

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



**PUBLIC PROTECTOR  
SOUTH AFRICA**

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**REPORT ON INVESTIGATION CONDUCTED INTO ALLEGATIONS OF  
MALADMINISTRATION AND IMPROPER CONDUCT BY FUNCTIONARIES OF THE  
WATER RESEARCH COMMISSION WITH REGARD TO THE FILLING OF THE POST  
OF EXECUTIVE MANAGER: KNOWLEDGE MANAGEMENT AND COMMUNICATIONS**

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## EXECUTIVE SUMMARY

- (i) This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution 1996), and published in terms of section 8(1) of the Public Protector Act, 1994 (Public Protector Act 1994).
- (ii) The report communicates the findings and appropriate remedial action that the Public Protector is taking in terms of section 182(1) (c) of the Constitution 1996, following an investigation into allegations of maladministration and improper conduct by functionaries of the Water Research Commission (the Commission) relating to the appointment of Ms Khosi Jonas (Ms Jonas) in the post of the Executive Manager: Knowledge Management and Communications on 1 August 2019.
- (iii) The complaint was received on 23 August 2019, from an anonymous complainant alleging amongst others that the Commission appointed Ms Jonas in the post without her meeting the requirements for the post as advertised. The requirements for the post were that the ideal candidate must be in possession of a *suitable* Master's Degree in Marketing, Communication Science or a MBL/MBA specialisation in marketing, knowledge management or related field as the minimum educational requirements for the post;
- (iv) Based on the analysis of the complaint and the allegations contained therein, the following issue was identified to inform and focus the investigation:
  - (a) Whether the Commission appointed Ms Jonas in the post of Executive Manager: Knowledge Management and Communications without her meeting the minimum educational

requirements stipulated in the job advertisement for the post, if so, whether the conduct constitutes improper conduct or maladministration?

- (v) The investigation was conducted in terms of section 182(1) (a) of the Constitution 1996 and sections 6 and 7 of the Public Protector Act 1994. It included the consideration of the complaint lodged by the Complainant, the exchange of correspondence and documentation with the Commission. Meetings were held between Dr Mandla Msibi (Dr Msibi), Dr Mthombifuthi Nala (Dr Nala) of the Commission and the investigation team of the Public Protector as well as written responses to the section 7(9) notices of the Public Protector Act 1994 received from the relevant parties.
- (vi) Having considered the submissions made and evidence uncovered during the investigation against the relevant regulatory framework, the Public Protector makes the following finding:
  - (a) **Whether the Commission appointed Ms Jonas in the post of Executive Manager: Knowledge Management and Communications without her meeting the minimum educational requirements stipulated in the job advertisement for the post if so, whether the conduct constitutes improper conduct or maladministration**
  - (aa) The allegation that the Commission appointed Ms Jonas in the post of Executive Manager: Knowledge Management and Communications without her meeting the minimum educational requirements stipulated in the job advertisement for the post is substantiated.
  - (bb) The appointment of Ms Jonas in the post of Executive Manager: Knowledge Management and Communications constitutes an irregular appointment.
  - (cc) Ms Jonas did not meet the minimum educational requirements stipulated in the job advertisement for the post of Executive Manager:

Knowledge Management and Communications at the time of her appointment in the post. She should not have been shortlisted, interviewed and appointed in the post as she was unqualified in terms of the advertised requirements for the post which required possession of a *suitable* Master's Degree. She was in possession of a Bachelor of Creative Communications and an Honours Degree in Marketing Management as her highest qualifications at the time of her shortlisting, interview and appointment.

- (dd) The recruitment, selection and interview panel disregarded the minimum educational job requirements stipulated in the advertisement for the post, which favoured the shortlisting and interviewing of Ms Jonas.
- (ee) The conduct of the recruitment, selection and interview panel failed to promote the basic values and principles governing public administration as stipulated in section 195 of the Constitution, 1996. The basic values and principles of the Constitution oblige organs of state to amongst others, uphold and maintain high standard of professional ethics, engage in employment and personnel practices based on ability, objectivity, fairness and render services impartially, fairly, and equitably and without bias; and
- (ff) Furthermore, the conduct of the recruitment, selection and interview panel also breached **Clause 2.8.1** of the the Water Research Commission Human Resource Manual, 2019 which stipulates that *“Selection criteria shall be objective, related to the inherent requirements of the job and consistently applied to all applicants”*.
- (gg) In the above regard, the conduct of the recruitment, selection and interview panel constitutes improper conduct as envisaged in section 182(1) of the Constitution, 1996 and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act, 1994.
- (vii) The appropriate remedial action taken as contemplated in section 182(1)(c) of the Constitution, 1996 with a view to remedying the

maladministration and improper conduct referred to in this report is as follows:

**(a) The Chairperson of the Commission, within ninety (90) working days of receipt of this report must:**

- (aa) Take steps to address the irregular appointment of Ms Jonas in the post of Executive Manager: Communication and Knowledge Management within the legal and policy prescripts available to the Commission; or.
- (bb) Take any other steps provided for in the Labour Relations Act 66 of 1995.
- (cc) Take disciplinary action in terms of Clause 2.11 of the Water Research Commission Human Resource Policy Manual and or applicable policies and prescripts against the recruitment, selection and interview panel members for failing to adhere to the recruitment and selection policy of the Commission resulting in the shortlist, interview and appointment of a candidate not meeting the requirements for the post of Executive Manager: Communications and Knowledge Management.

**REPORT ON INVESTIGATION CONDUCTED INTO ALLEGATIONS OF MALADMINISTRATION, IMPROPER OR SUSPECTED IMPROPER CONDUCT BY FUNCTIONARIES OF THE WATER RESEARCH COMMISSION WITH REGARD TO THE FILLING OF THE POST OF EXECUTIVE MANAGER: KNOWLEDGE MANAGEMENT AND COMMUNICATIONS**

**1. INTRODUCTION**

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

1.2 The report communicates the findings and appropriate remedial action that the Public Protector is taking in terms of section 182(1) (c) of the Constitution 1996, following an investigation into allegations of maladministration, and improper conduct by functionaries of the Water Research Commission with regard to the appointment of Ms Jonas by the Water Research Commission (the Commission) in the post of Executive Manager: Knowledge Management and Communications on 1 August 2019.

1.3 The report is submitted in terms of section 8(3) of the Public Protector Act 1994 to the following people;

1.3.1 Dr Nozibele Mjoli (the Chairperson of the Commission);

1.3.2 Dr Mandla Msibi (the Acting Chief Executive Officer of the Commission);

1.3.3 Dr Nthombifuthi Nala (the Commission's Board member);

1.3.4 Ms Mariam Ssonko (the Human Resource Manager of the Commission);  
and

- 1.3.5 Ms Khosi Jonas (the Executive Manager: Knowledge Management and Communications)

## 2 THE COMPLAINT

- 2.1 The complaint was received on 23 August 2019, from an anonymous complainant (the Complainant), alleging amongst others that:

2.1.1 The Commission advertised a post of Executive Manager: Knowledge Management and Communications, which required applicants to be in possession of a Master's Degree in Marketing, Communication Science or a MBL/MBA specialisation in marketing, knowledge management or related field as the minimum educational requirements for the post;

2.1.2 At the time of her appointment in the post, Ms Jonas was in possession of a Bachelor of Creative Communications Degree as well as an Honours Degree in Marketing Management and not a Master's Degree in Marketing, Communication Science or a MBL/MBA specialisation in marketing, knowledge management or related field as stipulated in the job advertisement for the post; and

2.1.3 The recruitment, selection and interviewing of an unqualified candidate for the post of Executive Manager: Knowledge Management and Communications by the Commission's recruitment, selection and interview panel resulted in the irregular appointment of Ms Jonas in the post.

2.2 In view of the above, the Complainant requested that an investigation be conducted to determine whether the conduct of the Commission's recruitment, selection and interview panel was improper and constituted maladministration with regard to filling of the post of Executive Manager: Knowledge Management and Communications in August 2019.



