

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



**PUBLIC PROTECTOR  
SOUTH AFRICA**

**REPORT 18 of 2019/20**

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***“Allegations of maladministration, corruption and nepotism against the  
former CEO of AgriSETA”***

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF  
MALADMINISTRATION, CORRUPTION AND NEPOTISM AGAINST THE FORMER  
CHIEF EXECUTIVE OFFICER (CEO) OF THE AGRICULTURAL SECTORAL  
EDUCATION TRAINING AUTHORITY (AgriSETA), MR JERRY MADIBA.**

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## **Executive Summary**

- (i) This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, and published in terms of section 8(1) of the Public Protector Act, 1994.
- (ii) The report relates to an investigation into allegations of maladministration, improper conduct involving nepotism, procurement and recruitment irregularities by Mr Jerry Madiba, the former Chief Executive Officer (former CEO) of the Agricultural Sector Education Training Authority (AgriSETA). The complaint was lodged with the Public Protector through the Public Service Commission (PSC) National Anti-Corruption Hotline (NACH) on 07 October 2013 by anonymous employees (Complainants) of AgriSETA.
- (iii) The Complainants, submitted their complaint in terms of the Protected Disclosure Act, 2000 (PDA), and requested to remain anonymous. The essence of the complaint was that the former CEO, irregularly awarded tenders; appointed service providers without following proper procurement processes and appointed staff without following the prescribed recruitment processes which amounts to maladministration and improper conduct.
- (iv) On analysis of the complaint, the following issues or conducts were identified and investigated:
  - (a) Whether the former CEO irregularly appointed a Personal Assistant (PA), Ms Tshepiso Mamabolo, who does not have the necessary skills and qualifications required for the position;
  - (b) Whether the former CEO irregularly appointed Ms Maria Mahlangu, as a cleaner at AgriSETA; and

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- (c) Whether the former CEO improperly awarded tenders to service providers from the Limpopo Province only, particularly to a company called Kediemetse HR Solutions CC, owned by Ms Onicca Moloto.
- (v) The investigation process was conducted through an exchange of correspondence, meetings and interviews with the Complainants and relevant officials of AgriSETA, consideration and analysis of all the relevant documents and application of the relevant laws, policies and related prescripts.
- (vi) Having assessed AgriSETA’s response as well as the Complainants’ reply thereto, notice letters in terms of Section 7(9) of the Public Protector Act relating to the preliminary findings made on the allegations investigated, were issued and served on AgriSETA’s former CEO and the Board’s Chairperson to respond, and further copied the Minister of Higher Education and Training to make submissions.
- (vii) Based on the responses to the section 7(9) notice letters, I commenced with finalisation of the report on the investigation. I was also informed by the Acting Chairperson of the AgriSETA Board, Mr Thami Ka-Plaatjie, that they had in the meantime, resolved, on 09 May 2017, to commence with disciplinary action against certain officials, including the former CEO. The said officials had been implicated in wrongdoing in a report on a forensic investigation, conducted by OMA Chartered Accountants Inc. (OMA Inc.), into all payments effected to Kediemetse HR Solutions CC for learning programmes entered into, in April 2011 for a period of 12 months. The investigation had been commissioned by the Chairperson of the Audit Committee, Mr Len Hansen with the support of the then Board Chairperson, Professor Gilingwe Mayende.

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- (viii) The forensic investigation had concluded that Ms Onicca Moloto, Kediemetse HR Solutions CC, Mr T Henning - AgriSETA Admin Manager, Ms C Manugu - AgriSETA Skills Delivery Co-ordinator and Ms M Ngcobo-AgriSETA Skills Delivery Administrator, colluded to induce AgriSETA to effect payment to Kediemetse HR Solutions CC for training that had not taken place, in contravention of the contractual agreement between AgriSETA and Kediemetse HR Solutions CC in respect of Sunkloof Nursery (Pty) Ltd invoice SUN003, dated 28 April 2011, for an amount of R112 500 as fictitious/ghost learners' identity numbers had been used to claim for this particular training.
- (ix) According to the OMA forensic investigation report (OMA report), it was recommended that AgriSETA should also institute disciplinary action against Ms Onicca Moloto (Ms Moloto) for the commission of fraud and misrepresentation during the interview process for her appointment , as well as to consider instituting disciplinary action against specific AgriSETA officials for failing to perform their duties with due care and for contravening sections 57(a), 57(c) and section 83(3) of the PFMA in the Kediemetse HR Solutions CC impropriety.
- (x) Prior to the date of the disciplinary hearing scheduled for 04 September 2017, the former CEO requested to be released from his employment contract which was due to expire in 2018.
- (xi) AgriSETA however, consequently failed to implement the other recommendations of the OMA report, which related to the laying of criminal charges and instituting civil action against Ms Moloto and Kediemtse HR Solutions CC.

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- (xii) The AgriSETA Board accepted the former CEO's request on 07 September 2017, which in effect resulted in him being paid a total separation package of **R1 328 276.08**.
- (xiii) The AgriSETA Board upon her request, also agreed to release another implicated official, Ms Moloto from her contract and paid her a separation package of **R537 160, 66**.
- (xiv) OMA's forensic investigation's recommendations were briefly as follows:
- (a) AgriSETA should consider instituting criminal charges against Ms Moloto and Kediemetse HR Solutions CC and its members for forgery and fraud.
  - (b) AgriSETA should institute a civil claim against Ms Moloto and Kediemetse HR Solutions CC to recover any monies paid to Kediemetse HR Solutions CC in respect of the fraudulent transactions and the overpayment identified in this report.
  - (c) AgriSETA should also institute disciplinary action against Ms Moloto for the commission of fraud and misrepresentation during the interview process.
  - (d) AgriSETA should also consider instituting disciplinary action against the following AgriSETA personnel for failing to perform their duties with due care and for contravening sections 57(a) and 57(c) the PFMA:
    - 1. Administrator;
    - 2. Skills Delivery Administrator;
    - 3. Skills Delivery Co-ordinator;

4. ETQA Manager;
5. Skills Development Manager; and
6. The Chief Operations Officer.

- (e) AgriSETA should ensure that the learner contact details are provided to the investigators to establish whether additional fraud has taken place.
- (f) The learnership checklist should be amended to remove the pre-completed aspects and an instruction issued that all relevant elements of the checklist be completed and signed off prior to any payment being considered.
- (xv) Key laws and policies taken into account were those imposing responsibilities and specific standards to be complied with by public functionaries regarding proper use of public power and resources. Those laws and policies are the following:
- (a) Sections 182(1) of the Constitution and 6(4) of the Public Protector Act, 1994, which prohibits maladministration and improper conduct in state affairs.
  - (b) The Protected Disclosures Act, 2000, which relates to the protection of whistle-blowers from victimisation attributed to them having made protected disclosures.
  - (c) Sections 57(a) and (c) and 83(3) of the Public Finance Management Act, 1999 (PFMA) as well as the Discretionary Grant Funding Policies and Procedures were considered to determine whether the awarding of

learnership training programmes to Kediemetse HR Solutions CC was improper.

- (d) Sections 16 and 17 of the Skills Development Act, 1998, providing for the availing of funds by the DHET to the SETAs for skills development programmes, was also considered; and
  - (e) The AgriSETA Recruitment, Selection and Appointment Policy was relied on to determine whether the appointment of certain staff was irregular.
- (xvi) Having considered the evidence and information obtained during the investigation and the regulatory framework , I make the following findings:
- (a) **Regarding whether the former CEO of AgriSETA appointed Ms T Mamabolo as his Personal Assistant despite her not having the necessary skills and qualifications required for the position, I find that:**
    - (aa) The allegation that no proper recruitment processes were followed in the appointment of the former CEO's PA, Ms Mamabolo, is not substantiated.
    - (bb) The appointment of Ms Mamabolo was done in compliance with AgriSETA's Recruitment, Selection and Appointment policy which requires advertising of positions, shortlisting and interviewing candidates prior to the final selection of suitable appointees.
    - (cc) Although the former CEO was part of the panel that interviewed the candidates for the position of the PA in his office and the fact that he attended



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the same church with Ms Mamabolo, no undue influence on the said appointment could be proven on his part.

**(b) Regarding whether the former CEO irregularly appointed Ms Maria Mahlangu, as a cleaner at AgriSETA, I find that:**

(aa) The allegation that the appointment of Ms Maria Mahlangu by the former CEO, as a cleaner within AgriSETA is irregular, is not substantiated.

(bb) Although the appointment of Ms Mahlangu by the former CEO was not preceded by advertising before shortlisting and interviewing of the two (2) candidates from the cleaning services company previously subcontracted to AgriSETA, this was done in compliance with AgriSETA Board’s resolution to fill the vacant post of a cleaner by appointing one of the former employees from the said company.

(cc) The former CEO’s recommendation that Ms Mahlangu’s name should be included among the two (2) candidates could not be regarded as improper as this emanated from a resolution of the Board.

**(c) Regarding whether the former CEO only awards tenders to service providers from Limpopo province, particularly to a company called Kediemetse HR Solutions CC, owned by Ms Onicca Moloto, I find that:**

(aa) The allegation that the appointment and payment of Kediemetse HR Solutions CC as the preferred service provider, which is based in the Limpopo province, by the former CEO was improper, is substantiated.

