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## **MEDIA STATEMENT**

### **Public Protector South Africa releases reports on investigations it conducted in the first quarter of 2024**

**Sunday, 30 June 2024:** The Public Protector South Africa (PPSA) today issued its reports based on the investigations it had conducted in the first quarter of the 2024/25 financial year.

During the period under review, the PPSA received 1,850 new complaints, of which 926 were early resolution, 571 related to lack of service delivery, while 88 of the cases related to allegations of maladministration and related improprieties in the conduct of state affairs.

#### **A summary of key reports**

The reports of the Public Protector are issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), which empowers the Public Protector to report on any conduct in state affairs that is suspected to be improper or to result in any impropriety or prejudice and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act), which provides that the Public Protector may make known the findings, point of view or recommendation of any matter investigated by her.

#### **1. Alleged irregular appointment of Opulentia by the Emfuleni Local Municipality**

The allegation that the Emfuleni Local Municipality had irregularly appointed Opulentia Financial Services JV Fezi Auditors and Consultants (Opulentia) for the provision of insurance brokerage services without following proper supply chain management is substantiated.

The investigation emanated from a complaint lodged with the PPSA by an anonymous complainant on 17 September 2020, who alleged, among others, that the municipality irregularly appointed Opulentia even though the company failed to make the shortlist. Furthermore, the complainant alleged that the company that had scored the highest, and was recommended by the Bid Evaluation Committee (BEC), namely Lateral Unison, was overlooked.

The evidence before the Public Protector indicates that the municipality embarked on a competitive bidding process from 06 May 2019 for the procurement of a short-term brokerage

service. The first BEC was appointed to evaluate the tender, but it was inexplicably dissolved before the evaluation process was finalised. The second BEC was subsequently appointed, but this process was also discontinued although the tender was not formally cancelled as required by the law.

Instead of an open tender process, the municipality embarked on a separate process in terms of Regulation 32 of the Municipal Finance Management Act (MFMA) to procure the same service. The regulation allows for the procurement of goods or services under contracts which have been secured by other organs of state.

Evidence also shows that some of the functionaries of the municipality conspired to bend the rules in favour of Oplentia. For example, before the appointment of winning bidder, Lateral Unison, could be confirmed by the Bid Adjudication Committee, the then Chief Financial Officer of the Emfuleni Local Municipality Mr Andile Dyakala appointed Oplentia by invoking Regulation 32 of the Municipal Supply Chain Management Regulation without the requisite Municipal Council resolution.

Regulation 32 states that the goods or services that are procured by the organ of state must be exactly the same in every respect, including the terms and conditions as that required by the municipality or municipal entity. The municipality or municipal entity will rely on the open competitive bidding process that the other organ of state undertook in appointing the service provider, thereby saving on the administrative efforts and costs.

It was against this backdrop that the Emfuleni Local Municipality relied on the existing contract of the Matjhabeng Local Municipality for short-term insurance brokerage, which was provided by Oplentia.

Upon evaluation of the legal framework, the investigation by the PPSA found that the Municipality did not act in accordance with Regulations 13(1) and 13(2) of the Preferential Procurement Policy Framework Act, which require organs of state to give the stipulated reasons for the cancellation of the tender and publish a notice in the newspapers and on the municipality's website where the original tender was advertised.

The evidence further reveals that:

- the municipality opted to utilise Regulation 32 under a contract secured by the Matjhabeng Local Municipality without ensuring that the contract periods are aligned. Furthermore, the terms and conditions differed in that, there were additional costs incurred through the brokering services for short-term borrowing.
- the Municipality did not follow the terms and conditions of Section 45 of the MFMA in that, they did not obtain a resolution from the Municipal Council approving the debt agreement.
- paragraph 34 of the municipality's approved Supply Chain Management (SCM) Policy does not provide for the procedure to be followed when procuring goods and services under contracts secured by other organs of states, as contemplated in Regulation 32 of the MFMA;
- section 217 of the Constitution was flouted. The section requires that when an institution enters into contracts for goods and services, it must follow a system which is fair, equitable, transparent, competitive, and cost effective. The tender to Lateral

Unison was already in place on 04 February 2020, when Mr Dyakala used Regulation 32, to appoint Oplentia whilst Lateral Unison was still contracted to provide the same services to the municipality.

