

# ANNUAL REPORT

1 April 2004 - 31 March 2005

**10 YEARS**  
OF PROTECTING AND  
STRENGTHENING CONSTITUTIONAL  
DEMOCRACY



PUBLIC PROTECTOR  
SOUTH AFRICA



## Vision

The office of the Public Protector strives to be efficient, effective, accessible, known by all, and with our impartiality accepted, thereby strengthening constitutional democracy in all organs of state.

## Mission

The Office of the Public Protector is an independent and impartial constitutional institution established to strengthen constitutional democracy by conducting investigations into alleged improper conduct by organs of State, facilitating resolution of disputes, reporting and recommending remedial action and enhancing awareness about the role and functions of the office.

## Values

### Impartiality

We ensure impartiality in our interactions with our stakeholders. We shall perform our duties without fear or favour, mindful of the independence of our Office.

### Courtesy

We display courtesy to all and treat people with dignity and respect.

### Empathy

We are sensitive towards and understand our stakeholders' needs and feelings.

### Integrity

We strive to maintain high standards of trustworthiness.

### Accountability

We always give account of our actions and decisions.

### Service Oriented

We strive to execute our responsibilities timeously, fairly and consistently, with due regard to the facts of each matter before us.

## The Hon Ms Baleka Mbete

Speaker of the House of Assembly of South Africa  
Parliament Building  
Parliament Street  
CAPE TOWN

Dear Madam Speaker

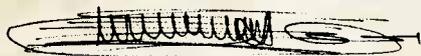
I have the honour to present my third Annual Report to Parliament which covers the period 1 April 2004 to 31 March 2005. This also includes the Audit Committee Report.

The report is submitted in terms of section 181(5) of the Constitution, 1996, which states:

"These institutions are accountable to the National Assembly, and must report on their activities and the performance of their functions to the Assembly at least once a year."

This year has once again seen significant achievements, as we continue to strive to become more accessible to the diverse community, which we serve, and to seek equitable solutions for those adversely affected by maladministration.

On behalf of all my staff, I would like to express our sincere appreciation to the many representatives of government departments and agencies who have so willingly assisted us in our endeavours in fulfilling our Constitutional mandate.



**ADV ML MUSHWANA**  
**PUBLIC PROTECTOR OF THE REPUBLIC OF SOUTH AFRICA**  
**DATE: 31 March 2005**



## FOREWORD:

### Adv. ML Mushwana (Public Protector RSA)

It is once more that time of the year when we look back in retrospect to the standards of our performance in conformity with the mandate of the Office of the Public Protector (OPP). It is that time when the prescripts of transparency, openness and accountability demand of us to lay bare and table our Annual Report before Parliament.

In general terms, the core functions of the OPP are to protect the individual from unfair and unjust actions of organs of state. More importantly, the OPP plays a major role in helping state organs to improve the services they offer to the public by identifying improprieties, maladministration, and by recommending remedial action, and in that way, guide them towards a better way of conducting business with the public. In this way, both the public and state organs are assisted and administrative processes are improved.

In a nutshell, the Annual Report of the OPP describes how the OPP has, in many varied ways impacted on the lives of ordinary individuals, from people with disabilities, the aged, single parents seeking grants to improve their living conditions, heirs seeking payments of pensions and estates emanating from their deceased loved ones, retrenched individuals seeking assistance for delayed payments by the Unemployment Insurance Fund, abuse of power and any impropriety committed by state organs, to mention but a few complaints that were dealt with in the preceding year.

We are privileged and indeed honoured to table this report in Parliament and also make it available to our stakeholders and any other interested individual, bodies and institutions. What follows is the summation of major events and activities reported on in this Annual Report.

The very first strategic plan for the Office of the Public Protector was put to test during the preceding financial year. It is indeed encouraging that the identified strategic goals as set out in the strategic plan have been achieved, as is more fully reported on in this report.

## HIGHLIGHTS OF SOME OF THE SUCCESSES:

### Building Capacity in the Human Resource Section:

The core function and mandate of the office of the Public Protector is to conduct investigations of alleged impropriety within state organs, to report on the results of such investigations, recommend remedial action, mediate, negotiate or conciliate warring parties. In order to succeed in carrying out this mandate, the investigative section of the OPP must be supported by an efficient Human Resource (HR) section. Our HR has been ailing and under resourced for a long time.

The HR was improved and beefed up by the appointment of amongst others, the HR Senior Manager, Training Officer, and Personnel Practitioner. The immediate benefits and spin-off of these appointments were increased training sessions to capacitate support staff and speedy completion of strategic office policies, to mention just a few.

### Signing Performance Agreements:

The OPP is proud that all its staff members, for the first time, are parties to signed performance agreements. The performance of each staff member can now be assessed with more precision and ultimate certainty.

Staff members are now more informed and certain of what is expected of them. It has now become easier to measure the performance and success of the office as a whole.

### **Adoption of Operational Plans:**

Operational plans that conform to the adopted strategic plan of the OPP have been adopted and are in place. Operational plans are signposts that guide each staff member in the performance of their duties. They prescribe the turnaround times in the performance of specific functions and serve as early warnings for emerging failures. The operational plans, in general, ensure that goals and objectives as identified and set out in the strategic plan are realised and achieved with precision and within prescribed time frames.

### **Successful Investigations:**

The OPP can and must make a difference in the lives of the people of South Africa. In conducting our investigations during the year under review, more attention was focused on root causes of complaints followed by meaningful recommendations for remedial actions. Complaints were dealt with more speedily than it was the case in the past. More own initiative investigations were embarked upon. Projects on specific shortcomings, such as that in the whistle blowing legislation were carried out and specific recommendations made to the Law Commission.

Towards the end of the financial year, the backlog of cases in the OPP was almost cleared. A resolve was taken and implemented that all complaints must be completed in less than two years from receipt.

The main complaints that were dealt with emanated from people at the grassroots level and ranged from delays in service delivery to improper action by state officials. There was also an upsurge in the number of high profile matters, some of which were highly controversial. We report on some of these matters in the report.

### **Outreach Programme:**

The OPP is enjoined by law to be accessible to everybody. In order to reach out to all individuals at the grass roots level, an outreach programme was embarked upon through the whole country. This programme is ongoing with a number of visiting points already established country wide of which some are permanently serviced on a weekly basis.

The success of this programme can be measured by an increase in the number of complaints received during the preceding year. Two additional regional offices have been identified and are to be established in the next financial year in Mpumalanga and the Western Cape.

The OPP operates on a very limited budget and has not managed to achieve all desired goals. It was not possible to fill all identified posts as set out in the Organogram as approved by Parliament. We will continue to knock on the doors of the Treasury Department for more funds that will enable us to fulfil our mandate without hindrance.

A five-year strategic plan has since been adopted. It indeed, spells out future challenges that face the OPP. The OPP's Organogram has also been reviewed in order to underpin the five year strategic plan.

Our resolve for this year is: **“As the OPP, we can, and we must make a difference in the lives of the people of South Africa - and we have vowed to do that”.**

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## 1. BACKGROUND OF THE OFFICE OF THE PUBLIC PROTECTOR

### 1.1 Appointment mechanism and powers

The Public Protector is appointed by the President, on the recommendation of the National Assembly, in terms of Chapter Nine of the Constitution, 1996. The Public Protector is required to be a South African citizen who is suitably qualified and experienced and has exhibited a reputation for honesty and integrity. The Constitution also prescribes the powers and duties of the Public Protector. Further powers, duties and execution thereof are regulated by the Public Protector Act, 1994 (Act 23 of 1994).

Section 181 of the Constitution ensures that the Public Protector shall be subject only to the Constitution and the law. He/she must be impartial and must exercise his/her powers and perform his/her functions without 'fear, favour or prejudice'. No person or organ of state may interfere with the functioning of the Office of the Public Protector (OPP).

The Public Protector has the power to investigate any conduct in state affairs, or in the public administration in any sphere of government that is alleged or suspected to be improper or to result in any impropriety or prejudice. Following such an investigation the Public Protector has to report on the conduct concerned and he/she can take appropriate remedial action. Additional powers and functions are provided for by the Public Protector Act, 1994. The Public Protector may not investigate court decisions. He/she must be accessible to all persons and communities. Other organs of the state must assist and protect the institution to ensure its independence, impartially, dignity and effectiveness.

The Public Protector is neither an advocate for the complainant nor for the public authority concerned. He/she ascertains the facts of the case and reaches an impartial and independent conclusion on the merits of the complaint.

### 1.2 A brief history of the office

Most democracies have a national institution similar to that of the Public Protector - although called by different names, amongst others, Ombudsman, Mediator, Commissioner - which is empowered by legislation to assist in establishing and maintaining efficient and proper public administration.

The idea of the office of Ombudsman originated in Sweden, but did not spread to other countries until the 20th century, when it was adopted in other Scandinavian countries. In the early 1960's various Commonwealth and other, mainly European countries, established such an office. By mid 1983, there were approximately 21 countries with Ombudsman offices at provincial, state or regional levels. In particular, the transition of many countries to democracy and democratic structures of governance over the past two decades, has led to the establishment of many more Ombudsman offices during this recent period. Accordingly, by 1998, the number of Ombudsman offices had more than quadrupled to encompass offices both in states with well established democratic systems and in countries which have younger democracies, such as countries in Latin America, Central and Eastern Europe, as well as in parts of Africa and the Asia Pacific countries.

With the founding of a proper and modern democracy in South Africa, it was decided that such an institution should also form part of the establishment of institutions that will protect fundamental human rights and that will prevent the state from treating the public in an unfair and high-handed manner.

During the multi-party negotiations that preceded the 1994 elections, it was agreed that South Africa should have a Public Protector.

The Public Protector was established by means of provisions of the interim Constitution of 1993 and confirmed as an institution that strengthens constitutional democracy by the final Constitution, 1996. The office of the Public Protector came into being on 1 October 1995.

### 1.3 Jurisdiction

The Public Protector has jurisdiction over all organs of state, any institution in which the state is the majority or controlling shareholder and any public entity as defined in section 1 of the Public Finance Management Act, 1999.

### 1.4 Particular powers and duties

During an investigation, the Public Protector may, if he/she considers it appropriate or necessary:

- 1.4.1 Direct any person to appear before him/her to give evidence or to produce any document in his/her possession or under his/her control which, in the opinion of the Public Protector, has a bearing on the matter being investigated, and may examine such person for that purpose;
- 1.4.2 Request any person at any level of government, or performing a public function, or otherwise subject to his/her jurisdiction, to assist him/her in the performance of his/her duties with regard to a specific investigation; and
- 1.4.3 Make recommendations and take appropriate remedial action.

### 1.5 Reporting

The Public Protector is accountable to the National Assembly and must report on his/her activities and the performance of his/her functions to the Assembly at least once a year. The Public Protector must, however, at any time submit a report to the National Assembly on the findings of a particular investigation if:

- 1.5.1 He/she deems it necessary;
- 1.5.2 He/she deems it in the public interest;
- 1.5.3 It requires the urgent attention of, or an intervention by, the National Assembly; or
- 1.5.4 He/she is requested to do so by the Chairperson of the National Council of Provinces.

## 2. PROFILE OF THE PUBLIC PROTECTOR, ADV MABEDLE LAWRENCE MUSHWANA



Born in 1948 at Bordeaux in Limpopo Province, Mbedle Lawrence Mushwana studied through the University of South Africa and obtained a B Juris degree. He also attended the University of Zululand where he obtained two legal diploma's and later an LLB degree.

He started his legal career in 1972 as an interpreter of the Magistrate's Court in Mhala, Bushbuckridge and became a public prosecutor there three years later. By 1977 he had risen to the position of Magistrate and served in Malamulele, Ritavi, Giyani and Mhala districts, respectively. At the time of his resignation in 1986 due to political activities, he was Principal Magistrate.

Twice detained under the old Apartheid State of Emergency Regulations, he was later admitted as an attorney of the High Court of South Africa and went on to establish his own firm in 1992. He has now been admitted as an advocate of the Supreme Court of South Africa.

Mr Mushwana has had a distinguished career in government and has led a number of delegations on international Parliamentary tours.

He has also served on several Parliamentary committees. Amongst others, he co-chaired the Joint Parliamentary budget committee and the Code of Conduct and Ethics Committee. He has served as Chairperson of Committees and also on the Audit Commission and the Judicial Services Commission. He participated in the drawing up of the South African Constitution and is well known for his role as Deputy Chairperson of the National Council of Provinces. He resigned from his position to take up office as the second Public Protector of South Africa on 15 October 2002.

He is actively involved in community service and is renowned for his language proficiency. As a law student, he obtained a distinction in Practical Afrikaans. He is also fluent in English, Xitsonga, Zulu, Northern Sotho, Swazi and Xhosa. In addition, he is conversant in Southern Sotho, Venda and Setswana.

### 3. PROGRAMME PERFORMANCE

The (OPP) identified three strategic result areas for the 2004/2005 financial year, namely:

1. Efficient and effective investigations;
2. Outreach programme; and
3. Improved administrative support.

#### 3.1 STRATEGIC RESULT AREA ONE

##### **Efficient and effective investigations.**

##### **a) Purpose**

To ensure that investigations are performed in accordance with the prescribed mandate.