### 3 POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector is an independent state institution established under section 181(1)(a) of the Constitution 1996 to strengthen constitutional democracy through amongst other investigating and redressing improper conduct in state affairs.<sup>1</sup>

3.2 Section 182(1) of the Constitution 1996 provides that:

*“The Public Protector has the power as regulated by national legislation –*

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

3.3 Section 182(2) of the Constitution 1996 directs that the Public Protector has additional powers and functions prescribed by national legislation.

3.4 Section 182(4) of the Constitution 1996 also requires that the Public Protector be accessible to all persons and communities. It is against this background that the services of the Public Protector are free and the Public Protector affords equal protection to complainants as well as the person or institution against whom a complaint was lodged<sup>2</sup>. It is to be further noted that the accessibility of the Public Protector is enabled by amongst others, the publication of the reports which are easily accessible and form a repository of public knowledge on the work of the institution to all persons, communities, the academia and public administration.

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<sup>1</sup> Thornhill C, *The Role of the Public Protector Case Studies in Public Accountability*, African Journal of Public Affairs Volume 4 (2) September 2011 pg 80.

<sup>2</sup> Brynard D J. *Supporting Constitutional Democracy in South Africa: An Assessment of the Public Protector (Ombudsman)* SAIPA 1999 34(1) pg 11.

- 3.5 It is also imperative to mention that the reports of the Public Protector constitute additional sources of information to different communities amongst others the media which at times write their stories on reports issued by the Public Protector<sup>3</sup>. Further thereto, the reports of the Public Protector can serve or can be used as a source of information to develop and enhance amongst others the standard operating procedures, training guides and manuals to guide public officials and the executive authorities to prevent similar maladministration and/or improper conduct from recurring in the future.
- 3.6 The Public Protector is further mandated by the Public Protector Act 1994 to investigate and redress maladministration and related improprieties in the conduct of state affairs and to resolve disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanisms.
- 3.7 In the matter of the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect.<sup>4</sup> The Constitutional Court further held that:
- “When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences”*<sup>5</sup>

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<sup>3</sup> Brynard D J. *Brynard Supporting Constitutional Democracy in South Africa* pg 9-10.

<sup>4</sup> [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].

<sup>5</sup> *Supra* at para [73].

- 3.8 In the above-mentioned matter, Mogoeng CJ, stated the following, when confirming the powers of the Public Protector:
- 3.8.1 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (para 65);
- 3.8.2 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced (para 67);
- 3.8.3 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints, as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint (para 68);
- 3.8.4 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow (para 69);
- 3.8.5 Every complaint requires a practical or effective remedy that is in *sync* with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to (para 70);
- 3.8.6 The Public Protector's power to take remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be

informed by the subject-matter of investigation and the type of findings made (para 71);

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

3.8.8 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (para 71(d)); and

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

3.9 In the matter of the *President of the Republic of South Africa v Office of the Public Protector and Others, Case No 91139/2016 (13 December 2017)*, the Court held as follows when confirming the powers of the Public Protector:

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

3.9.2 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) of the Constitution, 1996 afford the Public Protector with the following three separate powers (para100-101):

a) Conduct an investigation;

b) Report on that conduct; and

c) To take remedial action.

- 3.9.3 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or *prima facie* findings. (para 104);
- 3.9.4 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court. (para 105);
- 3.9.5 The fact that there are no firm findings on the wrong doing, does not prohibit the Public Protector from taking remedial action. The Public Protector's observations constitute *prima facie* findings that point to serious misconduct (para 107-108); and
- 3.9.6 *Prima facie* evidence which point to serious misconduct is a sufficient and appropriate basis for the Public Protector to take remedial action (para 112).
- 3.10 The Commission is listed under Schedule 3, Other Public Entities, Part A: National Public Entities of the Public Finance Management Act, (Act 1 of 1999) as a Public Entity. The Minister of Water and Sanitation exercises oversight over the Commission. As a Public Entity falling under the oversight of the Minister of Water and Sanitation, its affairs fall within the ambit of state affairs and the Public Protector has the power and jurisdiction to investigate the complaint.
- 3.11 The Public Protector's power and jurisdiction to investigate and take appropriate remedial action was not disputed by any of the parties involved.

### 3.12 **ISSUES IDENTIFIED FOR INVESTIGATION**

3.12.1 Based on the analysis and evaluation of the allegations in the complaint, the following issue was identified to inform and focus the investigation:

3.12.1.1 Whether the Commission appointed Ms Jonas in the post of Executive Manager: Knowledge Management and Communications without her meeting the minimum educational requirements stipulated in the job advertisement for the post, if so, whether the conduct amounts to improper conduct and maladministration.

## 4 **THE INVESTIGATION**

### 4.1 **The scope of the investigation**

4.1.1 The investigation was conducted in terms of section 182 of the Constitution, 1996 read with sections 6 and 7 of the Public Protector Act, 1994 which confers upon the Public Protector the power to investigate any alleged or suspected improper or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action when necessary.

### 4.2 **Approach to the investigation**

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

4.2.1.1 What happened?

4.2.1.2 What should have happened?

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

4.2.1.4 In the event of maladministration or improper conduct, what would it take to remedy the wrong or to place the Complainant as close as possible to where they would have been but for the 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 course of the investigation. In this particular case, the factual enquiry principally focused on whether the conduct of functionaries of the Commission was improper with regard to allegations of irregularity.

4.2.3 The enquiry regarding what should have happened, focuses on the law, policy prescripts and/or rules that regulate the standard that should have been met by the Commission's functionaries in order to prevent maladministration or improper conduct from happening in future.

#### 4.3 **Key sources of information and documentation received**

4.3.1 Copies of the following documentation pertinent to the matter were obtained, assessed, analysed and evaluated against the allegations in the complaint, including the consideration and application of relevant laws and related policy prescripts throughout the investigation, namely:

4.3.1.1 A copy of the *Complaint* dated 23 August 2019 forming the basis of the allegations in the complaint;

4.3.1.2 A copy of a letter titled, *Investigation into allegations of maladministration, improper or suspected improper conduct relating to the filling of the position of Executive Manager: Communications*, dated 14 November 2019 requesting Mr Dhesigen Naidoo (Mr Naidoo), the then Chief Executive Officer of the Commission to respond to the allegations in the complaint;

- 4.3.1.3 A copy of a letter titled, *In Re: Investigation into allegations of maladministration, improper or suspected improper conduct relating to the filling of the position of Executive Manager: Communications: Ref: 7/2-010454/19* signed by Mr Naidoo and dated 11 December 2019;
- 4.3.1.4 A copy of the job advertisement for the post of *Executive Manager: Knowledge Management and Communications Ref: EM: KMC* with a closing date of 30 October 2018;
- 4.3.1.5 A copy of job re-advertisement for the post of *Executive Manager: Knowledge Management and Communications Ref: EM:KMC* with a closing date of 1 February 2019;
- 4.3.1.6 A copy of list of *63 Applications Received* for the re-advertised post of *Executive Manager: Knowledge Management and Communications Ref: EM:KMC*,
- 4.3.1.7 Copies of *Water Research Commission Job Application Forms* for the shortlisted and interviewed candidates including that of Ms Jonas;
- 4.3.1.8 A copy of letter titled: *Offer of Employment* , dated 8 July 2019 and signed by Mr Naidoo, addressed to Ms Jonas appointing her in the post of Executive Manager: knowledge Management and Communications with effect from 1 August 2019;
- 4.3.1.9 A copy of the *Water Research Commission Human Resource Policy Manual* approved on 29 April 2019;
- 4.3.1.10 A copy of *Curriculum Vitae* of Ms Jonas;
- 4.3.1.11 A copy of *Water Research Commission Interview Sheet Form* for Ms Jonas dated 14 May 2019;