On the strength of evidence obtained during the investigation and the application of the legal framework to the facts of the matter, the Public Protector concluded that:

- the functionaries of the municipality procured the contract in terms of Regulation 32 of the MFMA without cancelling the initial advert as required by Regulation 13 of the PPPFA.
- the contract was not in compliance with Regulation 32 of the SCM Regulations in that the terms and conditions were not the same and the period of the contract were misaligned.
- the appointment of Oplentia for the provision of insurance brokerage services was irregular and not in accordance with section 217 of the Constitution, 1996 and section 62(1) and 78(1) of the MFMA.

Having received similar complaints, the Emfuleni Local Municipality launched its own internal Probity Audit Report in February 2020 – about six months before the complaint was lodged with the PPSA. The Probity Audit Report found material irregularities in the appointment of Oplentia, and made the following findings:

- There was a lack of an appropriate procurement plan;
- There was also a lack of monitoring and oversight of the functionality of the bid committees which resulted in a non-functional SCM bid committee;
- The bid committees had inadequate capacity and skills to evaluate complicated bids and the analysis of financial information;
- There was a lack of and/or ineffective communication within the SCM related structures within the municipality;
- There was no monitoring of the bid validity period and there was also a continuation with the bidding processes while the tender was no longer valid; and
- The issue of wasteful expenditure having been incurred in terms of cost attached to normal competitive bidding processes was also identified.

The Public Protector has noted that the Municipality's Internal Probity Report was ratified by the Municipal Council, and the Council resolved that the municipality's policies, including the SCM policy be reviewed; that a workshop be arranged for employees on SCM policy; and that the dismissal of the implicated employees be endorsed as recommended by the chairperson of the hearing.

In the light of the corrective action already taken by the municipality, the Public Protector is of the view that where a state institution has already taken action or implemented remedial action based on its own internal practice and prescripts, within its sphere of administration, as is clear in this matter, it would not be prudent to take further remedial action.

## **2. Alleged irregular appointment of C-Squared Consumer Connectedness (PTY) LTD and the resultant excessive expenditure incurred for the events leading up to and the funerals of Messrs Makgoe and Mdi**

The investigation originates from a complaint lodged with the PPSA by Dr Roy Jankielsohn, a Member of the Provincial Legislature and Leader of the Democratic Alliance in the Free State Province, on 31 May 2023. He contended that C-Squared was appointed as the events coordinator and event service provider in a short space of time, without any vetting processes being conducted, and that it was unclear whether competitive bidding processes were followed.

Based on the evidence before the Public Protector, the allegation that the functionaries of the Free State Office of the Premier irregularly appointed C-Squared and incurred excessive expenditure for events leading up to and the funerals of Education Member of Executive, Mr Tate Makgoe, and Warrant Officer Mdi, is substantiated.

The functionaries of the Free State Office of the Premier proceeded to evaluate and adjudicate the quotation received from C-Squared despite the quotation including items that were not listed on the specifications of the Request For Quotation (RFQ), in contravention of section 45(a) to (d) of the Public Finance Management Act.

The appointment of C-Squared and resultant expenditure was in violation of the provisions of sections 195(a),(b),(f) and 217(1) of the Constitution and in contravention of section 38(1)(a)(iii) of the PFMA and National Treasury Regulation 16A3.2(a), as the process was not conducted in accordance with a system that was fair, equitable, transparent, and cost effective as the quotation was not evaluated in terms of the criteria stated in the RFQ.

The Public Protector takes cognisance that the circumstances under which the funeral preparations were to be done required an urgent procurement process, however, it was still incumbent on the Accounting Officer and functionaries of the Free State Office of the Premier to adhere to the standards set out in section 217 of the Constitution read with sections 38(1)(a)(iii), 45(b) of the PFMA and National Treasury Regulations 16A3.2.

