

**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

**Case No: 2024-050741**

In the matter between:

**GAUTENG CARE CRISIS COMMITTEE**

Applicant

and

**MEC FOR SOCIAL DEVELOPMENT: GAUTENG**

Respondent

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**RESPONDENT'S ANSWERING AFFIDAVIT**

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I, the undersigned,

**BONGANI NGOMANE**

do hereby state under oath that:

1. I am the acting Head of Department ("**HOD**") of the Gauteng Department of Social Development ("**Department/GDSD**"). Immediately prior to my appointment as the acting HOD, I was Acting Deputy Director General: Social Welfare, Regions, and Institutions at the GDSD.
2. I am duly authorised to depose to this affidavit and oppose this application on behalf of the respondent ("**MEC**") by virtue of my position as the accounting authority of the Department. Any reference to "Department/GDSD" herein is

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also a reference to the MEC, where appropriate, unless otherwise stated or appears from the context.

3. The facts contained herein are within my personal knowledge unless I state the contrary or the contrary appears from the context. To the best of my knowledge and belief they are both true and correct.
4. Where I make submissions of law, I do so on the advice of the Department's legal representatives, which advice I accept.
5. I have read and had regard to the founding affidavit of **LISA VETTEN**, filed on behalf of the applicant and respond thereto as set out below.
6. I point out at the outset that, at the heart of this application is the allegation by the applicant that the Department has: (i) unreasonably delayed in deciding applications for funding submitted by some of its alleged members; and/or (ii) failed to make payments where decisions to fund have been made. Two quick answers:
  - 6.1. First, any delay has not been unreasonable, considering the changes that have had to be implemented in the funding processes and the restructuring that has taken place within the Department. The office of the HOD has also been recently vacated, resulting in some administrative challenges within the Department. That said, the processing of applications for funding is being undertaken urgently and the Department anticipates having completed it on or before 24 May 2024, and to have informed all applicants of the outcome of their applications by that date.



- 6.2. Second, the making of payments to approved organisations depends on there being duly signed SLAs between the Department and the organisations in question. It has recently become difficult to have SLAs signed promptly by some organisations who have instructed attorneys to scrutinise these agreements and raise all sorts of, often meritless, objections to the SLAs. By way of example, I attach hereto a copy of a letter marked “AA1”, from the applicant’s attorneys raising a string of objections to the proposed SLAs and unrealistically expecting these to be resolved in three days or so. Be that as it may, where SLAs have been signed, the Department expects to have made all the outstanding payments no later than 24 May 2024.
7. The issue of non-payment of funding to qualifying social work organisations (“SWO” or “NPO”) is being given the urgency it deserves by the Department, at its highest level of administration and political oversight. As recent as 14 May 2024, a meeting was held between the Premier of Gauteng and the SWOs, including the applicant, to address concerns raised by the SWOs.
8. It is therefore highly likely that by the time that judgment is delivered in this application, the order (per the relief sought) will have been overtaken by events and therefore of no practical effect or will create unnecessary differential treatment between SWOs represented by the applicant and the rest. That is why, on 14 May 2024, the Department’s attorneys addressed a letter to the applicant’s attorneys requesting that the application be removed from the urgent roll of 21 May 2024 – with the proviso that it may be re-enrolled if necessary, after two weeks or so. A copy of this letter is attached hereto

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marked "AA2". The response from the Applicant's attorneys, which in essence rejects this offer is attached as "AA3".

9. Having said that, and as I shall explain more fully below, the Department opposes the relief sought by the applicant on the following bases:
  - 9.1. There is no substantive relief sought in the notice of motion declaring the Department's alleged unreasonable failure to make a decision or payment unlawful, to justify the remedies sought.
  - 9.2. The supervisory order sought in the notice of motion is incompetent, as will be demonstrated in the respondent's heads of argument.
  - 9.3. Where the Department has delayed in making a decision, this has not been unreasonable. Any outstanding decision will be made by 24 May 2024, much sooner than what the applicant is asking the Court to order.
  - 9.4. Where the Department has not made payments that are due, this has been as a result of various constraints within the Department, but all payments will be made by 24 May 2024, again much sooner than what the applicant is asking the Court to order.
  - 9.5. The application is not urgent and falls to be struck off the urgent roll.
  - 9.6. The applicant has failed to comply with Rule 41A and is called upon to do so.

10. In responding to certain allegations made in the founding affidavit, I wish to point out the following:
  - 10.1. In view of the short timeframes for the filing of this affidavit, it has not been possible for me to deal with each and every allegation concerned.
  - 10.2. In view of the urgency of the matter and the timeframes imposed by the applicant's attorneys, I have not been able to obtain all the information necessary to be placed before the Court for the proper disposal of this application. It therefore became necessary to file this affidavit only based on the available information on the basis that an additional/confirmatory affidavit may have to be filed in due course.
  - 10.3. My failure to deal with any specific averment or contention contained in the founding affidavit must not be understood as a concession of the correctness of such averment or contention. Where such averment or contention is inconsistent with what is set out in this affidavit, it must be taken to be denied by the Department.
  
11. In what follows, I deal with the following issues in turn:
  - 11.1. Firstly, I set out the background to this matter in order to provide the relevant context.
  - 11.2. Secondly, I discuss the issue of urgency and set out the reasons why this application is not urgent.
  - 11.3. Thirdly, I address the issue of non-compliance with Rule 41A.

11.4. Fourthly, I explain that there are pending investigations against some of the SWOs.

11.5. Lastly, I respond to the answering affidavit paragraph by paragraph.

## **BACKGROUND AND OVERVIEW**

### **General**

12. Pursuant to the findings of maladministration within the Department's NPO funding process as identified by various regulatory bodies such as the Auditor General ("AG"), the Department was required to rectify and revise the process, which has resulted in delays in the finalisation of the appointment and funding of NPOs in the 2024/25 financial year.
13. Historically, the process lacked internal controls. There was a minimal segregation of duties resulting in the creation of a fertile environment for maladministration and fraud. The adjudication panel consisting predominantly of a group of social workers, not only adjudicated and evaluated the proposals submitted by NPOs, but also signed off legally binding documentation such as SLAs with the NPOs and/or SWOs to the exclusion of the Department's legal unit.
14. The findings of the AG concluded that some of the SLAs concluded contained the approval of large payments, in excess of one million Rands, by officials not authorised to sign off such large amounts and that those approvals were in contravention of the National Treasury's regulations.