- 4.3.1.12 A copy of *Interview report for the Executive Manager: Knowledge Management and Communication Vacancy Held on 14 and 31 May 2019* reflecting the total number of candidates shortlisted and interviewed for the post of Executive Manager: Knowledge Management and Communication including their qualifications; and
- 4.3.1.13 Copies of *Curriculum Vitae* for other applicants who applied for the post.
- 4.3.2 Copy of Notice in terms of the section 7(9) of the Public Protector Act 1994 directed to Dr Mjoli, the Chairperson of the Commission and recruitment, selection and interview panel members.
- 4.3.3 Copy of response to the section 7(9) notice received from Dr Mjoli dated 8 December 2021.
- 4.3.4 Copy of Internal Audit Report dated 12 December 2019 reflecting the outcome of an investigation conducted into the process followed in filling post of Executive Manager: Knowledge Management and Communications;
- 4.3.5 Copy of response to section 7(9) notice received from Dr Nala dated 8 December 2021
- 4.3.6 Copy of response to section 7(9) notice received from Dr Msibi dated 8 December 2021
- 4.3.7 Copy of response to section 7(9) notice received from Ms Jonas dated 9 December 2021;
- 4.3.8 Record of a meeting held with Dr Msibi, Dr Nala and the investigation team of the Public Protector dated 2 December 2021; and
- 4.3.9 Copy of *Presentation* by Dr Msibi made to the investigation team during the course of the meeting held on 2 December 2021

#### 4.4 **Legislation and other prescripts**

4.4.1 The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

4.4.2 The Public Protector Act, 1994 (Act 23 of 1994);

4.4.3 Rules of the Public Protector, 2018;

4.4.4 The Water Research Act No 34 of 1971

4.4.4.1 *Water Research Commission Human Resource Policy Manual* approved on 29 April 2019;

#### 4.1 **Case law**

4.1.1 *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].

4.1.2 *President of the Republic of South Africa v Office of the Public Protector and Others* (91139/2016) [2017] ZAGPPHC 747; 2018.

4.1.3 *Khumalo and another v Member of the Executive Council for Education: KwaZulu Natal* (CCT 10/13) [2013] ZACC 49; 2014 (3) BCLR 333 (CC); (2014) 35 ILJ 613 (CC); 2014 (5) SA 579 (CC)

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

**5.1 Regarding whether the Commission appointed Ms Jonas in the post of Executive Manager: Knowledge Management and Communications without her meeting the minimum educational requirements stipulated in the job advertisement for the post, if so, whether the conduct amounts to improper conduct and maladministration**

*Common cause facts*

5.1.1 The Commission advertised the post of Executive Manager: Knowledge Management and Communications with a closing date of 30 October 2018. The post was later re-advertised with a closing date of 1 February 2019; and

5.1.2 At the time of commencing and finalising the recruitment process and eventually appointing Ms Jonas in the post of Executive Manager: Knowledge Management and Communications, in August 2019, she was in possession of an Honour's Degree in Marketing as her highest educational qualification.

*Issues in dispute*

5.1.3 The key issue for the determination is whether the recruitment, selection and interview panel recruited an unqualified candidate in the post of Executive Manager: Knowledge Management and Communications *and if so*, whether their conduct was improper and constituted maladministration in state affairs as contemplated in section 182 of the Constitution 1996.

- 5.1.4 It is the Complainant's contention that Ms Jonas was irregularly appointed in the post of Executive Manager: Knowledge Management and Communications in that:
- 5.1.4.1 She did not possess the minimum required educational qualification stipulated in the job advertisement for the post; and
- 5.1.4.2 The recruitment, selection and interview panel disregarded the minimum educational job requirements stipulated in the job advertisement resulting in the shortlisting and interviewing of Ms Jonas.
- 5.1.5 A letter from the Public Protector titled, *Investigation into allegations of maladministration, improper or suspected improper conduct relating to the filling of the position of Executive Manager: Communications*, dated 14 November 2019 was forwarded to Mr Naidoo requesting him to provide a comprehensive response to the allegations contained in the complaint substantiated with all relevant copies of documentation relating to the recruitment, selection and interview process leading to the appointment of Ms Jonas in the post in question.
- 5.1.6 In his response dated 12 December 2019 Mr Naidoo stated amongst others that:
- 5.1.6.1. The post of Executive Manager; Knowledge Management and Communications was first advertised both internally and externally on 16 October 2018 with a closing date of 30 October 2018;
- 5.1.6.2. In November 2018, a memo submitted by Corporate Services to EXCO indicated amongst others that, fifty-five (55) applications were received for the advertised post, however, none of the applicants met the requirements for the advertised post. A decision was taken to re-advertise the post and expand the requirements to allow for a large pool of applicants;

5.1.6.3. The re-advisement of the post was published internally and externally in January 2019 and sixty-three (63) applications were received;

5.1.6.4. Four (4) candidates were shortlisted for the post, two (2) of the shortlisted candidates were in possession of a Master's Degree and the other two (2) were in possession of Honour's Degrees. It is further stated that;

*“The screening process entailed looking at the candidates based on their qualifications as well as the years of experience and what quality of experience, which was applied on a consistent basis throughout the screening process finally resulting in the four (4) shortlisted candidates”;*

5.1.6.5. Only three (3) candidates were interviewed as one of the shortlisted candidates withdrew her application for the post;

5.1.6.6. Interviews were conducted and each candidate was individually scored by the interview panel members. A report of the outcome of the interview was prepared. The report was approved and signed off by the interview panel members on 9 July 2019. The interview panel recommended Ms Jonas for appointment in the post, who was later sent for psychometric assessment in compliance with the recruitment requirements of the Commission;

5.1.6.7. Ms Jonas was appointed on condition that she completes her Master's Degree within one year or complete the Recognition of Prior Learning Assessment process, whichever comes first;

5.1.6.8. The advertisement for the post provided that Recognition of Prior Learning and work experience may be considered; and

5.1.6.9. It is therefore the view of the Commission that the recruitment and selection and interview process undertaken by its functionaries was proper and complied with the law and best practices at every stage.

- 5.1.7 Mr Naidoo's response was carefully assessed and evaluated against the information contained in the copies of documentation submitted as follows:
- 5.1.8 The *First advertisement* for post of Executive Manager: Knowledge Management and Communication with a closing date of 30 October 2018 reflects the requirements for the post being that:
- 5.1.8.1 The ideal candidate must be in possession of a Master's Degree in Marketing, Communication Science/or an MBL/MBA specialising in marketing, knowledge management or related field;
- 5.1.8.2 A minimum of seven (7) years experience in marketing, communication and/or media related experience including 3 years of management of which 1-2 years in water sector will serve as an advantage;
- 5.1.8.3 A proven track record in leadership role within communication/marketing or related field with demonstrated experience in managing diverse teams is essential; and
- 5.1.8.4 Registration with a professional communication/marketing or equivalent body will be an added advantage.
- 5.1.8.5 At the bottom part of the advertisement page, the following information appears:

*"Closing date 30 October 2018. If you are not contacted by 30 November please consider your application as unsuccessful. A Recognition of Prior Learning Assessment may be considered for applicants with suitable work experience",*

5.1.9 The *Re-advertisement* for post of Executive Manager: Knowledge Management and Communication with a closing date of 1 February 2019 reflects the requirements for the post being that:

5.1.9.1 The ideal candidate must have as a minimum, a suitable Master's Degree for the post or equivalent;

5.1.9.2 A minimum of seven (7) years marketing/communication/knowledge management experience is essential; and

5.1.9.3 Understanding of the water sector and the ability to manage a diverse and impactful team will be added advantage.

5.1.9.4 At the bottom part of the advertisement page, the following information appears:

*“Closing date 1 February 2019. If you are not contacted by 28 February 2019 please consider your application as unsuccessful. A Recognition of Prior Learning Assessment may be considered for applicants with suitable work experience”*

5.1.10 Having considered both the *First advertisement* and the *Re-advertisement* for the post in question the following information is reflected;

5.1.11 In both the *First advertisement* and *Re-advertisement*, the requirement that the ideal candidate must be in possession or have a Master's Degree as a minimum qualification remained in the advertisement;

5.1.12 The *First advertisement* required an ideal candidate to be in possession of a Master's Degree in Marketing, Communication Science/or an MBL/MBA specialising in marketing, knowledge management or related field. In this regard the Master's Degree requirement was specific to a particular field(s) of study or profession.

