

Minister Joemat-Pettersson takes report on legal review

Agriculture, Forestry and Fisheries Minister Tina Joemat-Pettersson says she has approached the North Gauteng High Court to ask that the Public Protector's findings into a multi-million fishing vessel tender be reviewed.

Briefing journalists in Parliament in Cape Town yesterday, the minister said she had sought legal advice following the release of the Public Protector Thuli Madonsela's report entitled "Docked Vessels" and had been told that Madonsela's findings against her were not factually accurate, and that in most cases, no evidence was provided to substantiate the findings.



Tina Joemat-Pettersson - not happy. (Image: GCIS)

She said while she will always respect the work and findings of Chapter 9 institutions, she found that Madonsela's findings were premature, and that matters raised in the report could have been responded to and resolved through an engagement between Madonsela and herself.

"Since the release of the report on 4 December, I have had time to study its contents and I sought the opinion of two senior counsels.

"On 14 January my Director General engaged the Public Protector indicating that the department held a different view to that of the Public Protector on the four allegations made against the minister.

"In response to the letter of the Director General, the Public Protector wrote to the minister stating that her investigation was concluded and the recommendations are final. The Public Protector further advised that if I wished to challenge the findings, I should engage the President or subject the report to legal review. I am thus following the advice of the Public Protector by taking the report on legal review," she said.

Award of tender found to be 'improper'

The minister's announcement comes after Madonsela released the findings of her investigation into the handling of the tender process for the crewing and maintenance of South Africa's fleet of fishing patrol vessels, which is worth about R800m a year.

Releasing her report last December, Madonsela found that the awarding of the tender was improper as it did not comply with the department's supply-chain management requirements.

In 2011, when the incumbent, Smit Amandla Marine, was close to expiring, a new tender bidding process started, but Smit Amandla complained that its tender documents had been leaked to its rival, Sekunjalo Marine Services Consortium (SMSC).

The department had awarded the contract to SMSC, but then withdrew it and notified Smit Amandla to hand over the crewing and maintenance of the fleet of six patrol and survey vessels to the South African Navy. Smit Amandla was given a month to do so.

Minister Joemat-Pettersson said that two days before Smit Amandla's contract was due to expire, the Public Protector requested her to defer the termination of the contract and to extend it by three months and to defer the "planned abrupt handover" of the services to the SA Navy.

Minister Joemat-Pettersson rejected Madonsela's request, and Madonsela found the minister's rejection of this request to be "imprudent and led to fruitless and wasteful expenditure".

Minister accused of 'reckless dealing with state money'

"Hence the Public Protector proposes remedial action by the President, namely, that that the President should "consider taking disciplinary action against the Minister for her reckless dealing with state money and services resulting in fruitless and wasteful expenditure, loss of confidence in the fisheries industry in South Africa and the alleged decimation of fisheries resources and delayed quota allocations due to lack of appropriate research"."

Minister Joemat-Pettersson said the Public Protector had first claimed there was wasteful and fruitless expenditure. "The Public Protector provides no evidence for this. Instead the report (in 11.1.1) acknowledges and commends the department for having revoked the tender before work started hence no payments were ever made.

"More importantly, the Auditor General of South Africa (AG), who is the relevant and competent authority to express an opinion on fruitless and wasteful expenditure, expressed an unqualified audit opinion on the department's financial information for the period in question, confirming there was no fruitless or wasteful expenditure," explained the minister.

She said there was no obligation on her department to grant Smit Amandla the three-month handover extension, in light of the fact that her department had given the company four months' notice.

The extension, the minister said, would have been irregular as it would have required certain procurement processes to be followed prior to it being granted.

Minister Joemat-Pettersson said Madonsela's body of investigation did not correlate to the summary of the findings that were made against her.

"The reason for disciplinary action was that there had been a "loss of confidence in the fishing industry in South Africa". There is no evidence for this statement in the investigation or the body of the report. As far as we know there was no scientific study or survey done to test this issue and one can only assume that it is a perception," she said.

The minister also said the reason that Madonsela gave for recommending to the President to take disciplinary action against her pertains to the claim that she was responsible for "delayed quota allocations".

"This statement was made on 4th December 2013 and the quotas were only due for renewal on 31 December 2013. The finding was premature and has now been proven factually incorrect, since quota allocations were allocated on time."

Minister Joemat-Pettersson said she would therefore be asking the North Gauteng High Court to declare that the report, including the findings and recommendations, are reviewed, corrected, and/or set aside.



Thuli Madonsela - not impressed. (Image: GCIS)