15. In the light of the above, the Department was required to revise its entire appointment process of SWOs to ensure good governance and adherence to regulations.
16. It should be noted that the former adjudication process occurred on a regional and provincial level. Thereafter, the Department decided to centralise this process and appoint an adjudication committee which is responsible for assessing business proposals and recommending which SWOs should be appointed in accordance with the requirements of the Department and the prescribed criteria.
17. Furthermore, the preparation and drafting of SLAs has been delegated to Legal services within the Department. The Department has also introduced e-gov, which has allowed for SLAs to be finalised and signed electronically. This fast-tracked the process by decreasing the number of NPO officials required to attend the offices of the Department to sign the SLAs; however, the Department is still experiencing delays due to the internal restructure.
18. It should also be noted that the Department has made significant progress in the finalisation of SLAs. To date, a total of 1 311 SLAs have been created from 1 723 applications received from NPOs and are in the process of distribution to NPOs. A number of organisations have also returned their signed SLAs to the Department. With effect from 13 May 2024, the Department began loading payments to them. Furthermore, in an effort to expedite the payments to SWOs, the Department has requested additional support from the office of the Provincial Treasury that is currently managing daily payments to NPOs, which payments were formerly done twice a week.

**Communication between the legal representatives of the parties**

19. On 9 April 2024, Webber Wenzel, acting on behalf of the applicant, addressed a letter to the Department.
20. The letter outlines that during a presentation by the GDSD to the NPO Sector on 6 and 7 September 2022, and again at the National Child Protection Forum on 23 June 2023 – the Department informed GCCC members that the partnership model between the Department and NPOs is no longer sustainable and therefore the Department has set in motion plans to reduce the reliance on NPOs and SWOs in particular.
21. The letter also stated that the Department's decision to reprioritise funding away from SWOs for the 2023/24 and 2024/25 financial years is a far-reaching decision that adversely impacts the beneficiaries serviced by the GCCC members and impacts the future survival of the SWOs. Furthermore, it addressed the Department's intention to reduce the budget across all services in the next financial year as per Table 7.5.2 in Budget Vote 6 and requested that the Department furnish it with additional information relating to its reprioritisation decision and re-organisation plans.
22. On 17 April 2024, HNM placed itself on record for the Department and sent a letter to Webber Wenzel advising them that HNM was in the process of taking instructions from the Department.
23. On 24 April 2024, HNM, acting on behalf of the Department, addressed a letter to Webber Wenzel responding to the contentions made in its letter dated 09 April 2024 and, most importantly, requested to be furnished with a copy of



the GCCC's constitution and/or documentation confirming its status as a NPO and its office bearers. To date, this information has not been forthcoming.

24. Additionally, HNM's response asserted that the Department's obligation to provide for the right to social security is subject to the available funds and further that the Department has the responsibility to ensure the fair and adequate distribution of services to all persons and not exclusively to the members of the GCCC. Furthermore, the Department cannot answer for decisions taken which it has no control over. As such, these issues would need to be ventilated with the Gauteng Provincial Treasury, and the Gauteng Provincial Government.
25. Notwithstanding the above, on 23 April 2024, Webber Wenzel sent a letter directly to the MEC for Social Development, despite being aware that HNM was on record as the Department's attorneys as per the letter to Webber Wenzel referred to in paragraph 22 above.
26. On 29 April 2024, Webber Wenzel sent a further letter to the MEC and copied HNM into the correspondence. The letter from Webber Wenzel made reference to the abovementioned letter dated 23 April 2024.
27. On 2 May 2024, HNM sent an email to Webber Wenzel in response to the above requesting Webber Wenzel to furnish it with its letter dated 23 April 2024 to understand the basis for the contentions made in the subsequent letter and to take the necessary instructions from the Department. Webber Wenzel did not honour the request.

28. Instead, HNM received the said letter from the Department on Wednesday, 14 May 2024. This is important because the aforementioned letter appears to raise the very same issues that are raised in this application and if it was received by the Department's attorneys timeously, as requested from Webber Wentzel, the said issues could have been resolved.
29. On 9 May 2024, this application was brought by the applicant.

#### **THE APPLICATION IS NOT URGENT**

30. It is denied that this application is urgent.
31. This application does not comply with the requirements for urgency for several reasons, including that:
- 31.1. The applicant disingenuously creates the impression that by not approving funding to the NPOs it purports to represent, the Department is failing in its constitutional duties owed to vulnerable persons within the Gauteng province. In this regard, it is important to note that the Department contracts multiple NPOs to provide social care services to vulnerable persons.
- 31.2. As mentioned above, the Department works with multiple NPOs who provide various social care services on behalf of the Department. The Department receives a large number of business proposals and applications from NPOs every year and not every NPO is successful and appointed. As such, the NPOs the applicant alleges to represent are not entitled to funding by the Department merely by virtue of

submitting applications and by formerly receiving funding from the Department.

- 31.3. The applicant appears to raise issues with the process of the Department regarding the appointment and funding of NPOs. This is not an issue that gives rise to urgency because the appointment process is underway.
- 31.4. To the extent that any NPO's application is not successful, the Department will, in accordance with its legal obligations, provide reasons for its decisions directly to the unsuccessful NPOs.
- 31.5. Furthermore, the Applicant states that the Department announced that the adjudication process will be finalised by end of March. However, this application is brought over a month later. If indeed this matter was urgent, the applicant would have brought this application shortly following its realisation that the Department did not meet its undertaking in this regard. It is submitted that the urgency is self-created, alternatively non-existent.

#### **RULE 41A NOTICE**

32. The applicant failed to comply with Rule 41A 2(a) of the Uniform Rules of Court.
33. It is important to note that there was ongoing correspondence between the legal representatives of the applicant and the Department. In this regard, it is submitted that a discussion between the parties would have addressed the concerns raised by the applicant.