- 5.1.13 The *Re-advertisement* required that the ideal candidate must have as a minimum a suitable Master's Degree. What constitutes a suitable Master's Degree was not explained or specified. It is not known in this instance which Master's Degree and in which field of study or profession could be regarded as being a suitable Master's Degree for the post.
- 5.1.14 The *First advertisement* reflects that a minimum of seven (7) years experience in marketing, communication and/or media related experience including three (3) years of management of which 1-2 years in water sector will serve as an advantage. The *Re-advertisement* reflects that a minimum of seven (7) years marketing/communication/knowledge management experience is essential. The requirement of *3 experience years of management of which 1-2 years in water sector listed as an advantage in the First Advertisement* was abandoned from the Re-Advertisement.
- 5.1.15 The sentence “*A recognition of Prior Learning Assessment may be considered for applicants with suitable work experience*” appears below the closing date for both the *First advertisement* and *Re-advertisement* for the post.
- 5.1.16 The “*Water Research Commission Job Application Form*” for shortlisted candidates dated 2 July 2019 reflects Ms Jonas’ qualifications as a B.Phil Honours in Marketing and BA Creative Communication respectively.
- 5.1.17 The qualifications reflected in the copy of “*Curriculum Vitae*” of Ms Jonas are B.Phil (Hons) Marketing Management (2012), BA Creative Communications (2007) and Matric Certificate (2001). The “*Curriculum Vitae*” further reflects that she was studying or was registered for a Master's in Management, Digital Business Degree at Wits University since 2018.



- 5.1.18 The “*Curriculum Vitae*” also reflects that she held the following positions:
- 5.1.18.1 Head: Marketing and Communication from 2016 to current at the Commission;
  - 5.1.18.2 CRM and Marketing Manager at Point SA from January 2014 to October 2016;
  - 5.1.18.3 Senior Client Manager at the Brand Union from August 2011 to November 2013;
  - 5.1.18.4 Account Director at Switch Branding and Design from January 2010 to July 2011;
  - 5.1.18.5 Brand Consultant at Interbrand Sampson from May 2009 to December 2009 and
  - 5.1.18.6 Brand Consultant HKLM from November 2007 to April 2009.
- 5.1.19 The copy of “*Water Research Commission Interview Sheet Form*” dated 14 May 2019 reflects the interview panel consisted of Mr Naidoo (the then Chief Executive Officer and Chairperson of the panel), Dr Ntombi Nala, Dr Mandla Msibi and Ms Mariam Ssonko.
- 5.1.20 Candidates shortlisted were Ms Mmenyane Seoposengwe who was interviewed on 31 May 2019 and Ms Ntombikayise Jacha who was interviewed on 14 May 2019 together with Ms Jonas. Ms Lynette Kameith is said to have withdrawn from the interview.
- 5.1.21 The Internal Audit report reflects that there were no internal applications received in response to the *First advertisement* of the post. This implies that Ms Jonas as an internal candidate did not apply or respond to the *First advertisement*.

5.1.22 The table below reflects the interview scores per panel member in relation to each candidate:

*Ms Jonas*

Competence area	Score weight	Member Score (N Nala)	Member Score (M Msibi)	Member Score (D Naidoo)	Member Score (M Ssonko)	Total
Candidate Motivation	10	10	9	8	4	31
<b>Job Requirements (master's degree for the Post)</b>	<b>10</b>	<b>9</b>	<b>8</b>	<b>8</b>	<b>9</b>	<b>34</b>
Presentation	40	30	30	32	30	122
Technical Competencies	20	19	14	16	10	59
Bahaviourial Competencies	10	10	7	8	8	33
Observation Competencies	10	10	8	9	8	35
<b>Grand total</b>	<b>100</b>	<b>88</b>	<b>76</b>	<b>81</b>	<b>69</b>	<b>314</b>

*Ms M Seoposengwe*

Competence area	Score weight	Member Score (N Nala)	Member Score (M Msibi)	Member Score (D Naidoo)	Member Score (M Ssonko)	Total
Candidate Motivation	10	5	6	6	5	22
<b>Job Requirements (master's degree for the Post)</b>	<b>10</b>	<b>8</b>	<b>8</b>	<b>10</b>	<b>10</b>	<b>36</b>
Presentation	40	15	20	20	10	65
Technical Competencies	20	17	10	10	10	47
Behavioral Competencies	10	5	6	7	6	24
Observation Competencies	10	10	7	6	4	27
<b>Grand Total</b>	<b>100</b>	<b>60</b>	<b>57</b>	<b>59</b>	<b>135</b>	<b>221</b>

*Ms NQ Mdluli Jacha*

<b>Competence area</b>	<b>Score weight</b>	<b>Member Score (N Nala)</b>	<b>Member Score M Msibi</b>	<b>Member Score (D Naidoo)</b>	<b>Member Score (M Ssonko)</b>	<b>Total</b>
Candidate Motivation	10	8	7	6	5	26
<b>Job Requirements (master's degree for the Post)</b>	<b>10</b>	<b>6</b>	<b>No Score</b>	<b>7</b>	<b>7</b>	<b>20</b>
Presentation	40	14	21	15	10	60
Technical Competencies	20	18	12	8	10	48
Behavioral Competencies	10	10	8	6	6	30
Observation Competencies	10	9	7	6	4	26
<b>Grand Total</b>	<b>100</b>	<b>65</b>	<b>55</b>	<b>48</b>	<b>42</b>	<b>210</b>

*\*The figures in the above tables are expressed as totals and not as averages.*

5.1.23 It is observed that in the *Job Requirement Competencies* which required a Master's Degree, the candidates were scored as follows;

5.1.23.1 Ms Jonas with an Honour's Degree was scored 8 by both Dr Msibi and Mr Naidoo. She was scored 9 by both Ms Ssonko and Dr Nala;

5.1.23.2 Ms M Seoposengwe with a Master's Degree in New Media and Society and held the post of Senior Manager: Strategic Communications was scored 8 by both Mr Msibi and Dr Nala and she scored 10 by Mr Naidoo and 9 Ms Ssonko;

5.1.23.3 Ms NQ Mdluli Jacha with a Master's Degree in New Media Governance and Democracy and held the post of Head of Communication was scored 6 by Dr Nala and scored seven (7) by Mr Naidoo and Ms Ssonko. No score was allocated by Dr Msibi.

5.1.24 The “*Interview report for the Executive Manager: Knowledge Management and Communication Vacancy Held on 14 and 31 May 2019*” reflects that all three candidates were black Africans.

5.1.25 The table below reflects the names and qualifications of candidates who applied for the post but were not shortlisted.

Candidate	Qualifications
Farieda Miller	Master’s in Strategic Communication (2018) BA Honour’s in Brand Leadership (2007) BA Honour’s in Marketing Communication (2005) Diploma in Development Journalism (2001)
Mandla Ndlovu	MBA (2018) Master’s in Public Policy Management (2014) BCom Honour’s (2003) BTech in Information Technology (1998) National Diploma in Education (1997)
Naume Kupe	Master’s of Philosopy in Media and Communication Studies 1996 Post Graduate Diploma in Media and Communication (1993) BA General Post Graduate Diploma in Public Development Management
Mohamed Shaikh	M-Journalism (1996) BA Honour’s in Journalism (1998) BA Honour’s in Psychology (1979) BA Social Science (1978)
Sindiso Malaku	MBL (2007) BA Honour’s (2005) BCom Honour’s (1999) BCom (1994) Advanced Marketing Management Diploma (2003)

5.1.26 None of the candidates reflected in the table above were considered for the post, despite them being in possession of Master’s degree in marketing/communication or related fields.

