**3. REPORT OF THE PORTFOLIO COMMITTEE ON ENVIRONMENTAL AFFAIRS ON THE REASONS WHY THE SOUTH AFRICAN WEATHER SERVICE BOARD SHOULD NOT BE HELD LIABLE FOR THE FRUITLESS AND WASTEFUL EXPENDITURE FOLLOWING ITS DECISION TO TERMINATE THE SERVICES OF THE FORMER CHIEF EXECUTIVE OFFICER, DR L MAKULENI, DATED 24 OCTOBER 2017.**

The Portfolio Committee on Environmental Affairs having interacted with the South African Weather Service (SAWS) Board on the reasons why Board members should not be held personally liable for fruitless expenditure following their decision to terminate the services of the former Chief Executive Officer (CEO), Dr Linda Makuleni reports as follows:

**1.BACKGROUND**

At the meeting of the Portfolio Committee on Environmental Affairs held on 3rd May 2017, the Chairperson of the SAWS Board, Ms N Mngomezulu presented a report pertaining to the termination of the contract of its former CEO by the Board. It transpired during the presentation of the Board Chairperson and subsequent engagements that the former CEO of SAWS was paid *eight* months’ salary after the termination of her contract. The eight months’ salary consisted of the five months remaining on her contract at the time of her termination of her contract and the three months was a settlement reached at the Commission for Conciliation Mediation and Arbitration (CCMA). The Committee considered this as a fruitless and wasteful expenditure and consequently resolved to invite the entire SAWS Board to provide valid reasons why Parliament should not demand that members of the Board of SAWS pay individually for the fruitless and wasteful expenditure that SAWS has unnecessarily incurred as a result of the ill-advised Board’s decision to prematurely terminate the services of the CEO *five* months before the expiry of her contract.

* 1. **INTRODUCTION**

On the 4 October 2017, SAWS the Board appeared before the Portfolio Committee on Environmental Affairs. The Board was represented by the following members:

* Ms N Mngomezulu – Board Chairperson;
* Mr D Lefutso;
* Mr K Modimoeng
* Mr R Nicholls;
* Ms J Beaumont;
* Ms N Madiba; and
* Prof E Mokotong;

**2.EXPLANANTION BY THE BOARD CHAIRPERSON ON THE CIRCUMSTANCES THAT LED TO THE TERMINATION OF THE CONTRACT OF THE FORMER CEO**

The SAWS Board was provided an opportunity to give account of the reasons that led to the termination of the former CEO’s contract and why members of the Board should not be held responsible for their decision pay in their individual capacity for the fruitless and wasteful expenditure incurred relating to the termination of the contract.

Ms Mngomezulu, the Board Chairperson provided the following account:

**2.1**.The first employment contract period of Dr Makuleni was from 1st April 2009 to 31st March 2012;

**2.2**.The second contract period was from 1st April 2012 to 31st March 2015;

**2.3**.The Minister of Environmental Affairs, Hon Edna Molewa further extended the contract to 31st March 2017, in order to align with the contracts of the other CEOs in entities reporting to the Minister;

**2.4**. On 26th August 2015 the Minister wrote to the former CEO confirming her re-appointment to the SAWS Board as an ex-officio Board member in her capacity as CEO until to 31st August 2018;

**2.5**. On 7th June 2016, the former CEO was requested to provide her employment contract by the Board Chairperson as it would form part of the agenda for the bilateral meeting that was scheduled for 8th June 2017;

**2.7**. On 8th June 2016, the Board meeting was held and the former CEO did not attend the meeting;

* 1. On 14th June 2016, the Board Chairperson requested the former CEO in writing, to provide her contract as a matter of urgency;

**2.9.** The former CEO wrote to the Company Secretary on 14th June 2016, requesting her to provide her employment contract that extended her contract to August 2018 to the Board Chairperson;

**2.10**. The Company Secretary responded to the former CEO on the same day, and informed her that letter was given to her previously. Furthermore, the Company Secretary explained that the only reference to 2018 was the former CEO’s appointment as an ex- officio member of the current Board;

**2.11**. On 6th July 2016, the Board Chairperson wrote to Minister Molewa seeking clarity on the former CEO’s contract;

* 1. On 27th July 2016, Minister Molewa responded and clarified that the extension of the contract of the former CEO was due to end by 31st March 2017;

**2.13.** On 2nd August 2016, the Board meeting was held wherein the former CEO was formally notified about the non-renewal of her employment and that the process of recruitment of a new CEO would commence. The former CEO left the meeting and indicated that she would dispute the process;

**2.14**. The Board Chairperson also received a letter from the former CEO requesting to attend an international meeting, which the Chairperson declined. This, according to the Chairperson contributed to the tension between her and the former CEO;