The investigation found that there was no segregation of the functions that were performed by the officials in the drafting of the specifications, the evaluation of the quotations and the adjudication thereof, in that the SCM Demand and Acquisition officials who evaluated the quotations also formed part of the Bid adjudication Committee which was not in line with the provisions of National Treasury Circular: Implementation of Supply Chain Management, 27 October 2004, and renders the procurement process in violation of section 217 of the Constitution.

Paragraph 1.4 of the Funeral Policy provides for the categories of persons who qualify for a provincial official funeral. Paragraph 1.5 states that other persons may also qualify for special provincial official funerals. The evidence at the Public Protector's disposal indicates that Mr Dukwana obtained approval from the President, Mr Ramaphosa, declaring only the funeral of Mr Makgoe as a provincial official funeral. No evidence could be found by the Public Protector that approval was sought from and granted by the President, to declare Mr Mdi's funeral as a

special provincial official funeral. Accordingly, the approximate amount of one million rand (R1 000 000) spent towards Mr Mdi's funeral, cannot be justified.

National Treasury Regulation 21.1.1 stipulates that when such cash amounts exceed one hundred thousand rand (R100 000) per case, the approval of the relevant legislature must be sought by including the item separately in the appropriation bill.

Even though the Funeral Policy does not define "*reasonable costs*", cognisance must be taken that R5.9-million rand for a funeral could have never been the intention of the policy. Reasonable costs should be understood within the ambit of "*funeral undertaker costs including the coffin and limited catering for the family and State/Official guests*". In this instance, the functionaries went beyond same.

The Public Protector found that Mr Kopung Ralikontsane, the Director-General in the Office of the Premier, failed to obtain the required approval for funds to be voted by the provincial legislature.

To this end, the Public Protector has taken the following remedial actions:

- **The Presidency**

Within **one hundred and twenty (120) calendar days** from the date of this report, in line with section 85(2)(b) of the Constitution and in consultation with the National Treasury review the Funeral Policy to determine the actual costs related to services that are expected to be offered per funeral category, in light of the deficiencies identified in this report.

- **The Premier**

Within **ninety (90) calendar days** from the date of this report, in terms of section 84 of the PFMA, take disciplinary action against Mr Ralikontsane for failure to execute his duties in terms of section 38 of the PFMA relating to the events leading up to and funerals of Messrs Makgoe and Mdi.

Within **ninety (90) calendar days** from the date of this report, in terms of section 84 of the PFMA, ensure that disciplinary action is taken by the Director General against the functionaries of the Free State Office of the Premier for participating in the procurement and appointment of C-Squared.

- **The Director General**

Within **sixty (60) calendar days** from the date of this report, in line with section 7(3)(b) of the Public Service Act, 1994, as amended and section 38(1)(h) of the PFMA, initiate disciplinary proceedings against Mr Martins, Mr Tsunke, Ms Tsimele and Mr Kokoana, for violating the provisions of the Constitution, contravening section 45(a) to (d) of the PFMA and paragraphs 2.2, 2.3, 2.4 and 2.5 of the SCM Policy, for their participation in the procurement process and appointment of C-Squared and appraise the Premier on the steps taken.

- **The Directorate for Priority Crimes Investigation (DPCI)**

A copy of this Report is provided to the DPCI as a referral in terms of section 6(4)(c)(ii) of the Public Protector Act, to consider this Report and to establish if any acts of impropriety identified herein amount to criminal conduct in terms of the Prevention and Combating of Corrupt Activities Act, 2004.

The Premier is expected to submit an action plan to the Public Protector within **thirty (30) calendar days** from the date of this report on the implementation of the remedial actions. The submission of the implementation plan and the implementation of the remedial action shall, in the absence of a court order, be complied with within the period prescribed in this report to avoid being in contempt of the Public Protector.

### **3. Alleged improper conduct by functionaries of the Gauteng Department of Infrastructure Development and the Gauteng Education department in connection with the construction of Mayibuye Primary School**

The report relates to an investigation into allegations that the functionaries of the Gauteng Department of Infrastructure Development (GDID) and the Gauteng Department of Education (GDE) improperly constructed Mayibuye Primary School on an old sewer line; without conducting a wetland study; and spent over R82-million on an incomplete project.

The investigation originates from a complaint lodged by Mr Mmusi Maimane on 16 September 2020.