*Consideration of Recognition of Prior Learning Assessment*

- 5.1.27 In terms of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), SAQA Regulation 452, No. 18787, March 1998:5 **"recognition of prior learning"** *means the comparison of the previous learning and experience of a learner howsoever obtained against the learning outcomes required for a specified qualification, and the acceptance for purposes of qualification of that which meets the requirements.*
- 5.1.28 In view of the above definition of recognition of prior learning with regard to the response received from Mr Naidoo, it was established that:
- 5.1.28.1 No evidence was provided reflecting the criteria that was used to assess Ms Jonas to determine whether her qualifications and experience were suitable to have her shortlisted for the advertised post as she had an Honour's Degree as her highest qualification;
- 5.1.28.2 The outcome of Recognition of Prior Learning Assessment conducted on Ms Jonas or other candidates *if any*, was not submitted to substantiate the contention that Recognition of Prior Learning Assessment was considered when shortlisting candidates including Ms Jonas;
- 5.1.28.3 Mr Naidoo's response further provided that Ms Jonas was appointed on condition that she completed a Master's Degree within one year or complete a Recognition of Prior Learning process, whichever comes first. It would appear that the Recognition of Prior Learning was not applied during the course of the recruitment and selection, rather it was to be considered within one year upon her appointment.

#### **Section 7(9) notice response received**

- 5.1.29 A meeting was held with Dr Msibi and Dr Nala on 2 December 2021 in response to the section 7(9) notice served to discuss the matter and the

provisional remedial action. During the meeting the following information came to the fore:

- 5.1.29.1 It was conceded that Ms Jonas was not in possession of a Master's Degree at the time of her shortlisting, interview and appointment in the post;
- 5.1.29.2 Dr Nala was roped in at the interview stage as an external expert with regard to communication/marketing field/profession hence she did not take part in the selection/shortlisting process.
- 5.1.29.3 Dr Nala reiterated that she raised the issue of the candidate not being in possession of a Master's Degree as a minimum qualification stipulated in the advertisement. She was advised by other members who participated in the selection and shortlisting (*referring to the recruitment and selection panel members*) process that a combination of factors such as additional certificates obtained by the candidate and her registration with a professional marketing board were considered and it was felt that those factors considered together amount to a qualification that is equivalent to a Master's Degree.
- 5.1.30 Dr Msibi submitted that Dr Nala did raise her concerns about the qualification issue as she was not involved in the shortlisting process. She did not form part of the recruitment and selection panel that was involved in the shortlisting, unlike him and other interview panel members who were involved in the shortlist process.
- 5.1.31 Dr Msibi and Dr Nala committed to provide further written responses to the section 7(9) notice by no later than 15 December 2021.
- 5.1.32 A written response was received from Dr Mjoli, Dr Nala and Dr Msibi dated 08 December 2021 including a copy of an Internal Audit Report dated 12 December 2019. Ms Jonas' written response was received on 9 December 2021.

5.1.33 In her written response to the section 7(9) notice Dr Mjoli stated amongst others that:

*“During November 2019, the aforementioned matter was brought to the attention of the Board by the then Minister of Water and Sanitation, Minister Sisulu with a request to investigate the matter and confirm whether the appointment processes of the WRC were adhered to. The Board commissioned the Internal Audit to conduct an independent review of the entire recruitment process from advertisement to appointment and provide the Board with a report. The brief included examination of legal, policy and practice environment governing the filling of posts in the public service.*

*On 12 December 2019, the Board received the Internal Audit Report for consideration. The report confirmed that the WRC complied with its Human Resource Policy Manual which is in line with the Labour Relations Act and Employment Equity Act.*

*The Board deliberated on the Internal Audit Report and based on this, it is the view of the Board that due process both in terms of South African Law and best practice, was followed in the filling of the position of Executive Manager Knowledge Management and Communication at the WRC. Therefore, no remedial action is required as proper process was deemed to have been followed”.*

5.1.34 The *Internal Audit Report* dated 12 December 2019 signed by Mrs. Y Small, Manager Internal Audit outlining the recruitment process that was followed leading to the appointment of Ms Jonas in the post of Executive Manager Knowledge Management and Communication, reflects amongst others that the post was advertised (*First advertisement*) internally and externally on 16 October 2018 stipulating that:

- 5.1.34.1 The ideal candidate must be in possession of a minimum of a Master's degree in Marketing/Communication/Science or an MBL/MBA qualification with specialisation in Marketing/Communication/Knowledge Management or a related field.
- 5.1.34.2 Registration with a professional Marketing and/or Communication or equivalent body will be an added advantage.
- 5.1.34.3 A minimum of seven (7) years marketing, communications and media related experience including three (3) years management experience was essential. One to two year's water sector experience will serve as an advantage.
- 5.1.34.4 A proven track record in a leadership role within a communications/marketing or related department with demonstrated experience in managing diverse teams is essential.
- 5.1.34.5 A Recognition of Prior Learning Assessment may be considered for applicants with suitable work experience.
- 5.1.35 The report further states that:
- 5.1.35.1 On 13 November 2018 a memo was submitted to EXCO indicating that 55 applications were received, 20 were shortlisted which was reduced to five (5) who partially met the requirements. No internal applications were received. A decision was made to re-advertise and adjust the minimum requirements to allow more candidates to apply. The post was re-advertised both internally and externally on 18 January 2019 stipulating the following requirements:
- 5.1.35.2 The ideal candidate must have as a minimum, a suitable Master's Degree for the post or equivalent



- 5.1.35.3 A minimum of seven (7) years of marketing/communication/knowledge management experience was essential.
- 5.1.35.4 Understanding of the water sector and the ability to manage a diverse and impactful team will be an added advantage.
- 5.1.35.5 A Recognition of Prior Learning Assessment may be considered for applicants with suitable work experience
- 5.1.35.6 The information obtained from Group Executive: Innovation and Impact and the Corporate Human Resource Manager was that the screening process did not focus only on the candidates' qualifications but also considered the years of experience of the candidate and that's how the four (4) short listed candidates were identified. Of the four candidates shortlisted two (2) where in possession of Honour's Degree and two (2) where in possession of Master's Degrees.
- 5.1.35.7 Most of the candidates had marketing and communication experience but not all had knowledge management experience. Not all candidates had the understanding and experience of the water sector. Most candidates appear to be able to manage a diverse and impactful team. One (1) candidate withdrew from the interview process, therefore only three (3) were interviewed.
- 5.1.35.8 The Line Manager did not object to the shortlisting of candidates who were not in possession of a Master's Degree as a minimum qualification stipulated in the *Re-advertisement*.
- 5.1.35.9 The conclusion of the *Internal Audit Report* is captured as follows:
- 5.1.35.9.1 *"Through scrutinising the above documentation as well as the WRC Human Resource Policy Manual it can be confirmed that the WRC complied with the WRC Human Resource Policy Manual which is in line with the Labour Relations Act and Employment Equity Act. South African*

Qualification Authority (SAQA) gazetted its National Policy for the implementation of RPL in 2014 and was amended in March 2019. When the position was advertised, the WRC's RPL policy was not yet in place and therefore SAQA was used to guide the process, SAQA does not specify when a RPL report should be provided by an applicant. In both advertisements it was stated that RPL may be taken into consideration, which means the principles and processes through which the prior knowledge and skills of a person are made visible, mediated and assessed for the purposes of alternative access and admission, recognition and certification, or further learning and development may be considered for candidates although they may not have met the all the minimum requirements. Through inspection of the CVs submitted, it was noted that various types of degrees were submitted as well as experience and that was taken into consideration when the screening process was performed, and this was consistently applied throughout the process. Further it should be noted, that the appointment was made on a conditional basis stipulating the following in the offer of employment: "The provision of a Recognition of Prior Learning Competency certification from an authorised RPL practitioner; or the attainment of a relevant Master's Degree within a period of 1 year from date of acceptance of this conditional offer, failing which the offer of employment will be revised, along with the title, remuneration and benefits linked to the position." Therefore, such conditional appointment is valid and binding if applied consistently and if the conditional requirements are clearly stipulated and monitored as per the above mentioned section of the Basic Conditions of Employment Act."