##### **b) Strategic Objectives**

1. To implement service delivery indicators.
2. To identify systemic investigations (i.e. look at the root causes or number of similar cases).
3. To identify and classify investigations into projects and assign timeframes and to cost such investigations.
4. Creation of precedent system (i.e. for reference knowledge base).
5. To establish a mechanism to identify own initiative investigations not flowing from existing complaints.
6. To improve investigative skills.
7. To deal with backlogs (previous volumes of work that has accumulated).
8. To document all processes and phases in the investigation cycle; and
9. Regular and prompt reporting and making recommendations, while still relevant.

<b>Programme Investigations</b>	<b>Objectives</b>	<b>Results/Output</b>
<p>1. Efficient and effective investigations</p>	<p>1. To implement service delivery indicators</p>	<p>1. Service delivery indicators have been developed and implementation started from 01 July 2004 and will be renewed during 2005/2006 financial year.</p>
	<p>2. To identify Systemic Investigations</p>	<p>2. The following five systemic investigations were identified and project plans approved:</p> <ul style="list-style-type: none"> <li>i. Appeals investigation</li> <li>ii. Compensation Commissioner investigation</li> <li>iii. Social grants (Eastern Cape) investigation</li> <li>iv. Maintenance matters investigation</li> <li>v. Protection of whistleblowers within the legislative framework of the Protected Disclosures Act, 2000 and the role of the Public Protector</li> </ul>
	<p>3. To identify and classify investigations into projects and assign time frames and costs.</p>	<p>3. The above-mentioned systemic investigations have been classified as projects.</p>
	<p>4. Creation of precedent system</p>	<p>4. In order for the OPP to comply with the new Treasury regulation of Supply Chain Management, the post of a researcher was used to appoint the Deputy Director Supply Chain Manager.</p> <ul style="list-style-type: none"> <li>- The creation of a precedent system was dependent on the appointment of a researcher and this post will be filled as and when funds become available.</li> </ul>

Programme Investigations	Objectives	Results/Output
	<p>5. To establish a mechanism to identify own initiative investigations</p>	<p>5. The following five own initiative investigations were identified and conducted:</p> <ul style="list-style-type: none"> <li>(i) Investigation into allegations in connection with the Head of the Johannesburg Metro Police.</li> <li>(ii) Investigation into allegations of impropriety relating to the affairs of the Tshwane Metro Police.</li> <li>(iii) Investigation into the allegations of a failure by the Department of Justice and Constitutional Development to comply with a directive of the Department of Labour.</li> <li>(iv) Investigation into apparent failure by Departments of the Eastern Cape Provincial Government to comply with court orders.</li> <li>(v) Investigation into allegations concerning the renewal of drivers and vehicle licenses.</li> </ul>
	<p>6. To improve investigative skills</p>	<p>6. A needs analysis has been conducted and investigative staff have to date been trained on Report writing, Human Rights and Conflict Management and Reduction / Resolution - Project Management</p>
	<p>7. To deal with backlog</p>	<ul style="list-style-type: none"> <li>(vi) All cases older than two years have been identified and monthly reports are provided with a view to finalizing them</li> <li>(vii) For the 2005/2006 financial year a team has been appointed to assist all investigators to finalize cases older than two years. The process is ongoing.</li> </ul>

<b>Programme Investigations</b>	<b>Objectives</b>	<b>Results/Output</b>
	8. To document all processes and phases in the investigation cycle.	A manual has been compiled on how to conduct investigations and is now being used to induct new investigators.
	9. Regular and prompt reporting and recommendations, while still relevant	The Think Tank committee has been established to facilitate speedy issuing of reports and the making of recommendations to state organs where needs be to parliament.

### **3.2 STRATEGIC RESULT AREA TWO**

#### **Outreach Programme**

##### **a) Purpose**

The purpose of the outreach programme is to take service delivery to the people, by being accessible and empowering communities and all stakeholders through public awareness campaigns.

##### **b) Strategic Objectives:**

1. To identify, establish and maintain visiting points;
2. To conduct clinics;
3. Where needs be, establish regional and satellite offices; and
4. To conduct public awareness campaigns.

<b>Programme Outreach</b>	<b>Objectives</b>	<b>Results/Output</b>
	1. To identify, establish and maintain visiting points	- 43 new visiting points have been established throughout the country and are serviced at least once every month.
	2. To conduct clinics	- 43 clinics are conducted monthly throughout the nine Provinces.
	3. To conduct Public awareness campaigns	- Workshops and information sessions were conducted throughout the country to all OPP's identified stakeholders.
	4. Where needs be, establish regional and satellite offices	- The target set was to establish nine regional offices but due to financial constraints, approval has been granted to open two additional permanent regional offices.

Programme Outreach	Objectives	Results/Output
		<ul style="list-style-type: none"> <li>- Two Provinces were identified where there is a need to open regional offices, namely Western Cape in George and Mpumalanga in Siyabuswa.</li> <li>- Those two offices will be opened in the 2005/2006 financial year.</li> </ul>

### 3.3 STRATEGIC RESULT AREA THREE

#### Improve Administrative Support

##### a) Purpose

The purpose of improved administrative support is to provide for the strategic leadership of the office, as well as for a variety of essential support services, such as financial and human resource management.

##### b) Strategic Objectives

1. To have an effective and uniform Information Technology (IT) and Information Security (IS) infrastructure to support OPP;
2. To formulate both internal and external communication strategies;
3. To formulate and implement organisational policies and procedures;
4. To improve people management through change management (i.e. soft issues);
5. To design and implement a proper Performance Management System;
6. To deal with hybrid employment environment Department of Justice and Constitutional Development (DOJCD and OPP);
7. To reduce the level of non-core functions currently performed by investigators;
8. To develop a Web site;
9. To establish a possibility of a pension fund for OPP; and
10. To train the administrative staff.

<p><b>Programme Improve Administrative Support</b></p>	<p><b>Objectives</b></p>	<p><b>Results/Output</b></p>
	<p>1. To have an effective and uniform, IT and IS infrastructure to support OPP.</p>	<p>- The office has outsourced its complete IT and IS function to SITA.- The IT Manager has been appointed as from 01 December 2004.</p>
	<p>2. To define a communication strategy for both internal and external communication.</p>	<p>The Senior Manager: Communications has been appointed with effect from 01 December 2004, to ensure the formulation of the OPP communication strategy, and to perform related functions.</p>
	<p>3. To formulate and implement policies and procedures.</p>	<p>All major policies have been drawn up and adopted.</p>
	<p>4. To improve people through change management. (i.e. soft issues)</p>	<p>The change management strategy has been developed within the performance management system which has been adopted and implemented.</p>

<p><b>Programme Improve Administrative Support</b></p>	<p><b>Objectives</b></p>	<p><b>Results/Output</b></p>
	<p>5. To design and implement a proper performance management system.</p>	<p>The new Performance Management System has been adopted and the first assessment in terms of new system will be in place in April 2005.</p>
	<p>6. To develop a website</p>	<p>The website has been finalized and will be launched on August 26 2005.</p>
	<p>7. To deal with hybrid employment (DOJ and OPP).</p>	<ul style="list-style-type: none"> <li>- The Minister of Finance has given approval for the office to join the Government Employees Pension Fund.</li> <li>- This will resolve the hybrid employment environment as seconded staff from the Department of Justice can join the OPP establishment without losing their pension benefits.</li> </ul>
	<p>8. To train administrative staff.</p>	<ul style="list-style-type: none"> <li>- The training of administrative staff commenced with Conflict Management training and Secretarial course. Other courses will be attended in the 2005/2006 financial year.</li> <li>- The following posts have been created and filled to reduce the level of non-core functions:               <ol style="list-style-type: none"> <li>1. Human Resource Manager</li> <li>2. Communication Manager</li> <li>3. IT Manager</li> <li>4. Personnel Practitioner</li> <li>5. Training Officer</li> </ol> </li> </ul>

### 3.4 ISSUES OF COLLABORATION AMONGST CHAPTER NINE INSTITUTIONS

The office of the Public Protector has in the year under review, collaborated on different levels with the other Chapter nine institutions. These relationships exist on infrastructural level where the OPP has accommodated an officer of the Commissioner on Gender Equality in the Northern Cape Provincial Office. The OPP also collaborated in the Public awareness and outreach programmes where joint workshops were held which resulted in financial savings as well as clarifying our different mandates.

The Human Rights Commission, Commission on Gender Equality and the office of the Public Protector will jointly implement the Civil Society Advocacy Programme funded by the European Union, for a period of three years.

This programme will enhance and empower communities and stakeholders to understand their rights and enforce them, in the three targeted provinces namely: KwaZulu Natal, Eastern Cape and Limpopo.

### 3.5 CHALLENGES AND CONSTRAINTS

#### 3.5.1 Capacity Constraints

The outreach programme, which was implemented in the year under review, has substantially increased the number of cases received for investigation. This influx has resulted in staff not being able to cope with the increased workload. Although the organisational organogram does make provision for the appointment of additional staff, the budget allocated is insufficient. However, the office continues to commit itself in rendering an efficient service delivery programme in spite of its staffing constraints. A further constraint was the introduction of the Supply Chain Management legislative framework. That required additional compulsory appointment of a manager without additional funding.

#### 3.5.2 Infrastructural Constraints

A number of key positions were filed in the National Office, resulting in a shortage of office space. As it was not possible to secure premises in the city center, the office had to relocate to Hatfield with an increase in rental costs, which were not provided for.

The National Office is inundated with complaints and had to expand to cope with the workload, in order to carry out its mandate effectively. A formal request for a once-off amount for the expansion of the Gauteng Office as well as additional allocations for satellite offices and the filling of vacant posts were submitted. The MTEC recommended that the Gauteng Offices be funded within the baseline, but the expenditure for the former will not be sustained in the subsequent financial year. The recommendation is therefore aimed at sustaining these offices in the 2005/2006 financial year.

## 4. STATISTICAL OVERVIEW

### 4.1 Statistical Overview

#### 01 APRIL 2004 TO 31 MARCH 2005

<b>Cases brought forward from 31 March 2004</b> (National Office)	2 702
<b>Cases reopened during current year</b> (National Office)	191
<b>Cases brought forward from 31 March 2004</b> (Mabopane Regional Office)	232
	<b>3 125</b>
<b>Cases brought forward from 31 March 2004</b> (North West Provincial Office)	2 161
<b>Cases brought forward from 31 March 2004</b> (Eastern Cape Provincial Office)	1 190
<b>Cases brought forward from 31 March 2004</b> (Kwa-Zulu Natal Provincial Office)	1 100
<b>Cases brought forward from 31 March 2004</b> (Western Cape Provincial Office)	578
<b>Cases brought forward from 31 March 2004</b> (Mpumalanga Provincial Office)	297
<b>Cases brought forward from 31 March 2004</b> (Northern Cape Provincial Office)	201
<b>Cases brought forward from 31 March 2004</b> (Free State Provincial Office)	202
<b>Cases brought forward from 31 March 2004</b> (Limpopo Provincial Office)	438
<b>Cases brought forward from 31 March 2004</b> (Gauteng Provincial Office)	0
<b>GRAND TOTAL</b>	<b>9 292</b>

4.2 NEW CASES RECEIVED										
	National Office	North West	Eastern Cape	KwaZulu-Natal	Mpumalanga	Western Cape	Northern Cape	Free State	Limpopo	Gauteng
April 2004	469	223	60	87	51	96	85	73	392	-
May 2004	521	356	84	153	85	97	131	155	146	-
June 2004	511	313	93	212	122	131	140	78	110	-
July 2004	603	344	295	209	110	121	120	145	93	-
August 2004	516	341	304	212	136	121	114	167	123	-
September 2004	624	358	691	157	76	148	84	124	90	-
October 2004	642	327	508	182	100	196	106	113	91	-
November 2004	562	253	709	222	107	170	129	198	129	-
December 2004	91	201	122	68	29	67	50	77	42	14
January 2005	718	371	220	105	82	115	72	149	182	36
February 2005	450	305	122	55	190	218	57	190	110	31
March 2005	509	275	88	121	134	167	33	190	89	61
TOTAL	6 216	3 667	3 296	1 783	1 222	1 647	1 121	1 659	1 597	142
<b>GRAND TOTAL:</b>										<b>22 350</b>

4.3 CASES FINALISED										
	National Office	North West	Eastern Cape	KwaZulu-Natal	Mpumalanga	Western Cape	Northern Cape	Free State	Limpopo	Gauteng
April 2004	502	188	96	122	42	100	43	32	82	-
May 2004	507	273	187	120	60	127	45	82	77	-
June 2004	573	261	163	127	69	119	92	40	44	-
July 2004	725	284	197	95	60	85	109	40	44	-
August 2004	482	287	219	124	42	85	63	110	67	-
September 2004	692	336	97	117	69	87	52	128	64	-
October 2004	534	304	80	88	30	117	56	108	68	-
November 2004	664	317	87	129	112	137	62	102	120	-
December 2004	218	175	85	120	25	102	49	83	34	07
January 2005	750	326	86	102	127	102	76	105	107	17
February 2005	444	240	84	102	91	94	48	128	116	18
March 2005	440	207	92	101	163	185	65	101	50	26
<b>TOTAL</b>	<b>6 531</b>	<b>3 198</b>	<b>1 473</b>	<b>1 347</b>	<b>890</b>	<b>1 340</b>	<b>760</b>	<b>1 059</b>	<b>873</b>	<b>68</b>
<b>GRAND TOTAL:</b>										<b>17 539</b>