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- (bb) Initially, in both responses from the then Chairperson of the Board dated 19 November 2013 and AgriSETA's response to the section 7(9) notice letter dated 15 December 2016, my office was not provided with any record relating to the appointment of Kediemetse HR Solutions CC by AgriSETA by the former CEO, except proof of payment to this company.
- (cc) Evidence emanating from the records provided by AgriSETA to my office indicate that all the invoices for the learnership programme submitted by Kediemetse HR Solutions CC for the period under investigation were approved for payment by the former CEO. These formed part of the suspicious payments effected to Kediemetse HR Solutions CC in April 2011,
- (dd) for a period of 12 months by AgriSETA as uncovered by the OMA forensic investigation.
- (ee) The conduct of the former CEO with regard to his signing off of invoices and authorisation of payments thereof to Kediemetse HR Solutions CC without conducting due diligence amounts to unauthorised expenditure and constitutes maladministration as envisaged in section 182(1) of the Constitution and improper conduct as envisaged in section 6(4) of the Public Protector Act.
- (ff) Furthermore, the concealment of the forensic investigation conducted by OMA Inc. in 2012 by AgriSETA officials is improper and constitutes maladministration as envisaged in section 182(1) of the Constitution and improper conduct as envisaged in section 6(4) of the Public Protector Act.
- (xvii) In taking appropriate remedial action in pursuit of section 182(1)(c) of the Constitution, I am mindful of the steps already set in motion by the previous

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(xviii) Board to remedy the improprieties identified at AgriSETA. However, further remedial action is necessary and is as follows:

**(a) The Chief Executive Officer of AgriSETA**

- (aa) Review the termination policies and procedures for all employees to regulate employees who resign after committing acts of misconduct as well as the payment of their salaries and benefits under such circumstances.
- (bb) Review the Recruitment and selection policies to clarify the roles and responsibilities of the Board in filling Senior Management positions.
- (cc) Engage Treasury to explore the blacklisting of this company and Directors in the Government Central Supplier Data Base of government not to conduct business with the state.
- (dd) Implement section 33 of the PFMA in its entirety to prevent recurrence of this kind of misconduct in the future.
- (ee) To approach the Director of Priority Crimes Investigation (DPCI) in order to open criminal investigations for fraud against the former CEO of AgriSETA, Mr J Madiba, Miss O Moloto, Mr T Henning, Ms C Manugu and Ms M Ngcobo as per the recommendations of the OMA report.

**(b) The Chairperson of the AgriSETA Board:**

- (aa) To ensure that all the recommendations of the OMA forensic investigation report are implemented, so that all those officials identified for wrongdoing are made to account for their misdeeds in the irregular appointment and authorisation of payments to Kediemetse HR Solutions CC by AgriSETA in line with section 33 of the Public Finance Management Act .

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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF  
MALADMINISTRATION, CORRUPTION AND NEPOTISM AGAINST THE  
FORMER CHIEF EXECUTIVE OFFICER (CEO) OF THE AGRICULTURAL  
SECTORAL EDUCATION TRAINING AUTHORITY (AgriSETA), MR JERRY  
MADIBA.**

**1. INTRODUCTION**

- 1.1. This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).
- 1.2. The report is submitted in terms of section 8 of the Public Protector Act to:
- 1.2.1. The Minister Higher of Education and Training, Ms Naledi Pandor, MP;
- 1.2.2. The Director General of the Department of Higher Education and Training (DHET), Mr G F Qonde;
- 1.2.3. The Chairperson of the Agricultural Sectoral Education Training Authority (AgriSETA) Board, Mr Christo Van Der Rheede; and
- 1.2.4. The Interim Chief Executive Officer (CEO) of AgriSETA, Mr Zenzele Myeza.
- 1.3. A copy of the report is also provided to:
- 1.3.1 The Chairperson of the Public Service Commission, Adv. R Sizani;

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- 1.3.2 The Complainants ( who wish to remain anonymous); and
- 1.3.3 The former CEO of AgriSETA, Mr Jerry Madiba.
- 1.4 The report relates to an investigation into allegations of maladministration, corruption and nepotism against the former CEO of AgriSETA, Mr Jerry Madiba.

## **2. THE COMPLAINT**

- 2.1 The complaint was lodged with my office through the Public Service Commission (PSC) National Anti-Corruption Hotline (NACH) on 7 October 2013 by anonymous employees (Complainants) of AgriSETA.
- 2.2 The Complainants, submitted their complaint in terms of the Protected Disclosures Act, 2000 (PDA), and requested to remain anonymous.
- 2.3 The essence of their complaints was that AgriSETA and/or Mr Jerry Madiba, the former AgriSETA Chief Executive Officer (former CEO), irregularly appointed a service provider, Kediemetse HR Solutions CC to conduct learnership programmes, without following the prescribed processes.
- 2.4 Further, that he appointed staff that did not qualify for the vacant positions and without following the prescribed recruitment process.

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### **3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

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

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

*“The Public Protector has power as regulated by national Legislation*

*(a) To investigate any conduct in state affairs, or in the public administration in any spare 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 In the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* [2016] ZACC 11; 2016 (3) SA 580 (CC) and (5) BCLR 618, the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect [at para 76]. 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”.*

3.4 In the above-mentioned matter of *Economic Freedom Fighters v Speaker of the National Assembly and Others*, Chief Justice Mogoeng stated the following, when confirming the powers the Public Protector:

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- 3.4.1 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (para 65);
- 3.4.2 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);
- 3.4.3 Taking appropriate remedial action is much more significant than making a mere endeavor 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);
- 3.4.4 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);
- 3.4.5 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);
- 3.4.6 The Public Protector’s power to take appropriate 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);

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- 3.4.7 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 these words suggests that she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence; (para 71(a));
- 3.4.8 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (para 71(d));
- 3.4.9 “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));
- 3.5 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:
- 3.5.1 The Public Protector, in appropriate circumstances, has the power to direct the President to appoint a commission of enquiry and to direct the manner of its implementation. Any contrary interpretation will be unconstitutional as it will render the power to take remedial action meaningless or ineffective (paragraphs 85 and 152).
- 3.5.2 There is nothing in the Public Protector Act that prohibits the Public Protector from instructing another entity to conduct further investigation, as she is empowered by section 6(4)(c)(ii) of the Public Protector Act (paragraph 91 and 92).



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- 3.5.3 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers ( paragraph 100 and 101):
- 3.5.3.1 Conduct an investigation;
  - 3.5.3.2 Report on that conduct; and
  - 3.5.3.3 To take remedial action.
- 3.5.4 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or prima facie findings (paragraph 104).
- 3.5.5 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court (paragraph 105).
- 3.5.6 The fact that there is 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 (paragraphs 107 and 108).
- 3.5.7 Prima facie evidence which point to serious misconduct is a sufficient and appropriate basis for the Public Protector to take remedial action (paragraph 112).
- 3.6 Section 182(2) provides that the Public Protector has additional powers and functions prescribed by legislation.
- 3.7 The Public Protector is further empowered by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs and to resolve disputes through conciliation,

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mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.8 AgriSETA is an organ of state and it performs a public function. As a result the complaint falls within the ambit of the Public Protector.

3.9 Regarding the exercise of my discretion in terms of section 6(9) to entertain matters which arose more than two (2) years from the occurrence of the

incident, and in deciding what constitute ‘*special circumstances*’, some of the special circumstances that I took into account to exercise my discretion favourably to accept this complaint, includes the nature of the complaint and the seriousness of the allegations; whether the outcome could rectify systemic problems in state administration; whether I would be able to successfully investigate the matter with due consideration to the availability of evidence and/or records relating to the incident(s); whether there are any competent alternative remedies available to the Complainants and the overall impact of the investigation; whether the prejudice suffered by the complainants persists; whether my refusal to investigate perpetuates the violation of section 195 of Constitution; whether my remedial action will redress the imbalances of the past. What constitute ‘special circumstances’ therefore depends on the merits of each case.

#### **4. THE INVESTIGATION**

##### **4.1. Methodology**

4.1.1. The preliminary investigation was conducted in terms of section 182 of the Constitution and section 7(1) of the Public Protector Act.

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- 4.1.2. The Public Protector Act confers on me the sole discretion to determine how to resolve a dispute of an alleged improper conduct or maladministration.
- 4.1.3. The conclusion of the preliminary investigation was delayed due to the lack of resources in the office of the Public Protector South Africa.

## **4.2 Approach to the investigation**

- 4.2.1 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to determine:
- a) What happened?
  - b) What should have happened?
  - c) Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration?
  - d) In the event of maladministration or improper conduct, what would it take to remedy the wrong?
- 4.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether or not the former CEO acted improperly in relation to the allegations of the procurement of a service provider, Kediemetse HR Solutions CC, and the appointments of a Personal Assistant and a Cleaner.
- 4.2.3 The enquiry regarding what should have happened, focused on the law or rules that regulate the standard that should have been met by AgriSETA to prevent improper conduct, maladministration and prejudice.

4.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and maladministration. Where the allegations pointed out apparent cases of irregular or fruitless and wasteful expenditure by the organs of state, whether such unconscionable misuse of state funds cannot lead to the recovery thereof from those responsible for the improper conduct or maladministration to ensure future compliance with the regulatory framework setting the applicable standards for good administration.

**4.3 On analysis of the complaint, the following issues were considered and investigated:**

4.3.1 Whether the former CEO of AgriSETA appointed Ms T Mamabolo as his Personal Assistant, despite her not having the necessary skills and qualifications required for the position;

4.3.2 Whether the former CEO irregularly appointed Ms Maria Mahlangu, as a cleaner at AgriSETA; and

4.3.3 Whether the former CEO only awards tenders to service providers from Limpopo province, particularly to a company called Kediemetse HR Solutions CC, owned by Ms Onicca Moloto.