34. The Department's attorneys invited the applicant's attorneys to furnish the letter that allegedly sets out the basis for the applicant's contentions and, despite this request, the relevant letter was not made available until 13 May 2024. Instead, on 9 May 2024, the applicant was steadfast in approaching this Court for urgent relief.
35. As such, it is the Respondent's respectful submission that this dispute could have been resolved through mediation and that it can still be resolved through mediation; alternatively, by discussions between the parties.

#### **PENDING INVESTIGATION**

36. On or about 7 September 2023, the Department commissioned a forensic audit into the mismanagement of NPOs within the grant scheme of the Department. This investigation is still underway although findings have been made in relation to irregular payments and irregular appointments of certain NPOs. In this regard, a number of departmental officials are facing disciplinary action and a number of NPOs are implicated.
37. The Department is not in a position to fund all NPOs which have applied for funding, including those which have been found to have breached previous SLAs concluded with the Department. There is also no obligation on the Department to fund each and every NPOs in the province.

**SERIATIM RESPONSE**

38. I now respond to the founding affidavit *ad seriatim* to the extent necessary. Insofar as I do not deal with each averment in the founding affidavit, and that averment is at odds or inconsistent with what is contained herein, that averment is to be regarded as denied.

**Ad paragraphs 1 – 7**

39. The contents of these paragraphs are noted.

**Ad paragraphs 9 – 10**

40. The identity and address of the applicant are noted.

41. For the reasons set out above, I deny that:

41.1. the applicant is representing the common interests of all its alleged constituent members;

41.2. this application is brought on behalf of all its alleged members; and

41.3. this application concerns all SWOs in the province of Gauteng and all persons dependent on the services provided by SWOs in Gauteng.

**Ad paragraphs 11 – 13**

42. Save to deny any suggestion that the GPG is constitutionally required to partner with any SWO to fulfil its constitutional duties, I admit these allegations.



**Ad paragraphs 14 – 18**

43. The contents of these paragraphs are noted.

**Ad paragraphs 19 – 21**

44. I deny any suggestion that all closures and collapses of SWOs may result in those who depend on their services becoming helpless and unattended to.

45. Several SWOs are being investigated for, or have been found guilty of, financial mismanagement to the detriment of the very vulnerable persons they seek to assist.

46. The sweeping statements about SWOs in general are unhelpful – particularly as the application concerns only six SWOs, out of the 1723 applications which have been received by the Department and which NPOs are not necessarily under a risk of collapse or closure.

**Ad paragraph 22 – 28**

47. I note these allegations.

48. It is remarkable that the applicant saw it fit to explain that the “partnership” between the Department and SWOs started decades ago (circa 1937), but conveniently only explains the “funding procedure” from 2018. In doing this, the applicant has expediently avoided explaining the changes that have occurred in the funding procedure over the years. It has confined itself to the changes that it, and its alleged members, do not like.

49. These allegations describe a process that never guaranteed any funding for any SWO. To that extent, they are correct.
50. I am advised that the previous funding procedures may have flouted section 217 of the Constitution, amongst other prescripts, insofar as the SWOs are appointed to provide services to the Department. It is for this reason that the latest 2024/25 processes were revised.
51. The applicant and its alleged members have no right to demand “no change” in the funding procedure. It is the Department’s prerogative to decide which funding procedure is appropriate at any given moment, subject only to the law (which the Department has complied with).

**Ad paragraph 29 – 52**

52. I have explained why the 2024/25 funding procedure is different to previous procedures.
53. I deny these allegations to the extent contradicted above.
54. It is worth noting that these allegations appear to have been made for atmospheric purposes only. This application is about events that occurred after the closing date for funding applications, not before. It was always open to the applicant and/or its alleged members to challenge any aspect of the pre-closing date process they may have found to be unlawful – but they did not.

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**Ad paragraph 53 – 54**

55. I deny that 7 February 2024 – 28 February 2024 was “prescribed”, to the extent that this suggests that the period was cast in stone. The applicant’s reference to this period as “initial” correctly makes it clear that the period could be extended as necessitated by the circumstances. The internal contradiction in these allegations that the adjudication “*ought to have concluded by 28 February 2024*” is denied.

**Ad paragraphs 55 – 56**

56. The deponent’s knowledge must be woefully limited for her to allege that only a limited number of SWOs have been informed that their funding applications have been successful.

57. This undermines the deponent’s assertion that she is “*abreast and well-versed in the personal circumstances of several organisations and developments in the social services sector*” (para 6).

58. As noted above, as many as 1311 SLAs out of 1723 applications have been created in relation to funding applications that have been approved by the Department.

**Ad paragraph 57**

59. I deny these allegations.

60. This application is fundamentally about the six SWOs referred to in the founding affidavit, who seem to believe that they are entitled to a contract with the Department.



**Ad paragraphs 58 – 66**

61. It is important to note that it is the services rendered by the SWOs that realise several entrenched rights, not the SWOs themselves. This distinction is important because the rights may be realised through the services being rendered other than through the SWOs. The non-existence of SWOs in certain areas does not necessarily equate to non-realisation of the constitutional rights in question in those areas.
62. I deny the legal argument advanced in these allegations. These allegations will be dealt with in the respondent's heads of argument and at the hearing.

**Ad paragraphs 67 – 77**

63. The contents of these paragraphs are denied to the extent already contradicted above.
64. Without derogating from the above denial, it is specifically denied that the Department has neglected to finalise the adjudication of applications in a timely manner.
65. While it is acknowledged that the Department made a public announcement that the allocations will take place at the end of April, there have been delays as a result of, amongst other things, the internal restructuring of the NPO funding processes, in line with the segregated duties resulting in, including but not limited to, the inclusion of the legal division assigned to drafting and finalising the SLAs.

66. In addition, it is now a requirement that all SLAs should be signed by the Accounting Officer, being the HOD of the GDSD. However, the former HOD's term of office terminated with effect from 30 April 2024, and I have recently been appointed and apprised of the issues at hand. This has consequently and understandably caused a delay in the finalisation and distribution of SLAs.

**Ad paragraphs 78 – 83**

67. These allegations are denied to the extent contradicted above.

68. I note that the allegations about NISSA are not supported by any documentary evidence, other than being confirmed in general terms. Such evidence is material to the adjudication of this application – as is the case with any application that must be decided on the strength of documentary evidence.