#### 4.4 Cases carried forward to April 2005

<b>Cases carried forward to April 2005</b> (National Office)	2 810
<b>Cases carried forward to April 2005</b> (North West Provincial Office)	2 630
<b>Cases carried forward to April 2005</b> (Eastern Cape Provincial Office)	3 013
<b>Cases carried forward to April 2005</b> (KwaZulu-Natal Provincial Office)	1 536
<b>Cases carried forward to April 2005</b> (Mpumalanga Provincial Office)	629
<b>Cases carried forward to April 2005</b> (Western Cape Provincial Office)	885
<b>Cases carried forward to April 2005</b> (Northern Cape Provincial Office)	562
<b>Cases carried forward to April 2005</b> (Free State Provincial Office)	802
<b>Cases carried forward to April 2005</b> (Limpopo Provincial Office)	1 162
<b>Cases carried forward to April 2005</b> (Gauteng Provincial Office)	74
<b>GRAND TOTAL:</b>	<b><u>14 103</u></b>

## 5. CASES INVESTIGATED

Some of the more common types of complaints referred to the OPP include the following:

- a) Insufficient reasons given for a decision or no reasons given;
- b) The interpretation of criteria, standards, guidelines, regulations, laws, information or evidence was wrong or unreasonable;
- c) Processes, policies or guidelines were not followed or were not applied in a consistent manner;
- d) Adverse impact of a decision or policy on an individual or group;
- e) Unreasonable delay in taking action or reaching a decision;
- f) Failure to provide sufficient or proper notice;
- g) Failure to communicate adequately or appropriately;
- h) Due process denied;
- i) A public service was not provided equitably to all individuals;
- j) Denial of access to information.

## 6. SPECIFIC INVESTIGATIONS

### 6.1 Matters formally reported on

#### Executive / Cabinet

#### Constitutional duty of State regarding health care

##### 6.1.1 Case Number: 4846/03

#### **Complaint against Cabinet's approval of an operational plan for comprehensive treatment and care for Human Immuno Defiaency Virus (HIV) and Acquired Immuno Defiaency Syndrome (AIDS) patients.**

The Public Protector investigated a complaint against the decision of the South African Cabinet, taken on 19 November 2003, to approve the Operational Plan for Comprehensive Treatment and Care for HIV and AIDS, designed for South Africa by the National Department of Health. In the main, it was alleged that the decision was unconstitutional and irrational as it did not take into account the best available evidence on the disease and it was based on the unproven premise that HIV causes AIDS.

Prior to considering the complaint, the authority of the Public Protector to investigate complaints or suspicions of impropriety in respect of the formulation and implementation of government policies, had to be determined. It was found that the Public Protector has such authority. The pronouncements of the courts relating to the interpretation of the Constitution, 1996 and the law applicable to administrative actions by organs of state are helpful directives and indicators relevant to the investigation of complaints entertained by the Public Protector.

During the investigation, the legislative framework pertaining to the Cabinet's decision and international perspectives based on comprehensive research on the issue of HIV/AIDS were considered and evaluated.

#### **It was found that:**

- a) The decision of Cabinet to approve the Operational Plan was taken in compliance with the constitutional duty of the State to take measures to make health care available to everyone;
- b) The said decision was taken based on the best information currently available to the international community; and
- c) The Cabinet's decision to approve the operational plan was reasonable and proper and in accordance with the recommendations and initiatives of the World Health Organization and UNAIDS.

#### **Minister: Minerals and Energy**

#### **Conflict of interest**

##### 6.1.2 Case Number: 110/04

#### **Special Report Number 27**

#### **Allegations of improper conduct in connection with the maintenance shutdown at, and subsequent failure of the PetroSA Refinery**

The Public Protector investigated a complaint by the Democratic Alliance in connection with the scheduled maintenance and subsequent shutdown of the PetroSA refinery near Mossel Bay in the Western Cape.

Responding to media reports on the complaint lodged with the Public Protector, the Minister of Minerals and Energy (the Minister) and the Acting Chief Executive and Managing Director of PetroSA approached the Public Protector, explaining the matters that were raised and offered their assistance in the investigation. The Minister also expressed her concern about the ethical issues and perceptions that often arise when relatives of persons in prominent positions conduct business with the state.

**It was alleged that:**

- a) Millions of Rand in revenue was lost at the PetroSA ('Mossgas') refinery after the issuing of a maintenance contract resulted in prolonged production losses since May 2003;
- b) The cause of the prolonged shutdown was under-qualified "contractors and/or staff" that used contaminated water, which corroded the tanks of the sensitive cooling system making it impossible to convert fuel from gas;
- c) PetroSA failed to ensure that the maintenance team involved during the shutdown had the necessary skills; and
- d) The awarding of the contract to Daluxolo Manpower Services constituted a conflict of interest for the Minister, as her brother-in-law, Mr V Ngcuka, has an interest in the company.

The investigation was conducted in terms of section 7 of the Public Protector Act, 1994. The Public Protector also considered the provisions of the Constitution, 1996 and the Executive Ethics Code, promulgated by virtue of the provisions of the Executive Members' Ethics Act, 1998 that regulate the ethical conduct of members of the Executive. It was observed that because members of the Executive constantly find themselves in situations where a perception of using their positions to improperly benefit relatives or friends could be created, they should take precautionary steps to dispel such perception.

The Public Protector found that nothing prevents any person, who has a relative in government or who is employed by a government agency, to do business with the state. The duty of disclosure of an interest is on the member or employee and cannot bind or disqualify the relative.

From the investigation it was established that the allegation that the shutdown of the refinery was caused by under-qualified contractors was not substantiated. It was also clear that PetroSA had taken several steps to prevent a recurrence of the events that caused the shutdown in July 2003.

**The following key findings were made from the investigation:**

- a) The Minister was not involved in the awarding of a contract for the procurement of labour for maintenance by PetroSA to Daluxolo Manpower Services at the refinery near Mossel Bay, during May 2003;
- b) The awarding of the said contract did not constitute a conflict of interest as far as the Minister was concerned; and
- c) The incorrect installation of equipment during the said maintenance together with the failure by PetroSA to maintain the management system of operating procedures and to provide operators with adequate training, were the main causes of the failure of the refinery in July 2003 that resulted in a financial loss of R473,2 million.

**The Public Protector recommended that the Executive Management of PetroSA, in consultation with the Board of Directors take urgent steps to:**

- a) Ensure that the implementation of the optimized organizational structure that was adopted by the Executive Management is properly monitored;
- b) The development of improved planning and contracting strategies for the next maintenance shutdown continues and is finalised well in advance;
- c) The updating of the procedures of all departments of the refinery is finalised and implemented; and
- d) All key operators at the refinery are adequately trained in respect of relevant emergency measures and procedures.

**Premier: Northern Cape****Conflict of interest****6.1.3 Case Number: 1957/04****Report Number 28****Alleged breach of the Executive Ethics Code by former Premier of the Northern Cape, Mr M Dipico**

The Office of the Public Protector investigated an alleged breach of the Executive Ethics Code (the Code) by the former Premier of the Northern Cape, Mr M Dipico. The matter was reported to the Public Protector by a Member of Parliament and was based on a newspaper article suggesting that:

- a) Mr Dipico had a conflict of interest in respect of the procurement of services for the official opening of the new building of the Legislature in February 2003, from a business, Special and Dignified Events, in which his wife has an interest; and
- b) Mrs Dipico's interest had not been disclosed in terms of the Code.

The investigation was conducted in terms of section 7 of the Public Protector Act, 1994.

No substance to the suggestion of a conflict of interest could be found. Mrs Dipico's interest in Special and Dignified Events was disclosed in the Register of Members' Interests. It was concluded that the suggestion of a breach by Mr Dipico of the Code was unfounded.

The Public Protector recommended that steps be taken to ensure that the provisions of the Code are observed and the content and format of the Register of Members' Interests are improved.

**National Departments and organisational components, including statutory bodies  
Compensation Commissioner****Batho Pele principle: Service Standards****6.1.4 Case Number 0818/02****Allegations of undue delay and prejudice at the Office of the Compensation Commissioner.**

Complainant sustained back injuries within the course of her employment in 1997. She lodged a claim with the Office of the Compensation Commissioner. Because she required further medical treatment during 1999, a request was submitted to the Compensation Commissioner to have her claim re-opened. She said that the Compensation Commissioner failed to inform her of the outcome of her request for re-opening and she went ahead with medical treatment. When her doctor queried non-payment of the account, she took the matter up with the Compensation Commissioner, as she believed that they were responsible for payment thereof. She further stated that the doctor subsequently issued summons against her as the account remained outstanding.

Investigations revealed that the Compensation Commissioner only accepted liability for the payment of compensation and medical expenses until 1997, as the medical practitioner who had attended to complainant indicated that she had already been suffering from a pre-existing back condition for which she underwent an operation prior to her accident. Based on this, the claim could not be re-opened in 1999 and the medical

expenses incurred after this date were not payable. Therefore only payment of compensation in respect of temporary total disablement during 1997 was approved in favour of the employer as she had received her normal salary during period complainant was off duty.

Complainant maintained that had the Compensation Commissioner informed her of the outcome of her claim, she would not have left the medical expenses unpaid. She believed that the non-payment of the accounts caused her to suffer prejudice since the legal action instituted against her was embarrassing and tarnished her credit record. She was also bound to pay additional costs relating to interest on outstanding debts and legal charges.

The Compensation Commissioner disputed complainant's allegation that she was never informed of the outcome of her original claim for compensation. They furnished the Public Protector with a copy of a facsimile in this regard, that complainant denied ever having received.

**The following key findings were made:**

- a) The Compensation Commissioner failed to give proper notification to complainant about the outcome of her claim for compensation, and she suffered prejudice in this regard; and
- b) The Compensation Commissioner did delay unduly in dealing with the application to have the claim re-opened, as complainant only learnt about the outcome thereof one year and ten months after the date of submission.

**The Public Protector recommended that:**

- a) All administrative decisions affecting compensation claimants, must be communicated in writing, be easily understood, and as detailed as possible, and must adequately explain all the facts upon which the decision is based;
- b) Such administrative decisions must be conveyed not only to employers, but also to claimants, and must be made within a reasonable time after it has been taken;
- c) The Compensation Commissioner must always confirm with both employers and claimants that they have received notification of the decision;
- d) The Compensation Commissioner must always inform employers and claimants of the latter's right to further redress following adverse administrative decisions; and
- e) The Compensation Commissioner must take the necessary steps to reduce the backlog relating to the processing of claims in the office, accelerate the handling of claims and improve communications with claimants, affected parties and other institutions, by finalising the investigations into the Compensation Fund's structure, systems and processes which the Compensation Commissioner had undertaken.

## **Finance (Pensions Administration)**

### **Failure to implement recommendation by the Public Protector**

#### **6.1.5 Case Number 4583/03**

#### **Complaint relating to a pension benefit and interest, allegedly payable to the estate of a deceased member of the Government Employees Pension Fund. (GEPF)**

The matter was reported in the previous annual report where it was indicated that the office is still following up to ensure compliance with the recommendations of the Public Protector. What follows illustrates the difficulties that the Public Protector can sometimes encounter, and the steps that had been taken, to ensure that the recommendations of the Office are implemented. Firstly a brief summary of the original report is given, and thereafter the actions taken by the Office to ensure compliance with recommendations.

The Public Protector investigated a complaint relating to a pension benefit that was payable to the estate of the complainant's father in 1994, but which was not received at the time.

After the Public Protector had raised the matter with the National Treasury: Pensions Administration, the Government Employees Pension Fund (GEPF) recognised the complainant's claim and the outstanding pension benefit was paid to the beneficiaries on 19 August 2003. The GEPF however refused to pay interest on the pension benefit. The Pensions Administration contended that there was no liability to pay interest. However, the Public Protector found to the contrary and recommended that the GEPF pay interest on the pension benefit paid.

The Legal Section of the National Treasury (Pensions Administration) raised an objection to the report. After careful consideration of the objection, the Public Protector found no convincing reasons to diverge from his previous view.