Mr Maimane alleged at the time that the GDID spent R82-million on the construction of the school equipped to cater for 1,200 primary school learners, however, the school had at the time of the lodgement of the complaint, not been utilised as it cannot obtain an occupancy certificate due to the dangerous terrain on which it was built.

Based on the evidence before the Public Protector, the allegation that the functionaries of the Gauteng Department of Infrastructure Development improperly constructed Mayibuye Primary School at Commercia Rabie Ridge/Midrand prior to conducting a wetland study, thus resulting in overspending, costs overruns and undue delays in completing the project, is substantiated.

The investigation by the PPSA revealed various forms of maladministration, undue delays, and irregularities, which occurred during the construction of Mayibuye Primary School such as the following:

- The Contractor namely, Basic Blue/Nebavest was appointed by GDID on 22 August 2015, but the permission to occupy for the site was obtained from the landowner, City of Johannesburg Metropolitan Municipality on 22 September 2016, which was 13 months after the award of the contract or tender;
- The GDE amended the scope of the contract four days after the contractor was appointed to include amongst other things, smart school requirements. These required additional funding from Gauteng Provincial Treasury, and resulted in increased costs and further delays to get approvals from the relevant the provincial treasury;

- The handing over of the site to the Contractor was also unduly delayed as it only happened on 12 May 2017. As a direct result of the delays, the GDID and GDE incurred Compensation Events (CEs) of over R10-million towards the Contractor for “*standing time*”;
- Poor project management by the GDE and GDID resulted in their inability to identify shortcomings that existed on the site such as the revision of the scope of the project by GDE to incorporate smart school’s requirements, the diversion of sewer lines and the encroaching properties on site; and
- Both the GDE and GDID failed to ensure that undue delays experienced in this project were prevented or avoided through proper planning, project management by coordinating their actions through coherent governance, consultation with one another and cooperation as contemplated in section 41(1) of the Constitution.

Furthermore, the allegation that the functionaries of the Gauteng Department of Infrastructure Development improperly constructed Mayibuye Primary School at Commercia Rabie Ridge/Midrand prior to conducting a wetland study, thus resulting in overspending, costs overruns and undue delays in completing the project, is substantiated.

PPSA investigators found that the Gauteng Department of Agriculture, Rural Development and Environment (GDARDE) had no record of an application or a decision for an environmental authorisation as a provincial department responsible for environmental affairs in the Gauteng province from GDID as contemplated in National Environmental Management Act Regulations, and in terms of Version 13 of GDARDE’s March 2014 Minimum Requirements in connection with the development footprint activities for the site where Mayibuye Primary School is constructed.

The wetland study was only commissioned after construction had already commenced on site.

Even without the certainty due to the modifications already done in preparation for building on the northern portion of Erf 2326 Commercia Extension 34 Township Rabie Ridge/Midrand, all the school buildings are without a doubt within 500 metres radius of a wetland. No water use license authorisation application was submitted in relation to the construction of Mayibuye Primary School on Erf 2326 Commercia Extension 34 Township Rabie Ridge/Midrand. This was not in line with section 21(c) and (i) of National Water Act, 1998.

All the delays detailed above could have been avoided if both the functionaries of GDID and GDE collaborated and cooperated effectively to satisfy themselves about the permission to occupy site and the availability land to build the school prior to awarding the tender to the Contractor. As a result of the apparent lack of collaboration and coordinated project management by these two departments, undue delays ensued and both GDID and GDE incurred cost overruns and expenditure prohibited in terms sections 38(1)(c)(ii) and (iii) of the PFMA and 45(c) of the PFMA.

The CEs or costs incurred by GDID and GDE towards the contractor for “*standing or idling time*” are all irreconcilable with the prohibited expenditure in terms section 38(1)(c)(ii) and (iii) of Public Finance Management Act, 1999 (PFMA) and section 45(c) of the PFMA as well as in direct contravention of the efficient, economic, and effective use of resources envisaged in

section 38(1)(b) of PFMA, section 45(b) of PFMA and section 195(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution).

The GDID's own internal investigation, the Auditor General South Africa, and Gauteng Provincial Treasury's findings confirmed that there were irregular expenditures in the project caused by amongst other things poor contract management and planning by GDID's officials.

