

No. R. 37, 2010**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 Education: 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 Act, and at the request of the Premier of the Eastern Cape Province, refer the matters mentioned in the Schedule, in respect of the Department for investigation to the Special Investigating Unit established by Proclamation No. R. 118 of 31 July 2001 and determine that, for the purposes of the investigation of the matters, the terms of reference of the Special Investigating Unit are to investigate as contemplated in the Act, any -

- (a) serious maladministration in connection with the affairs of the Department;
- (b) improper or unlawful conduct by officials 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 April 2005 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 Act, including recovery of any losses suffered by the Department, in relation to the said matters in the Schedule.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Twenty first day of July Two thousand and ten.

J G Zuma

President

By Order of the President-in-Cabinet:

J T Radebe

Minister of the Cabinet

SCHEDULE

1. The procurement of goods or services by or on behalf of the Department and payments made in respect thereof in a manner that was -
 - (a) not fair, competitive, transparent, equitable or cost-effective;
 - (b) contrary to applicable legislation;
 - (c) contrary to applicable manuals, guidelines, practice notes or instructions issued by National Treasury or the applicable Provincial Treasury;
 - (d) contrary to manuals, policy, procedures, prescripts, instructions or practices of or applicable to the Department; or
 - (e) conducted or facilitated by, or through the intervention of officials or employees of the Department with undeclared conflicts of interest, and any related unauthorised, irregular, fruitless and wasteful expenditure or loss of funds of the Department.
2. Any losses suffered by the Department as a result of -
 - (a) the mismanagement of the expenditure of its funds; or
 - (b) theft, fraud or other unlawful conduct and irregular practices of third parties or of officials or employees of the Department.
3. The mismanagement of the remuneration or benefits of officials or employees of the Department and losses resulting therefrom.
4. The remuneration or granting of benefits to officials or employees of the Department or other persons whilst such officials, employees or other persons were not entitled to such remuneration or benefits or any part thereof.
5. The failure by the Department to take appropriate steps to recover remuneration and employee benefits paid out or granted incorrectly or erroneously.
6. The recruitment, selection and appointment of personnel -
 - (a) for the Department or education institutions in a manner that was contrary to -
 - (i) applicable legislation;
 - (ii) manuals, policies, procedures, prescripts, instructions or set practices of or applicable to the Department or such educational institutions; or
 - (iii) the applicable post structures, minimum post requirements and remuneration structures; and
 - (b) for positions that they are not qualified or otherwise best suited for.