
PROCLAMATIONS • PROKLAMASIES

PROCLAMATION NO. R. 23 OF 2017

**by the
PRESIDENT of the REPUBLIC of SOUTH AFRICA**

SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT, 1996 (ACT NO. 74 OF 1996): REFERRAL OF MATTERS TO EXISTING SPECIAL INVESTIGATING UNIT

WHEREAS allegations as contemplated in section 2(2) of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996) (hereinafter referred to as the "Act"), have been made in respect of the affairs of the Gauteng Provincial Department of Health (hereinafter referred to as "the Department");

AND WHEREAS the State or the Department suffered losses that may be recovered;

AND WHEREAS I deem it necessary that the said allegations should be investigated and civil proceedings emanating from such investigation should be adjudicated upon;

NOW, THEREFORE, I hereby, under section 2(1) of the Act, refer the matters mentioned in the Schedule in respect of the Department, for investigation to the Special Investigating Unit established by Proclamation No. R. 118 of 31 July 2001 and determine that, for the purposes of the investigation of the matters, the terms of reference of the Special Investigating Unit are to investigate as contemplated in the Act, any alleged—

- (a) serious maladministration in connection with the affairs of the Department;
- (b) improper or unlawful conduct by employees or officials of the Department;
- (c) unlawful appropriation or expenditure of public money or property;
- (d) unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;
- (e) intentional or negligent loss of public money or damage to public property;
- (f) offence referred to in Parts 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), and which offences were committed in connection with the affairs of the Department; or
- (g) unlawful or improper conduct by any person, which has caused or may cause serious harm to the interests of the public or any category thereof,

which took place between 1 January 2016 and the date of publication of this Proclamation or which took place prior to 1 January 2016 or after the date of publication of this Proclamation, but is relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule or involve the same persons, entities or contracts investigated under authority of this Proclamation, and to exercise or perform all the functions and powers assigned to or conferred upon the said Special Investigating Unit by the Act, including the recovery of any losses suffered by the State or the Department, in relation to the said matters in the Schedule.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Thirtieth day of June Two thousand and seventeen.

J G Zuma
President

By Order of the President-in-Cabinet:

T M Masutha
Minister of the Cabinet

SCHEDULE

1. The procurement of, or contracting by or on behalf of the Department of the services from 28 entities in whose care mental health care users were entrusted and payments made in respect thereof in a manner that was—

- (a) not fair, competitive, transparent, equitable or cost-effective;
 - (b) contrary to applicable—
 - (i) legislation;
 - (ii) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury or the relevant Provincial Treasury; or
 - (iii) manuals, policies, procedures, prescripts, instructions or practices of or applicable to the Department;
 - (c) conducted by or facilitated through the improper or unlawful conduct of—
 - (i) officials of the Department; or
 - (ii) any other person or entity, to corruptly or unduly benefit themselves or others; or
 - (d) fraudulent,
- and related unauthorised, irregular or fruitless and wasteful expenditure incurred by the Department or the State.

2. Any unlawful or improper act or omission by—

- (a) officials of the Department; or
 - (b) the owner of, a person in control of, or the staff of, an entity referred to in paragraph 1 of this Schedule,
- which caused or may have caused serious harm to mental health care users who were entrusted into the care of an entity.

PROKLAMASIE NO. R. 23 VAN 2017**van die
PRESIDENT van die REPUBLIEK van SUID-AFRIKA****WET OP SPESIALE ONDERSOEKEENHEDE EN SPESIALE TRIBUNALE, 1996
(WET NO. 74 VAN 1996): VERWYSING VAN AANGELEENTHEDE NA
BESTAANDE SPESIALE ONDERSOEKEENHEID**

AANGESIEN bewerings soos beoog in artikel 2(2) van die Wet op Spesiale Ondersoekeenhede en Spesiale Tribunale, 1996 (Wet No. 74 van 1996) (hierna na verwys as die "Wet"), gemaak is in verband met die aangeleenthede van die Gauteng Provinsiale Departement van Gesondheid (hierna na verwys as "die Departement");

EN AANGESIEN die Staat of die Departement moontlike verliese gely het wat verhaal kan word;

