

# Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA  
REPUBLIEK VAN SUID-AFRIKA

*Regulation Gazette*

**No. 8956**

*Regulasiekoerant*

**Vol. 519**

**Pretoria, 4 September 2008**

**No. 31394**

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**PROCLAMATION***by the**President of the Republic of South Africa***No. R. 35, 2008****SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT, 1996 (ACT NO. 74 OF 1996): REFERRAL OF MATTERS TO EXISTING SPECIAL INVESTIGATING UNIT AND SPECIAL TRIBUNAL**

WHEREAS allegations as contemplated in section 2(2) of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996) (the Act), have been made in respect of the affairs of Mhlatuze Water;

AND WHEREAS Mhlatuze Water suffered losses that may be recovered;

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

NOW, THEREFORE, I hereby, under section 2(1) of the said Act, refer the matters mentioned in the Schedule 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 said Act, any -

- (a) serious maladministration in connection with the affairs of Mhlatuze Water;
- (b) improper or unlawful conduct by officers and/or employees of the Mhlatuze

Water;

- (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 Part 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, and which offences were committed in connection with the affairs of the Mhlathuze Water ; 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 have taken place between 1 January 2004 and the date of publication 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 said Act, in relation to the said matters in the Schedule, for the purpose of the recovery of any losses suffered by Mhlathuze Water.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Twenty-second day of August Two thousand and eight.

**T. M. MBEKI**

**President**

By Order of the President-in-Cabinet:

**B. S. MABANDLA**

**Minister of the Cabinet**

**SCHEDULE**

1. The procurement and background to the procurement of services by Mhlatauze Water for the inspection, repair and maintenance of underwater pipes conveying effluent from the Mondi Business Paper Plant into the sea, contrary to applicable legislation or internal prescripts, policy or regulations that regulate such procurement in respect of Mhlatauze Water, and losses suffered by Mhlatauze Water as a result thereof.
2. The procurement and background to the procurement of goods or services from various entities by Mhlatauze Water contrary to applicable legislation or internal prescripts, policy or regulations that regulate such procurement and losses suffered by Mhlatauze Water as a result thereof.
3. Any actual or prospective interest that a member of the governing Board of Mhlatauze Water or employee of Mhlatauze Water may have had in any of the transactions set out in paragraphs 1 and 2 above.
4. The use of advance payments by Mhlatauze Water received from entities for purposes other than those intended by these entities.
5. The failure by Mhlatauze Water to settle contractual obligations within a reasonable period of time and losses suffered by Mhlatauze Water as a result thereof.
6. The non-compliance with prescribed procurement and tender procedures by Mhlatauze Water.
7. The unlawful or constructive dismissal of staff which resulted in financial prejudice or losses to Mhlatauze Water.
8. The use of the resources of Mhlatauze Water by employees of Mhlatauze Water for private business purposes.

9. The financial prejudice and losses suffered by Mhlatauze Water as a result of the sale of houses owned by Mhlatauze Water.
10. The failure by Mhlatauze Water to rent out houses at a market related value and the absence of a control system to ensure that rent in respect of the property was collected by Mhlatauze Water.
11. The fruitless and wasteful expenditure incurred by Mhlatauze Water as a result of –
  - (a) a value chain analysis which was conducted by consultants on behalf of Mhlatauze Water, which was never finalised;
  - (b) the collapse of an electronic records management system that was introduced in 2003 at Mhlatauze Water; and
  - (c) a project undertaken to value the assets of Mhlatauze Water.
12. Irregular expenditure incurred by Mhlatauze Water in respect of security guards that were appointed to guard the house of the Chief Executive Officer of Mhlatauze Water.
13. Financial prejudice and losses suffered by Mhlatauze Water as a result of excessive spending on travel, accommodation and other expenses by members of the governing Board of Mhlatauze Water.

