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**Report of the Select Committee on Security and Justice on the Provisional Suspension from the Office of Magistrate of Ms L B Freeman, Senior Magistrate, Mossel Bay, tabled in terms of section 13(3)(b) of the Magistrates Act, 1993 (Act No 90 of 1993), dated 21 June 2018.**

1. **Introduction**

The Select Committee on Security and Justice, having considered the Magistrates Commission’s report dated 27 March 2018, as tabled by the Minister for Justice and Correctional Service, on the provisional suspension from office of Ms L B Freeman, the Senior Magistrate at Mossel Bay, pending the outcome of a misconduct hearing into her fitness to hold the office of magistrate, as is required by section 13(3)(b) of the Magistrates Act, 90 of 1993, reports as follows:

1. **Background**

 Ms Freeman is a Senior Magistrate and the Judicial Head of Office at the Mossel Bay District Court. She is 42 years of age and has been appointed to the lower court bench on 24 October 2006. She was appointed a Senior Magistrate at Mossel Bay on 01 May 2017.

The Ethics Division of the Magistrates Commission conducted a preliminary investigation and the Magistrates Commission considered the preliminary investigation report submitted to it in this regard, the Magistrates Commission resolved to charge Ms Freeman with misconduct. A charge sheet dated 17 November 2017, containing 24 counts of misconduct, was personally served on Ms Freeman on 23 November 2017.

1. **Discussion**

The misconduct charges against Ms Freeman relate to acts of dishonesty in that she:

* 1. During the period 2015 to 2017 made numerous false and or incorrect statements, knowing them to be false and or incorrect in that she submitted transport and travel claims to the Department of Justice and Correctional Services (the Department) for payment in respect of kilometres travelled in excess of the actual distances she was entitled to claim for;
	2. On 10 August 2017, Ms Freeman, submitted a transport claim for payment, claiming that she on 09 June 2017 conducted an *inspection in loco* whilst in truth and in fact, no such *inspection in loco* took place;
	3. According to a transport claim dated 29 November 2016, falsely and or incorrectly claimed that she on 08 and 15 November 2016 travelled with her Audi A4 motor vehicle with an engine capacity of 2000cc, whilst in truth and in fact she travelled with an Uno, which motor vehicle has a lower engine capacity than the Audi A4;
	4. On 26 May 2016, when completing her application form for an appointment as Senior Magistrate, on a request to list all directorships she holds and or any other interests in business, failed to disclose the fact that she has been registered as an active director and founding member of the Southern Cape Fish Co-operative Limited, and
	5. In the aforementioned application form stated that she had never been convicted of a criminal offence, whilst in truth and in fact she was convicted of theft and sentenced by a court of law.
	6. The Magistrates Commission has reported the matter to the South African Police Service (SAPS) for investigation.
1. **Decision to provisionally suspend Ms Freeman**
	1. On 13 October 2017, Ms Freeman was, in compliance with the rules of natural justice, invited to furnish the Magistrates Commission with representations why the Magistrates Commission should not recommend that she be provisionally suspended from office and why the Magistrates Commission should not determine to withhold her remuneration. Ms Freeman provided representation on 24 October 2017.
	2. The Magistrates Commission, after considering the serious nature of the allegations, the information at hand and Ms Freeman’s representations, resolved to recommend that Ms Freeman be provisionally suspended from office in terms section 13(3)(a) of the Magistrates Act, 90 of 1993.
	3. The Commission is of the view that the existing evidence against Ms Freeman is of such a serious nature as to make it inappropriate for her to perform the functions of a Magistrate while the allegations are being investigated. Without anticipating the outcome of the investigation into her fitness to hold the office of Magistrate, the existing evidence against Ms Freeman is of such a serious nature that it would justify her removal from office, should she be found guilty of the misconduct charges.
2. **Legal position**
	1. In terms of Section 13(3)(a) of the Magistrates Act, 90 of 1993, the Minister, on the advice of the Magistrates Commission, may provisionally suspend a magistrate from office if-

(i) the Commission, after affording the magistrate a reasonable opportunity to be heard regarding the desirability of such provisional suspension, is satisfied that reliable evidence exists indicating that an allegation against that magistrate is of such a serious nature as to make it inappropriate for the magistrate to perform the functions of a magistrate while the allegation is being investigated; and

(ii) an investigation has been instituted by the Commission into such magistrate’s fitness to hold office.

* 1. A report in which the provisional suspension and the reasons therefore are made known, must be tabled in Parliament by the Minister within 7 (seven) days of such suspension, if Parliament is then in session, or if Parliament is not then in session, within 7 (seven) days after the commencement of its next ensuing session (section 13(3)(b) of the Act).
	2. Parliament must, as soon as is reasonably possible, pass a resolution as to whether or not the provisional suspension of the magistrate is confirmed (section 13(3)(c) of the Act).
	3. If Parliament passes a resolution as contemplated in paragraph *(c)* that the provisional suspension is not confirmed, the suspension lapses (section 13(3)(d) of the Act).
1. **Committee observations and recommendations**
	1. The Select Committee noted with concern that the fraud charges relating to the travel reimbursement system was not picked up immediately and that this abuse of the travel reimbursement system may be prevalent amongst magistrates.
	2. The Select Committee further noted that the current travel reimbursement system in place for magistrates was flawed in that it relied heavily on magistrates to conduct themselves ethically. The current system was open to abuse and the Select Committee recommended the Magistrates Commission consider instituting a flat rate per kilometre irrespective of the vehicle driven to curb the temptation to abuse the system.
2. **Committee recommendation to the NCOP for approval**

The Select Committee on Security and Justice, having considered the Magistrates Commission’s report dated 27 March 2018, as tabled by the Minister for Justice and Correctional Services, on the provisional suspension from office of Ms L B Freeman, the Senior Magistrate, Mossel Bay, pending the outcome of a misconduct hearing into her fitness to hold the office of magistrate, as is required by section 13(3)(b) of the Magistrates Act, 90 of 1993, recommends the National Council of Provinces confirm Ms L B Freeman’s provisional suspension from the office of Magistrate.

**Report to be considered.**