69. In particular, NISSA has not attached the last SLA it signed with the Department for a "fixed-term". It was always within the contemplation of the parties that the "partnership" is not permanent. The basis for NISSA to make plans beyond the term of its agreement with the Department that are dependent on funding from the Department is not explained. NISSA has also not attached proof of its application for funding or the application itself. This evidence is material to the adjudication of this application.

70. NISSA has also not explained how it has survived from when the funding from the Department it says it relies upon, was "due" to the end of May 2024 (which is when it says it will start retrenching staff or close its doors).

71. The reality is that, from when it submitted its application for funding, NISSA was always alive to the possibility of there being no funding granted, owing to

the outcome of the adjudication process, amongst other things. NISSA must have planned for such eventuality.

72. As is readily acknowledged by the applicant, the Department has established relationships with thousands of SWOs throughout the country. This enables the Department to seek assistance from these SWOs to replace those no longer qualifying for partnership with the Department, where the Department is not itself able to step in. Also, the Department, and government in general, has in place alternative plans to cater for any emergency that may ensue as a result of closure of any SWO. Therefore, the sweeping statements that closure of a particular SWO will result in disaster are simply red herrings.
73. The Department will furnish its decision to NISAA in due course, but by 24 May 2024.

**Ad paragraphs 84 – 90**

74. These allegations are denied to the extent contradicted above.
75. I repeat paragraphs 70 to 73 above, with the necessary changes to refer to ARA.

**Ad paragraphs 91 – 101**

76. These allegations are denied to the extent contradicted above.
77. I repeat paragraphs 70 to 73 above, with the necessary changes to refer to ESA.

78. It is important to note that at this point, the Department has concluded 2 SLAs with ESA amounting to a total sum of R8 250 000.

79. The Department is currently in the process of making payments to qualifying SWOs and anticipates finalising this by 24 May 2024.

**Ad paragraph 102 – 109**

80. These allegations are denied to the extent contradicted above.

81. I repeat paragraphs 70 to 73 above, with the necessary changes to refer to Bethany House.

**Ad paragraphs 110 – 115**

82. These allegations are denied to the extent contradicted above.

83. I repeat paragraphs 70 to 73 above, with the necessary changes to refer to CWA.

**Ad paragraphs 116 – 127**

84. These allegations are denied to the extent contradicted above.

85. I repeat paragraphs 70 to 73 above, with the necessary changes to refer to Tutela.

86. The applicant appears to contend that the Department has a duty to conclude 17 service level agreements (SLAs) with Tutela to give effect to the 17 business proposals submitted by Tutela.

87. The Department is under no obligation to approve all the business proposals submitted by Tutela. The Department has a duty to duly interrogate the various business proposals it receives and thereafter, subject to its discretion, allocate funds to successful SWOs that have duly submitted their proposals and business plans in compliance with the requirements and conditions of the Department and also complied with the contracting requirements of the Department.
88. As stated in the email sent to the Boksburg Magistrate Court by Ms Phumla Nkosi of the Department, Tutela had a duty to inform the Department of the closure of its offices in Boksburg and further hand over the relevant cases to the Department.

**Ad paragraphs 128 – 134**

89. I deny that the applicant has no alternative remedy.
90. It is respectfully submitted that the applicant has failed to demonstrate how the SWOs' ability to challenge the decision of the Department is limited.
91. The Department is yet to inform the applicants that were unsuccessful of its decision and the reasons therefor, should the SWOs request this.
92. It is untenable that the SWOs are unable to remain operational without funding from the Department. The Department does not have a duty to ensure that the SWOs are operational and to further source funding for SWOs, where it has alternative means of serving the beneficiaries.

93. The Department only has a duty to ensure that the rights of the beneficiaries are not infringed upon and that they are provided with the services required. The Department's obligations towards SWOs can only arise on the basis of a duly concluded SLA.
94. It is reiterated that the Department concludes SLAs with numerous organisations that are able to provide the requisite services to beneficiaries.

**Ad paragraphs 135 – 139**

95. I deny that the application is urgent, as explained above.
96. The Department reiterates that it has measures in place to ensure that the beneficiaries are provided with the requisite services. As such, no prejudice will be suffered by the beneficiaries should this application be heard in the ordinary course.
97. Furthermore, the applicant has failed to show why it would not obtain substantial relief in the ordinary course.

**Ad paragraphs 140 – 148**

98. I deny these allegations to the extent contradicted above.
99. There is no justification for a supervisory order. This will be dealt with in some detail in the respondent's heads of argument and at the hearing.

**Ad paragraphs 149 – 150**

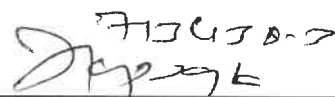
100. For the reasons set out above, I deny these allegations.

101. In all the circumstances, the respondent asks that the application be struck off the roll for lack of urgency or be dismissed, with no order as to costs.

DATED AT JOHANNESBURG THIS DAY OF MAY 2024.

  
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DEPONENT

The deponent has acknowledged that he knows and understands the contents of the affidavit, which was signed and sworn before me at Mondeor on this the 16 day of **May 2024**, the Regulations contained in Government Notice No. R1258 dated 21 July 1972, as amended by Government Notice No R1648 dated 19 August 1977, as further amended by Government Notice No. R1428 dated 11 July 1980, and by Government Notice No R774 of 23 April 1982, having been complied with.

  
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COMMISSIONER OF OATHS





# WEBBER WENTZEL

in alliance with > **Linklaters**

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Your reference

Our reference

Date

Asmita Thakor / Matthew Ilsley  
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29 April 2024

Dear Madam,

## **URGENT: OUTSTANDING DECISIONS ON SUBSIDY APPLICATIONS AND INCOHERENT SERVICE LEVEL AGREEMENTS FOR THE 2024/25 FINANCIAL YEAR**

1. We confirm that we act for the Gauteng Care Crisis Committee ("GCCC" / "our client").
2. Our correspondence addressed and delivered to your offices by email and by hand dated 23 April 2024 refers ("our letter").
3. Our letter raised several concerns brought to our client's attention by NPOs who are members of our client that had received incomplete service level agreements ("SLAs") from the Gauteng Department of Social Development ("GDSD"). These NPOs have been instructed to sign the SLAs should they wish to receive funding for the 2024/25 financial year.