- 5.1.36 Having considered the response of the Dr Mjoli as well as the contents of the *Internal Audit Report* it is established that:
- 5.1.36.1 In both the *First advertisement* and the *Re-advertisement* the sentence "A Recognition of Prior Learning Assessment may be considered for applicants with suitable work experience", appears below the closing date. It does not appear amongst the stipulated requirements of the post

in the body of the advertisement therefore it is not convincing that it forms part of the requirements.

- 5.1.36.2 The Internal Audit Report does not explain or demonstrate how the Recognition of Prior Learning Assessment was applied and does not mention if there was any evidence or report that was produced in relation to the assessment conducted to evaluate the recognition of prior learning aspect.
- 5.1.36.3 It is conceded in the *Internal Audit Report* that the Recognition of Prior Learning Policy (RPL) was approved by the Board on 30 July 2019 while both the *First advertisement* and *Re-advertisement* were published on 16 October 2018 and 18 January 2019 respectively. In this regard, the policy finds no application as it was not in existence at the time when the recruitment process was commenced and finalised.
- 5.1.36.4 The *Internal Audit Report* further reflects that in the absence of the Recognition of Prior Learning Policy, SAQA was used to guide the process while on the other hand it is stated that SAQA does not specify when a Recognition of Prior Learning report should be provided by an applicant. This is contradictory as it does not specify which SAQA guidelines were used to guide the process while also stating that SAQA does not specify when Recognition of Prior Learning report should be provided by an applicant. In this regard, it's unclear as to how the selection or shortlisting panel considered Recognition of Prior Learning in the process while SAQA does not specify when Recognition of Prior Learning report should be provided by the applicant. In addition, the advertisement of the post did not require that applicants should provide Recognition of Prior Learning assessment reports together with their applications, if this was a requirement for the post.
- 5.1.36.5 Even though in both advertisements it was stated that Recognition of Prior Learning may be taken into consideration, it was not an inherent requirement for the post. Neither the *Internal Audit Report*, the

recruitment, selection and interview panel nor the then Chief Executive Officer or the Acting Chief Executive Officer, Dr Msibi could provide a convincing explanation or demonstrate how and which criteria was used to assess and consider Recognition of Prior Learning as a qualification that is suitable or equivalent to a Master's Degree.

5.1.36.6 The Commission cannot justify its reliance on Recognition of Prior Learning during the recruitment process because it had no approved Recognition of Prior Learning policy in place. It was not proper for the advertisement for the post to state that Recognition of Prior Learning may be considered while the Commission had no policy or set criterion on how to consider applications of candidates based on the Recognition of Prior Learning criteria. Further thereto, the Commission could not provide an explanation on what constitutes equivalent qualification or a suitable qualification to a Master's Degree.

5.1.36.7 Dr Mjoli mentioned in her response that, *“The brief included examination of legal, policy and practice environment governing the filling of posts in the public service. The Board deliberated on the Internal Audit Report and based on this, it is the view of the Board that due process both in terms of South African Law and best practice, was followed in the filling of the position of Executive Manager Knowledge Management and Communication at the WRC”*. She has not mentioned or listed any of the legal, policy and best practice governing the filling of posts in the public service in substantiating her response.

5.1.37 In her written response to the section 7(9) notice dated 8 December 2021, Dr Nala stated amongst others that:

5.1.37.1 Her involvement was at the interview stage and not at the shortlisting process. She stipulated the requirements of the post as they appear in the *Re-advertisement* of the position which have already been discussed above.

- 5.1.37.2 She stated that the criteria “equivalent” drew the attention of the interview panel, and a discussion ensued. It was noted that it was highly subjective and left much to the discretion of the panel members, therefore it was not a suitable criteria. The discussion led to the highlighting of Recognition of Prior Learning as possibly better process as it can be formalised. However, no formal report/outcome of Recognition of Prior Learning was provided before the interviews started.
- 5.1.37.3 The interview panel proceeded with the interviews being careful to apply the approved criteria fairly across all candidates. This “or equivalent” criteria’s weighting was less than 10% of the overall score.
- 5.1.37.4 Dr Nala further submitted that, *“Whilst SAQA does not provide a clear definition of equivalent qualification – it does provide the following: “Although qualifications are registered at the same NQF level, they cannot be considered equivalent.” [(SAQA, 2021)]. The Cambridge dictionary defines “Equivalent” as having the same amount, value, purpose, qualities, etc. Without any other formal process at the WRC on evaluating equivalence, the Panel used a similar approach to this definition”*.
- 5.1.37.5 The interview panel made recommendation to the Commission that Recognition of Prior Learning, in line with the approved advertisement must be considered, and that a Master’s Degree must be obtained before the appointment of Ms Jonas is fully confirmed.
- 5.1.37.6 The Commission has already taken steps to ensure full compliance with all relevant legislation and internal approved policies including the approval of the Recognition of Prior Learning Policy.
- 5.1.38 Considering the above response by Dr Nala, it is submitted that an Honours Degree has no same amount, value, purpose, qualities, weight to a Master’s Degree. The Commission had no policy in place to guide and regulate how the Recognition of Prior Learning criteria was to be

applied during shortlisting process. It is also noted that Dr Nala did not participate in the shortlisting process hence her inputs are limited to the deliberations that ensued on the day of the interview when the issue of the “equivalent or suitable Master’s Degree” came up. She could not have been able to put the process on hold in that regard, even though she had compelling reservations.

5.1.39 In his written submission dated 8 December 2021 in response to the section 7(9) notice Dr Msibi who was Acting Chief Executive Officer of the Commission and was a member of both the selection and interview panel stated amongst others that:

5.1.39.1 The Commission’s Executive Committee approved the advertisement of the post including the approval of the minimum requirements for the post to be advertised.

5.1.39.2 The interview panel was not wholly responsible for recruitment and selection process of the Executive Manager: Knowledge Management and Communication post.

5.1.39.3 Upon receipt of applications a Master’s Degree qualification and alternatives were considered during the shortlisting and in line with the Commission’s Human Resource Policy Manual. The Human Resource Department led the shortlisting process and shared the list of applications with the Line Manager and the then Chief Executive Officer.

5.1.39.4 Following receipt of a number of applications, shortlisting was conducted following the approved criteria of (i) Master’s Degree for the post or equivalent and (ii) seven (7) years experience of marketing / communication / knowledge management. Two applicants were shortlisted following consideration of their Master’s Degree and seven (7) years relevant experience. Two others were shortlisted based on seven (7) years of relevant experience and their Honour’s Degree with other qualifications or training considered as “equivalent” to a Master’s Degree.

5.1.39.5 The role of the interview panel was to interview shortlisted candidates and score them based on the presented criteria and guided by those specifications. The role of the interview panel ended with a recommendation to the Commission's appointing structure.

5.1.39.6 An external member, Dr Nala was included based on her understanding of the subject matter and experience in the field of Marketing and Communication.

