

irregular and therefore the appointment is not irregular.

- 9.3 Given the Minister's assertion regarding the composition of the panel and the status of the appointment made, the PSC sought a legal opinion in this regard. The State Law Advisor submitted an opinion dated 27 May 2022 (**Tag F**). The legal opinion confirms the PSC's initial finding that the process is rendered irregular due to the Executive Authority being the Chairperson of the recruitment and selection panel. It also confirms that the appointment is irregular.

## 10. FINDINGS

- 10.1 The process of recruitment and selection pertaining to the post of Chief Director: Service Delivery Management and Coordination specific to the head-hunting procedure followed is found not to be irregular in light of the current policy provisions applicable to the provincial government.
- 10.2 Notwithstanding 10.1, the head-hunting provisions contained in the recruitment and selection policy of the provincial government is found to be inadequate, nebulous, and does not foster openness and transparency (refer to paragraph 7 of this investigation report).
- 10.3 The Minister for Social Development (WC) was the Chairperson of the panel for a Chief Director post in this instance. The recruitment and selection panel was thus improperly constituted and not in line with the PSR. The process is thus rendered irregular and the appointment is deemed to be irregular.

## 11. RECOMMENDATIONS

- 11.1 The recruitment and selection policy pertaining to head-hunting should be immediately reviewed and enhanced to account for the issues raised under paragraph 7.
- 11.2 The Corporate Services Centre (Department of the Premier) to research best practices in terms of head-hunting and incorporate these in a revised policy where practicable and viable.
- 11.3 The investigation report to be furnished to the Department of Public Service and Administration for further interrogation of existing provisions pertaining to head-hunting.

## 12. DIRECTIONS

- 12.1 The following Directions are issued by the PSC in terms of Section 196(4)(d) of the *Constitution of the Republic of South Africa, 1996*, read with the provisions contained in sections 5(8)(a) and (b) of the *Public Service Act, 1994* (as amended):
- 12.1.1 That the Department promptly engage Ms A van Reenen for mutual agreement in terms of her appointment being found to be irregular [see the steps outlined in section 6 and 7 of the PSC's Guide to Correct Irregular Appointments (June 2018) (Tag G)].




12.1.2 In the event that Ms van Reenen does not agree to a transfer or resignation, that the Department makes an application to the Labour Court to declare the appointment null and void [see Khumalo and Another vs Member of the Executive Council for Education Kwazulu-Natal 2014 (3) BCLR 333 (CC)]<sup>1</sup>. This should be made without delay and the affected employee should be informed of the steps taken by the department.

12.1.3 That the department immediately revise its recruitment and selection policy in order to clarify the role of Executive Authorities serving on recruitment and selection panels.

12.1.4 That the Minister report to the Commission on the implementation of the directions as prescribed in section 5(8)(a) of the PSA, 1994 (as amended).

### 13. DECISION OF THE PANEL OF COMMISSIONERS

The Panel of Commissioners hereunder approves the content of the report on Complaint Case 2122/08/22/001 and confirms the findings, recommendations and directions.

Commissioner Goosen: 
LJ GOOSEN Date: 06/06/2002
Commissioner Oxoyiya: 
AB OXOYIYA Date: 06/06/2002
Commissioner Sizani: 
LV SIZANI Date: 06/06/2002

<sup>1</sup> The court, in relation to section 5(7)(a) of the Public Service Act, 1994, as amended, viewed functionaries as being not entitled but duty bound to seek redress of an irregularity in a court of law.