**4.4 The Key Sources of information**

**4.4.1 Documents**

4.4.1.1 Letter from the AgriSETA Chairperson to Cheadle Thompson and Hayson Inc. (CTH Inc.) dated 1 October 2012;

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- 4.4.1.2 First Report of an investigation into the complaints against the former CEO compiled by CTH Inc. in November 2012;
  - 4.4.1.3 Second Report on an investigation by CTH into the complaints against the former CEO – Issues in respect of Service Providers- dated 7 November 2012;
  - 4.4.1.4 Final forensic investigation report by O.M.A Accountants Inc. on the appointment of *Kedimetse HR Solutions CC*, dated June 2012;
  - 4.4.1.5 Minutes of AgriSETA Human Resources Committee meetings, held on 25 January 2010 and 10 February 2010;
  - 4.4.1.6 Minutes of AgriSETA Board meetings, held between 19 September 2012 and 18 September 2013 and on 26 May 2016, 29 May 2017;
  - 4.4.1.7 Minutes of AgriSETA Special Board meeting held on 09 November 2012;
  - 4.4.1.8 Memoranda from AgriSETA staff dated 14 February 2013 and 29 October 2013;
  - 4.4.1.9 Recruitment records of Ms Tshepiso Mamabolo, the Personal Assistant to the former CEO, dated 29 April 2011;
  - 4.4.1.10 Fixed Term Contract of Employment of Ms Mamabolo, signed on 27 June 2011;

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- 4.4.1.11 Recruitment records relating to the appointment of Ms Mahlangu as a cleaner, dated 13 June 2012;
  - 4.4.1.12 Fixed Term Contract of Employment of Ms Mahlangu, dated 25 June 2012;
  - 4.4.1.13 AgriSETA Supply Chain Management Policies and Procedures Manual, dated November 2011;
  - 4.4.1.14 AgriSETA Recruitment, Selection and Appointment Policy;
  - 4.4.1.15 Summary of the annual AgriSETA Service Provider Accreditation register;
  - 4.4.1.16 Minutes of the AgriSETA Skills Delivery Committee meeting held on 28 October 2011;
  - 4.4.1.17 Agenda of Skills Delivery Committee meeting held on 22 March 2012;
  - 4.4.1.18 Memorandum from DHET to the Chairpersons of the Boards and former CEOs of the Sector Education and Training Authorities dated 16 February 2012;
  - 4.4.1.19 Memorandum from the Skills Delivery Manager to the former CEO, dated 07 March 2012;
  - 4.4.1.20 Memorandum from the Manager: Apprenticeships to the former CEO, dated 16 March 2012;

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- 4.4.1.21 Memorandum from the Manager Apprenticeships to the former CEO, dated 22 March 2012;
  - 4.4.1.22 Memorandum from the former CEO of AgriSETA to the AgriSETA Board and EXCO, dated 22 May 2017;
  - 4.4.1.23 AgriSETA Management update by the Interim CEO, Mr Frikkie Fouche, dated 21 September 2017;
  - 4.4.1.24 Separation Agreement between the AgriSETA Board and the former CEO, dated 01 September 2017;
  - 4.4.1.25 Separation Agreement between the AgriSETA Board and Ms Onicca Kediemetse Moloto, former Quality Control Training Office (QCTO) Manager, dated 27 September 2017; and
  - 4.4.1.26 OMA forensic investigation evidence documents sourced from AgriSETA through the SIU on 07 August 2018.

#### **4.5 Correspondence**

- 4.5.1 Letter of complaint from the Chairperson of the Public Service Commission (PSC) addressed to the Public Protector, dated 21 August 2013.
- 4.5.2 Letters from the Public Protector to the Chairperson of AgriSETA Board dated 04 November 2013, 20 November 2013 and 15 September 2014.
- 4.5.3 Letters from the Chairperson of the AgriSETA Board to the Public Protector, dated 19 November 2013, 9 September 2014, 20 October 2014 and 29 October 2014.

- 4.5.4 Letter from the Public Protector to the Chairperson of the PSC, dated 20 November 2013.
- 4.5.5 Letter in terms of section 7(9) of the Public Protector Act, from the Public Protector to the Acting Chairperson of the AgriSETA Board, dated 05 December 2016.
- 4.5.6 Letter in terms of section 7(9) of the Public Protector Act, from the Public Protector to the former CEO of AgriSETA, dated 05 December 2016.
- 4.5.7 Letter dated 08 December 2016 from the Senior Manager Legal Services of DHET, Mr KG Seanego to the Public Protector in response to the section 7(9) notice.
- 4.5.8 Acknowledgement letter from the Public Protector to Mr Seanego of DHET, dated 08 December 2016.
- 4.5.9 Letter dated 15 December 2016 from the former CEO of AgriSETA to the Public Protector in response to section 7(9) notice.
- 4.5.10 Letters dated 10 April 2017, 17 May 2017, 01 June 2017 as well as 05 and 12 September 2017 from the Acting Chairperson of the AgriSETA Board to the Public Protector in response to section 7(9) notice.
- 4.5.11 Letter from the Public Protector to the AgriSETA Board's Acting Chairperson, dated 22 May 2017 and 22 August 2017.



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

**5.1. Regarding whether the former CEO of AgriSETA appointed Ms T Mamabolo as his Personal Assistant despite her not having the necessary skills and qualifications required for the position:**

*Common cause issues*

- 5.1.1. It is common cause that the former CEO appointed Ms T. Mamabolo as his Personal Assistant on 01 June 2011.

*Issues in dispute*

- 5.1.2. The issue for my determination is whether or not the appointment complied with AgriSETA's Recruitment, Selection and Appointment Policy that provides standard and procedures to be followed in the recruitment, selection and placement of staff.
- 5.1.3. AgriSETA through the then Chairperson of the Board, Professor. Gilingwe Mayende (Prof Mayende) stated in their response dated 05 December 2014, that the vacancy was advertised and the closing date for applications was 21 April 2011. A copy of the advertisement and the recruitment records were provided.
- 5.1.4. It was established that eighteen (18) applications were received from internal and external candidates, but only five (5) were shortlisted for interviewing by a panel of three members, which included the former CEO.

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5.1.5. Subsequent to the interviews held on 29 April 2011, three candidates including Ms T Mamabolo, were recommended for appointment according to their aggregate scoring by the panel members, with preference being given to the highest scoring candidate.

5.1.6. Ms Mamabolo was scored the highest by all three panel members.

5.1.7. She was accordingly appointed by the former CEO and her contract of employment signed on 27 June 2011.

*Application of the relevant law*

5.1.8 AgriSETA's recruitment process is regulated by the AgriSETA Recruitment Selection and Appointment Policy.

5.1.9 Section 1.5 thereof provides that:

*"Candidates for non-managerial positions will be interviewed by the CEO and/or Core Function Manager and candidates for managerial positions will be interviewed by the CEO and the Chairperson of the relevant working committee or a person/s designated by him/her".*

*Conclusion*

5.1.10 The involvement of the former CEO in the selection of Ms T Mamabolo as the preferred candidate and her subsequent appointment was in accordance with AgriSETA's Recruitment Selection and Appointment Policy and was accordingly proper.

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**5.2. Regarding whether the former CEO irregularly appointed Ms Maria Mahlangu, as a cleaner at AgriSETA.**

*Common cause issues*

5.2.1. It is common cause that the former CEO appointed Ms Mahlangu as a cleaner at AgriSETA.

*Issues in dispute*

5.2.2. The issue for my determination is whether or not the appointment was in compliance with AgriSETA's Recruitment Selection and Appointment policy.

5.2.3. AgriSETA's Prof Mayende stated in their response dated 05 December 2014, in which they provided a summary of the recruitment process relating to the appointment of Ms Mahlangu, that they had complied with proper recruitment procedure before effecting her appointment.

5.2.4. The summary shows that the former CEO had, based on Board's resolution of 10 February 2010, directed that in the recruitment of a cleaner in the place of a deceased cleaner, consideration should be given to the cleaners who previously worked for AgriSETA as sub-contractors.

5.2.5. AgriSETA's Human Resources (HR) Corporate Services department identified two ladies and interviewed them for the position of a cleaner on 13 June 2012.

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- 5.2.6. The interview panel comprised of Ms Dineo Dhlolongolo (HR Corporate Services), Ms Onicca Moloto, Quality Control Training Office (QCTO Manager) and Ms C Manungu, Education and Training Quality Assurance (ETQA Manager).
- 5.2.7. According to AgriSETA's former CEO, the interview panel members were each given questions to ask the candidates as per the agreed list, and the members were to rate them individually and assign scores against the criteria.
- 5.2.8. The interview panel recommended Ms Mahlangu for appointment as she was scored the highest.
- 5.2.9. The CEO approved her appointment on 15 June 2012 commenting that *“because of her previous and current experience, because she has the knowledge of the AgriSETA, because the Committee recommended her”*.
- 5.2.10. A fixed term employment contract was entered into between AgriSETA represented by the former CEO and Ms Mahlangu on 25 June 2012.

*Application of the relevant law*

- 5.2.11. As already indicated above, AgriSETA's recruitment process is regulated by the AgriSETA Recruitment Selection and Appointment Policy.
- 5.2.12. Section 1.5 of the AgriSETA Recruitment Selection and Appointment Policy. States that:

*“Candidates for non-managerial positions will be interviewed by the CEO and/or Core Function Manager and candidates for managerial positions will be interviewed by the CEO and the Chairperson of the relevant working*

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*committee or a person/s designated by him/her*”. This then confers on the CEO authority to be involved in the recruitment of all employees to AgriSETA.