Having regard to the evidence, the regulatory framework determining the standard that GDID and GDE should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

- **Premier of Gauteng**

Take cognisance of this report and in line with his executive powers envisaged in section 125(2) of the Constitution and exercise oversight on the implementation of the remedial action;

- **Member of the Executive Council for Gauteng Human Settlements and Infrastructure Development**

Take cognisance of this report in line with powers contemplated in section 63(1)(a) of the PFMA and ensure implementation of the remedial actions as contemplated in paragraph(s) below, by GDID;

- **Member of the Executive Council for Gauteng Department of Education**

Take cognisance of this report in line with powers contemplated in section 63(1)(a) of the PFMA and ensure implementation of the remedial action as contemplated in paragraph(s) below, by GDE.

- **Member of the Executive Council for Gauteng Department of Finance**

Take cognisance of this report in line with powers contemplated in section 63(1)(a) of the PFMA and ensure implementation of the remedial action as contemplated in paragraph below.

- **Auditor General of South Africa**

In terms of section 6(4)(c)(ii) of the Public Protector Act, the Public Protector hereby refers this report to the AGSA in line with its mandate.

- **The Head of Department of GDID**

Within **sixty (60) calendar days** from the date of receipt of this report, provide the Public Protector with a Project Plan, in accordance with the MEC's bilateral meeting convened on 25 January 2024 where an executive decision was reached that GDID will only implement the external civil works. The Project Plan must indicate how and when the completion of the remaining external civil works will be finalised to ensure that Mayibuye Primary School is fully operational in line with the efficient and economic management of the working capital as contemplated in terms of section 38(1)(c)(iii) of the PFMA and to enable learners to fully access and utilise all the facilities of the school during 2024;



Within **sixty (60) calendar days** of receipt of this report, provide the Public Protector, and the MEC for Human Settlements and Infrastructure Development with a progress report, in respect of the implementation of the recommendations set out in the GDID's internal investigation dated 28 April 2022, as contemplated in terms of section 38(1)(h) of the PFMA.

Within **sixty (60) calendar days** from the date of this report provide the Public Protector, and the MEC for Human Settlements and Infrastructure Development with the Project Plan indicating how GDID shall work collaboratively with GDE in line with the principles of cooperative governance as contemplated in section 41(1)(h) of the Constitution to initiate a water use authorisation application process as recommended by DWS to ensure compliance with sections 21 and 22 of the National Water Act, 1998 and NEMA Regulations, 2017.

- **The Head of the Gauteng Department of Education**

Ensure continuous compliance and strict monitoring mechanisms of the Project Plan already provided to the Public Protector on 14 June 2024 to ensure that the school is fully operational in line with the efficient and economic management of the working capital in terms of section 38(1)(c)(iii) of the PFMA.

Within **sixty (60) calendar days** from the date of receipt of this report, provide the relevant Treasury with a report envisaged in paragraph 3.2 (iv) of Treasury Instruction 2 of 2015/16: Cost Control Measures for the Construction of New Primary and Secondary Schools and the Provision of Additional Buildings at Existing Schools to enable the Treasury to interrogate costs overruns, project status, track expenditure trends and take necessary corrective action to ensure the full completion of Mayibuye Primary School project.

Within **sixty (60) calendar days** from the date of this report provide the Public Protector, and the MEC for Education with the Project Plan indicating how GDE will work collaboratively with GDID in line with the principles of cooperative governance as contemplated in section 41(1)(h) of the Constitution to initiate a water use authorisation application process as recommended by DWS to ensure compliance with sections 21 and 22 of the National Water Act, 1998 and NEMA Regulations, 2017.

- **The Head of the Gauteng Provincial Treasury**

Within **sixty (60) calendar days** upon receipt of a report from GDE envisaged in Paragraph 3.2 (iv) of Treasury Instruction 2 of 2015/16: Cost Control Measures for the Construction of New Primary and Secondary Schools and Provision of Additional Buildings at Existing Schools, provide the Public Protector with monitoring mechanisms or measures to be put in place to prevent irregular and fruitless expenditure in relation to this project, in line with the provisions of Paragraph 3.3 of Treasury Instruction 2 of 2015/16: Cost Control Measures for the Construction of New Primary and Secondary Schools and the Provision of Additional Buildings at Existing Schools, section 18(1)(b) and (c) as well as section 18(2)(f) of the PFMA.