2024 04 29 WW To MEC And HOD\_Slas And Decision On Funding Applications\_AT Edits\_ML Update(21041273.4)

**Senior Partner:** JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa C Alexander AK Allie NG Alp RL Appelbaum TB Ball DC Bayman AE Bennett AP Blair K Blom AR Bowley M Bux V Campos RI Carrim T Cassim SJ Chong ME Claassens C Collett KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies KM Davis PM Daya HM de Villiers ST Dias L de Bruyn A de Meyer PU Dela M Denenga DW de Villiers BEC Dickinson DA Dingley G Driver W Drue GP Duncan HJ du Preez CP du Toit TC Dye SK Edmundson LF Egypt KH Eiser AE Esterhuizen K Fazel G Fitzmaurice JB Forman L França M Garden OH Geldenhuys MM Gibson H Goolam C Gopal CI Gouws PD Grealy L Green JM Harvey JS Henning KR Hillis CM Hoffeld PM Holloway KT Inglis ME Jarvis JC Jones CM Jonker S Jooste LA Kahn L Kamukwamba M Kennedy A Keyser MT Kgoadi A Khumalo KE Kilner MD Kota JC Kraamwinkel AC Kruger J Lamb LC Lambrechts B Lötter E Louw M Mahlangu S Manley V Mannar L Marais G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer A Mhlongo AJ Mills D Milo M Mkhabela DR Mogapi P Mohanlall N Moodley L Moolman LE Mostert VM Movshovich M Mpungose A Muir C Murphy D Naidoo P Naidoo DC Nchabeleng DP Ndiweni C Nöthling PD Novotny M Nxumalo AN Nyatumba MB Nzimande A October L Odendaal N Paige AS Parry S Patel N Pather GR Penfold SE Phajane MN Phala M Philippides BA Phillips MA Phillips CH Pienaar MP Pool DJ Rafferty D Ramjettan GI Rapson K Rew G Richards-Smith SA Ritchie J Roberts Y Robbertse S Rule G Sader H Samsodien DA Serumula KE Shepherd ZK Sibeko N Singh N Singh-Nogueira P Singh S Sithole J Smit MP Spalding MW Straeuli LJ Swaine Z Swanepoel WV Tembedza A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Tihavani G Truter PZ Vanda SE van der Meulen JP van der Poel MS van der Walt CS Vanmali L van Tonder N van Vuuren JE Veeran HM Venter B Versfeld MG Versfeld TA Versfeld C Vertue T Viljoen DM Visagie EME Warrington J Watson AWR Westwood RH Wilson KD Wolmarans

Chief Operating Officer: SA Boyd

*BSP*



4. Our letter furthermore identified the fact that the SLAs, in their current form, do not contain the essential elements of a contract and highlighted the fact that even if signed, the SLAs would not create a binding agreement between the GDSD and the relevant NPO.
5. Our letter requested that the issues raised in relation to the SLAs be addressed in writing within three days of the date of the letter. As such, your response to our letter was due on Friday, 26 April 2024. No response has been received.
6. While we haven't received a response to our letter from you or any other representatives of the GDSD, we've been informed by various members of our client that they are still waiting for a decision from the GDSD regarding their funding applications. These NPOs submitted their applications for funding and business plans prior to the application deadline in November 2023.
7. Despite the GDSD having had **5 months** to consider these NPOs' applications for funding, several NPOs have still not received the GDSD's decision on their funding applications; while various other NPOs have received decisions for some, but not all, of their program offerings.
8. The following NPOs have not received any indication from the GDSD as to whether they will be funded for the 2024/25 financial year, despite the 2024/25 financial year having begun two months ago:
  - 8.1 A Re Ageng Social Services;
  - 8.2 Nissa Institute for Women's Development;
  - 8.3 Gauteng Children's Rights Committee;
  - 8.4 Employment Solutions for People with Disabilities;
  - 8.5 South African National Council on Alcoholism and Drug Dependence;
  - 8.6 Abba - Specialist Adoption and Social Services;
  - 8.7 Islamic Careline;
  - 8.8 Laudium Mental Health Society;
  - 8.9 Tshohang Youth Project;
  - 8.10 Alberton Child Welfare;
  - 8.11 Khayaletu;
  - 8.12 Residentia;
  - 8.13 Shangri-La Community Development Project;
  - 8.14 People Opposing Women Abuse; and
  - 8.15 Khulisa Victim Empowerment Programme.

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9. The following NPOs have received decisions on the funding of some, but not all, of their program offerings for the 2024/25 financial year:
  - 9.1 Tutela;
  - 9.2 Christelik Maatskaplike Raad;
  - 9.3 SAVF;
  - 9.4 Mould Empower Service (MES);
  - 9.5 RATA Social Services;
  - 9.6 Central Gauteng Mental Health Society;
  - 9.7 The Bethany House Trust;
  - 9.8 FAMSA Pretoria;
  - 9.9 Park Care; and
  - 9.10 Remme Los.
10. The funding application process is governed by the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA"). PAJA guarantees our client and its NPO members the right to just administrative action. A reasonable time for the consideration of the applications has passed. The GDSD is obliged, in terms of fair procedure and in accordance with the doctrine of just administrative action, to inform our client's NPO members whether their applications have qualified for funding or not. The GDSD is furthermore required under PAJA to furnish our client's NPO members with reasons in the case of those NPOs whose applications have been unsuccessful.
11. Accordingly, we shall be pleased if GDSD can urgently - and by no later than **12h00 on 2 May 2024** - provide:
  - 11.1 the NPOs outlined in paragraphs 8 and 9 with a conclusive decision regarding their funding applications for all programs provided by the relevant NPO; and
  - 11.2 furnishes any NPO listed in paragraphs 8 and 9, which has been unsuccessful in their funding application, with reasons for the decision refusing subsidies to them.
12. Should the demands outlined above not be complied with within the stipulated timeframes, we are instructed to approach the High Court on an urgent basis for the appropriate relief.
13. Our client's rights, as well as the rights of our client's members, remain reserved.