*Conclusion*

5.2.13. The appointment of Ms Mamabolo was done in compliance with AgriSETA's Recruitment, Selection and Appointment policy which requires, inter alia, shortlisting and interviewing candidates prior to the final selection of suitable appointees.

5.2.14. Although the former CEO was part of the panel that interviewed the candidates for the position of the PA in his office and the fact that he attended the same church with Ms Mamabolo, no undue influence on the said appointment could be proven on his part.

**5.3. Regarding whether the former CEO only awards tenders to service providers from Limpopo province, particularly to a company called Kediemetse HR Solutions CC, owned by Ms. Onicca Moloto, who is allegedly his personal friend.**

*Common cause issues*

5.3.1. It is common cause that Kediemetse HR Solutions CC was awarded a learnership training contract by AgriSETA and/or the former CEO, in 2010.

5.3.2. It is further common cause that the then owner of Kediemetse HR Solutions CC, Ms Onicca Moloto, was the signatory for the company during the learnership training programmes in 2011, and she later took up employment within AgriSETA as the QCTO Manager.

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*Issues in dispute*

- 5.3.3. The issue for my determination is whether or not the appointment of Kediemetse HR Solutions CC by AgriSETA and the authorisation of their payment by the former CEO were in compliance with the PFMA as well as AgriSETA's Supply Chain Management (SCM) Policies and Procedures.
- 5.3.4. In their initial response to my inquiry letter dated 05 December 2014, AgriSETA's Prof Mayende, did not address the issue pertaining to the appointment of Kediemetse HR Solutions CC despite him being part of the two (2) people, who with the Chairperson of the Audit Committee, Mr. Len Hansen, commissioned the forensic investigation by OMA Inc on 28 September 2011.
- 5.3.5 However, in a meeting with the investigation team held on 02 March 2015, AgriSETA officials, Mr Gerard Mamabolo and Ms Thakane Motebang stated that the Discretionary Grant Funding Policies and Procedures provides for the procedure to be followed in applying for funding by service providers under the Discretionary Grants as contemplated in Section 7(3) of the Skills Development Regulations, which regulates how the SETAs are funded. According to these policies all surplus funds will be transferred to the Discretionary Grant Fund within three (3) months of the financial year end.
- 5.3.6 AgriSETA explained that the discretionary grants are available to employers, training providers ,workers and the unemployed who have applied, through the set application process, for funding of learning programmes or projects that meet the National Skills Development Strategy (NSDS) targets, the AgriSETA priorities and, where specified, the sector specific needs.

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- 5.3.7 Where the Discretionary Grant funding is allocated to a service or training provider or other suppliers, the procurement must be conducted according to the PFMA and National Treasury Regulations specifically, as contemplated in section 16A whose provisions were enacted to regulate financial management in state institutions to ensure that all revenue, expenditure, assets and liabilities of government are managed efficiently and effectively; to provide for the responsibilities of persons entrusted with financial management within such entities.
- 5.3.8 With regard to the allegation that the former CEO awarded tenders only to service providers from Limpopo Province, in particular to a company called Kediemetse HR Solutions CC which is allegedly owned by Ms Onicca Moloto, who is also alleged to be his personal friend. The AgriSETA initially failed to submit documents, including the contract pertaining to the appointment of Kediemetse HR Solutions CC, except for a list of service providers apparently kept on the database of AgriSETA in which Kediemetse HR Solutions CCs' name also appears.
- 5.3.9 In a subsequent meeting with the investigation team on 02 March 2015, AgriSETA submitted the Discretionary Grant Funding Policies and Procedures document which provides for the establishment of funding and on how the funding is to be accessed by employers, training providers, workers and the unemployed who have applied.
- 5.3.10 An application form and special conditions document to participate in Learnership implementation were also submitted. It provides for the set application process to be followed by employers, training providers, workers and the unemployed, and also for declaration of interests by the applicants for funding.

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- 5.3.11 Once a year AgriSETA will place an invitation on its website inviting interested AgriSETA stakeholders to apply for Discretionary Grants within a funding window period, usually from 01 November to 28 February each year.
- 5.3.12 AgriSETA stated that preference is always given to the Strategic Objectives of the NSDS.
- 5.3.13 AgriSETA management is said to ensure that a valid, fair and transparent process is developed and established to evaluate the applications against the set criteria and within the set time periods.
- 5.3.14 The internal evaluation committee will make a recommendation to the Skills Delivery Committee or any other relevant delegated Standing Committee or person, who will approve the allocations to the detailed projects aligned to their budget per NSDS target.
- 5.3.15 As indicated above, AgriSETA failed to submit any documentary proof or evidence to indicate how Kediemetse HR Solutions CC was appointed as a service provider, or proof of any deviation from the normal procurement processing appointing this company.
- 5.3.16 The documents which were subsequently submitted by AgriSETA, confirmed that Ms Moloto was a director of Kediemetse HR Solutions CC where she relinquished her directorship and took up employment at AgriSETA as the QCTO Manager in 2011.
- 5.3.17 According to a fixed term contract of employment between AgriSETA and Ms Moloto, it is confirmed that she was appointed by AgriSETA as Manager QCTO on 03 May 2011.



- 5.3.18 Ms Moloto completed a Declaration of Financial and other Interest form on 05 May 2011 in which she declared her 100% ownership of Kediemetse HR Solutions CC.
- 5.3.19 However, according to this form, Ms Moloto resigned and apparently de-registered her name from Kediemetse HR Solutions CC on 20 June 2011.
- 5.3.20 On 02 March 2015, the investigation team met with AgriSETA officials, namely Mr G Mamabolo and Ms T Motebang, whereupon further documents which had been requested and the Discretionary Grant Funding Policies and Procedures as well as Ms Moloto's employment contract were subsequently submitted, but nothing on the procurement of Kediemetse HR Solutions' appointment by AgriSETA to conduct the learnership programme.
- 5.3.21 The investigation team conducted a search on the Companies and Intellectual Property Commission (CIPC) on 23 February 2015 on Kediemetse HR Solutions CC company. Its profile revealed that since registration on 29 September 2004, the ownership of the company initially vested in three (3) directors, namely: Ofentse Theodore Sebakeng; Dikeledi Lettie Sepeng; and Vhutshilo Madzunye.
- 5.3.22 From the CIPC record, Ms Moloto became a director of Kediemetse HR Solutions CC on 27 January 2005.
- 5.3.23 However, Ms Moloto resigned from her directorship of Kediemetse HR Solutions CC on 06 June 2011. This was immediately after taking up employment under AgriSETA on 03 May 2011.

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### **Independent Evidence**

- 5.3.24 Towards the final stages of the investigation, my investigation team was tipped by a whistle-blower of the existence of a forensic investigation report which had been conducted by OMA Inc. into the Learnership contracts awarded to Kediemetse HR Solutions CC by AgriSETA in 2011.
- 5.3.25 I had to subpoena for the report's submission by the forensic investigating company, OMA Inc, after initial attempts to get same from them were not successful because they needed to get permission from AgriSETA
- 5.3.26 The report is therefore briefly dealt with below. According to the then Acting Chairperson of the Board, it is alleged that the AgriSETA Board and the Ministry of the DHET were not aware of the forensic investigation conducted by OMA Inc. at AgriSETA. It had been commissioned by the Chairperson of the Audit Committee and sanctioned by the former Chairperson of the previous Board.
- 5.3.27 According to this report dated 20 June 2012, OMA Inc. was engaged by AgriSETA to conduct an investigation into the payments made to Kediemetse HR Solutions CC for Learning Programmes effected for period 01 April 2010 to 30 June 2011 conducted at Braaks Plants (Pty) Ltd; Lilly Valley (Pty) Ltd and Sunkloof Nursery CC.
- 5.3.28 According to the report, despite repeated requests and a meeting with AgriSETA by OMA Inc., AgriSETA had to date not provided contact details of learners as a key investigation activity was to interview learners to confirm attendance of training and the receipt of stipends or other payments due to the learners. Due to the limitation in scope, the learner interview activity could not be undertaken.

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**5.3.29 The following documentation was reviewed by OMA Inc.:**

- 5.3.29.1 AgriSETA Discretionary Grant Policies Procedures Template FINAL 3 50911(2);
- 5.3.29.2 Contracts between AgriSETA and Employer Organisation;
- 5.3.29.3 Contracts between Employer Organisation and Service Provider;
- 5.3.29.4 Learnership Agreements;
- 5.3.29.5 Copies of Learner ID Documents;
- 5.3.29.6 Invoices;
- 5.3.29.7 Payment Listings;
- 5.3.29.8 Learnership Payment Checklist;
  
- 5.3.29.9 Progress Reports; and
- 5.3.29.10 Copies of Attendance Registers.
- 5.3.30 *The following activities were undertaken:*
  - 5.3.30.1 *Examined and identified required processes followed when reviewing invoices received, reviewed and approved for payments;*
  - 5.3.30.2 *Reviewed the contracts/SLA's/Learnership agreements in place in support of the Learning Programmes against which invoices have been received;*
  - 5.3.30.3 *Verified payments made to the service provider/employer organisation and verified the documentation submitted in support of such payment for accuracy; and*
  - 5.3.30.4 *Examined the documentation in support of the invoices to establish whether the review is in compliance with process. Documentation in support of invoices among others include:*
    - 5.3.30.4.1 *Training Plant;*
    - 5.3.30.4.2 *Application Forms;*
    - 5.3.30.4.3 *Agreements;*