In a letter dated 27 May 2004 addressed to the Head of the GEPF, the Public Protector addressed these objections by the Legal Section. Regarding their view that the Public Protector lacks jurisdiction, it was pointed out that the Public Protector is empowered by section 182 of the Constitution to investigate any conduct in state affairs that is alleged to be improper or to result in impropriety or prejudice. Section 6 of the Public Protector Act, 1994, deals with the additional powers of the Public Protector, which inter alia includes the investigation of maladministration and undue delay. In this matter the facts showed that the GEPF failed for nine years up until 19 August 2003 to pay the pension benefit. This conduct or rather inaction on the part of the GEPF was the subject of the investigation. Therefore the Public Protector had the requisite jurisdiction to investigate such conduct. The Public Protector was of the opinion that the only equitable way in which the situation could be rectified was to recommend the payment of interest for the period of delay. The fact that the initial date on which the payment had been due (1994), preceded the date of commencement of the Public Protector Act, did not affect the jurisdiction of the Public Protector to deal with the matter. The payment of interest was regarded as an appropriate remedial step, and must not be confused with jurisdiction to investigate the delay. The Legal Section also raised the point (in relation to interest), that the GEPF Law does not have retrospective operation. However, the view was held that the Legislature, in enacting section 26 of the GEPF Law, has established the principle to pay interest when delays occur and that it would have been equitable to pay interest from the date when the benefit was due. Further, it goes without saying that the fund has had the benefit of the money for more than nine years. However, the Public Protector remarked that if the GEPF chose to follow a narrow, legalistic approach in this matter, the Public Protector would be satisfied if interest be paid at least from 1 May 1996 when the relevant Law commenced.

Regarding negligence on the part of the GEPF, the Public Protector remained of the opinion that addressing the relevant letter at the time regarding the pension benefit to "Die Bestuurder, ABSA Trust, Kaapstad, 7800" does constitute negligence, since Pensions Administration was careless in utilising an obviously defective address.

The submissions regarding prescription raised by the Legal Section were also found to be unsubstantiated. Apart from the arguments expressed in the report, the Public Protector pointed out that the complainant for the first time had sight of the information reflected on the liquidation and distribution account on 20 June 2003, when she made enquiries with the office of the Master of the High Court. This is prima facie confirmed by the printed date, time, number and words "Meester Kaapstad" at the top of this document, which were presumably generated by the fax machine. Further, the Public Protector raised the question whether it would be reasonable to expect members of the public who are not public servants, to be acquainted with the rules of the government employee's pension fund and estimated pension benefits. The Public Protector noted that payment of a benefit in accordance with the rules of the fund and interest in the circumstance at the present, and while the GEPF had the benefit of the money for more than nine years, could not be in contravention of the fiduciary duty of Pensions Administration.

Following the above, more than four months elapsed without the recommendation being implemented. The Public Protector raised his concern in this regard with the Minister of Finance and requested the Minister to assist in bringing the matter to conclusion. The office was informed in September 2004 that interest had indeed been paid to the complainant. The case was finally closed.

## Home Affairs

### Batho Pele Principle: Service Standards

#### 6.1.6 Case Number 3209/02

#### **Allegation of failure to maintain international minimum standards on refugees.**

The Human Rights Commission, with Lawyers for Human Rights and the University of the Witwatersrand Campus Law Clinic (the complainants) alleged that the Braamfontein Refugee Reception Office (the Centre) has contravened international standards on refugees, and South African Refugee Laws in the manner in which it renders services to refugees.

#### **The complainants alleged that:**

- a) The Centre denies refugees access to its offices;
- b) Officials and security guards at the Centre only allow access and render services to refugees who offer a bribe;
- c) The Centre unduly delays the processing and finalisation of applications for asylum;
- d) The Security Guards have been witnessed to assault refugees when controlling the queues at the Centre; and
- e) The Centre fails to inform refugees of their status as refugees, what steps it is taking in order to finalise applications from refugees, and how long it would take to have them finalised.

In its response, the Department denied the allegations that its officials receive bribes from refugees, arguing that it was the volunteer interpreters, not employed by the Department, that were involved in taking bribes. The Department also explained that, owing to the Centre being under-resourced and short staffed, it had failed to adjudicate on applications for asylum as required by the relevant laws, and that it is experiencing a backlog.

#### **The following key findings were made:**

- a) The Department had indeed denied refugees access to its offices at the Centre, due to a shortage of staff. Such conduct was not only improper but also unlawful, since it contravened the relevant provisions of the Refugees Act, the Constitution of the Republic of South Africa and the provisions of the Promotion of Administrative Justice Act;
- b) As a consequence refugees have been denied the right of access to the asylum system and procedures, and therefore suffered prejudice;
- c) The Department had unduly delayed the finalisation of applications for asylum and other matters of importance affecting refugees, and failed to inform refugees how long it would take to finalise matters; and
- d) The Security Guards at the Centre may have used means and mechanisms of crowd control inappropriately for the treatment of members of the public visiting a public institution.

#### **The Public Protector recommended the following:**

- a) That, in order to address the root cause of problems affecting refugees, an urgent review of the operations and functioning of all Refugee Reception Offices in South Africa be conducted by the Department and a report presented to Parliament and the Public Protector within a period of six months from date of submission of the Public Protector's report;

- b) That the recruitment of staff in respect of all positions for which interviews have been conducted be finalised within a period of two months from date of submission of the Public Protector's report;
- c) That the Department conducts a study of the principal languages spoken by refugees at all Refugee Reception Offices and, employ suitably qualified and registered South African interpreters;
- d) That the practice of the Centre to take only 25 new applications per region on particular days of the week, be abolished with immediate effect;
- e) That the Department engages the Ministry of Safety and Security with immediate effect, to consider the possibility of employing Police at all the Refugee Reception Offices; and
- f) That all staff of the Refugee Reception Offices is provided with clearly identifiable nametags and that a departmental policy be formulated to ensure that all staff of the department wear their name-tags while performing their official duties.

## National Director of Public Prosecutions

### Right to dignity: Jurisdiction of the Public Protector

#### 6.1.7 Case Number: 4340/03

#### Special Report Number 26

#### Complaint by the Deputy President in connection with a criminal investigation conducted against him:

The Public Protector investigated a complaint by Deputy President Jacob Zuma against the National Director of Public Prosecutions (the National Director) and the National Prosecuting Authority (the Prosecuting Authority) in connection with a criminal investigation that was conducted against him. The criminal investigation related to allegations of the improper involvement of the Deputy President in the Strategic Defence Procurement of the South African National Defence Force, commonly referred to as 'the arms deal'.

On 23 August 2003, the National Director issued a press statement stating that although there is a prima facie case of corruption against the Deputy President, he would not be prosecuted, as the prospects of success were "not strong enough". This announcement sparked off media frenzy and a public debate regarding Mr Zuma's alleged or suspected involvement in corrupt relationships and improper conduct.

#### The complaint by the Deputy President was lodged on 30 October 2003. In the main, Mr Zuma raised his concerns about the:

- a) Manner in which the criminal investigation against him was conducted;
- b) Leaking to the media by the Prosecuting Authority of confidential information relating to the criminal investigation;
- c) Failure by the Prosecuting Authority to inform him of the criminal investigation against him;
- d) Public statement by the National Director that there is a prima facie case of corruption against him; and
- e) Apparent continuation of the criminal investigation after it was decided not to prosecute him.

The proceedings of the Hefer Commission of Enquiry into allegations of spying against the National Director coincided with the investigation by the Public Protector of the complaint by the Deputy President. However, as the Commission made no finding on the allegations of abuse of office by the National Director, it had no influence on the investigation. President Mbeki took note of remarks made by Judge Hefer in his report in regard to leaks of confidential information by the Prosecuting Authority and commissioned an internal investigation. The findings were as follow;

- a) Nothing that suggested that the National Director could have been party to the leaks; and
- b) Strong circumstantial evidence that privileged information in the possession of the Prosecuting Authority found its way to unauthorized persons outside its structures.

**In response to the recommendations made by the inquiry to prevent such leaks from occurring again, the President instructed the (new) Minister of Justice and Constitutional Development, together with the Justice, Crime Prevention and Security Cluster, to:**

- a) Develop, as a matter of urgency, a proper security management system that meets the accepted standards of information security. This should include guidelines to ensure that no privileged information lands in the hands of 'sources' used in the course of investigations;
- b) Ensure that all personnel of the Prosecuting Authority, including external consultants, are properly screened in terms of section 19B of the National Prosecuting Authority Act, 1998 (the NPA Act) and the Intelligence Services Act, 1994; and
- c) Ensure that the Ministerial Coordinating Committee, established in terms of section 31 of the NPA Act urgently attend to all matters of relationships between the Directorate: Special Operations and other intelligence and security institutions to improve effective coordination in the performance of their functions.

**In order to determine which of the matters raised by the Deputy President could be investigated by the Public Protector, the following had to be considered:**

- a) The jurisdiction of the Public Protector to investigate the affairs of the Prosecuting Authority;
- b) The independence of the Prosecuting Authority; and
- c) Avoidance of matters that are sub judice.

**It was decided to investigate whether:**

- a) The public statement by the National Director that there is a prima facie case of corruption against the Deputy President, but that he would not be prosecuted, resulted in the Deputy President being improperly prejudiced;
- b) The said statement was fair and proper under the circumstances;
- c) The Deputy President was properly and timeously informed of the criminal investigation against him; and
- d) The criminal investigation against the Deputy President continued after the decision not to prosecute him was publicly announced.

The investigation was conducted in terms of section 7 of the Public Protector Act, 1994. The Public Protector decided that it would be in the best interest of the parties involved in the complaint by the Deputy President and in the criminal matter of the State v S Schaik and others, to conduct the investigation by means of correspondence and the submission of reports.

**In the main, the investigation comprised:**

- a) An evaluation and consideration of voluminous documentation submitted by the Deputy President;
- b) Consideration of the Joint Investigation Report into the Strategic Defence Procurement Packages;
- c) A study of the transcript of the proceedings and the report of the Hefer Commission of Enquiry;
- d) Telephonic discussions between the Public Protector and the Minister;
- e) A meeting between the Public Protector and the Minister;
- f) A meeting between the Public Protector and the National Director and senior officials from his office;
- g) Correspondence between the Public Protector and the Minister;
- h) Correspondence between the Public Protector and the National Director;
- i) A study of a report submitted to the Minister on 23 August 2003 by the National Director, entitled: "Report in terms of section 35(2)(b) of the National Prosecuting Authority Act pertaining to the Arms Deal Investigation into allegations of corruption involving Mr Jacob Zuma, in particular insofar as it relates

- to his relations with Schabir Schaik, the Nkobi Group of companies and the Thomson/Thales group of companies”;
- j) Consideration of the contents of the Summary of Substantial Facts in terms of section 144(3) of the Criminal Procedure Act, 1977, that was presented by the Prosecuting Authority in the High Court (Durban & Coastal Local Division) case of: The State v Schabir Schaik and Others;
  - k) A study of the relevant provisions of the Constitution, the Public Protector Act, the NPA Act, the Prosecution Policy, the United Nations Guidelines on the Role of Prosecutors and other legislative prescripts and common law principles applicable to the matter in question;
  - l) Consideration of a legal opinion obtained from independent Senior Counsel in regard to certain matters pertaining to the investigation; and
  - m) Consideration of case law relevant to the matters investigated.

During the investigation the Public Protector relied on the cooperation of the former Minister of Justice and Constitutional Development (the Minister) and the National Director, as provided by the Constitution, 1996. They were approached on several occasions to provide information and their responses to the complaints of the Deputy President. Apart from repeatedly stating that the matters that Mr Zuma complained about were sub judice and therefore beyond investigation by the Public Protector, they failed to provide any assistance.

The investigation was conducted in a manner that did not interfere with the performance of the powers and functions of the Prosecuting Authority.

The sub judice rule had no bearing on the investigation, even if such investigation was to extend to the issues that have arisen or may arise in the court case against Mr Schaik and others. Particular care and caution were taken not to traverse matters that would cause the risk of the Public Protector having to make public statements in connection with this criminal case. Care was also taken not to create a perception that the Public Protector was questioning or reviewing the decision by the National Director not to prosecute the Deputy President.

**Having considered the meaning of “a prima facie case” in a criminal matter, it was deduced that whether or not such a case exists against a person:**

- a) Is determined by a court of law;
- b) After hearing the evidence submitted by the prosecution and such evidence has been subjected to cross examination and the version of the accused has been put to the witnesses for comment; and
- c) When satisfied that a reasonable person might, in the absence of further contesting evidence by the accused, convict him/her of the crime he/she is being charged with.

It was found that the right to human dignity contained in the Bill of Rights (Chapter 2 of the Constitution, 1996) includes both the value of the intrinsic worth of a person and his/her individual reputation built upon his or her own individual achievements. Mr Zuma’s right to human dignity could, under the circumstances relevant to the investigation, only have been justifiably limited in terms of a law of general application. Neither the United Nations Guidelines on the Role of Prosecutors nor the NPA Act and the Prosecution Policy provide for a public statement regarding a person’s apparent but not provable guilt. To the contrary, these provisions prohibit inappropriate media statements and unfair conduct by prosecutors.