* 1. On 15th August 2016, the meeting was scheduled between the Minister, the Chairperson of the SAWS Board and the former CEO. Although the meeting was requested by the former CEO, she did not arrive and called to say that her car broke down and the Weather Service was not in the positon to arrange for an alternative transport for her;

**2.16**. The Board initiated the process of appointing the new CEO in August 2016;

**2.17**. On 1st November 2016, the Board received a letter from the former CEO’s attorneys, indicating her intention to litigate against the SAWS Board for infringing on her rights by recruiting the new CEO;

**2.18**. On 2nd November 2016, the Board met to consider the attorneys’ letter and took a decision to terminate the contract of the former CEO;

**2.19**. On 1st December 2016, the former CEO took the matter to the CCMA;

* 1. On 13th January 2017, the CCMA hearing took place;

**2.21**. Approval was granted by Cabinet for the appointment of Mr Jerry Lengoasa as the new CEO for SAWS;

**2.22**. On 27th March 2017, the arbitration was held and both parties settled;

* 1. Mr Lengoasa resumed his duties on 8th May 2017; and
	2. Ms Mngomezulu concluded by stating that the premature termination of the former CEO’s employment contract did not fit the definition of fruitless and wasteful expenditure as found in *section 7* of the Public Finance Management Act (PFMA).
1. **ACCOUNT BY THE SAWS BOARD MEETING RELATING TO THE TERMINATION OF THE EMPLOYMENT CONTRACT OF THE FORMER CEO**

The SAWS Board members present were also given opportunity to give their account on their role regarding the termination of the former CEO contract:

**3.1**. Mr David Lefutso supported the Board Chairperson’s account. He stated that the termination of the former CEO contract was done in good faith. The decision was taken as a result of the former CEO’s having missed Board meetings and hence the Board took this rational decision. He opined that the decision was in line with the prescripts of the relevant law. He made reference to a similar judgement heard in the Constitutional Court between Mr Xulu and the Minister of Defence’s review application not to extend his fixed contract. Minister Lefutso voted for the termination of the former CEO’s contract;

**3.2**. Dr Keabetswe Modimoeng also concurred with the Board Chairperson’s account of the events and reaffirmed that it reflected what transpired in the meeting of the Board. The relationship between the Chairperson of the Board and former CEO had broken down. Furthermore, he noted that the former CEO stomped out of meetings and that she failed to attend meetings without notice or making an apology. The former CEO was also at the tail end of her contract. These relationship dynamics had to be taken into account when evaluating the situation. The Board had to use its discretion and it was on that basis that the decision was taken. He concluded by stating that it would have been helpful if the Committee could provide reasons about why it felt that there was fruitless and wasteful expenditure, citing that the financial year in question had been audited by the Auditor-General and the fact of the matter was disclosed;

**3.3**. Mr Rowan Nicholls, who is the Chairperson of the Board’s Risk and Audit Committee, said he voted against the Board resolution to terminate the contract and he recorded his vote as such. He believed that the matter could have been mediated or handled differently. He disputed the assertion by the other Board member that the former CEO failed to attend meetings of the Board. He also cited that there were attempts by the former CEO to meet with the Board to address the dispute that arose as a result of the interpretation of the terms of her contract, in particular the question as to when is her contract supposed to come to an end, but her efforts were not heeded. He highlighted the fact that SAWS did well under the tenure of the former CEO, who succeeded to position the organisation onto the path of a clean audit;

* 1. Ms Judy Beaumont, Deputy Director-General (DDG) of Climate Change and Air Quality in the Department of Environmental Affairs indicated that she was part of the meeting and that she concurred with the report presented by the Chairperson of the SAWS Board and further stated that the Board acted legally, rationally and in good faith;
	2. Ms Nandi Madiba expressed her appreciation to appear in front of the Committee and expressed her surprise to learn that the Committee invited Board members who did not honour the invitation. She apologised for not attending and confirmed that the Committee’s invitation did not reach all members of the Board. As a member of the Audit and Risk Committee, she evaluated the risk that the decision to prematurely terminate the contract of the former CEO could have on the organisation, and hence decided to vote against the decision. Secondly, there was no formal written report advising members of the Board on the course of action that needed to be taken prior to the decision to prematurely terminate the former CEO’s contract. She on previous occasions requested that a special meeting of the Board be convened to discuss the dispute regarding the interpretation of the contract of the former CEO which was affecting the relations in the workplace. She submitted a request and agenda item to the Chairperson of the Board but the meeting was never called. The request was rejected on the basis that it was not the majority who requested the meeting. She supported Mr Nicholls that the matter could have been avoided if the Board had acted in a professional and mature way and prioritised the interest of the organisation instead of looking at individuals. She also mentioned that although the decision to terminate the former CEO’s employment contract was not arrived at unanimously, the Board members were not divided in their work. In addition, some of the information presented by the Board members on the duration of the breakdown in the relationship between the Board Chairperson and the former CEO of SAWS was new information to her. According to her, the main issue was around the interpretation of the contract;
	3. Prof Elizabeth Mokotong agreed with Ms Madiba that they were not necessarily a divided Board. Her observation as a social scientist was that the relationship had broken down between the former CEO and the Board Chairperson. A big source of unhappiness in her view was the interpretation of the term of contract of the former CEO. The organisation’s staff morale was at its lowest ebb due to what was happening. Prof Mokotong also mentioned that she met with the former CEO and realised that the relationship between her and the Board Chairperson had broken down. She stated that there were several meetings scheduled to discuss the matter, however, unfortunately, the former CEO did not attend them. Prof Mokotong said she had to leave the meeting early before the vote was taken on the matter. She however supported the Board’s decision in order to save the organisation.
1. **COMMITTEE OBSERVATIONS AND FINDINGS**