Yours faithfully

*B. K. P.  
J.N.*

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Page 4

**WEBBER WENTZEL**

Asmita Thakor

Partner

Direct tel: +27 11 530 5875

Direct fax: +27 11 530 6875

Email: [asmita.thakor@webberwentzel.com](mailto:asmita.thakor@webberwentzel.com)

Letter sent electronically. Physical copy to be provided on request.

K.P  
BjN

14 May 2024

Webber Wentzel

Attention: Ms. Asmita Thakor

Per email: asmita.thakor@webberwentzel.com

Dear Ms. Thakor,

**RE: SIGNING OF SERVICE LEVEL AGREEMENTS (“SLAS”) BETWEEN THE GAUTENG DEPARTMENT OF SOCIAL DEVELOPMENT (“GDSD”) AND NON-PROFIT ORGANISATIONS (“NPOS”) IN VIEW OF PROCESSING PAYMENTS**

1. We refer to your urgent application against the Member of the Executive Council of the GDSD (“**the application**”) and confirm that we act on behalf of the GDSD (“**our client**”).
2. Our client advises us that meetings were held on 13 and 14 May 2024 with your client, the Gauteng Care Crisis Committee, and other NPO representatives.
3. Our client has indicated that, at the meetings, NPOs which have received SLAs from the Department were encouraged to sign their SLAs in order for the Department to make payments to them. It was further stated that the Department had, with effect from 13 May 2024, commenced loading payments to be released to those NPOs which have signed their SLAs and whose SLAs have been captured by the Department. We are advised that the Department has implemented daily payment runs in order to accelerate payments to eligible NPOs and that, with effect from 13 May 2024, a number of SLAs had been captured by the Department and payments to these NPOs is underway.
4. Our client has also made your email which was sent at 17:04 on 13 May 2024 available to us. The aforementioned email attaches your letter dated 23 April 2024 (“**your letter**”). Your letter, *inter alia*, raises issues in relation to the contents of your client’s members’ SLAs. However, it is unclear to us why your letter was not sent to us despite us going on record as the Department’s attorneys in our letter to you dated 17 April 2024 and notwithstanding our email to you dated 2 May 2024, wherein we specifically requested to

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be provided with a copy of your letter. As such, the legal issues that have been raised in relation to your client's members' SLAs have only now been brought to our attention.

5. In view of the progress that has been made by the Department in relation to the signing of SLAs and processing of payments and considering that discussions are ongoing between our clients in this regard, our instructions are to request, as we hereby do, that the application be removed from the roll of 21 May 2024 by agreement between the parties, with no order as to costs. Your client will of course be at liberty to re-enroll the application in two weeks or so, should it still be necessary. In the meantime, a meeting may be held between the legal representatives to iron out the legal issues you have raised (improperly directly with our client). This will also allow for your client to join the Department and others who may have a legal interest in future proceedings (if the proceedings are necessary).
6. We look forward to your urgent and favourable response.
7. Our client's rights are strictly reserved.

Regards,

**Harris Nupen Molebatsi Inc.**

*(sent electronically, unsigned)*

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[lesego@hnmattorneys.co.za](mailto:lesego@hnmattorneys.co.za) / [jodie@hnmattorneys.co.za](mailto:jodie@hnmattorneys.co.za)

Your reference

Our reference

Date

Asmita Thakor / Nkosinathi Thema /  
Matthew Ilsley  
4004466

15 May 2024

**WITH PREJUDICE**

Dear Ms Mokgatle

**Gauteng Care Crisis Committee // MEC for Social Development and the signing of service level agreements**

1. We act for the Gauteng Care Crisis Committee ("**our client**") and its 70 members.
2. We are in receipt of your letter dated 14 May 2024 ("**your letter**"), which references our client's urgent application against the Gauteng MEC for Social Development ("**urgent application**"), and the meetings held by the Gauteng Department of Social Development ("**GDSD**") and the Premier of Gauteng on 13 and 14 May 2024.
3. It is correct that our client met with Mr Bongani Ngomane, the Acting Head of Department of the GDSD and the Premier on 13 and 14 May 2024. The meetings were convened at the request of the Acting HOD and Premier; confirming that the Premier acknowledges that he, and the GDSD, are accountable to NPOs and Social Work Organisation's ("**SWOs**") in Gauteng.
4. We note that at the meetings held by the Premier on 13 and 14 May 2024, the Premier made several undertakings, including the following:
  - 4.1 that the clauses in the SLAs providing for the 70/30 split between beneficiary and administrative costs is invalid, and would be rectified by a task team so that the allocation of costs is clearer to SWOs signing the SLA;

2024 05 15 WW To HNM\_Draft\_V2(21108959.2)

**Senior Partner:** JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa C Alexander AK Allie NG Alp TB Ball DC Bayman AE Bennett AP Blair K Blom AR Bowley M Bux V Campos RI Carrim T Cassim SJ Chong ME Claassens KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies KM Davis PM Daya HM de Villiers ST Dias L de Bruyn A de Meyer PU Dela M Denenga C Denny DW de Villiers BEC Dickinson DA Dingley G Driver W Drue GP Duncan HJ du Preez CP du Toit TC Dye SK Edmundson LF Egypt KH Eiser AE Esterhuizen K Fazel G Fitzmaurice JB Forman L França M Garden OH Geldenhuys MM Gibson H Goolam C Gopal CI Gouws PD Grealy L Green JM Harvey JS Henning KR Hillis CM Hofveld PM Holloway KT Inglis ME Jarvis JC Jones CM Jonker S Jooste LA Kahn L Kamukwamba M Kennedy A Keyser MT Kgoadi A Khumalo KE Kilner MD Kota JC Kraamwinkel AC Kruger J Lamb LC Lambrechts LM Lamola B Lötter E Louw M Mahlangu S Manley V Mannar L Marais G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer A Mhlongo AJ Mills D Milo M Mkhabela DR Mogapi P Mohanlal N Moodley L Moolman LE Mostert VM Movshovich M Mpungose A Muir C Murphy D Naidoo P Naidoo DC Nchabeleng DP Ndiweni C Nöthling PD Novotny M Nxumalo AN Nyatumba MB Nzimande A October L Odendaal N Paige AS Parry S Patel N Pather GR Penfold SE Phajane MN Phala M Phillipides BA Phillips MA Phillips CH Pienaar MP Pool DJ Rafferty D Ramjettan GI Rapson K Rew G Richards-Smith SA Ritchie J Roberts Y Robbertse S Rule G Sader H Samsodien DA Serumula KE Shepherd ZK Sibeko N Singh N Singh-Nogueira P Singh S Sithole J Smit MP Spalding MW Straeuli LJ Swaine Z Swanepoel WV Tembedza A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Tihavani G Truter PZ Vanda SE van der Meulen JP van der Poel MS van der Walt CS Vanmali L van Tonder N van Vuuren JE Veeran HM Venter B Versfeld MG Versfeld TA Versfeld C Vertue T Viljoen DM Visagie EME Warrington J Watson AWR Westwood RH Wilson KD Wolmarans