**From the investigation, the following key findings were made:**

- a) The Prosecuting Authority is accountable to Parliament in respect of the exercising of its powers and the performance of its functions and duties;
- b) The Prosecuting Authority is also accountable to Parliament for its decisions regarding the institution of prosecutions;

- c) The Minister and the National Director were constitutionally obliged to cooperate with the Public Protector in the investigation of the complaints of the Deputy President;
- d) The reluctance and failure by the Minister and the National Director to cooperate with the Public Protector in the investigation was improper and unconstitutional. It resulted in the Public Protector having to conclude the investigation without the benefit of proper responses by those implicated by the complaints of the Deputy President;
- e) The press statement made by the National Director on 23 August 2003, that there is a prima facie case of corruption against the Deputy President, but that he would not be prosecuted, unjustifiably infringed upon Mr Zuma's constitutional right to human dignity and caused him to be improperly prejudiced;
- f) The press statement (referred to above) was unfair and improper;
- g) The Deputy President had probably not been informed by the Minister and the National Director of the criminal investigation against him shortly after it commenced, as was publicly claimed by the National Director;
- h) As the Minister was replaced in the Cabinet after the 2004 elections, it would serve no purpose to make any recommendations to Parliament in regard to his improper failure to cooperate with the Public Protector;
- i) The provisions of section 31 of the NPA Act that established a Ministerial Coordinating Committee have not been implemented; and
- j) The steps taken by the President to attend to the remarks made by the Hefer Commission in regard to the leaking of confidential information by the Prosecuting Authority should be commended. The recommendations made by the investigators and the instructions given by the President in this regard, are supported.

**The Public Protector recommended that Parliament take urgent steps to:**

- a) Ensure that the National Director and the Prosecuting Authority are held accountable, by virtue of the provisions of sections 41(1) and 181(3) of the Constitution and section 35 of the National Prosecuting Authority Act, 1998, for:
  - b) Failing to cooperate with the Public Protector in the investigation of the complaint of the Deputy President;
  - c) Infringing upon the Deputy President's constitutional right to human dignity and thereby causing him to be improperly prejudiced; and
  - d) Acting in an unfair and improper manner in regard to the Deputy President.
- e) Ensure that the Ministerial Coordinating Committee contemplated by section 31 of the National Prosecuting Authority Act, 1998:
  - f) Convenes as a matter of urgency; and
  - g) Determines policy guidelines in respect of the functioning of the Directorate of Special Operations that would prevent a recurrence of the improprieties referred to in the report of the Public Protector.

## Road Accident Fund

### Batho Pele Principle: Service Standards

#### 6.1.8 Case Number: 125/03

#### **Alleged delay by the Road Accident Fund to process a claim for loss of support by a minor child.**

A complaint was received against the Road Accident Fund (RAF) for the delay in processing a claim for a loss of support emanating from a road accident death. The claim was on behalf of a minor child for the death of the father, and brought by an older sibling. The sibling was also the complainant to the Public Protector.

Due to a breakdown in communication between the claimant's attorney and the RAF, as well as between the claimant and her attorney, the matter dragged on from 1991 to 2004 when it was settled in favour of the claimant. This was only achieved after the intervention by the Public Protector.

Because of the unusually long delay in finalising this matter (13 years), it has been recommended that the RAF should have a time limit within which to finalise claims, as delays like the one in this case cause untold prejudice to beneficiaries, especially minor children. Although claimant's attorneys also played a role in the delay, no recommendations could be made regarding their conduct as the Public Protector does not have jurisdiction over them.

## Provincial Departments and Legislatures

### Limpopo: Office of the Premier

#### Conflict of interest

##### 6.1.9 Case Number: 884/04

#### **Alleged cancellation of June 16 Youth Day celebration by the Provincial Government of Limpopo.**

Leaders of Azapo, the Democratic Alliance and the UDM approached the Public Protector, alleging that the Limpopo Provincial Government had decided to cancel the provincial Youth Day celebrations which were scheduled for the 16th June 2004 at the Peter Mokaba stadium. They also indicated that the Provincial Government further decided that the celebrations should go ahead under the leadership of the African National Congress (the ANC).

The complainants felt aggrieved in that according to them Youth Day is a national day and that the Limpopo Provincial Government has no authority to delegate it to a political party of its choice. They further alleged that time and money had been expended by the Provincial Government in preparation for the event, and handing it over to a political party would be to give that party an unfair advantage.

#### **Because of the urgency of the matter, the Public Protector communicated the issues raised with the Director-General in the Office of the Premier, who explained:**

- a) that the Provincial Government was involved in the planning of events for the Youth Day celebration;
- b) that the events were to be held in several venues throughout the Province, including Peter Mokaba stadium;
- c) that during the planning stages of the different events it was discovered that the ANC was planning their own celebrations at Peter Mokaba stadium;
- d) that the Provincial Government cancelled its involvement at Peter Mokaba stadium in order to avoid the perception that it was sponsoring the ANC activities;
- e) that consequently, the order that was placed with CEDOH Trading for catering purposes for the event at Peter Mokaba stadium was cancelled; and
- f) that no expense was incurred by the Provincial Government in preparation for the celebrations at Peter Mokaba stadium.

The complainants were requested to provide more information or evidence to the contrary, if available. The Public Protector did not receive any further communication from complainants regarding this matter.

Based on the facts provided by the complainants, and the response thereto from the Provincial Government, it was concluded that no irregularity or maladministration could be established in regard to the manner in which the Provincial Government conducted itself in the cancellation of the Youth Day celebrations at the Peter Mokaba stadium.

## Limpopo Provincial Department of Sports, Arts and Culture

### Batho Pele Principles: Service Standards and Value for Money

#### 6.1.10 Case Number: 1407/98

#### **Allegations of irregular conduct by the Limpopo Provincial Department of Sports, Arts and Culture.**

The Public Protector conducted an investigation into allegations of irregularities concerning the Limpopo Provincial Department of Sports, Arts and Culture. The investigation was the result of a number of complaints lodged by the former Chairperson of the Provincial Arts and Culture Council and former member of the Transformation Board. The investigation also concerned complaints received from a non-government organisation, namely the Limpopo Arts and Culture Association, also referred to as the Provincial Arts and Culture Association.

**Preliminary enquiries made after receipt of the complaints revealed that another investigation had been initiated by the Auditor-General to address some of the issues raised by the complainants. The Auditor-General conducted a regularity audit at the Limpopo Provincial Department of Sports, Arts and Culture. The report by the Auditor-General, namely 'Report on the investigation conducted at the Department of Sport, Arts and Culture in the Limpopo Province' was submitted to the said Department on 15 July 2004 and included findings and recommendations. Having considered the report by the Auditor-General, as well as the information obtained during the investigation of the Public Protector, the following key findings were made:**

- a) African Pathways submitted a proposal to the former Department of Arts, Culture, Science and Technology (DACST) and a reasonable expectation that they would receive adequate funds for their project was created;
- b) DACST failed to timeously inform African Pathways that the project concerned would not be implemented;
- c) DACST eventually only informed African Pathways in November 2002. This delay constituted a gross administrative oversight on the part of DACST;
- d) Even though the former Member responsible for Arts and Culture of the Limpopo Executive Council had the power to change DACST's decision to approve African Pathways' project, this was never explained to the relevant role-players;
- e) The Limpopo Department of Sport, Arts and Culture and the National Department of Arts and Culture entered into a lengthy process of negotiations with the Limpopo Arts and Culture Association to afford them the opportunity to submit proposals to the Department and during 2004 an amount of money was committed as funding to the Association's crafts proposal;
- f) During the period 1996 to 1999 no budget allocation was made by DACST to the Limpopo Provincial Arts and Culture Council;
- g) The expenditure claims for the Provincial Arts and Council members were not reimbursed by the Department of Sports, Arts and Culture, the reason being that there was "no budget" for the said Council;
- h) The Auditor-General found that the Provincial Arts and Culture Council members performed their duties voluntarily, thus not entitling them to remuneration as far as salaries were concerned. It was further found that, since the promulgation of the Provincial Arts and Council Members Act in 2001, the said Council is an organ of State, thus entitled to public funding and authorized to defray expenses in connection with the performance of its duties;
- i) The Auditor-General concluded that the subsistence and travel claims for the former Provincial Arts and Council members could not be found and taking into account the time that has lapsed since the origin of the claims, advised that this issue be laid to rest; and

j) DACST utilized the Far North campsite to accommodate employees transferred to Polokwane as a temporary measure to save money on accommodation costs. The campsite is vacant at present and due to budgetary constraints, the Limpopo Department of Sports, Arts and Culture cannot utilise the campsite at the moment.

**The Public Protector recommended that the Department of Arts and Culture:**

- a) Disseminate this report of the Public Protector to all members of:
- b) the National Arts Council; and
- c) the Provincial Arts and Culture Council;
- d) Take urgent steps to ensure implementation of the recommendations of the Auditor-General regarding the investigation of possible unauthorised expenditure incurred as a result of overspending on the Melting Pot Cultural Festival, as well as the transfer of funds, contrary to the stipulations of the Provincial Treasury;
- e) In future refrain from informing any person, organisation or institution of the outcome of the consideration of his/her/its proposal(s), until such time as the process of approval or allocation of funds as a whole, has been concluded; and
- f) Ensure that policy guidelines in respect of the process to be followed and time frames for consideration of applications of arts projects by any person, organisation or institution are in place and implemented, in order to prevent a recurrence of the improprieties referred to in this report.

## Eastern Cape Provincial Legislature

### Corruption

#### 6.1.11 Case Number: 320/04EC

#### **Alleged unauthorised transfer of monies.**

The Public Protector investigated a complaint referred to the office by the Scorpions in connection with allegations made by NEHAWU that a Director of Finance at the Eastern Cape Provincial Legislature has granted herself two financial advances amounting to R8 000.00 and R6 000.00, respectively, without following proper authorization.

From the investigation, it appeared that in the Eastern Cape Legislature there is a policy on advances for studies and funerals for the employees, which was adopted by the management on 28 April 1999. The policy provides that an employee should complete an application and submit the same to his/her superior for recommendation, and, if the loan has been recommended, it would be submitted to Secretary to the Legislature for approval.

In terms of the policy an employee may not receive more than one financial advance for either studies/ funeral assistance during the same financial year.

**Subsequent to this policy, different internal circulars were issued without clarity or indications as to whether they were nullifying the previous one(s) or not. The circulars that were issued were as follows:**

- (i) Speaker's Financial Instructions provides in chapter 16 No.117 (2) that the accounting officer may authorise advances against salaries only in exceptional circumstances if the Speaker approves the advance.
- (ii) Circular 16 of 2000 provides that funeral advances will in future not be considered unless such advances are to be deducted from the employee's salary in full by the next payday.
- (iii) Circular 18 of 2000 dated 27 June 2000 contained a format for a salary advance application and

an authorization by the applicant that the loan should be deducted on the next payday following immediately after the month that the application was made. Secondly the circular was informing the applicant that on 5 June the management took a decision that in future only those applications that are in compliance with the above requirement (advance should be paid in full by the next payday) will be considered.

- (iv) Circular 21/2000 dated 24 August 2000 provides that merits of the Speakers Financial Instructions and the content of Circular 18/2000 above must be adhered to when applying for financial advances.
- (v) Minutes of Proceedings of the legislature dated 21 June 2002 state that the Speakers Financial Instructions as promulgated on 14 June 1999 remain in force and effect, until a legislation dealing with financial administration of the Legislature is passed.

**The following findings and recommendations were made:**

- (i) The Office of the Public Protector is unable to make a finding as to any irregularity, either in the manner in which the relevant financial advances were obtained or in respect of any alleged attempt by the Director to defraud the Legislature.
- (ii) The union representative has not produced sufficient evidence that the rejection of any applications was unjustified. The names of such allegedly disaffected staff members were requested from the union representative but none have been forthcoming. In the absence of any corroboration of the union representative's averment that members of the Union were prejudiced by the Director's conduct, the Public Protector is not in a position to make a finding in that regard.
- (iii) The Public Protector has found that the Director is a signatory to a letter instructing direct transfer of the sum of six thousand rand (R 6 000.00) from the Legislature to her private bank account. This Office has confirmed through its investigation the Director is one of three signatories to the Legislature's Bank account, and that one of the three was in fact on leave when the relevant transaction took place.
- (iv) Both the relevant advances were approved and authorised by competent officials.
- (v) It is not apparent from the available evidence that the Director intended to commit fraud. However, in maintaining good financial controls it is essential to separate financial controls from beneficiaries to avoid fraud. This will be in line with clause 8.3.1 of the PFMA Regulations of 2002.
- (vi) The Legislature should as matter of urgency develop a clear policy and guidelines relating financial internal controls, e.g. salary advances in line with the provisions of Sections 3(2)(b) and 76(4)(b) of PFMA read together with Treasury Regulation No. 8.3.1 as amended in 2002, which states that The Accounting Officer of an institution must ensure that internal procedures and Internal control measures are in place for payment approval and processing.
- (vii) The Speaker should consider it his obligation in terms of the PFMA to exercise greater circumspection granting advances, whether they are classified as special or otherwise, until when paragraph 5.1 above is complied with. This is also provided for in the Minutes of the Legislature's Proceedings on 21st June 2002.
- (viii) One authorised cheque signatory, at the level of a Chief Director, should be appointed to avoid any repetition of the circumstances that arose under 2 above. This will be in line with Treasury Regulation No. 8.3.1, 2002.
- (ix) Given that the policy and procedural guidelines were found to be lacking and that insufficient evidence of criminal intention or malice on the part of the Director could not be found, disciplinary and/or criminal action against the Director or any other person would not be appropriate in the circumstances.