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5.3.30.4.4 *Payments;*

5.3.30.4.5 *Invoices;*

5.3.30.4.6 *Attendance Registers;*

5.3.30.4.7 *Training Assessments;*

5.3.30.4.8 *Moderation and/or Certifications; and*

5.3.30.4.9 *Correspondence.*

5.3.31 ***An analysis of signatures on Attendance registers and a comparison between the same learners signature on multiple attendance registers and as such the following procedures will be carried out regarding this concern:***

5.3.31.1 *Identify learners who appear on more than 1 register;*

5.3.31.2 *Compare signatures of above learners;*

5.3.31.3 *Examine the remaining signatures on attendance registers to identify suspicious signatures; and*

5.3.31.4 *Interviewing learners to verify their existence and to confirm whether learners were provided with the necessary training as part of the Learning Programme.*

5.3.32 ***Probity was conducted on the following organisations: Kediemetse HR Solutions CC; Braaks Plants (Pty) Ltd; Lilly Valley (Pty) Ltd and Sunkloof Nursery CC to establish their existence and whether any AgriSETA officials (excluding Board Members) had an interest in Kediemetse HR Solutions CC.***

5.3.33 ***Findings – Probity’s***

5.3.33.1 ***Ms Onicca Moloto ID No 7210220637084***

5.3.33.1.1 *Resigned Member of Faranani Training and Development Primary Co-operative (Registration Number 2010/001569/24) Status “In Business”.*

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- 5.3.33.1.2 *Active Member of Dynamics Reservations and Travel CC. (Registration Number 2006/101569/24) – Status “Deregistration Final”.*
- 5.3.33.1.3 *Resigned Member of Kediemetse HR Solutions CC (Registration Number 2004/100993/23) Status “In Business”.*
- 5.3.33.1.4 *Active Member of Kediemetse Projects CC (Registration Number 2005/018426/23- Status “Deregistration Final”.*
- 5.3.33.1.5 *Resigned Member of P N K Management Services CC (Registration Number 2005/007706/23) Status “In business”.*
- 5.3.33.2 ***Kediemetse HR Solutions CC:***
- 5.3.33.2.1 *The CC was registered on 29 September 2004;*
- 5.3.33.2.2 *Its registered address is 415 Block M, Soshanguve, 0152;*
- 5.3.33.2.3 *The CC registration number is 2004/100995/23;*
- 5.3.33.2.4 *There are three active members namely:*
- 5.3.33.2.4.1 *Theodore Ofentse Sebakeng (60% membership) Identity Number 9109166509083 appointed on 06 June 2011);*
- 5.3.33.2.4.2 *Dikeledi Lettie Sepeng (20% membership) Identity Number 8204070629084 appointed on 06 June 2011; and*
- 5.3.33.2.4.3 *Vhutshilo Madzunye (20% membership) Identity Number 8108255514088(appointed on 06 June 2011).*
- 5.3.33.3 ***Braaks Plants (Pty) Ltd***
- 5.3.33.3.1 *The company was registered on 05 December 1999.*
- 5.3.33.3.2 *Its registered address is 101 Brooklyn Forum, Lynwood Road, Brooklyn, 0181.*
- 5.3.33.3.3 *The CC registration number is 1999/009726/07.*
- 5.3.33.3.4 *There are five active directors namely:*
- 5.3.33.3.5 *Jan Gysbert Vorster ( ID 6510055143087);*

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- 5.3.33.3.6 *Jacobus Du Plessis Bouwer ( ID 420104 5019080);*
- 5.3.33.3.7 *Moses Ndanduleni Marole ( ID 4304125593081);*
- 5.3.33.3.8 *Hendrik Christoffel Bouwer (ID 6611265190007); and*
- 5.3.33.3.9 *William John Minnie (58020650502089).*
- 5.3.33.4 ***Lilly Valley (Pty) Ltd***
- 5.3.33.4.1 *The company was registered on 11 September 1994.*
- 5.3.33.4.2 *Its registered address is 18 Vegkop Street, Noordheuwel, 1739.*
- 5.3.33.4.3 *The CC registration number 1994/009069/07.*
- 5.3.33.4.4 *There are three active members/ directors namely:*
- 5.3.33.4.4.1 *Heinrich Muller (ID 7304115056085);*
- 5.3.33.4.4.2 *Adriana, Catharina Van Den Berg (ID 7601150170080;*
- 5.3.33.4.4.3 *Liesbeth, Irene Van Den Berg (ID 4802270126183).*
- 5.3.33.5 ***Sunkloof Nursery CC***
- 5.3.33.5.1 *The CC was registered on 31 May 2005.*
- 5.3.33.5.2 *Its registered address is 121 Boshoff Street, New Muckleneuk, Pretoria, 0181.*
- 5.3.33.5.3 *The CC registration number is 2007/111461/23.*
- 5.3.33.5.4 *There is one director namely, Roy Trendler (ID 5703305068102).*
- 5.3.33.6 ***Invoices - Braaks Plants (Pty) Ltd***
- 5.3.33.6.1 *Kediemetse HR Solutions CC issued the following invoices to AgriSETA in respect of Braaks Plants (Pty) Ltd Reg 1999/00927/07 (Contract Number SD/LS/1011/Braaks).*
- 5.3.33.6.2 *The contract period is 01 April 2010 to 31 March 2011, which differs from the contract period recorded in the Learnership agreement of 17 May 2010 to 10 December 2010.*
- 5.3.33.7 ***Invoice 0501 dated 26 May 2010***

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- 5.3.33.7.1 *Kedimetse HR Solutions CC submitted invoice number 0501 dated 26 May 2010, in the amount of R42 750 to AgriSETA for the first tranche payments (25% of total contract value each) for the training of 10 learners ( at a ratio of R17 100 per learner VAT inclusive).*
- 5.3.33.8 ***The Learnerships invoice Checklist has not been completed and signed by all required parties as follows:***
- 5.3.33.8.1 *It should be noted that the Learnership checklist appears to have been pre-completed which defeats the purpose of a checklist as evidenced by the nonsensical confirmation of criteria that are required for specific invoices.*
- 5.3.33.8.2 *The cheque and EFT requisition was prepared on 21 June 2010 for the amount of R42 750 and approved by the CEO on 22 June 2010.*
- 5.3.33.8.3 *No delegation of authority has been sighted allowing the Skills Delivery Co-ordinator to approve payment by signing the invoice.*
- 5.3.33.9 ***Invoice 0801 dated 12 August 2010***
- 5.3.33.9.1 *Kedimetse HR Solutions CC submitted invoice number 0801 dated 12 August 2010, in the amount of R42 750 to AgriSETA for the second tranche payments (25% of total contract value each) for the training of 10 learners (at a rate of R17 100 per learner VAT inclusive).*
- 5.3.33.9.2 *It should be noted that the Learnership checklist appears to have been pre-completed, which defeats the purpose of a checklist as evidenced by the nonsensical confirmation of criteria that are required for specific invoices.*
- 5.3.33.10 ***Invoice number BRK004 dated 18 March 2011***
- 5.3.33.10.1 *Kedimetse HR Solutions CC submitted invoice number BRK004 dated 18 March 2011 in the amount of R85 500 to AgriSETA for the third and fourth tranche payments (50% of total contract value each) for the training of ten learners.*



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5.3.33.10.2 *It should be noted that the Learnership checklist appears to have been pre-completed, which defeats the purpose of a checklist as evidenced by the nonsensical confirmation of criteria that are required for specific invoices.*

5.3.33.10.3 *In calculating the value of fraud, an amount of R17 100 per learner per the Service Level Agreement (SLA) and claimed for on the invoices in this investigation and previous invoices paid but not investigated, has been used.*

5.3.33.10.4 *The contract states:*

*“AgriSETA will pay the Stakeholder per Learner who regularly and consistently (75% attendance) attend the training”.*

5.3.33.10.5 *Therefore where a learner has not attended 25% or more of the training days available as required by the contract but has been claimed for, the claim has been considered fraudulent.*

5.3.33.11 **Workplace Training**

5.3.33.11.1 *A Learnership is defined in the Skills Development Act as follows:*

*“The Learnership consists of a structured learning component, the Learnership includes practical work experience of a specified nature and duration”.*

5.3.33.11.2 *No evidence of the workplace training was provided by Kediemetse HR Solutions CC.*

5.3.33.11.3 *The contract period is from 01 April 2010 to 31 March 2011, which differs from the contract period recorded in the Learnership agreement of 14 July 2010 to 30 January 2011.*

5.3.33.12 **Invoice 0601 dated 28 June 2010**



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- 5.3.33.12.1 *Kedimetse HR Solutions CC submitted invoice number 0601 dated 28 June 2010, in the amount of R70 050 to AgriSETA for the first tranche payments (25% of total contract value each) for the training of 10 learners (at a rate of R26 020 per learner VAT inclusive).*
- 5.3.33.12.2 *It should be noted that the Learnership checklist appears to have been pre-completed, which defeats the purpose of a checklist as evidenced by the nonsensical confirmation of criteria that are required for specific invoices.*
- 5.3.33.12.3 *The cheque and Electronic Funds Transfer (EFT) requisition was prepared on 28 July 2010 in the amount of R70 050 and payment was approved by the CEO on 28 July 2010.*
- 5.3.33.13 ***Invoice 0901 dated 22 September 2010***
- 5.3.33.13.1 *Kedimetse HR Solutions CC submitted invoice number 0901 dated 22 September 2010, in the amount of R70 050 to AgriSETA for the second tranche payment ( 25% of total contract value each) for the training of 10 learners (at a rate of R28 020 per learner VAT inclusive).*
- 5.3.33.13.2 *It should be noted that the Learnership checklist appears to have been pre-completed, which defeats the purpose of a checklist as evidenced by the nonsensical confirmation of criteria that are required for specific invoices.*
- 5.3.33.13.3 *No payment listing has been attached to the invoice.*
- 5.3.33.14 ***Invoice 1201 dated 06 December 2010***
- 5.3.33.14.1 *Kedimetse HR Solutions CC submitted invoice number 1201 dated 06 December 2010, in the amount of R63 045 to AgriSETA for the third tranche payment (25% of total contract value each) for the training of 9 learners (at a rate of R28 020 per learner VAT inclusive).*