The Heads of Departments are expected to submit action plans to the Public Protector within **thirty (30) calendar days** from the date of this report on the implementation of the remedial action.

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

**4. Investigation into allegations of contravention of Transnet' SOC LTD's policies in relation to a payment of R350 000 made to the Popo Molefe Foundation while he was chairperson of Transnet**

The investigation emanated from a complaint lodged with the PPSA by the Treasurer-General of the Economic Freedom Fighters (EFF), Ms Omphile Maotwe, MP, on 15 November 2020 in which she raised the following issues for investigation:

1. Whether the payment of R350 000 made to the Popo Molefe Foundation by MNS Attorneys in April 2019, was not in contravention of clause 11.2.2 of the Transnet Ethics Code, which requires employees and non-executive directors of Transnet to act with integrity and professionalism by "*refraining from using a position of authority and/or facilities provided by Transnet to further personal interests or that of friends and relatives*"; as Dr Molefe was a sitting chairperson of the Transnet Board when the aforesaid transaction was concluded;
2. Whether the payment by MNS Attorneys to the Popo Molefe Foundation did not affect or unduly influence Dr Molefe's independence and his relationship with MNS Attorneys as a service provider to Transnet;
3. Whether the said payment by MNS Attorneys to the Popo Molefe Foundation was due to a corrupt relationship between Dr Molefe and MNS Attorneys or any of its officials; and
4. Whether Transnet investigated reports of alleged corruption in respect of a payment to the Popo Molefe Foundation in terms of clause 5.3 of the Transnet Ethics Code.

Based on the evidence gathered during the investigation, the allegation that Dr Popo Molefe, in his capacity as the Chairperson of the Transnet Board, contravened clause 11.2.2 of the Transnet Ethics Code and/or failed to manage any actual or perceived conflict of interest, in relation to his interest in the Popo Molefe Foundation and the purchase of a sponsorship package from the Foundation in the amount of R350 000 by MNS Attorneys, a service provider to Transnet, is not substantiated.

MNS Attorneys was already a service provider to Transnet prior to the appointment of Dr Molefe as chairperson of the Board. No evidence could be found to suggest that MNS Attorneys had an unfair advantage emanating from the relationship with the Popo Molefe Foundation. The Public Protector could not find evidence suggesting that Transnet facilities in both tangible or intangible forms as envisaged in Clause 11.2.2 of the Transnet Ethics Code, were used or employed in the soliciting of the sponsorship by the Popo Molefe Foundation.

Furthermore, there is no evidence that Dr Molefe sought to use his position or Transnet facilities to advance his private interests, or actually derived any benefit at the expense of Transnet as a result of the sponsorship made to the Popo Molefe Foundation or took decisions which were prejudicial to Transnet resulting therefrom.

The Public Protector found that Dr Molefe declared his interests in the Popo Molefe Foundation, and could not find evidence indicating that he has a personal financial interest in MNS Attorneys, which required him to declare to Transnet as contemplated in section 75 of the Companies Act and the provisions of the Disclosures Policy.

Accordingly, the Public Protector could not find evidence to conclude that the conduct of Dr Molefe constitutes improper conduct as contemplated in section 182(1)(a) of the Constitution and section 6(5)(b) of the Public Protector Act.

The allegation that Transnet failed to investigate allegations of corruption against Dr Molefe in relation to the payment of R350 000 to the Popo Molefe Foundation by MNS Attorneys in terms of clause 5.3 of the Transnet Ethics Code, is not substantiated.

The Transnet Ethics Code does not provide for the procedure to be undertaken for the investigation of complaints against non-executive directors as contemplated in clause 5.3, considering that Board members are not employees.

Accordingly, the conduct of the Transnet Board does not constitute improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration in terms of section 6(5)(a) of the Public Protector Act.