## Local government

### Ekurhuleni Municipality

#### Adherence to regulations

##### 6.1.12 Case Number: 4837/03

#### **Allegation of improper appointment of Mr R McBride as the Executive Head of the Ekurhuleni Metropolitan Police Department**

The Public Protector investigated a complaint by a Democratic Alliance Councillor of the Ekurhuleni Municipal Council in connection with the appointment of Mr R McBride as the Executive Head (Chief) of the Ekurhuleni Metropolitan Police Department. It was alleged that the Municipal Council failed to comply with the prescripts of the relevant legislation when it appointed Mr McBride, in the following respects:

- a) Mr McBride was not a member of the Metropolitan Police at the time of his appointment as the Executive Head, as is required by law;
- b) Mr McBride's experience and training did not make him eligible for appointment as a member of the Metropolitan Police, as it did not comply with the requirements of the Regulations for Municipal Police Service;
- c) Although the Regulations provide for a waiver by the National Commissioner of the South African Police Service (the National Commissioner) of the said requirements of the Regulations, such waiver was not possible under the circumstances since it is required that the Executive Head makes a recommendation to the Commissioner and this position was vacant at the time of the appointment of Mr McBride; and
- d) Mr McBride did not comply with the criteria for appointment as it was advertised.

The investigation was conducted in terms of section 7 of the Public Protector Act, 1994.

#### **The Public Protector found that:**

- a) Mr McBride qualified to have been considered as a candidate for the post of Executive Head of the Metropolitan Police;
- b) His appointment was recommended by a selected panel and confirmed by the Municipal Council, subject to compliance with the relevant statutory requirements;
- c) In the absence of an Executive Head of the Metropolitan Police Department, the Executive Director: Public Safety, was in a position to approach the National Commissioner for his waiver of certain provisions of the Regulations;
- d) The National Commissioner waived the requirements that Mr McBride had to be a member of the Metropolitan Police and in respect of training; and
- e) The allegation that the appointment by the Ekurhuleni Metropolitan Municipality of Mr R McBride as the Executive Head of the Metropolitan Police Department was irregular and improper is therefore, without substance.

### Thulamela Municipality, Limpopo

#### Communication

##### 6.1.13 Case Number: 23/02

#### **Alleged impropriety of the allocation of houses for flood disaster relief at Altein Village, Thulamela Municipality, Limpopo**

The Office of the Public Protector investigated a complaint, lodged by attorneys representing 'Altein Concerned Group', purportedly representing members of the community who were prejudiced by the Steering Committee of Thulamela Municipality when allocating Disaster Relief houses.

From the investigation, it appeared that the people who are alleged to have been allocated houses unfairly, benefited because they qualified under the low cost housing scheme.

On the allegation that the Steering Committee members unfairly benefited their siblings and relatives, it was clear that most of the people staying in Altein village are related, as it is a community which stayed together for more than hundred (100) years.

The investigation revealed that there was a communication break down between the Steering Committee and the Concerned Group. It was also clear that the Concerned Group did not involve all members of the community in their meetings or research, which is the reason why the process of allocation was never reviewed.

All the house units which were allocated by the Municipality to the Altein village for the purposes of the flood relief for the financial year 2001/2002 were exhausted, and there are people who are still on the waiting list. Such people will benefit in the next allocation.

## **National Public Entities and Bargaining Councils**

### **Tourism, Hospitality and Sport Education and Training Authority**

#### **Implications of the phrase "subject to the law" for procurement complaints**

##### **6.1.14 Case Number: 1449/04**

Complaint concerning alleged irregularities in the procurement procedures follows by the Tourism, Hospitality & Sport Education & Training Authority in regard to the award of a tender for an Integrated Nature-based and Conservation Management Project.

A complaint was received regarding alleged irregularities in the procurement procedures followed by THETA in respect of the award of a tender for an Integrated Nature-based and Conservation Management Project. The complainant requested the Public Protector's urgent intervention in the matter to suspend the procurement process, as THETA was reportedly about to appoint service providers.

In response to telephone enquiries by the office of the Public Protector concerning the status of the tender process, the office was informed that the appointment of service providers was at an advanced stage, that the preferred bidders had already been notified that they were successful, and that letters of acceptance had already been issued. As a result the opinion of officials of THETA was that legally binding contracts had already been concluded, and that the process could not be suspended.

In terms of Section 181 of the Constitution, the Public Protector is only subject to the Constitution and the law. While this provision serves to confirm the independence of the Public Protector, it also implies that the Public Protector could only consider or recommend remedial action that would lawfully fall within the powers or activities of the relevant institution or authority. The "law" referred to in the Constitution, includes the Private Law that regulates the relationship between contracting parties. It was therefore concluded that the Public Protector was not in a position to intervene in such a manner that would imply that a contract should unilaterally be terminated by the institution concerned and it be exposed to the risk of facing a claim for damages resulting from a breach of contract.

## Safety and Security Sectoral Bargaining Council

### Batho Pele Principles: Information and Redress

#### 6.1.15 Case Number: 141/02 FS

Allegation of a failure by the Safety and Security Sectoral Bargaining Council (SSSBC) to entertain an application for conciliation.

Mr M was a member of the SA Police Service, Free State. He was charged with misconduct relating to incidents of being absent without leave, and was dismissed on 1 July 1998. He appealed against the finding as well as the sanction (dismissal) and the case was referred to the Appeals Authority of the SAPS.

The SSSBC reportedly refused to entertain an application for conciliation, citing that the dispute arose before 17 August 1999 (when the SSSBC was established), and therefore fell outside its jurisdiction. Mr M tried in vain to convince the CCMA or the SSSBC that one of them should have jurisdiction to conciliate the matter.

The matter was pursued with the Legal Aid Board, the Department of Labour, the Public Service Coordinating Bargaining Council (PSCBC), and with the SSSBC.

The PSCBC confirmed in writing that "at the time of Mr Mofokeng's initial application to the SSSBC, there were conflicting views and judgments on the interpretation of the date of dismissal in cases where an appeal has been lodged." The situation has in the meanwhile changed because of certain amendments to the Labour Relations Act. This would mean that the SSSBC should now have jurisdiction to deal with the application for conciliation, and Mr M was advised to lodge a new application for conciliation with the SSSBC as soon as possible, with an application for condonation.

It was later confirmed that Mr M did lodge the application. Although his application for condonation was eventually not successful, he was finally in a position to proceed to the Labour Court.

## 6.2 MATTERS INFORMALLY REPORTED ON

### National Departments and organisational components, including statutory bodies Compensation Commissioner

#### Administrative Justice Principle: Procedurally fair administrative action

##### 6.2.1 Case Number: 1704/03

#### Allegation of undue delay on the part of the Compensation Commissioner to set down an objection for a hearing

The complainant approached the Public Protector with a complaint that the Compensation Commissioner unduly delayed in setting down for a hearing her objection regarding her claim for compensation.

Complainant was employed as a nurse for 16 years, until she was declared medically unfit for duty in December 1999. She was diagnosed with asthma. After reporting the disease and lodging the claim, the Compensation Commissioner informed her on 1 July 2002 that they would not be paying compensation for permanent disability, in terms of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993. On 23 July 2002, complainant lodged an objection against the decision. She indicated that

notwithstanding numerous requests, the Compensation Commissioner failed to report to her on the outcome of her objection.

The Public Protector conducted enquiries, and on 15 September 2003, the Compensation Commissioner indicated that they had never received complainant's objection. The document was re-sent, and the Compensation Commissioner subsequently declined to consider the objection, on the basis that they had received it for the first time on 15 October 2003. In this regard, they believed that the time for lodging the objection had lapsed, having been submitted 180 days after the required time period, in terms of section 91(1) of the Compensation for Occupational Injuries and Diseases Act. Based on their calculations, they should have received the form by no later than 28 December 2002.

The Public Protector was of the view that the Compensation Commissioner's refusal to accept the objection form was unfair, in that the decision was arrived at without adhering to the principles of just administrative action, as embodied in section 33(1) of the 1996 Constitution (the right to lawful, reasonable and procedurally fair administrative action), and sections 3(1) and 3(2)(ii) and (iv) of the Promotion of Administrative Justice Act, 2000 (administrative action which materially and adversely affects rights or legitimate expectations must be procedurally fair, persons must be given a reasonable opportunity to make representations, and adequate notice must be given of any right of review or internal appeal). It was indicated that, had the Compensation Commissioner given complainant an opportunity to make representations before the decision not to accept the form was taken, she would have been able to dispute the claim that they had never received her objection. According to documents provided to the Public Protector, complainant's employer forwarded her objection to a Mr B E Noyila of the Compensation Commissioner's Bisho office under cover of a letter dated 24 July 2002. Mr Noyila acknowledged receipt of the information on 25 July 2002. The Compensation Commissioner was requested to reconsider the refusal to accept complainant's objection form, as it appeared to have been duly lodged within the 180-day time prescript. The Compensation Commissioner decided to accept complainant's objection. They apologised for any prejudice that complaint may have suffered as a result of their initial refusal to accept the objection and set the matter down for hearing.

## Justice and Constitutional Development

### Mistake by state officials

#### 6.2.2 Case Number: 097/04MAF

##### Allegations of mistake on a detention warrant.

The complainant alleges that he was sentenced to 27 years imprisonment by the High Court. Subsequent to his sentence, his detention warrant submitted by the High Court to the Department of Correctional Services stated that he was to serve 37 years in prison. Complainant alleges that he attempted on several occasions to resolve the issue with both the Departments, but without any success.

It was established that an official of the Department of Justice and Constitutional Development erred whilst recording the complainant's sentence at the court a quo and on which the then Judge erroneously signed the incorrect record. The Judge who handed down the sentence retired and the matter had to be referred back to the court a quo for endorsement. The record was amended and the detention warrant was rectified.

## Labour

### Mediation

#### 6.2.3 Case Number: 64/01MP

#### **Allegation that the Department of Labour failed to establish a resource centre for trainees who completed their training.**

This case illustrates the use of mediation by the Office of the Public Protector to resolve disputes. The case related to the establishment of a resource centre built for use by trainees who had been trained in various trades, e.g. TV repairs, motor vehicle repairs, by the Department of Labour. The Department of Labour had been requested by the Department of Economic Affairs in Mpumalanga to assist with the training, and they in turn had requested a private company to do the training.

It was alleged that the Department of Labour had left the trainees in the lurch by not providing a proper resource centre after the training. During our investigation, it became apparent that there was no prejudice occasioned by either of the two government departments, as neither department was obliged to provide a resource centre for the trainees to work in. The private company that did the training had undertaken to provide the resource centre.

The Department of Labour had undertaken to bring all the stakeholders (that is both departments, trainees, and the private company) together for this matter to be resolved. This took more than a year, and the office of the Public Protector offered to mediate between the parties.

At the mediation meeting, the service provider indicated that they were willing to provide the resource centre as per the agreement as long as the trainees would demonstrate willingness to take responsibility for the overall running and viability of the resource centre. It was further agreed that the trainees would form a steering committee to oversee this.

## National Treasury

### Public Protector an office of last resort

#### 6.2.4 Case Number: 0073/04

#### **Complaint emanating from the restructuring of the National Treasury**

#### **Complainant was a Provisioning Administration Officer: Procurement, at the National Treasury since 1997.**

He requested the Public Protector's office to investigate four complaints against the National Treasury and one complaint against the Public Service Commission, alleging as follows:

- a) During 2003, the National Treasury (department) failed to absorb him into the component Contract Management: State Tender Board, by declaring him to be an excess staff member. This was the result of the department's transformation and restructuring process;
- b) The department failed to shortlist him for the post of Deputy Director: Supply Chain Management Policy, for which he applied. This and other posts were advertised by the Department as part of its restructuring process;
- c) The department interviewed him for three other posts for which he applied, being Deputy Director: Norms and Standards, Deputy Director: Commodity Unit and Assistant Director: Commodity Unit. His applications for all three posts were unsuccessful;

- d) The department failed to supply him with copies of the original scores of the interview for the post Deputy Director: Commodity Unit., the minutes and recommendations made by the interview panel and reasons why his application for the post was unsuccessful; and
- e) He approached the Public Service Commission for assistance, but they referred him back to the department to have his grievances addressed. Complainant believed that not only would this cause a further delay in having his grievances addressed, but that the Commission would not exercise impartiality should they have to investigate the matter where the department dismissed his grievances.

With regard to the complaint that the department had declared complainant to be an excess staff member, the view was that the Commission had correctly referred him back to the department to have his grievances addressed, in accordance with the Grievance Rules embodied in section 35 of the Public Service Act and Regulations.

With regard to the complaint of the department's failure to shortlist him and complainant's request that the Public Protector seek reasons for this failure, he was requested to obtain these reasons from the employer himself. It was explained that in terms of section 6(3)(a) of the Public Protector Act, the Public Protector is an institution of last resort and that it was complainant's duty to prove that he had pursued all aspects of his complaint with the department before approaching the Public Protector to investigate.

With regard to the complaint of the department's failure to appoint him to the three posts for which he was interviewed, complainant was advised to pursue this issue in terms of the Grievance Rules.