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- 5.3.33.14.2 *It should be noted that the Learnership checklist appears to have been pre-completed, which defeats the purpose of a checklist as evidenced by the nonsensical confirmation of criteria that is required for specific invoices.*
- 5.3.33.14.3 *No payment listing has been attached to the invoice to AgriSETA for the fourth tranche payment (25% per learner VAT inclusive).*
- 5.3.33.15 ***Invoice LILL04 dated 10 March 2011***
- 5.3.33.15.1 *Kedimetse HR Solutions CC submitted invoice number lill04 dated 10 March 2011, in the amount of R63 045 for the fourth tranche payment (25% of total contract value each) for the training of 9 learners (at a rate of R28 020 per learner VAT inclusive).*
- 5.3.33.15.2 *It should be noted that the Learnership checklist appears to have been pre-completed, which defeats the purpose of a checklist evidenced by the nonsensical confirmation of criteria that are required for specific invoices.*
- 5.3.33.15.3 *In calculating the value of fraud, the amount of R28 020 per learner per the SLA and claimed for on the invoices in this investigation and previous invoices paid but not investigated, has been used.*
- 5.3.33.15.4 *The contract states:*
- “AgriSETA will pay the Stakeholder per Learner who regularly and consistently (75%) attend the training”.*
- 5.3.33.15.5 *Therefore where a learner has not attended 25% or more of the training days available as required by in the contract but has still been claimed for, the claim has been considered fraudulent.*
- 5.3.33.15.6 *Kedimetse HR Solutions CC charged for 10 learners for the first and second tranches of R14 010 per learner. One of the learners, Malatsi Makidiane Rosinah left the training after 50% of the training had been completed and was replaced by Molefe Dinah Motshegwa who*

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*obviously then attended less than 75% of the training. Kediemetse HR Solutions CC only charged for nine (9) learners for the third and fourth tranches, but did not pass a credit for the learner that did not complete the training in respect of the first and second tranches. The amount involved is R14 010.*

**5.3.33.16 Workplace Training**

**5.3.33.16.1** *A Learnership is defined in the Skills Development Act as follows:*

*“The Learnership consists of a structured learning component; the Learnership includes practical work experience of a specified nature and duration”.*

**5.3.33.16.2** *No evidence of workplace training was provided by Kediemetse HR Solutions CC.*

**5.3.33.17 Invoices –SUNKLOOF Nursery CC**

**5.3.33.17.1** ***Extracts from contract Number SD/LS/1011/Sunkloof between AgriSETA and Sunkloof Nursery:***

**5.3.33.17.1.1** *The contract period is 01 April 2010 to 31 April 2011, differs from the contact period recorded in the Learnership agreement of 06 December 2010 to 30 September 2011.*

**5.3.33.18 Invoice SUN001 dated 21 November 2010**

**5.3.33.18.1** *Kediemetse HR Solutions CC issued invoice number SUN001 dated 21 November 2010, in the amount of R64 125 to AgriSETA for the first tranche payments (25% of total value each) for the training of fifteen (15) learners (at a rate of R17 100 per learner VAT inclusive).*

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5.3.33.18.2 *The Learnerships invoice Checklist has not been completed and signed by all required parties.*

5.3.33.18.3 *It should be noted that the Learnership checklist appears to have been pre-completed, which defeats the purpose of a checklist as evidenced by the nonsensical confirmation of criteria that are required for specified invoices.*

5.3.33.19 ***Invoice SUN002 dated 10 March 2011***

5.3.33.19.1 *Kedimetse HR Solutions CC submitted invoice number SUN002 dated 10 March 2011, in the amount of R64 125 to AgriSETA for the second tranche payments ( 25% of total contract value each) for the training of 15 learners (at a rate of R17 100 VAT inclusive).*

5.3.33.19.2 *It should be noted that the Learnerships checklist appears to have been pre-completed, which defeats the purpose of a checklist as evidenced by the nonsensical confirmation of criteria that are required for specific invoices.*

5.3.33.19.3 *No payment listing has been attached to the invoice.*

5.3.33.20 ***Invoice SUN003 dated 28 April 2011***

5.3.33.20.1 *Kedimetse HR Solutions CC submitted invoice number SUN003 dated 28 April 2011, in the amount of R112 500 to AgriSETA for the third and fourth tranche payments (50% of total contract value each) for the training of 15 learners (at a rate of R15 000 per learner VAT exclusive) It should be noted that the previous two invoices were at a rate of R17 100 VAT inclusive.*

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- 5.3.33.20.2 *It should be noted that this invoice was submitted prior to the training having been completed.*
- 5.3.33.20.3 *It should also be noted that the Learnership checklist appears to have pre-completed, which defeats the purpose of a checklist as evidenced by the nonsensical confirmation of criteria that are required for specific invoices.*
- 5.3.33.20.4 *In respect of invoice number SUN003 dated 28 April 2011, which was for the third and fourth tranches (i.e. completion of the training). The contract start date is 01 April 2010 with an end date of is 31 March 2011.*
- 5.3.33.20.5 *The Learnership agreement has 06 December 2010 as a start date and 30 September 2011 as the end date.*
- 5.3.33.20.6 *However, the first attendance register indicates that the training commenced on 08 January 2011 with last attendance register indicating that the training ended on 15 July 2011, some 11 weeks after the invoice number SUN003, dated 28 April 2011 was submitted for payment. In addition the invoice was submitted for payment five (5) months before the training end date as per the Learnership agreement.*
- 5.3.33.20.7 *In response to an advertisement for the position of QCTO manager at AgriSETA, Ms Onicca Moloto, the sole member of Kediemetse HR Solutions CC submitted an application on 24 March 2011 at 19h58.*
- 5.3.33.20.8 *Ms Onicca Moloto was invited to attend a job interview on 05 April 2011.*

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5.3.33.20.9 *One of the issues raised during the interview was that Ms Onicca Moloto stated that she would resign from Kediemetse HR Solutions CC if she was appointed as QCTO Manager.*

5.3.33.20.10 *The Panel recommended that Ms Onicca Moloto be appointed as QCTO Manager on 18 April 2011.*

5.3.33.20.11 *Ms Onicca Moloto was appointed as AgriSETA QCTO Manager on 01 July 2011 and resigned as a member of Kediemetse HR Solutions CC.*

5.3.33.20.12 *In calculating the value of fraud, the amount of R16 050 per learner per the SLA and claimed for on the invoices in this investigation and previous invoices paid but not investigated, has been used.*

5.3.33.20.13 *The contract states:*

*"AgriSETA will pay the Stakeholder per Learner who regularly and consistently (75% attendance) attend the training".*

5.3.33.20.14 *Therefore where a learner has not attended 25% or more of the training days available as required by the contract but has still been claimed for, the claim has been considered fraudulent.*

5.3.33.21 ***Workplace Training***

5.3.33.21.1 *A Learnership is defined in the Skills Development Act as follows:*

*"The Learnership consists of a structured learning component; the Learnership includes practical work experience of a specified nature and duration".*

5.3.33.21.2 *No evidence of workplace training was provided by Kediemetse HR Solutions CC.*

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### **Conclusion**

- 5.3.33.21.3 *The investigation concluded that Ms Onicca Moloto, Kediemetse HR Solutions CC, T Henning - AgriSETA Admin Manager, C Manugu - AgriSETA Skills Delivery Co-ordinator and M Ngcobo- AgriSETA Skills Delivery Administrator colluded to induce AgriSETA to effect payment to Kediemetse HR Solutions CC for training that had not taken place and in contravention of the contractual agreement between AgriSETA and Kediemetse HR Solutions CC in respect of Sunkloof Nursery (Pty) Ltd Invoice SUN003, dated 28 April 2011, in the amount of R112 500. This constitutes fraud on the part of Ms Onicca Moloto and Kediemetse HR Solutions CC and Financial Misconduct on the part of T Henning - AgriSETA Admin Manager, C Manugu - AgriSETA Skills Delivery Co-ordinator and M Ngcobo – AgriSETA Skills Delivery Administrator.*
- 5.3.33.21.4 *It was also established that the motivation for effecting payment for training that had not taken place in respect of Sunkloof Nursery (Pty) Ltd Invoice SUN003, dated 28 April 2011, in the amount of R112 500 to allow Ms Onicca Moloto to take up the position of AgriSETA QCTO Manager without creating a conflict of interest, is a contravention of the AgriSETA HR Policy and a contravention of Ms Onicca Moloto’s conditions of employment.*
- 5.3.33.21.5 *Additionally, Ms Onicca Moloto’s alleged divesture of her interest in Kediemetse HR Solutions CC is dishonest in that Ms Onicca Moloto had by virtue of inducing AgriSETA to effect payment to Kediemetse HR Solutions CC for training that had not taken place and in contravention of the contractual arrangements between AgriSETA and Kediemetse HR Solutions in respect of Sunkloof Nursery (Pty) Ltd*



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*Invoice SUN003 dated 28 April 2011, in the amount of R112 500, taken the profit of this transaction prior to her resignation as a member of Kediemetse HR Solutions CC.*