**PROKLAMASIE***van die**President van die Republiek van Suid-Afrika***No. R. 35, 2008****WET OP SPESIALE ONDERSOEKEENHEDE EN SPESIALE TRIBUNALE, 1996  
(WET No. 74 VAN 1996): VERWYSING VAN AANGELEENTHEDE NA  
BESTAANDE SPESIALE ONDERSOEKEENHEID EN SPESIALE TRIBUNAAL**

AANGESIEN bewerings soos beoog in artikel 2(2) van die Wet op Spesiale Ondersoekeenhede en Spesiale Tribunale, 1996 (Wet No. 74 van 1996) (die Wet), gemaak is in verband met die aangeleentheid van Mhlatuze Water;

EN AANGESIEN Mhlatuze Water verliese gely het wat verhaal kan word;

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

DERHALWE verwys ek hierby, kragtens artikel 2(1) van die Wet, die aangeleentheid in die Bylae vir ondersoek na die Spesiale Ondersoekeenheid ingestel by Proklamasie No. R. 118 van 31 Julie 2001 en bepaal dat, vir die doeleindes van die ondersoek van daardie aangeleentheid, die opdrag van die Spesiale Ondersoekeenheid is om soos beoog in gemelde Wet, ondersoek te doen na enige -

- (a) ernstige wanadministrasie in verband met die aangeleentheid van Mhlatuze Water;
- (b) onbehoorlike of onregmatige optrede deur beamptes en/of werknemers van Mhlatuze Water;

- (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, in verband met die sake van Mhlatuze Water; 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 2004 en die datum van publikasie van hierdie Proklamasie, en om die bevoegdhede en werksaamhede wat deur die Wet aan die Spesiale Ondersoekendeheid toegewys of opgedra is uit te oefen of te verrig in verband met die genoemde aangeleenthede in die Bylae, vir doeleindes van die verhaal van enige verliese wat deur Mhlatuze Water gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die Twee-en-twintigste dag van Augustus Tweeduisend-en-agt.

**T. M. MBEKI**

**President**

Op las van die President-in-Kabinet:

**B. S. MABANDLA**

**Minister van die Kabinet**



**BYLAE**

1. Die verkryging en agtergrond tot die verkryging van dienste deur Mhlatuze Water vir die inspeksie, herstel en onderhoud van onderwaterpype wat afval vervoer van die Mondi Business Paper aanleg in die see, strydig met toepaslike wetgewing of interne voorskrifte, beleid of regulasies wat sodanige verkryging ten opsigte van Mhlatuze Water reël, en verliese wat Mhlatuze Water as gevolg daarvan gely het.
2. Die verkryging en agtergrond tot die verkryging van goedere of dienste van verskeie entiteite deur Mhlatuze Water strydig met toepaslike wetgewing of interne voorskrifte, beleid of regulasies wat sodanige verkryging reël en verliese wat deur Mhlatuze Water gely is as gevolg daarvan.
3. Enige werklike of voorgenome belange wat 'n lid van die Bestuursraad van Mhlatuze Water of werknemer van Mhlatuze Water in enige van die transaksies soos uiteengesit in paragrawe 1 en 2, hierbo, mag gehad het.
4. Die gebruik van vooruitbetalings deur Mhlatuze Water ontvang van entiteite vir ander doeleindes as wat deur die entiteite bedoel was.
5. Die versuim van Mhlatuze Water om kontraktuele verpligtinge binne 'n redelike tydperk te skik en verliese wat deur Mhlatuze Water gely is as gevolg daarvan.
6. Die nie-nakoming van voorgeskrewe verkrygings- en tenderprosedures deur Mhlatuze Water.
7. Die onregmatige of konstruktiewe afdanking van personeel wat aanleiding gegee het tot finansiële nadeel of verliese vir Mhlatuze Water.
8. Die gebruik van hulpbronne van Mhlatuze Water deur wernemers van Mhlatuze Water vir private besigheidsdoeleindes.

9. Die finansiële nadeel en verliese wat deur Mhlatuze Water gely is as gevolg van die verkoop van huise wat aan Mhlatuze Water behoort het.
10. Die versuim deur Mhlatuze Water om huise te verhuur teen markverwante waarde en die afwesigheid van 'n beheerstelsel om te verseker dat die huur van die eiendom deur Mhlatuze Water ingesamel is.
11. Die vrugtelose en verspilte uitgawes wat opgedoen is deur Mhlatuze Water as gevolg van –
  - (a) 'n kettingwaarde analise wat gedoen was deur konsultante namens Mhlatuze Water, en wat nooit gefinaliseer was nie;
  - (b) die ineenstorting van 'n elektroniese opgawe beheerstelsel wat gedurende 2003 in gebruik geneem is by Mhlatuze Water; en
  - (c) 'n projek wat onderneem is om die bates van Mhlatuze Water te waardeer.
12. Onreëlmatige uitgawes wat deur Mhlatuze Water aangegaan is ten opsigte van sekuriteitswagte wat aangestel is om die huis van die Hoof Uitvoerende Beampte van Mhlatuze Water op te pas.
13. Finansiële nadeel en verliese wat deur Mhlatuze Water gely is as gevolg van buitensporige uitgawes ten opsigte van reis, akkomodasie en ander uitgawes deur lede van die Bestuursraad van Mhlatuze Water.