With regard to the complaint that the department failed to supply complainant with information pertaining to the Deputy Director: Commodity Unit interview, this office noted that the department did supply complainant with his scores, together with reasons why he had not been successful for the post.

With regard to the complaint that the Commission had referred him back to the department to have his grievances addressed, he was advised that the Commission had acted correctly, since he should first exhaust his remedies in terms of the grievance mechanisms available to public servants. Because this office found no basis to intervene in the matter at that stage, complainant was advised that the file of the Public Protector would be closed.

On 30 July 2004, complainant requested this office to re-open the investigation on the basis that on 2 March 2004, the department dismissed his grievances. The matter was referred to the Commission who found in his favour in two of the five grievances.

The first grievance in which the Commission found in complainant's favour related to the department's failure to appoint him to the position Deputy Director: Commodity Unit. The department required four posts to be filled regarding this position. According to Commission, no reasons were provided as to why complainant was not recommended for appointment to one of the three positions. The Commission recommended that the department disclose these considerations to complainant, alternatively, consider his candidature against those of other candidates.

The other matter the Commission found to be substantiated, was the grievance relating to the department's failure to provide him with access to information pertaining to the original scores. The Commission recommended that the department provide complainant with all relevant information pertaining to all unsuccessful applications for posts that he had applied for.

The Minister was requested to indicate whether he intended implementing the recommendations and advised that all disputes that remained unresolved were to be dealt with in terms of the PSCBC dispute resolution procedure. On 29 June 2004, the Minister referred complainant to the Human Resources component of the

department to provide him with reasons why he had not been appointed, as well as information pertaining to all his unsuccessful applications. However, the complainant subsequently approached the Public Protector again, alleging that the department failed, refused or unduly delayed in having the Commission's recommendations implemented.

It is so that the Department finally did not react on the Minister's referral. The department indicated, however, that whilst they were in the process of supplying the information, complainant declared a dispute and referred the matter to the PSCBC for conciliation during July 2004, placing before them only the issue of the department's failure to appoint him to the Deputy Director: Commodity Unit position. The conciliation took place during August 2004 and when the parties could not reach agreement, the matter was referred to arbitration. The arbitration was set down for 10 November 2004. The complainant confirmed that the matter did proceed to arbitration, but was still pending.

Whether or not the department decided to implement the Commissioner's recommendations, complainant had a right of recourse to further remedies where a dispute remained unresolved. This could include any dissatisfaction arising from any of the findings made in respect of the five grievances.

The view of the Public Protector was that the best forum for complainant to exercise his rights to further redress where any dispute remained unresolved, was with the PSCBC. The right to approach the PSCBC was mentioned in the Commission's report and the complainant correctly referred his complaints to the PSCBC. The legal effect of arbitration is that an award is final and binding and can be executed upon once certain procedures have been complied with. In comparison to an arbitration award, the Public Protector is empowered to make recommendations after investigating a complaint, much like the Commission. Although recommendations have a strong persuasive value, they are not legally binding. In this respect, a favourable arbitration award that can be executed upon would, under these circumstances, serve complainant's interests effectively.

## **National Treasury (Pension Administration)**

### **Incorrect pension payouts**

#### **6.2.5 Case Number: 1028/03MAF**

#### **Complaint that two children did not receive their rightful share of their mother's pension payout.**

The complainant in this matter was acting on behalf of two siblings (the older one hereinafter named A and the younger one, B) whose mother, an educator in the employ of the Department of Education had passed away. The deceased, was survived by her husband (hereinafter referred to as Mr. X) and two daughters. The complainant had initially approached the Ministries of Justice and Constitutional Development (Justice) as well as Public Service and Administration (DPSA). He alleged that:

- a) The Magistrate and/or Estate Office had acted in collusion with Mr. X to exclude the two children, A and B from benefiting from their deceased mother's estate. The children allegedly made the Magistrate aware that Mr. X was not the biological father of B and both children were not staying with him as he claimed, but despite this, the Magistrate awarded Mr. X the entire estate; and
- b) Despite A submitting to the Education Department (DoE) a copy of her Identity document and a sworn declaration stating that Mr. X was neither her biological father nor legal guardian, the national Treasury awarded Mr. X the entire pension gratuity plus monthly civil pension thus excluding her from benefiting from her late mother's pension benefit. The children's aunt allegedly also submitted a declaration in support of her two nieces but all was in vain as the National Treasury made payments to Mr. X;

The DPSA in turn referred the matter to the Public Protector for investigation.

**The Public Protector first launched an investigation against the Magistrate/Estate Office and the Office of the Master of the High Court in the Province. The investigation revealed that:**

- a) The deceased had died intestate;
- b) Since Mr. X was the surviving spouse and was married in community of property with the deceased, he was appointed as the Executor of the estate;
- c) The estate was disposed of at the Magistrate's Estate Office because it amounted to well below the limit of R125 000.00 when all the monies were declared and an inventory of assets was taken;
- d) Mr. X did mention in the Death Notice the fact that the deceased had left behind two issues namely the two siblings (A and B);
- e) There was nothing on record to show that either of the siblings brought a declaration to the Magistrate disputing their relationship to Mr. X;
- f) The Master indeed confirmed to the Public Protector that had there been a dispute, his Office would have intervened;
- g) Consequently the Public Protector found no wrong on the part of the Magistrate/Estate Office in their handling of the deceased's estate.

**The second phase of the investigations was directed against the Education Department and the National Treasury. The following findings were made:**

- a) The deceased did not complete the nomination (of beneficiaries) form issued by the DoE;
- b) The DoE submitted the Withdrawal from Fund form (Z102) as well as supporting documents to the National Treasury;
- c) The National Treasury made a lump sum payment of pension gratuity plus monthly civil pension to Mr. X despite their having on record documentary proof that A had lodged a claim from her deceased mother's pension benefits;
- d) Whereas the status of A was clear, the same could not be said with B as records issued by the Department of Home Affairs e.g. her Identity document and Full Birth Certificate confirmed that she was Mr. X's child. Her only option was to sue for child's maintenance from Mr. X if the latter was not supporting her.

When the National Treasury was confronted with the question of why was A overlooked when her late mother's pension benefits were paid out, they (National Treasury) conceded the error. They confirmed that they had on record all of A's documentation and would determine how much she would have received had she been included in the initial calculations of the deceased's pension benefit. National Treasury also took into account the amended Pension Laws Regulations, which favoured B.

In conclusion, both siblings (A and B) received their share of benefits from their late mother's pensions. Mr. X had his monthly civil pension reduced so as to offset what the national Treasury had paid the children.

## Public Works

### Administrative Justice Principle: Giving of reasons

#### 6.2.6 Case Number: 0461/03

#### Complaint regarding disputes with the Department of Public Works about the cancellation of contracts.

A complaint was lodged against the Ministry and the Department of Public Works, alleging that the Ministry and the Department failed to respond to correspondence that the complainant had addressed to the Minister to challenge the termination of four contracts to which he was party. The complainant also indicated that

he would claim an amount of R10 million from the Department for “violation of human rights, costs, loss of guarantees and equipment, and other damages”.

The Department responded to the complaint, as well as to the allegations made by the complainant, while the complainant in turn disputed most of the issues raised in the Department’s responses.

While both parties were afforded the opportunity to present the Public Protector with their version of the facts that led to the cancellation of three of the contracts in question, as well as the retention of payment in another, the complainant was reminded that the primary objective of the Public Protector’s involvement in this matter was to facilitate a response, an explanation, or information by or from the Ministry or Department of Public Works regarding his grievances.

The Public Protector found that he was not in a position to deal with the substantive issues raised by the complainant, and to make a finding on the factual circumstances that led to the cancellations of the contracts, including a finding that the cancellation of the contracts was unlawful, that certain monies retained by the Department should be returned to the complainant, or that he is entitled to compensation. The complainant was, however, entitled to information as well as a full explanation regarding the actions of the Department and the monies that were retained by the Department.

It was therefore recommended that the Department furnish the complainant with the necessary proof of any payments made to SARS for the credit of the complainant, to enable him to pursue the matter further with SARS.

There appears to be some confusion on the part of the complainant about the amounts of the monies that were due and payable to him, but which were apparently retained by the Department for damages allegedly suffered by reason of the termination of the contracts under discussion. It was also recommended that the Department furnish the complainant with a consolidated statement reflecting all payments made to the complainant and for the credit of the complainant, as well as any monies that were still due to him, and the estimated amounts of damages that were deducted from such amounts.

## **South African Police Service**

### **Assistance to deceased staff members**

#### **6.2.7 Case Number: 478/02RTB**

#### **Alleged unwillingness of South African Police Services to assist the next of kin of a deceased police woman.**

Complainant approached the Office of the Public Protector alleging that her daughter, who was in the employment of the South African Police Services: North West Province, passed away and that after a considerable lapse of time and after lodging a claim for death benefits (pension), the South African Police Services were reluctant to assist her.

#### **Upon investigation of the matter it was established that:**

- a) The deceased left behind two minor children, which were taken care of by the complainant. In an effort to finalise the estate, no estate account was opened in favour of the dependents;
- b) Complainant opened a personal account where the estate money was to be deposited, which contributed to the undue delay to finalise the estate; and
- c) Complainant had on numerous occasions tried to open an estate account with her bank but could not get the necessary assistance, as correspondence from National Treasury was outstanding and the South African Police Services did not furnish all the relevant forms to the latter.

**Taking into account the interest of the minor children, it was suggested to the SAPS that:**

- a) The matter should be investigated by the Employee Assistance Services Section at the Area Commissioner's office and that the complainant should be assisted by the Social Workers at that office; and
- b) The complainant should be assisted with the opening of an estate account to finalise the estate.

The South African Police Services reported back that the complainant was assisted accordingly.

## **Various departments**

### **Delays in the Public Administration**

#### **6.2.8 Case Number: 2327/99**

#### **Special Report Number 19**

#### **Causes for delays in the Public Administration**

In June 2002, the Public Protector issued his "Report on an investigation into the causes of delays in communication in the Public Administration". It was submitted to Parliament and all the Provincial Legislatures and contained a number of recommendations relating to improving communication and service delivery in the public administration.

During the second half of 2004, it was decided to follow-up on the implementation of the said recommendations. Enquiries were made from the Speakers of the National Assembly and of all the Provincial Legislatures. The responses received from the Provincial Legislatures were somewhat disappointing.

However, the Speaker of the National Assembly responded positively on 11 October 2004 and the Public Protector was subsequently invited to address the Portfolio Committee on Public Service and Administration in connection with the matter.

The Head: Special Investigations made a presentation to the said Committee on 16 February 2005.

On 18 February 2005, the Minister of Public Service and Administration appeared before the Committee to respond to the Public Protector's report. She informed the Committee that measures were being implemented to improve service delivery and turnaround times throughout the Public Service. Although the Committee welcomed the inputs made by the Minister, it was resolved that the Committee would visit Public Service offices around the country to witness first hand what measures are being implemented.

The Speaker of the National Assembly also indicated that the Parliamentary Joint Ad Hoc Subcommittee on Oversight and Accountability would take the recommendations of the Public Protector into account in its deliberations.

## Provincial Departments

### Mpumalanga Provincial Department of Health and Social Services

#### Batho Pele Principle: Service Standards

##### 6.2.9 Case Number: 0123/04MP

#### Allegation of undue delay with the payment of a disability grant.

Trends pertaining to applications for social grants (be they child support grants, disability grants, foster care grants or old age pensions) have been followed in Mpumalanga. This was done by reason of the pattern that was discerned regarding delays and problems pertaining to these matters, especially in the Siyabuswa area. This case illustrates one of the problems, which is documents being misplaced. Although the department from time to time backdates payments in respect of grants, not every beneficiary is that fortunate. Sometimes beneficiaries die before receiving benefits, and all that the department pays is the funeral costs.

In this case, the complainant had applied for a disability grant. Our enquiry elicited the information that the application could not be traced. By reason of this, the department undertook to have the medical examination done again at its own expense. They even transported the complainant to hospital free of charge.

There are many such cases where documents have gone missing either because they are completed at mobile units or for other reasons. In certain instances, when personnel are transferred, applications they were working on cannot be traced. This is why the Mpumalanga office of the Public Protector is to embark on a systemic investigation into grants in the Siyabuswa area.

In the present case the complainant ended up being paid an amount of R7740.00, which is approximately 10 months' worth of benefits.

### Mpumalanga Provincial Department of Health and Social Services

#### Batho Pele Principle: Service Standards

##### 6.2.10 Case Number: Confidential

#### Allegation of undue delay with the payment of a disability grant.

In a case received in October 2004, the complainant had applied for a disability grant based on his HIV status in March 2004. By October there had been no progress. The intervention of the Public Protector resulted in an official going to physically collect the application form, which was apparently at a local hospital, and taking the complainant's fingerprints who was then seriously ill. This was after the office of the Public Protector was informed that the form could not be traced and nothing could be done. When the Department of Health and Social Services was first contacted, the relevant official indicated that she would go to the complainant's home and assist him. This had not been done. It was only on our follow up that the trip to the hospital took place. The complainant reported in February that he was receiving the grant.