- 5.3.33.21.6 *It was further concluded that Ms Onicca Moloto misled the Interview Panel with regard to her interest in Kediemetse HR Solutions CC and the fact that the training being conducted by Kediemetse HR Solutions CC for AgriSETA would continue beyond the proposed employment date.*
- 5.3.33.21.7 *Lastly, AgriSETA, through the early payment of Sunkloof Nursery (Pty) Ltd Invoice SUN003 dated 28 April 2011, in the amount of R112 500 incurred fruitless and wasteful expenditure in that the interest that would have been earned on the amount of R112 500 was forfeited or alternatively overdraft interest that would not have been incurred, was incurred.*
- 5.3.33.21.8 *No Value Added Tax has been included in Sunkloof Nursery (Pty) Ltd invoice SUN003, dated 28 April 2011, in the amount of R112 500, which is in contravention of the Income Tax Act, and AgriSETA knew that VAT should have been charged, as with all the previous Kediemetse HR Solutions CC invoices. It should be noted that for the AgriSETA not to have obtained a Tax directive to exempt Kediemetse HR Solutions CC from charging VAT can be held liable for the unpaid VAT in the amount of R15 750 plus interest and penalties*
- 5.3.33.21.9 *An examination of the attendance registers provided by Kediemetse HR Solutions CC for Sunkloof Nursery (Pty) Ltd, Braaks Plants (Pty) Ltd and Lilly Valley CC also revealed that Ms Onicca Moloto and Kediemetse HR Solutions had forged learners signatures to induce AgriSETA to effect payment for learners who did not attended the contractually required 75% of the training, which constitutes fraud.*



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5.3.33.21.10 *An examination of the attendance registers provided by Kediemetse HR Solutions CC for Braaks Plants (Pty Limited revealed that Ms Onicca Moloto and Kediemetse HR Solutions CC had forged learners signatures to induce AgriSETA to effect payment for a learner who did not attend the contractually required 75% of the training, which constitutes fraud.*

5.3.33.21.11 *An examination of the attendance registers provided by Kediemetse HR Solutions CC for Lilly Valley CC revealed that Ms Onicca Moloto and Kediemetse HR Solutions had forged learners signatures to induce AgriSETA to effect payment for a learner who did not attend the contractually required 75% of the training, which constitutes fraud.*

5.3.33.21.12 *Kediemetse HR Solutions CC charged for 10 learners for the first and second tranches at R14 010 per learner. One of the learners, Malatsi Makidiane Rosinah left the training after 50% of the training had been completed and was replaced by Molefe Dinah Motshegwa who obviously attended less than 75% of the training. Kediemetse HR Solutions CC only charged for nine (9) learners for the third and fourth tranches, but did not pass or accredit for the one (1) learner that did not complete the training in respect of the first and second tranches. The amount involved is R14 010.*

5.3.33.21.13 *The following AgriSETA officials have not exercised their responsibilities with due care and professionalism and have not complied with sections 57(a) and 57(c) of the PFMA.*

5.3.33.21.13.1 *Administration Manager;*

5.3.33.21.13.2 *Skills Delivery Administrator;*

5.3.33.21.13.3 *Skills Delivery Co-ordinator;*

5.3.33.21.13.4 *ETQA Manager;*

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5.3.33.21.13.5 *Skills Development Manager; and*

5.3.33.21.13.6 *Chief Operations Officer.*

5.3.33.21.14 *Kedimetse HR Solutions CC did not provide evidence that learners claimed for received workplace training, a requirement for Learnerships in terms of the Skills Development Act.*

5.3.33.21.15 *There is no evidence that prior to completing the Learnership checklist, that the Skills Development unit requested Finance, Data Capturing and ETQA to complete the checklist resulting in none of the important checks that are the responsibility of Finance, Data Capture and ETQA having been performed.*

5.3.33.21.16 *According to the OMA report, the unwillingness of AgriSETA to provide contact details of learners implies knowledge of other fraudulent claims on the invoices submitted by Kedimetse HR Solutions CC.*

5.3.33.21.17 *Given the fraud identified on the invoices submitted by Kedimetse HR Solutions CC it is probable that communication with the learners would uncover further fraud.*

5.3.33.22 **Recommendations**

5.3.33.22.1 *According to the OMA report, AgriSETA should consider instituting criminal charges against Ms Onicca Moloto and Kedimetse HR Solutions CC and its members for forgery and fraud.*

5.3.33.22.2 *AgriSETA should institute a civil claim against Ms Onicca Moloto and Kedimetse HR Solutions to recover any monies paid to Kedimetse HR Solutions CC in respect of the fraudulent transactions and the overpayment identified in this report.*

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5.3.33.22.3 *AgriSETA should also institute disciplinary action against Ms Onicca Moloto for the commission of fraud and misrepresentation during the interview process.*

5.3.33.22.4 *AgriSETA should also consider instituting disciplinary action against the following AgriSETA personnel for failing to perform their duties with due care and for contravening sections 57 (a) and 57(c) the PFMA:*

5.3.33.22.4.1 *Administrator;*

5.3.33.22.4.2 *Skills Delivery Administrator;*

5.3.33.22.4.3 *Skills Delivery Co-ordinator;*

5.3.33.22.4.4 *ETQA Manager;*

5.3.33.22.4.5 *Skills Development Manager; and*

5.3.33.22.4.6 *Chief Operations Officer.*

5.3.33.22.5 *AgriSETA should ensure that the learner contact details are provided to the investigators to establish whether additional fraud has taken place.*

5.3.33.22.6 *The Learnership checklist should be amended to remove the pre-completed aspects and an instruction issued that all relevant elements of the checklist be completed and signed off prior to any payment being considered.*

#### *Application of the relevant law*

5.3.34 Section 57(a) of the PFMA provides that:

*“An official in a public entity must ensure that the system of financial management and internal control established for that public entity is carried out within the area of responsibility of that official”.*

5.3.35 Section 57(c) of the PFMA provides that:

*“An official in a public entity must take effective and appropriate steps to prevent, within that official's area of responsibility any irregular expenditure and fruitless and wasteful expenditure and any under-collection of revenue due”.*

5.3.36 Section 83(3) of the PFMA provides that:

*“Any official of a public entity to whom a power or duty is assigned in terms of section 56 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty”.*

5.3.37 The former CEO of AgriSETA therefore should have ensured compliance with sections 57 and 83(3) of PFMA and the AgriSETA SCM Policy and Procedures during the Learnership training programmes conducted by Kediemetse HR Solutions in 2010/11 financial year.

5.3.38 Section 17 of the Skills Development Act provides that:

- “(4) The SETA or the Director-General may set any terms and conditions for funding in terms of subsection (3) that the SETA or the Director-General, as the case may be, considers necessary.*
- (5) The SETA or the Director-General must monitor the skills programmes funded by the SETA or the Director-General, as the case may be.*
- (6) The SETA or the Director-General that has made funds available for a skills programme may withhold funds or recover any funds paid if the SETA or the Director-General, as the case may be, is of the opinion that –*

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- (a) The funds are not being used for the purpose for which they were made available;*
  - (b) Any term or condition of the funding is not complied with; or*
  - (c) The SETA or the Director-General, as the case may be, is not satisfied that the training is up to standard."*

5.3.39 In terms of section 1.2 of Discretionary Grant Funding Policies and Procedures of AgriSETA:

*"The AgriSETA management will ensure that the valid, fair and transparent process is developed to evaluate the applications against the said criteria within the time period set. The internal evaluation committee will make a recommendation to the Skills delivery committee or any other relevant delegated Standing committee or person, who will approve the allocation to the detailed projects and their aligned budget per the National Skill Development Strategy targeted".*

5.3.40 Section 10.3 of the Discretionary Grant Funding Policies And procedures states that:

*"The CEO has the responsibility and authority to ensure that the provisions in the procedure are adhered to".*

5.3.41 According to Section 6.4 of AgriSETA SCM Policy and Procedures.

*"The CEO is responsible to take effective and appropriate steps to prevent unauthorised irregular, fruitless and wasteful expenditure and loses from criminal conduct.*

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*To ensure that AgriSETA has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective”.*

- 5.3.42 AgriSETA is responsible for developing the procedures and processes to manage the administrative and financial aspects related to the discretionary grant applications. This would include contractual obligations, payment guidelines and more.
- 5.3.43 Where the Discretionary Grant Funding is allocated to a service provider or other suppliers, the procurement must be conducted according to the PFMA and Treasury Regulations specifically as contemplated in Section 16A Supply Chain Management (SCM).

Conclusion

- 5.3.44 Although my office did not conduct an independent investigation relating to the OMA report, the investigation team contacted AgriSETA, OMA Forensic Accountants and the Special Investigating Unit (SIU) and was provided with, verified and authenticated all the documents including invoices signed for payments by the former CEO, which were utilised and relied upon by OMA Inc. forensic investigators in their investigations prior to arriving at the conclusions which they made in their final report on Kediemetse HR Solutions CC.
- 5.3.45 It is therefore appropriate and prudent for me to make conclusions on the findings and recommendations thereof, especially as it is not denied by anyone at the AgriSETA, nor the contents thereof challenged or refuted by anyone.