**PROCLAMATION**  
*by the*  
***President of the Republic of South Africa***

**No. R. 36, 2008**

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

WHEREAS allegations as contemplated in section 2(2) of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996) (the Act), have been made in respect of the affairs of the Department of Health: Eastern Cape Province (hereinafter referred to as “the Department”);

AND WHEREAS the Department suffered losses that may be recovered;

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

NOW, THEREFORE, I hereby, under section 2(1) of the said Act, and at the request of the Premier of the Eastern Cape Province, refer the matters mentioned in the Schedule 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 said Act, any -

- (a) serious maladministration in connection with the affairs of the Department;
- (b) improper or unlawful conduct by officers and/or employees 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 Part 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, 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 have taken place between 1 January 2003 and the date of publication 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 said Act, in relation to the said matters in the Schedule, for the purpose of the recovery of any losses suffered by the Department.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Twenty-second day of August Two thousand and eight.

**T. M. MBEKI**

**President**

By Order of the President-in-Cabinet:

**B. S. MABANDLA**

**Minister of the Cabinet**

**SCHEDULE**

1. The payments made by the Department -
  - (a) to officers, employees and former employees of the Department in respect of salaries, benefits, commission or allowances not due to them;
  - (b) in respect of salaries to fictitious employees; and
  - (c) in respect of overtime remuneration to employees contrary to applicable prescripts and legislation.
  
2. The procurement by employees of the Department of services, including the performance of the Department's internal audit function, contrary to applicable prescripts and legislation.
  
3. Non-compliance, by employees of the Department, with applicable prescripts and legislation governing the procurement of goods and services for the Department by -
  - (a) extending and modifying the terms of existing contracts with suppliers and service providers; and
  - (b) dividing procurement lots into segments, in order to follow less stringent procurement processes, or to bring it within the scope of the procurement authorisation of employees involved in procurement.
  
4. The procurement of goods for the Department by its employees at the Kgotsong Santa Hospital from entities in which the relatives, friends or associates of the employees held an interest.
  
5. The manipulation of the Department's procurement system at the Kgotsong Santa Hospital by entities in which the relatives, friends or associates of the employees held an interest, by the submission of contrived quotations for the supply of goods and services to the Department, in order to promote the acceptance of other quotations.
  
6. Losses suffered by the Department as a result of -
  - (a) the payment of amounts in excess of what was due in terms of contracts with suppliers and service providers;
  - (b) payments made to service providers for work not completed or not done

- according to the required standard;
- (c) the payment by the Department of invoices not addressed to the Department and of amounts incorrectly calculated in invoices; and
  - (d) unnecessary and extravagant expenditure in respect of goods, services, accommodation and travel.
7. Losses suffered by the Department due to the forfeiture of indemnification for accident damages as a result of the failure by its employees to timeously report accidents and submit insurance claims.
8. The unauthorised upgrading and subsequent irregular filling of a post at the Kgotsong Santa Hospital.
9. Irregular conduct relating to the performance assessment of an employee at the Kgotsong Santa Hospital.