Having said this, the Public Protector has made the following observations:

- (a) The Public Protector's investigation identified deficiencies relating to the absence of a clear procedure and process for the reporting and investigation of violations of the Transnet ethics related policies by members of the Board. Although, this had been partially addressed through the Transnet Commitment Statement, which was approved by the Transnet Board on 31 May 2023, there is no SOP providing for a detailed procedure and process to be followed.
- (b) The Public Protector further observed that paragraph 4 of the Investigation SOP, contains an exclusion for the Investigations and FRM department to conduct investigations against the Board members and stipulates that such investigations should be handled through a separate process, yet to be established. The Public Protector observed that, a separate process that was proposed in 2021 is still outstanding.
- (c) The Public Protector is of the view that it is imperative that Transnet and the shareholder Department determine the process to be followed to report and investigate complaints against non-executive directors.
- (d) In its response to the section 7(9) Notice, Transnet recognised the need to review and potentially amend Transnet's policies for consistency, especially regarding the SOP for complaint handling and investigations, and Anti-Fraud and Corruption Policy. Transnet further identified the No Gifts and Hospitality Policy as the appropriate vehicle to accommodate the recommendation that non-executive directors should be required to disclose any donations and/or sponsorships received directly, in their

personal capacity, or indirectly, accruing to other private interests, such as Non-Profit Organisations, Trusts, Foundations, from service providers doing business with Transnet.

In light of the observations, the following recommendations are made in terms of section 6(4)(c)(ii) of the Public Protector Act:

- **The Minister of Public Enterprises**

Take note of the report and **within one hundred and twenty (120) days**, facilitate the development of a procedure for the reporting and investigation of complaints against non-executive directors in terms of section 15(3) of the Companies Act, 2008, as amended, read with paragraph 6 of the Transnet's Memorandum of Incorporation.

- **The Transnet Board of Directors**

Must take note of the report and ensure that **within one hundred and twenty (120) days** the GCE develops the SOP dealing with the complaint handling process and investigations concerning the Investigations personnel, the CSO the GCE and Board members as contemplated in paragraph 4 of the Investigation SOP and the referral process stipulated in paragraph 16.1 of the Anti-Fraud and Corruption Policy.

**Within one hundred and twenty (120) calendar days** upon receipt of the final report, review the Declaration of Interest and Related Party Disclosures Policy for Non-Executive Directors, 2021 and/or related governance instruments to require the Non-Executive Directors to disclose, **within thirty (30) calendar days**, any donations and/or sponsorships received directly, in their personal capacity, or indirectly, accruing to other private interests, such as Non-Profit Organisations, Trusts, Foundations, from service providers doing business with Transnet, in terms of section 15(3) of the Companies Act, 2008, as amended, read with paragraph 6 of the Transnet's Memorandum of Incorporation.

- **The Group Chief Executive of Transnet**

**Within one hundred and twenty (120) calendar days** upon receipt of the final report, take steps to ensure that a separate process is established and approved to deal with the complaint handling process and investigations concerning the Investigations personnel, the CSO, the GCE and Board members as contemplated in paragraph 4 of the Investigation SOP and the referral process stipulated in paragraph 16.1 of the Anti-Fraud and Corruption Policy.

The Minister and the Chairperson of the Transnet Board, shall **within thirty (30) calendar days** of the report, provide the Public Protector with an action plan with timelines, outlining how the above-mentioned recommendations will be implemented.

In addition, the Minister and the Chairperson of the Transnet Board, shall **within thirty (30) calendar days** after the expiry of the one hundred and twenty (120) calendar day period stated above, furnish the Public Protector with a close-out report on the implementation of the recommendations.

In addition to the above-mentioned reports, the Public Protector has also issued the following reports:

- Report No.01 of 2024/2025 – Systemic investigation into administrative deficiencies relating to gender-based violence within the South African justice system
- Report No.02 of 2024/2025 – Popo Molefe Foundation
- Report No.03 of 2024/2025 – Opulentia Report
- Report No.04 of 2024/2025 - Anonymous //Matjhabeng Local Municipality
- Report No.05 of 2024/2025 – Makgoe Funeral costs
- Report No.06 of 2024/2025 - Sonakile//NW Premier Maape
- Report No.07 of 2024/2025 - Hoffman//President Cyril Ramaphosa
- Report No.08 of 2024/2025 - Anonymous//NW Department of Health
- Report No.09 of 2024/2025 - JD Bloom//Gauteng Department of Health

Matters finalised during this quarter through investigations were 436, while another 340 were finalised by means of advice – bringing the total number of resolved complaints to 776.