5.1.39.7 *In relation to the Recognition of Prior Learning assessment Dr Msibi submitted that:*

*The Criteria "equivalent" drew the attention of the interview panel, and a discussion ensued. It was noted that it is highly subjective and leaves much to the discretion of the panel member and not a suitable criteria. The discussion led to the highlighting of Recognition of Prior Learning as possibly a better process as it can be formalized. The Panel proceeded with the interviews being careful to apply the approved criteria fairly across all candidates.*

*The interview panel focused on adhering to the approved minimum requirements and the questions provided to evaluate the candidates. The interview panel, additionally made the following recommendations based on the minimum requirements and performance of the candidates during the interview: "The panel recommended that Khosi be appointed into the post and that a conditional offer be offered to her subject to the completion of the RPL or Masters qualification (whichever comes first)." This is a clear indication that the Panel considered the requirement of Equivalent but were not entirely satisfied with how to apply it consistently hence the recommendation of completion of RPL or Masters prior to appointment.*

5.1.40 Taking into account the response received from Dr Msibi it is submitted that:

- 5.1.40.1 The response does not demonstrate how the Recognition of Prior Learning was applied for the requirement of an equivalent or a suitable qualification on the level of a Master's Degree.
- 5.1.40.2 There could not have been consideration of Recognition of Prior Learning criteria by the both the selection, shortlisting and interview panel while the Commission had no policy in place to guide and regulate its application during recruitment in particular during shortlisting process.
- 5.1.40.3 Recognition of Prior Learning was not listed amongst the requirements of the post rather it appeared below the closing date of the post, in this regard it is not convincing to consider it as one of the requirements of the post.
- 5.1.40.4 In case that the Commission contends that it was a requirement for post, there was no demonstration or evidence of how the Recognition of Prior Learning assessment exercise was undertaken/documentated, especially in respect of the appointed candidate. This is further supported by the responses from Dr Nala and Dr Msibi who both submitted that the interview panel discussed Recognition of Prior Learning as a preferred process that can be formalised unlike the criterion to determine an "equivalent" qualification. However, no formal report/outcome of Recognition of Prior Learning was provided before the interviews started.
- 5.1.40.5 The response does not demonstrate or explain how the equivalent/suitable criterion was used to determine which qualification was equivalent to a Master's Degree or suitable for the post as reflected in both the *First advertisement* and the *Re-advertisement* of the post.
- 5.1.41 In her response written submission dated 9 December 2021 to the section 7(9) notice Ms Jonas stated amongst others that:
- 5.1.41.1 At the time she applied for the post she occupied the post of Head of Marketing and Communication for the Commission for a period of two



years leading a diverse team supporting the Commission's knowledge dissemination mandate.

5.1.41.2 She applied for the post based on her extensive experience in marketing and communications and was already playing a pivotal role in driving the knowledge dissemination strategy of the Commission.

5.1.41.3 She has a professional designation of Chartered Marketer from the Marketing Association of South Africa (MASA) which she obtained after undergoing a rigorous Recognition of Prior Learning process and passing Board Examination. Her highest qualification was an Honour's Degree in Marketing and had already commenced studies for a Master's Degree in digital business through Wits Business School.

5.1.41.4 Her interpretation of the advert was that should one not be in possession of a Master's Degree qualification they will still be eligible to apply as provision was made for a Recognition of Prior Learning Assessment for applicants with suitable work experience. She was therefore of the view that she met the requirements of the post as advertised. She further submitted that she believed that she was correctly shortlisted and applied herself to a competitive interview process. She has already complied with the condition of her appointment by completing the required Master's Degree from Wits University on 20 November 2020.

5.1.42 Having considered the above response from Ms Jonas it is submitted that:

5.1.42.1 The inherent minimum academic requirement for the post had always been a Master's Degree.

5.1.42.2 Registration with a professional marketing/ communication or equivalent body is reflected as an advantage in the *First advertisement*, however it is not a qualification and it was abandoned in the *Re-advertisement*.

- 5.1.42.3 Her highest qualification was an Honour's Degree in Marketing at the time of her applying for the post. Obtaining a Master's Degree after being appointed does not change the fact that at the time of her applying for the post she was not in possession of a Master's Degree or a qualification that can be considered to be equivalent to a Master's Degree as required by the advertisement of the post.
- 5.1.42.4 She is not in a position to explain how she qualified to be shortlisted for the post on basis of her Honour's Degree in Marketing and the supposedly Recognition of Prior Learning assessment.
- 5.1.42.5 She cannot explain how Recognition of Prior Learning was equivalent Master's Degree or suitable for the post and how she was assessed during shortlisting process to satisfy that she met the minimum inherent requirements for the post as advertised in the absence of her being in possession of a Master's Degree.
- 5.1.42.6 The number of years experience stipulated in the advertisement cannot translate to Recognition of Prior Learning as a qualification. It is common cause that every position requires a minimum number of years' experience and that does not constitute an academic qualification or Recognition of Prior Learning rather it reflects amongst others the exposure and experience to the relevant working environment.

#### 5.1.43 **Application of relevant legal framework**

##### **The Constitution, 1996**

- 5.1.43.1 Section 195(1) of the Constitution provides that:

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

- (a) *A high standard of professional ethics must be promoted and maintained.*
- (b) *Efficient, economic and effective use of resources must be promoted;*
- (c) *Public administration must be development oriented;*
- (d) *Services must be provided impartially, fairly, equitably and without bias;*
- (e) *Peoples' needs must be responded to, and the public must be encouraged to participate in policy making;*
- (f) *Public administration must be accountable;*
- (g) *Transparency must be fostered by providing the public with timely, accessible and accurate information;*
- (h) *Good human-resource management and career-development practices, to maximise human potential, must be cultivated;*
- (i) *Public administration must be broadly representative of the South African people, with employment and personnel management practices base on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.*

5.1.43.2 In considering the above provisions of the Constitution and evidence presented, it was established that the recruitment and selection process followed, failed to adhere to employment and personnel management practices that are based on ability, objectivity, fairness, and promote a public administration that is accountable.

**Water Research Act, (Act No 30 of 1971)**

5.1.43.3 Section 4 of the Water Research Act (Water Act 1971) provides amongst others as follows with regard to the constitution of Commission and period of office of its members;

(4) *The executive director shall be the chief executive officer of the commission and manage and control the work authorized by the commission, and shall be responsible to the commission for the carrying out of their duties by the officers and employees of the commission.*

5.1.43.4 Section 10 of the Water Act 1971 provides as follows in relation to amongst others the appointment of employees of the Commission and their conditions of service:

(1)(a) *The establishment of the commission shall consist of the post of executive director and such other posts as the commission may determine.*

(b) *The executive director shall be appointed by the Minister after consultation with the commission, and the other officers and employees of the commission shall be appointed by the commission.*

(2) *The conditions of service of the executive director and the other officers and employees of the commission shall be determined by the commission, subject to the approval of the Minister granted with the concurrence of the Minister of Finance.*

(3) *The commission may at any time terminate the services of any officer or employee if in its opinion there are sound reasons for doing so, but the services of the executive director may only be terminated by the Minister after consultation with the commission.*

5.1.43.5 Having regard to the above provisions of the Water Act 1971, it is observed that the authority to appoint any employee for a post determined by the Commission rests with the Commission. It is further observed that the Water Act 1971 is silent on how the recruitment and selection process is to be undertaken. In this regard, the *Water Research Commission Human Resource Manual of 29 April 2019* provides for the process that should be followed with regard to the recruitment,

selection and interview process for other employees of the Commission other the Chief Executive Officer.

### **The National Policy and Criteria for the Implementation of Recognition of Prior Learning (the Policy)**

5.1.43.6 The Policy defines “Recognition of Prior Learning (RPL)” as *the principles and processes through which the prior knowledge and skills of a person are made visible, mediated, and assessed for the purposes of alternative access and admission, recognition and certification, or further learning and development.*

5.1.43.7 There are two main forms of RPL, that reflect different purposes and processes within which RPL takes place namely:

5.1.43.7.1 **RPL for access:** To provide an alternative access route into a programme of learning, professional designation, employment and career progression; and

5.1.43.7.2 **RPL for credit:** To provide for the awarding of credits for, or towards, a qualification or part-qualification registered on the NQF.

5.1.43.7.3 The Policy further provides for roles and responsibilities for the Implementation of RPL as amongst others as follows:

5.1.43.7.4 Employers may:

- (a) *Develop and implement organisational RPL policies and improve human resource support for RPL;*
- (b) *Encourage staff to engage in RPL for recognition in the workplace;*  
*and*
- (c) *Ensure that RPL practitioners who conduct the RPL in the workplace are accredited.*

Considering the above provisions of the Policy it is observed that the Commission did not have a policy in place relating the Recognition of Prior Learning and Ms Jonas was not a candidate for Recognition of Prior Learning Programme initiated by the employer at the time of her recruitment and appointment. Recognition of Prior Learning Programme outcome cannot supersede the weight of an academic qualification in this case, a Master's Degree.