**PROKLAMASIE**  
*van die*  
**President van die Republiek van Suid-Afrika**

**No. R. 36, 2008**

**WET OP SPESIALE ONDERSOEKEENHEDE EN SPESIALE TRIBUNALE, 1996  
(WET No. 74 VAN 1996): VERWYSING VAN AANGELEENTHEDE NA  
BESTAANDE SPESIALE ONDERSOEKEENHEID EN SPESIALE TRIBUNAAL**

AANGESIEN bewerings soos beoog in artikel 2(2) van die Wet op Spesiale Ondersoekeenhede en Spesiale Tribunale, 1996 (Wet No. 74 van 1996) (die Wet), gemaak is in verband met die aangeleentheid van die Departement van Gesondheid: Oos-Kaap Provinsie (hierna verwys na as die “Departement”);

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

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

DERHALWE verwys ek hierby, kragtens artikel 2(1) van die Wet, en op versoek van die Premier van die Oos-Kaap Provinsie, die aangeleentheid in die Bylae 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 daardie aangeleentheid, die opdrag van die Spesiale Ondersoekeenhede is om soos beoog in gemelde Wet, ondersoek te doen na enige -

- (a) ernstige wanadministrasie in verband met die aangeleentheid van die Departement;
- (b) onbehoorlike of onregmatige optrede deur werknemers 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, in verband met die sake van die Departement; 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 2003 en die datum van publikasie van hierdie Proklamasie, en om die bevoegdhede en werksaamhede wat deur die Wet aan die Spesiale Ondersoekendeheid toegewys of opgedra is uit te oefen of te verrig in verband met die genoemde aangeleenthede in die Bylae, vir doeleindes van die verhaal van enige verliese wat deur die Departement gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die Twee-en-twintigste dag van Augustus Tweeuisend-en-agt.

**T. M. MBEKI**

**President**

Op las van die President-in-Kabinet:

**B. S. MABANDLA**

**Minister van die Kabinet**



**BYLAE**

1. Die betalings wat deur die Departement gemaak is –
  - (a) aan beamptes, werknemers en voormalige werknemers ten opsigte van salarisse, voordele, kommissie of toelae waarop hulle nie geregtig was nie;
  - (b) ten opsigte van salarisse aan fiktiewe werknemers;
  - (c) ten opsigte van oortyd-vergoeding aan werknemers, strydig met toepaslike voorskrifte en wetgewing.
  
2. Die verkryging deur werknemers van die Departement van dienste, insluitende die verrigting van die Departement se interne ouditeersfunksie, strydig met toepaslike voorskrifte en wetgewing.
  
3. Nie-nakoming deur werknemers van die Departement van toepaslike voorskrifte en wetgewing wat die verkryging van goedere en dienste vir die Departement reguleer, deur –
  - (a) die bepaling van bestaande kontrakte met diensverskaffers uit te brei of aan te pas; en
  - (b) die aankoofoeveelhede in segmente op te deel, ten einde minder streng aankaffingsprosesse te volg, of om dit binne die omvang van die aankoopmagtiging van werknemers belas met aankope te bring.
  
4. Die aankoop van goedere vir die Departement deur sy werknemers by die Kgotsong Santa Hospitaal vanaf entiteite waarin familielede, vriende of vennote van hierdie werknemers 'n belang gehad het.
  
5. Die manipulering van die Departement se voorsieningstelsel by die Kgotsong Santa Hospitaal deur entiteite waarin familielede, vriende of vennote van werknemers 'n belang gehad het, deur die voorlegging van versinde kwotasies vir die verskaffing van goedere en dienste aan die Departement, om sodoende die aanvaarding van ander kwotasies te bevorder.

6. Verliese wat deur die Departement gely is as gevolg van –
    - (a) die betaling van bedrae meer as wat verskuldig was kragtens kontrakte met leweransiers en diensverskaffers;
    - (b) betalings gemaak aan diensverskaffers vir werk wat nie voltooi is nie of nie volgens die vereiste standarde verrig is nie;
    - (c) die betaling deur die Departement van fakture wat nie aan die Departement gerig was nie of van bedrae in fakture wat verkeerdelik bereken was; en
    - (d) onnodige en buitensporige uitgawes vir goedere, dienste, akkomodasie en reise.
  
  7. Verliese wat deur die Departement gely is deur die verbeuring van skadeloosstelling vir ongeluuskade as gevolg van die versuim van die Departement se werknemers om ongelukke tydig aan te meld en versekeringseise in te dien.
  
  8. Die ongemagtigde opgradering en gevolglike vulling van 'n pos by die Kgotsong Santa Hospitaal.
  
  9. Die onregmatige optrede in verband met die prestasiebeoordeling van 'n werknemer by die Kgotsong Santa Hospitaal.
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