**Chief Operating Officer:** SA Boyd

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- 4.2 that payments of funding will be made in terms of all signed SLAs by no later than 24 May 2024; and
- 4.3 that the budget allocated to the social care sector which was reduced from R2.4 billion to R1.8 billion, would be reinstated.
5. Your letter does not engage with the undertakings made by the Premier, and does not respond to the issues raised by our client in the urgent application, in particular the relief sought by our client and its members.
6. By informing our client that payment has commenced for those SWOs that have signed Service Level Agreements ("**SLAs**"), albeit defective SLAs, and terming such as "progress"; our client's confidence in the GDSD's senior officials to resolve the dispute has been further undermined. Your letter reflects a disconnect between the expectations created by the Premier in the minds of SWOs, both in relation to the substantive issues and the timelines for resolving the dispute.
7. Our client will only be amenable to withdrawing the urgent application if your client agrees to our client taking an order in relation to the relief set out in the Notice of Motion. This relief requires that:
  - 7.1 the GDSD publish within 7 (seven) days of the date of the court order, and by no later than **28 May 2024**, a list containing the names of all SWOs that have been approved for subsidies in the 2024/25 financial year and to provide reasons for those organization's whose applications for funding are unsuccessful;
  - 7.2 thereafter and as a second step, SLAs must be entered into with the organizations whose names appear on the above-mentioned list, as having been successfully approved for funding, by no later than **31 May 2024**; and
  - 7.3 finally, and as a third step, the first tranche of funding approved by the GDSD must be paid to the qualifying organization by no later than **31 May 2024**.
8. In addition to the undertakings made by the Premier, , the Premier stated that a task team would be set up to have defective clauses in the SLAs corrected within 21 days, when he addressed NPOs at City Hall on 14 May 2024.
9. It is very clear that neither the Premier, the MEC nor the GDSD have given much thought to the processes that the GDSD is required to follow in law in order for the Premier's undertaking to materialize.
10. The core legal instrument that has to be in place in order for the GDSD to pay SWOs is the SLA. The SLAs sent to our client's members are legally deficient and will not give rise to a binding contract between the parties. Furthermore, during the meeting between the Acting HOD and our client on 13 May 2024, he reported to our client that the panelists on the adjudication panels were financial management personnel with little or no understanding of social care services. These panelists were responsible for determining budget spend and the split between the professional costs or rendering services and operational costs, without properly considering the impact that the funding decisions would have on the ability of SWOs to provide constitutionally mandated services to beneficiaries. It was also confirmed that the staff of the regional offices previously engaged in the funding process were ignored.

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11. Given the above problems, we anticipate that it will not be possible to rectify the deficient SLAs and recalculate subsidy awards to qualifying SWOs before the 24 May 2024. We propose therefore that the SLAs for the 2024/2025 financial year be concluded on the same terms as previous years. If the past SLAs are relied upon by the GDSD, an inflation-based percentage increase must be awarded across the board to all qualifying SWOs. Given the Premier's undertaking to increase the budget for care services from R1.8 billion to R2.4 billion, the GDSD should have no difficulty in putting through the inflationary increases.
12. We further propose that the regional staff of the GDSD who in previous years were deployed by the GDSD to negotiate the SLAs with SWOs be reinstated into their roles to expedite conclusion of the SLAs.
13. We suggest the above proposal in the spirit of the meetings hosted by the Premier, MEC and GDSD to resolve the dispute. It is the only practical way in which order can be restored to the administrative chaos caused by the MEC and GDSD.
14. If your client is inclined to reject the above proposals and disagree on the relief sought in our client's Notice of Motion, then we expect to receive your answering affidavit in the matter by 12H00 on 15 May 2024, so that the matter can proceed in the urgent court on 21 May 2024.
15. Finally, we note your suggestion in paragraph 4 of your letter that we ought to have sent our letter dated 23 April 2024 to you, instead of your client. Please note that after receiving your email in which you requested the 23 April 2024 letter, your client sent out an email – in which we were copied – instructing you to request the letter directly from your client. As such, we did not see it proper to act contrary to your client's instructions. The email trail detailing your client's instruction is attached hereto marked "A", and evidences that your client has had notice of the defects in the SLAs since 23 April 2024 until the date of this letter and has had more than enough time to consider and remedy the deficiencies listed therein.
16. Our client's rights remain reserved.

Yours faithfully

**WEBBER WENTZEL**

Asmita Thakor

Partner

Direct tel: +27 11 530 5875

Direct fax: +27 11 530 6875

Email: [asmita.thakor@webberwentzel.com](mailto:asmita.thakor@webberwentzel.com)

Letter sent electronically. A signed copy will be provided on request.