The Portfolio Committee, after having engaged with the SAWS Board, makes the following observations and findings:

**4.1**. The SAWS Board’s inability to give a proper account around the circumstances leading to the dismissal of the former CEO is concerning to the Committee. The Committee struggled to obtain a formal report on what happed, despite repeated attempts to get an explanation from the Board;

**4.2**. It is the Committee’s considered view that the Board did not act professionally and in line with the requirements of good governance in that it did not request written legal opinion on a dispute regarding the interpretation of the contract of the former CEO, neither did the Board request and consider a written report outlining various options available to the Board before deciding to prematurely terminate the former CEO, Dr Makuleni’s contract. The Board’s decision to unilaterally terminate the employment contract was solely arrived at on the basis of the verbal narrative by the Chairperson of the Board, Ms Mngomezulu, despite the significant financial and legal risks that decision posed to the organisation;

**4.3**. Failure by the Board to seek legal advice on the implications of the unilateral termination of a contract of employment without following due process constituted a reckless behaviour and a flagrant failure to exercise due care and diligence by the Board;

**4.4**. The so-called breakdown of relationship as a reason for the premature termination of the employment contract of the former CEO was not included in the initial report that the Chairperson of the Board presented to the Committee, it only came about during robust questioning by the Committee members. It is the Committee’s view that the so-called breakdown of relationship was only introduced later to justify what was clearly an ill-advised decision and it was not the real reason for the premature termination of the contract;

**4.5**. During the presentation and briefing to the Committee on the SAWS Annual Report in October 2016, the Chairperson of the Board praised the CEO for her performance and good work in contributing towards the organisation attaining a clean audit. The Portfolio Committee was not alerted to any challenges/concerns the Board might have had with the former CEO, the Committee was shocked only to learn approximately three weeks later of the instant dismissal of the CEO;

**4.6**. There was no formal report outlining possible options, implications and recourse before the dismissal of the former CEO by the Board;

**4.7.** There was no value derived by SAWS from the R2 million settlement to the former CEO and it is the considered view of the Committee that this expenditure could have been avoided had the Board exercised due and reasonable care before arriving at this reckless decision. This amount of R2 million is only for settlement payment and does not include legal fees incurred;

**4.8**. The Board is weak, lacks understanding of the principles of good corporate governance, does not consist of suitably qualified members as required by section 5(2)(a) of the SAWS Act and is incapable of providing effective leadership to the organisation as required by section 6 of the South African Weather Services Act No 8 of 2001, as amended and therefore has to be relieved of its responsibility; and

**4.9**. The Board’s decision to dismiss the CEO was not a unanimous.

1. **COMMITTEE RESOLUTIONS**

The Portfolio Committee on Environmental Affairs, having deliberated on the decision of the SAWS Board to terminate the employment contract of the former CEO, resolves as follows:

**5.1**. That the decision by the Board of SAWS to prematurely terminate the employment contract of the former CEO, Dr Makuleni, has led to the expenditure of R2 million in a form of a settlement payment to the former CEO, which expenditure could have been avoided had the Board exercised reasonable care, and that SAWS did not derive any value from this expenditure and therefore it’s a fruitless and wasteful expenditure as defined by the Public Finance Management Act, No.1 of 1999 (PFMA);

**5.2**. That Board members who voted for the decision to prematurely terminate the contract of the former CEO without any legal advice or a formal written report presented to the Board are personally liable for the fruitless and wasteful expenditure that was incurred following their reckless decision and must pay back such expenditure to the state;

* 1. That the Minister of Environmental Affairs remove the Chairperson and other members of the Board in line with *section 7(1)(b)* of the South African Weather Services Act, 2001 (Act No 8 of 2001) because of their failure to exercise proper fiduciary duties in performing their functions as members of the Board of SAWS;
	2. That the new members of the Board to be appointed be thoroughly inducted on the requirements of good corporate governance; and
	3. That the new Board, in conjunction with the CEO and management, put measures in place to address the significant irregular expenditure reported by the Auditor-General for the 2016/17 financial year.

**Report to be considered.**