All these reports can be accessed on the Public Protector South Africa website at [www.pprotect.org](http://www.pprotect.org) .

The implementation of remedial action by state organs was at approximately 28.9% fully implemented as of 30 June 2024; not implemented stands at 39.2%; and partially implemented at 20.9% to date.

The PPSA awaits approval of the proposed amendment to the Public Protector Act, which among other things, include criminalising the non-implementation of our remedial action.

IMPLEMENTATION OF REMEDIAL ACTION NATIONAL STATUS 2016/17 TO 26 MARCH 2024 FINANCIAL YEARS		
REPORT IMPLEMENTATION STATUS	QUANTITY	PERCENTAGE
Fully Implemented	90	28.89%
Partially Implemented	65	20.90%
Not Implemented	122	39.22%
Judicial Review	34	10.93%
<b>SUB TOTAL</b>	<b>311</b>	<b>100%</b>

Figure 1: Status of national statistics on the implementation of remedial action

IMPLEMENTATION OF REMEDIAL ACTION NATIONAL STATUS 2016/17 TO 26 MARCH 2024 FINANCIAL YEARS					
Province / Branch	Fully Implemented	Partially Implemented	Not Implemented	On judicial Review	Total Matters taken on JR (active, non-active, "hanging", etc)
HQ	30	29	72	19	46
EC	5	8	3	0	2
FS	6	2	1	0	2
GP	8	7	9	2	6
KZN	5	3	2	0	0
LP	9	3	0	2	5
MPU	2	2	10	1	2
NC	6	5	14	4	5
NW	17	4	10	3	3
WC	2	2	1	4	5
<b>TOTAL</b>	<b>90</b>	<b>65</b>	<b>122</b>	<b>34</b>	<b>76</b>

Figure 2: A breakdown of the statistics per province

## **Concluding remarks**

In light of the many challenges faced in South African society, as a consequence of the issues raised in the aforementioned investigations, it is our sincere hope that other state institutions and role players, will borrow lessons from these reports and where appropriate, commence with efforts to remedy similar matters that may exist within them.

Adv. Kholeka Gcaleka wishes to reiterate the binding nature of the Public Protector's remedial action. Accordingly, where adverse findings have been made and appropriate remedial action taken, she urges the relevant organs of state to implement the remedial action fully.

The implementation of the Public Protector's remedial action is an expression of a willingness by the state to ensure that justice is not only done but is seen to be done and enforces accountability.

The Public Protector is entrusted with *inter alia*, the duty to help the state identify shortcomings in its systems, and the remedial actions contained in the Public Protector's reports are intended to assist in correcting the identified inadequacies to prevent reoccurrence of the issues complained of in the future. Many of the issues which are the subject matter of the reports listed herein form part of crucial South African discourse.

We hereby express our gratitude for the increasing spirit of cooperation with the PPSA by organs of State, who have remedied the malfeasance internally, even prior to the conclusion of our investigations.

As we make a countdown to the month of October, we are reminded that it is the month during which the PPSA was established. The PPSA annually celebrates Good Governance through awareness and education of its mandate and impact during that month. The aim of the campaign is to shed light on the value and importance of good governance in public administration, and where appropriate, to provide platforms to various commentators on their views on how good governance can be achieved.

We wish to emphasise our gratitude to the People of South Africa, who have continued to place their trust in this invaluable institution and have shown us that they have faith in the credibility of our work and continue to believe in the relevance of this constitutional institution by continuing to entrust us with their complaints.

Adv. Gcaleka further wishes to recognise and thank the committed and relentless staff of the PPSA, led by the CEO Ms. Thandi Sibanyoni and the COO Adv. Nelisiwe Nkabinde, who have all contributed to the work of the institution.

**ENDS**