- 5.3.46 Subsequent to the issuing of the section 7(9) notices by my office on 05 December 2016 to the former CEO of AgriSETA, the Acting Chairperson of the AgriSETA Board, Mr Ka-Plaatjie and the former Minister of DHET, Dr Blade Nzimande, my office received the OMA report dated 20 June 2012.
- 5.3.47 AgriSETA submitted in responses through its Acting Chairperson of the Board on 12 December 2016 and 10 April 2017 to my notice letter issued in terms of section 7(9) of the Public Protector Act, dated 05 December 2016, that it was in agreement with the provisional findings and conclusion reached by me.
- 5.3.48 However, in responding to section 7(9) notice on 14 December 2016 and 25 August 2017, the former CEO refuted the allegations of improper recruitment of the two ladies alleged to be close associates of his, whilst also claiming not to know anything about irregularities relating to Kediemetse HR Solutions CC as reported on in the OMA forensic report.
- 5.3.49 Inconceivable as it is, both the former CEO and the Acting Chairperson of AgriSETA Board were apparently oblivious to the existence of the said forensic investigation report which they claimed not to have known who had commissioned it. As it turned out later, the forensic investigation had been commissioned by the Chairperson of the Audit and Risk Committee with the knowledge of the then Chairperson of the Board.
- 5.3.50 Notwithstanding the above, from the evidence provided by AgriSETA, the former CEO who is the Accounting Officer, is the one who had actually signed for the payment of suspicious invoices submitted by Kediemetse HR Solutions CC. In doing so, he therefore did not comply with the provisions of the PFMA, the Skills Development Act and the AgriSETA SCM Policy and Procedures.



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- 5.3.51 It is apparent that both the former CEO as the Accounting Officer and some identified senior officials of AgriSETA failed to execute their responsibilities as required by the law, with the former failing in his oversight duties in the authorisation of payments of Kediemetse HR Solutions CC. No due diligence was also conducted by the former CEO when invoices were submitted for payments by the identified officials, as he would have picked up some of the anomalies pertaining to fictitious/ghost learners.
- 5.3.52 Although initially there had been failure and/or inaction by AgriSETA for a period of almost five years to implement the recommendations of the OMA report for action against Ms Onicca Moloto and Kediemetse HR Solutions CC, I was made to understand that it was due to the suspected concealment of the report from the previous Board by those who were implicated in it.
- 5.3.53 However, it is worth acknowledging that at the time of finalising my report and in response to the section 7(9) notice, the interim AgriSETA Board took a resolution on 09 May 2017, to commence with disciplinary action against those officials who were fingered for wrongdoing in the OMA forensic report including the former CEO. This resulted in the former CEO instead of appearing for a disciplinary hearing which was scheduled for 04 September 2017, requesting to be freed from his contract which still had 7 months left and was due to end in 2018.
- 5.3.54 The Acting Chairperson of the AgriSETA Board in a meeting with the investigation team on 07 September 2017, stated that the Board had already accepted the former CEO's request which in effect resulted in him being paid a total separation package of R1 328 276.08.
- 5.3.55 Although a service provider, Nexus Forensic Services had been procured to deal with the disciplinary action hearings against other AgriSETA three (3) senior officials, including Ms Moloto which were scheduled to commence on



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06 October 2017, Ms Moloto also requested to be released of her contract which still had six (6) months to run.

5.3.56 The disciplinary hearing process against Ms Moloto was therefore abandoned by AgriSETA as a separation agreement was concluded with her just like in the CEO's case which resulted in her receipt of a separation package of R537 160, 66.

### **5.3.57 OBSERVATIONS**

5.3.57.1 I have noted from the OMA forensic investigation report, that there was gross irregularities by AgriSETA with regard to the management of the Learnership programmes, as well as the subsequent payments made to service providers, in particular Kediemetse HR Solutions CC;

5.3.57.2 I observed that despite the damning findings and recommendations of the OMA forensic investigation report pointing that laying criminal charges and instituting a civil action against Ms Moloto and Kediemtse HR Solutions CC should be considered, no disciplinary action was taken against the former CEO and all other implicated officials by AgriSETA;

5.3.57.3 I also observed that the conduct by the previous Board of AgriSETA in the payment of separation packages to employees alleged to have committed gross misconduct and whose disciplinary proceedings had already commenced was improper; and

5.3.57.4 I therefore observed that the conduct of the Board of AgriSETA, by releasing employees who are alleged to have committed serious or gross misconduct (including financial misconduct) with no consequences for their misdeeds, was improper and violated AgriSETA's disciplinary policy.

## **6. FINDINGS**

Having considered the evidence uncovered during the investigation as well as the partial steps already taken by the AgriSETA Board, I make the following findings:

### **6.1. Regarding whether the former CEO of AgriSETA appointed Ms T Mamabolo as his Personal Assistant despite her not having the necessary skills and qualifications required for the position, I find that:**

6.1.1. The allegation that no proper recruitment processes were followed in the appointment of the former CEO's PA Ms Mamabolo, is not substantiated.

6.1.2. The appointment of Ms Mamabolo was done in compliance with AgriSETA's Recruitment, Selection and Appointment policy which requires advertising of positions, shortlisting and interviewing candidates prior to the final selection of suitable appointees.

6.1.3. Although the former CEO was part of the panel that interviewed the candidates for the position of the PA in his office and the fact that he attended the same church with Ms Mamabolo, no undue influence on the said appointment could be proven on his part.

### **6.2. Regarding whether the former CEO irregularly appointed Ms. Maria Mahlangu, as a cleaner at AgriSETA, I find that:**

6.2.1. The allegation that the appointment of Ms Maria Mahlangu by the former CEO as a cleaner within AgriSETA is irregular, is not substantiated.

- 6.2.2. Although the appointment of Ms Mahlangu by the former CEO was not preceded by advertising before shortlisting and interviewing of the two (2) candidates from the cleaning services company previously subcontracted to AgriSETA, this was done in compliance with AgriSETA Board’s resolution to fill the cleaner’s vacant post by appointing one of the former employees from the said company.
- 6.2.3. The former CEO’s recommendation that Ms Mahlangu’s name should be included among the two (2) candidates could not be regarded as improper as this emanated from a resolution of the Board.
- 6.3. **Regarding whether the former CEO only awards tenders to service providers from Limpopo province, particularly to a company called Kediemetse HR Solutions CC, owned by Ms Onicca Moloto, I find that:**
- 6.3.1. The allegation that the appointment and payment of Kediemetse HR Solutions CC as the preferred service provider based in Limpopo province by the former CEO was improper, is substantiated.
- 6.3.2. Initially, in both responses from the then Chairperson of the Board dated 19 November 2013 and AgriSETA management’s response to the section 7(9) notice letter dated 15 December 2016, my office was not provided with any record relating to the appointment of Kediemetse HR Solutions CC.
- 6.3.3. Evidence emanating from the records provided by AgriSETA to the Public Protector, all the invoices for the Learnership programme submitted by Kediemetse HR Solutions for the period under investigation were approved for payment by the former CEO. These formed part of the suspicious payments effected to Kediemetse Projects CC in April 2010, for a period of 12 months by AgriSETA as uncovered by the OMA forensic investigation.
- 6.3.4. The conduct of the former CEO with regard to the authorisation of payments to Kediemetse HR Solutions CC without conducting due diligence, amounts to unauthorised expenditure and constitutes maladministration as envisaged

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in section 182(1) of the Constitution and improper conduct as envisaged in section 6(4) of the Public Protector Act.

- 6.3.5. Furthermore, the concealment of the forensic investigation conducted by OMA Inc. in 2012 by AgriSETA officials is improper and constitutes maladministration as envisaged in section 182(1) of the Constitution and improper conduct as envisaged in section 6(4) of the Public Protector Act.

## **7 REMEDIAL ACTION**

In taking appropriate remedial action in pursuit of section 182(1)(c) of the Constitution, I am mindful of some steps already set in motion by the previous Board to remedy the improprieties identified at AgriSETA. However, further remedial action is necessary and is as follows:

### **7.1 The Chief Executive Officer of AgriSETA**

- 7.1.1 Review the termination policies and procedures for all employees to regulate employees who resign after committing acts of misconduct as well as the payment of their salaries and benefits under such circumstances.
- 7.1.2 Review the Recruitment and Selection policies to clarify the roles and responsibilities of the Board in filling Senior Management positions.
- 7.1.3 Engage National Treasury to explore the blacklisting of this company and Directors in the Government Central Supplier Data Base of government not to conduct business with the state.
- 7.1.4 Implement section 33 of the PFMA in its entirety to prevent recurrence of this kind of misconduct in the future.
- 7.1.5 To approach the Director of Priority Crimes Investigation (DPCI) in order to open criminal investigations for fraud against the former CEO of AgriSETA, Mr J Madiba, Miss O Moloto, Mr T Henning, Ms C Manugu and Ms M Ngcobo as per the recommendations of the OMA report.

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**7.2 The Chairperson of the AgriSETA Board:**

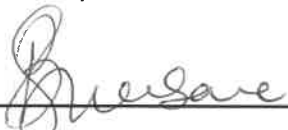
7.2.1 To ensure that all the recommendations of the OMA forensic investigation report are implemented, so that all those officials identified for wrongdoing are made to account for their misdeeds in the irregular appointment and authorisation of payments to Kediemetse HR Solutions CC by AgriSETA in line with section 33 of the Public Finance Management Act .

**8 MONITORING**

8.1 The Chief Executive Officer of AgriSETA to submit an Implementation plan within 30 days of receipt of this report in relation to my remedial action taken in paragraphs 7.1.1 to 7.1.4 above.

8.2 The Chairperson of the AgriSETA Board to submit an implementation plan within 30 days of receipt of this report in relation to my remedial action taken in paragraph 7.2.1.

8.3 Unless the remedial actions taken by the Public Protector are reviewed and set aside by the Court of law, compliance is not optional and same must be complied within the stated period.



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

**DATE:** 30/04/2019