K.P  
BEN



**Matthew Ilsley**

---

**From:** GASELA, MATILDA <Matilda.Gasela@gauteng.gov.za>  
**Sent:** 02 May 2024 15:31  
**To:** Rethabile Mokgatle; Matthew Ilsley; Hlophe, Mbali (GDSD)  
**Cc:** Nkosana Mtolo; winile.mthembu@gauteng.gov.za; Rajen Naidoo; Bongani Ngomane; Khanyisile Mathebula; Asmita Thakor; Keeran Balram; Dinendri Pillay; Sibusiso Radebe; Peter Harris  
**Subject:** Re: Urgent request to amend Service Level Agreements issued for the 2024/25 financial year by the Gauteng Department of Social Development [WW-WS\_JHB.FID2673426]

Please request the letter directly. Sorry just seen this mail

**Ms. Matilda Gasela**  
**Head of Department**  
**Gauteng Department of Agriculture and Rural Development (GDARD)**  
**Tel: 011 240 3457 E-mail: [matilda.gasela@gauteng.gov.za](mailto:matilda.gasela@gauteng.gov.za)**  
**Website: <http://www.gdard.gpg.gov.za>**

---

**From:** Rethabile Mokgatle <rethabile@hnmattorneys.co.za>  
**Sent:** Thursday, May 2, 2024 12:00:07 PM  
**To:** Matthew Ilsley <Matthew.Ilsley@webberwentzel.com>; Hlophe, Mbali (GDSD) <mbali.hlophe@gauteng.gov.za>; GASELA, MATILDA <Matilda.Gasela@gauteng.gov.za>  
**Cc:** Nkosana Mtolo <nkosana.mtolo@gauteng.gov.za>; winile.mthembu@gauteng.gov.za <winile.mthembu@gauteng.gov.za>; Rajen Naidoo <Rajen.Naidoo@gauteng.gov.za>; Bongani Ngomane <bongani.Ngomane@gauteng.gov.za>; Khanyisile Mathebula <khanyisile.mathebula@gauteng.gov.za>; Asmita Thakor <asmita.thakor@webberwentzel.com>; Keeran Balram <Keeran.Balram@webberwentzel.com>; Dinendri Pillay <Dinendri.Pillay@webberwentzel.com>; Sibusiso Radebe <sibusiso@hnmattorneys.co.za>; Peter Harris <pharris@hnmattorneys.co.za>  
**Subject:** RE: Urgent request to amend Service Level Agreements issued for the 2024/25 financial year by the Gauteng Department of Social Development [WW-WS\_JHB.FID2673426]

Dear Sirs,

We refer to your email below, wherein we are copied, and to your letter dated 29 April 2024 attached thereto ("your letter").

At this stage, we have not received instructions from the Department in relation to the contents of your letter. We have however requested instructions from the Department and will be in a position to respond accordingly upon receipt of same.

We gather from the contents of your letter that another letter was sent to the Department on 23 April 2024. We have not been provided a copy of this letter and request that same be furnished to us to enable us to understand the basis of the contentions made in your letter and to discuss same with the Department in view of obtaining further instructions on the matter.

Regards,

K.P  
B.S.N

**Rethabile Mokgatle**

Tel: +27 (0)11 017 3100  
Cell: +27 (0)76 030 6321  
Email: rethabile@hnmattorneys.co.za

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**From:** Matthew Ilsley <Matthew.Ilsley@webberwentzel.com>

**Sent:** Monday, April 29, 2024 3:35 PM

**To:** mbali.hlophe@gauteng.gov.za; Matilda.Gasela <Matilda.Gasela@gauteng.gov.za>

**Cc:** nkosana.mtolo@gauteng.gov.za; winile.mthembu@gauteng.gov.za; bongani.Ngomane@gauteng.gov.za; khanyisile.mathebula@gauteng.gov.za; Asmita Thakor <asmita.thakor@webberwentzel.com>; Keeran Balram <Keeran.Balram@webberwentzel.com>; Dinendri Pillay <Dinendri.Pillay@webberwentzel.com>; Sibusiso Radebe <sibusiso@hnmattorneys.co.za>; Peter Harris <pharris@hnmattorneys.co.za>; Rethabile Mokgatle <rethabile@hnmattorneys.co.za>

**Subject:** RE: Urgent request to amend Service Level Agreements issued for the 2024/25 financial year by the Gauteng Department of Social Development [WW-WS\_JHB.FID2673426]

You don't often get email from [matthew.ilsley@webberwentzel.com](mailto:matthew.ilsley@webberwentzel.com). [Learn why this is important](#)

Dear Ms Hlophe and Ms Gasela,

Please see the attached letter for your **urgent** attention.

Additionally, we are advised that Ms Gasela is currently under investigation and may have been suspended. We have therefore copied in attorneys from HNM to ensure that the letter is received by the correct representatives in the Gauteng Department of Social Development that are able to deal with the contents of this letter.

Physical copies will be served on your offices.

Regards,

**Matthew Ilsley | Associate | Webber Wentzel**

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**From:** Matthew Ilsley

**Sent:** Tuesday, April 23, 2024 2:09 PM

**To:** [mbali.hlophe@gauteng.gov.za](mailto:mbali.hlophe@gauteng.gov.za); [Matilda.Gasela@gauteng.gov.za](mailto:Matilda.Gasela@gauteng.gov.za)

**Cc:** [nkosana.mtolo@gauteng.gov.za](mailto:nkosana.mtolo@gauteng.gov.za); [winile.mthembu@gauteng.gov.za](mailto:winile.mthembu@gauteng.gov.za); [bongani.Ngomane@gauteng.gov.za](mailto:bongani.Ngomane@gauteng.gov.za); [khanyisile.mathebula@gauteng.gov.za](mailto:khanyisile.mathebula@gauteng.gov.za); Asmita Thakor <[asmita.thakor@webberwentzel.com](mailto:asmita.thakor@webberwentzel.com)>; Keeran Balram <[Keeran.Balram@webberwentzel.com](mailto:Keeran.Balram@webberwentzel.com)>; Dinendri Pillay <[Dinendri.Pillay@webberwentzel.com](mailto:Dinendri.Pillay@webberwentzel.com)>

**Subject:** Urgent request to amend Service Level Agreements issued for the 2024/25 financial year by the Gauteng Department of Social Development [WW-WS\_JHB.FID2673426]

Dear Ms Hlophe and Ms Gasela,

I hope you are well.

Please see attached important correspondence for your urgent attention. Physical copies of the letter will be delivered to your offices this afternoon.

Kindly acknowledge receipt of this email and the letter.

Kind regards

**Matthew Ilsley | Associate | Webber Wentzel**

T:+27115305013 | [matthew.ilsley@webberwentzel.com](mailto:matthew.ilsley@webberwentzel.com) | [www.webberwentzel.com](http://www.webberwentzel.com)

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