**The Water Research Commission Human Resource Manual of 29 April 2019**

5.1.43.8 The “*Water Research Commission Human Resource Policy Manual*” approved on 29 April 2019, provides as follows with regard to recruitment of candidates:

5.1.43.8.1 Clause 2.3;

*The WRC supports the principle of equal opportunity. It recognises the need to recruit and select employees without regard to race, gender or creed. Accordingly, in line with the Employment Equity Act, it will give preference to disadvantaged groups in recruitment until such time that these groups are representative at all levels of the organisation.*

5.1.43.8.2 Clause 2.4.3

*The Chief Executive Officer is authorised to make appointments up to Group Executive Manager or equivalent.*

5.1.43.8.3 Clause 2.6.8;

*Interviews will be conducted on a panel basis through a structured interview. The panel must be a minimum of three members. This will include the person responsible for the management of the position, human resources and additional members as determined.*

5.1.43.8.4 Clause 2.8.1;

*Selection criteria shall be objective, related to the inherent requirements of the job and consistently applied to all applicants.*

5.1.43.8.5 Clause 2.8.2;

*Qualifications required for a position shall be based on current job descriptions or skill requirements which accurately identify the nature, purposes and functions of the job.*

5.1.43.8.6 Clause 2.8.3;

*Qualifications for a position shall not be adapted to meet the qualifications of any particular individual whose application is anticipated.*

5.1.43.8.7 Clause 2.8.6;

*A decision to appoint will take into consideration the test results, interview record, experience and reference checks. The selected candidates may be sent for psychometric testing, if required, before appointment to determine competency levels. Such tests shall be fair and non-discriminatory in respect of individuals or groups and comply with the Employment Equity Act.*

5.1.43.8.8 Clause 2.11;

*Contravention of this Policy and associated WRC Policies or Procedures referenced herein will lead to disciplinary action.*

5.1.43.9 Considering the above provisions of the Policy and the evidence presented, it was established that:

5.1.43.9.1 The qualifications required for the post of Executive Manager: Knowledge Management and Communications were based on the job description and/or skills required for the post and job function in line with Clause 2.8.2 of the Policy. The qualification requirements were

not based on Recognition of Prior Learning Assessment outcome as stated in the responses received from Dr Mjoli, Dr Msibi, Dr Nala Mr Naidoo and Ms Jonas.

5.1.43.9.2 In the light of the above, it is submitted that, the recruitment, selection and interview members did not ensure that the minimum job requirements as stipulated in the job advertisement when shortlisting candidates are adhered to in line with the dictates of Clause 2.8.1 which states that:

*“selection criteria that was objective, related to the inherent requirements of the job and consistently applied to all applicants”.*

5.1.44 Having considered the evidence against the process followed leading to the appointment of Ms Jonas, the conclusion is that the recruitment selection and interview panel members disregarded to promote the values and principles contained in the Constitution 1996, resulting in the interviewing and eventually appointment of Ms Jonas. The shortlisting of Ms Jonas was neither justifiable in relation to the available legislative framework nor could it be demonstrated by available evidence sourced during the course of the investigation.

5.1.45 The recruitment, selection and interview panel disregarded adherence to the Water Research Commission Human Resource Manual of 29 April 2019 in this regard. The Internal Audit Report that Dr Mjoli referred to in her response constitutes a narration of the recruitment, selection and interview process followed leading to the appointment of Ms Jonas in the post. The report did not provide any new information or unearth irregularities associated with the filling of the post.

## **6 FINDINGS**

6.1 Having regard to the evidence and the regulatory framework determining the standard that the recruitment, selection and interview panel should



have complied with, the Public Protector is making the following adverse findings:

**6.1.1 Regarding whether the Commission appointed Ms Jonas in the post of Executive Manager: Knowledge Management and Communications without her meeting the minimum educational requirements stipulated in the job advertisement if so, whether the conduct constitutes improper conduct or maladministration**

6.1.1.1 The allegation that the Commission appointed Ms Jonas in the post of Executive Manager: Knowledge Management and Communications without her meeting the minimum educational requirements stipulated in the job advertisement for the post is substantiated.

6.1.1.2 The appointment of Ms Jonas in the post of Executive Manager: Knowledge Management and Communications constitutes an irregular appointment.

6.1.1.3 Ms Jonas did not meet the minimum educational requirements stipulated in both the *First Advertisement* and *Re-advertisement* for the post of Executive Manager: Knowledge Management and Communications at the time of her appointment in the post. She should not have been shortlisted, interviewed and appointed in the post as she was unqualified in terms of the advertised requirements for the post which required possession of a Master's Degree. She was in possession of a Bachelor of Creative Communications and an Honours Degree in Marketing Management as her highest qualification at the time of her shortlisting, interview and appointment.

6.1.1.4 The recruitment, selection and interview panel disregarded the minimum educational job requirements stipulated in the advertisement for the post which favoured the shortlisting and interviewing of Ms Jonas.

- 6.1.1.5 The conduct of the recruitment, selection and interview panel failed to promote the basic values and principles governing public administration as stipulated in section 195 of the Constitution, 1996. The Constitution's basic values and principles obliges organs of state to amongst others, uphold and maintain a high standard of professional ethics, engage in employment and personnel practices based on ability, objectivity, fairness and render services impartially, fairly, and equitably and without bias.
- 6.1.1.6 Furthermore, the conduct of the recruitment, selection and interview panel was also in breach of **Clause 2.8.1** of the the Water Research Commission Human Resource Manual, 2019 which stipulates that a, *"Selection criteria shall be objective, related to the inherent requirements of the job and consistently applied to all applicants"*.
- 6.1.1.7 In the above regard, the conduct of the recruitment, selection and interview panel constitutes improper conduct as envisaged in section 182(1) of the Constitution, 1996 and maladministration as envisaged in section 6(5)(a)(i) of the Public Protector Act, 1994.

## 7 **REMEDIAL ACTION**

7.1 The appropriate remedial action taken as contemplated in section 182(1)(c) of the Constitution, 1996 with a view to remedying the maladministration and improper conduct referred to in this report are as following:

7.1.2 **The Chairperson of the Commission, within ninety (90) working days of receipt of this report:**

7.1.2.1.1 Take steps to address the irregular appointment of Ms Jonas in the post of Executive Manager: Communication and Knowledge Management within the legal and policy prescripts available to the Commission; or.

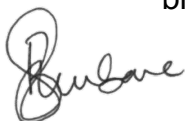
7.1.2.1.2 Take any other steps provided for in the Labour Relations Act 66 of 1995.

7.1.2.2 Take disciplinary action in terms of Clause 2.11 of the Water Research Commission Human Resource Policy Manual and or applicable policies and prescripts against the recruitment, selection and interview panel members for failing to adhere to the recruitment and selection policy of the Commission resulting in the shortlist, interview and appointment of a candidate not meeting the requirements for the post of Executive Manager: Communications and Knowledge Management.

## 8 MONITORING

8.1 The Chairperson of the Commission must submit an Implementation Plan to the Public Protector within thirty (30) working days from the date of receipt of this report indicating how the remedial action referred to in paragraph 8 above will be implemented.

8.2 In terms of the Constitutional Court Judgement in the matter of *Economic Freedom Fighters v Speaker of the national Assembly and other; Democratic Alliance v Speaker of the national Assembly and others [2016] ZACC 11*, and in order to ensure the effectiveness of the Public Protector South Africa, the remedial action taken in this report are legally binding unless a court directs otherwise.



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**ADV. BUSISIWE MKHWEBANE**  
**PUBLIC PROTECTOR OF THE**  
**REPUBLIC OF SOUTH AFRICA**

**DATE:** 31/01/2022



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*Assisted by: Mulao Lamula*