EN AANGESIEN ek dit nodig ag dat gemelde bewerings ondersoek en siviele verrigtinge voortspruitend uit sodanige ondersoek bereg moet word;

DERHALWE verwys ek hierby, kragtens artikel 2(1) van die Wet, die aangeleenthede in die Bylae vermeld ten opsigte van die Departement, vir ondersoek na die Spesiale Ondersoekeenhede ingestel by Proklamasie No. R. 118 van 31 Julie 2001 en bepaal dat, vir die doeleindes van die ondersoek van die aangeleenthede, dit die opdrag van die Spesiale Ondersoekeenhede is om soos beoog in gemelde Wet, ondersoek te doen na enige beweerde—

- (a) ernstige wanadministrasie in verband met die aangeleenthede van die Departement;
- (b) onbehoorlike of onregmatige optrede deur werknemers of beamptes van die Departement;
- (c) onregmatige bewilliging of besteding van publieke geld of eiendom;
- (d) onwettige, onreëlmatige of nie-goedgekeurde verkrygende handeling, transaksie, maatreël of praktyk wat op Staatseiendom betrekking het;
- (e) opsetlike of nalatige verlies van publieke geld of skade aan publieke eiendom;
- (f) misdryf bedoel in Dele 1 tot 4, of artikel 17, 20 of 21 (vir sover dit op voornoemde misdrywe betrekking het) van Hoofstuk 2 van die Wet op die Voorkoming en Bestryding van Korrupte Bedrywighede, 2004 (Wet No. 12 van 2004), en welke misdrywe in verband met die sake van die Departement gepleeg is; of
- (g) onwettige of onbehoorlike optrede deur enige persoon wat ernstige benadeling vir die belange van die publiek of enige kategorie daarvan veroorsaak het of kan veroorsaak,

wat plaasgevind het tussen 1 Januarie 2016 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Januarie 2016 of na die datum van publikasie van hierdie Proklamasie, maar wat relevant is tot, verband hou met, insidenteel of bykomstig is tot, die aangeleenthede vermeld in die Bylae of wat dieselfde persone, entiteite of kontrakte betrek wat ondersoek word kragtens die volmag verleen deur hierdie Proklamasie, en om al die werksaamhede en bevoegdhede wat deur die Wet aan die gemelde Spesiale Ondersoekeenhede toegewys of opgedra is, uit te oefen of te verrig in verband met die genoemde aangeleenthede in die Bylae, insluitend die verhaal van enige verliese wat deur die Staat of die Departement gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die Dertigste dag van Junie Twee duisend-en-sewentien.

J G Zuma
President

Op las van die President-in-Kabinet:

T M Masutha
Minister van die Kabinet

BYLAE

1. Die aanskaffing van, of kontraktering deur of namens die Departement van die dienste van 28 entiteite in wie se sorg geestesgesondheids-sorg-verbruikers toevertrou was en betalings wat in verband daarmee gemaak is op 'n wyse wat—

- (a) nie regverdig, mededingend, deursigtig, billik of koste-effektief was nie; of
 - (b) strydig was met toepaslike—
 - (i) wetgewing;
 - (ii) handleidings, riglyne, praktyknotas, omsendskrywes of instruksies wat deur die Nasionale Tesourie of die relevante Provinsiale Tesourie uitgevaardig is; of
 - (iii) handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op die Departement van toepassing is;
 - (c) gedoen of gefasiliteer was deur die onbehoorlike of onregmatige optrede van—
 - (i) beamptes van die Departement; of
 - (ii) enige ander persoon of entiteit,om hulself of andere op 'n korrupte of onbehoorlike wyse te bevoordeel; of
 - (d) bedrieglik was,
- en enige verwante ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat deur die Departement of die Staat opgeloop was.

2. Enige onwettige of onbehoorlike handeling of versuim deur—

- (a) beamptes van die Departement; of
 - (b) die eienaar van, 'n persoon in beheer van of die personeel van, 'n entiteit waarna in paragraaf 1 van hierdie Bylae verwys word,
- wat ernstige benadeling vir geestesgesondheids-sorg-verbruikers wat aan die sorg van 'n entiteit toevertrou was, veroorsaak het of kon veroorsaak het.