6(4)(c)(ii) of the Public Protector Act, to the Directorate for Priority Crime Investigations to determine whether the former Chief Executive Officer of the Strategic Fuel Fund Association, Mr Sibusiso Gamede or any person may have committed an offence.



ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE: 16/09/2020

Assisted by: Mr Masekela Maphosa (Senior Investigator Good Governance and Integrity Branch)