## North West Provincial Department of Health

### Adherence to regulations

#### 6.2.11 Case Number: 1357/03 MAF

#### Alleged unauthorised transfer of a cadaver.

The complainant approached the office of the Public Protector alleging that Leratong Hospital in Krugersdorp has transferred a cadaver to the Medical University of South Africa (MEDUNSA), for educational purposes, without prior consultation and consent of the next of kin of the deceased. The complainant further alleged that the deceased died as a result of an accident and not as a result of natural causes as stipulated on the death certificate that was issued by the hospital. The complainant after being informed by the Hospital that the deceased's body was transferred to MEDUNSA, contacted the Department of Health for assistance, but was allegedly not assisted by the latter to clarify the issues that he is concerned about.

#### The following findings were made:

- a) It was established that the deceased died as result of natural causes (Pulmonary Tuberculosis) and not the cause of a motor vehicle accident as alleged by the complainant;
- b) The cadaver was transferred to the State Mortuary after attempts by personnel of the Hospital had failed to locate the next of kin of the deceased;
- c) The Seisoville Police Station was also requested to assist in locating the deceased's next of kin, allegedly without any success;
- d) In lieu of the failure of any next of kin to remove the cadaver, the Inspector of Anatomy approved the removal of the Deceased's body to MEDUNSA in terms of section 12 of the Human Tissue Amendment Act, 1989; and
- e) The actions of the Department of Health were justified and that neither the complainant nor any next of kin of the deceased were improperly prejudiced by the actions of the Department;

## North West Provincial Department of Public Works and Roads

### Adherence to regulations

#### 6.2.12 Case Number: 1175/02MAF

#### Alleged unauthorised deviation of a road

The complainant alleged that a portion of a public road, road Z613, which he and his family had been using to access their farm since 1965, when his late father bought their farm from the State, was deviated and/or closed by the Local Tribal Authority and the Department of Roads and Public Works. He further alleged that his attempts to seek the intervention of the highest government authorities in the province amounted to nothing and that his attorneys were also unable to assist him in resolving his dilemma. As a last resort, he approached the Public Protector.

Because of the somewhat complex issues involved in the matter, the office of the Public Protector conducted an inspection in loco and established that the road had been deviated from its original alignment, thus creating some hardships for the complainant to gain entry onto his property. The Department's Regional Office concerned was engaged and an audience was also requested with the local Kgosi who readily agreed to such a request seeing the matter had been dragging for almost a decade without a possible solution. The meeting or "lekgotla" was attended by Kgosi (Chairperson) and his council, the representatives of the

Department's Regional Office, the complainant and the Public Protector's representative who made it clear to all attendees that his presence should be seen not as complainant's legal representative but as that of a mediator.

**Pursuant to this meeting, the matter was taken up with the Head of Department. A copy of a comprehensive report by the Department's Chief Engineer to her MEC was later submitted to the Public Protector. The report briefly confirmed that:**

- a) The Department's Regional Office rerouted or deviated the road in question following a request by the tribal authority without making any formal submissions to the Head Office;
- b) There was a dispute between the land owners;
- c) The Public Protector intervened; and
- d) The Department's Regional Office was as a result, requesting assistance for the proclamation of the deviation.

As a result of the Public Protector's intervention, the MEC approved recommendations by his Head of Department to deviate the road and publicise the notice in the Provincial Gazette. A month later, a notice appeared in the Provincial Gazette wherein the Premier issued a directive for the deviation of the road in accordance with the provisions of section 48 (1) of the Roads Ordinance, 1957.

## **North West Provincial Department of Social Development**

### **Labour issues**

#### **6.2.13 Case Number: 1085/04 MAF**

**Complaint about the alleged failure of the North West Provincial Department of Social Development to pay salaries to contract employees after the extension of their employment contracts for a further period of six months.**

Mr. X and 206 others alleged that, in 2003, the Department of Social Development contracted with them for a period of three months to assist the Department with the registration of social grants applications. They were paid accordingly for the services rendered. After the lapse of the three-month employment period, their Supervisor allegedly informed them verbally that their contracts were to be extended for another period of six months, and that the contracts were to be renewed in writing. The complainants allegedly proceeded with the rendering of services for an extended period of six months, however, without receiving any written contracts and without receiving any remuneration during the extended period.

#### **It was found that:**

- a) The complainants indeed rendered services for a period of six months after officials of the Department verbally requested them to do so;
- b) The complainants were of the belief that they would be supplied with written employment contracts for the extended period of six months, however, they did not receive any such contracts; and
- c) The complainants did not receive any remuneration for the services they rendered to the Department for the extended contractual period.

Subsequent to the intervention by the office of the Public Protector the Department undertook to effect payment of the remuneration due to the complainants.

## Local Government

### Klerksdorp Local Municipality, North West Province

#### Corruption

##### 6.2.14 Case Number: 1696/03MAF

#### **Alleged impropriety on the part of the Klerksdorp Municipality.**

The complainant alleged that the Klerksdorp Council had written off an electricity account of one Mr X although Mr X allegedly consumed electricity illegally from the Council's main electricity supply. The complainant alleged further that the officials from council's Finance and Electricity Departments had written off Mr X's electricity account because of personal favours.

#### **Investigations revealed that:**

- a) The said electricity meter was situated in the oldest section of the town and had old distribution networks; and
- b) As a result of the old equipment, there was a mix up with accounts that created problems in the accounting system.

#### **After intervention by the Public Protector:**

- a) The Municipality replaced the electricity meter with modern equipment and rectified the user accounts; and
- b) The financial losses from the registered owner's account were recovered and Mr X's account was debited with an amount of R4109.42.

### Mamusa Local Municipality, North West Province

#### Labour issues

##### 6.2.15 Case Number: 1760/02MAF

#### **Alleged failure of the Mamusa Local Municipality to pay complainant's salary.**

The Public Protector received a complaint from a member of the Public alleging that although he worked for the Municipality for a period of thirteen months, the Municipality refused to pay him a salary for his services rendered. He further alleged that he was employed by the Municipality to operate a water pump at a reservoir situated in a township within the municipal area.

He said that whenever he approached councillors and officials of the Municipality to enquire about his outstanding salary, he was assured that it would be paid at a later stage. The complainant further alleged that despite several visits to the council offices, he was sent from pillar to post, without being able to resolve the issue.

#### **The investigation revealed that:**

- a) The complainant was initially employed by a Water Committee that rendered service to the community, and that the latter was responsible for his salary; and
- b) That Council initially only assisted the Water Committee with the supply of diesel before it appointed the complainant but that the Council took over the services of the Water Committee and that the complainant was retained in his post to operate the water pump.

## 7. OWN INITIATIVE INVESTIGATIONS

To be proactive, some emphasis was placed on initiating investigations on issues which came to the attention of the Public Protector, as opposed to waiting until a complaint is received. Five such complaints were undertaken, of which four were conducted by the Special Investigations Unit of the Public Protector. The investigations were done in terms of the provisions of section 7 of the Public Protector Act, 1994.

### 7.1 Investigation into allegations in connection with the Head of the Johannesburg Metro Police

On 4 October 2004 it was reported in the media that a report on an investigation commissioned by the Municipality of the City of Johannesburg into allegations of improper conduct by the Head of the Johannesburg Metro Police recommended that disciplinary action be taken against him and other officials. The details of the irregularities and improprieties found were also listed.

It was decided that it would be in the public interest to approach the Executive Mayor of the City of Johannesburg and request more information to enable the Public Protector to determine whether the Office should conduct a further investigation into the matter.

The Executive Mayor failed to respond to a number of attempts to obtain more information regarding this matter. Eventually it was decided to approach the Municipal Manager.

A comprehensive response was recently received from the Municipal Manager, the contents of which are currently being considered.

### 7.2 Investigation into allegations of impropriety relating to the affairs of the Tshwane Metro Police

During the second half of 2003, several negative reports appeared in the media relating to the affairs of the Tshwane Metro Police.

It was regarded as in the public interest to make enquiries from the Executive Mayor of the City of Tshwane in connection with the said allegations.

Subsequently, the Public Protector was informed that a forensic investigation had been commissioned and would be conducted by an independent firm of auditors.

A copy of the report on the investigation was submitted to the Public Protector in July 2004. It contained numerous findings of irregularities and shortcomings in connection with the administration of the affairs of the institution concerned and a number of recommendations were made.

The implementation of these recommendations is currently the subject of further communication between the Special Investigation Unit and the Head of Legal Services of the Tshwane Municipality.

### 7.3 Investigation into allegations of a failure by the Department of Justice and Constitutional Development to comply with a directive of the Department of Labour

In July 2004 it was reported in the media that the Director of Public Prosecutions in Pretoria issued a notice to appear in court or pay an admission of guilt fine, to the then Director General of the Department of Justice and Constitutional Development. It related to the alleged failure by the Department to comply with a directive of the Department of Labour regarding the condition of the building housing the Pretoria Magistrate's Office. It was alleged that the building posed a fire hazard.

The matter was raised with the Minister of Justice and Constitutional Development in August 2004, but despite several attempts to obtain her comments, she failed to co-operate with the investigation. It was subsequently referred to the acting and newly appointed Director-General, but no response has been received to date.

In the light of the failure by the Department to co-operate, the Director of Public Prosecutions will be approached directly to find out what happened to this matter.

#### **7.4 Investigation into apparent failure by Departments of the Eastern Cape Provincial Government to comply with court orders**

In September 2004 the Public Protector raised his concern in regarding reports in the media focusing on the failure by Departments of the Eastern Cape Provincial Government to comply with court orders.

The said failure by the Departments became controversial when a Judge of the Eastern Cape High Court differed in one of his judgments with a ruling made by the Supreme Court of Appeal, to the extent that officials may not be found in contempt if they fail to comply with a court order.

The matter was raised with the Eastern Cape Provincial Office of the Public Protector and it appeared that several complaints in this regard were under investigation.

All these complaints have subsequently been resolved.

#### **7.5 Investigation into allegations concerning the renewal of drivers and vehicle licenses**

In January 2005 it was reported in the media that the Tshwane Traffic Department implemented a computer program whereby they intended to block the renewal of driver's licenses and vehicle licenses to people who have outstanding fines and warrants of arrest.

This raised concern, as this is not in line with legislation and the policy of the National Director of Public Prosecutions on traffic procedures. It was decided that it would be in the public interest to conduct an own initiative investigation.

The National Prosecuting Authority was approached and it appeared that the Tshwane Traffic Department was not complying with the provisions of the National Road Traffic Act. A report on the matter from the Head of the Tshwane Traffic Department is currently awaited.

## 8. SYSTEMIC INVESTIGATIONS

It happens from time to time that complaints received by the Public Protector, indicate that such complaints are caused by a systemic deficiency in public administration. In such cases the Public Protector still pursues the individual complaint, but also initiates a systemic investigation to address the deficiency.

For the current year, 9 such investigations were considered, of which one was finalised. These investigations are mostly driven as projects, and the details follow below.

### 8.1 Appeals investigation

The office of the Public Protector received numerous complaints from prisoners about the status of their appeal applications. For the years 2003 and 2004 such complaints accounted for approximately 17% of all complaints received by the Public Protector. From a survey done by the office it appears that the complaints are mostly about delays in finalizing appeals that are caused by one or more of the following:

- a) The appeal never reaches the Registrar of the Court;
- b) The case record is lost and must be reconstructed;
- c) The transcript is still being typed;
- d) The reasons for judgment are outstanding;
- e) The prisoner was notified of the status of the appeal, but did not receive the notification; or
- f) The prisoner lacks the legal knowledge to comply with the requirements of the Court Rules for lodging an appeal.

The aim with this investigation is to identify those courts or institutions where complaints regarding appeals cannot be said to be isolated incidents, but rather due to systemic deficiencies in the administration of appeals, and to address those systemic deficiencies.

A project plan has been approved and the investigation will proceed in the next financial year. The date of completion is estimated to be December 2005.

### 8.2 Compensation Commissioner Investigation

Similar problems were experienced by various complainants regarding claims with the Compensation Commissioner. These problems are:

- a) A failure to finalise claims for compensation timeously;
- b) A failure to inform claimants about the outcome of their claims;
- c) A failure to inform claimants of their rights to object to a decision by the Compensation Commissioner; and
- d) A failure to be accessible to claimants and the general public.

A final decision on whether or not it is necessary to proceed with a systemic investigation is to be taken in the next financial year.

### 8.3 Social Grants Investigation - Eastern Cape

The office of the Public Protector receives numerous complaints from the Public in the Eastern Cape regarding the status of their applications for social welfare grants. For the past three years the majority of complaints in the Eastern Cape Provincial office of the Public Protector, relate to social welfare grants. The complaints received are mostly about delays to process applications for grants, which, amongst other things, are alleged to be caused by the following:

- a) The unavailability of assigned medical practitioners (district surgeons) to examine the disability grant applicants.
- b) Social grant applications not being processed within the prescribed period as laid down in the Social Assistance Act and relevant government policies.

- c) Decisions on the outcome of applications not being communicated effectively to applicants.
- d) The toll free number for queries always being engaged.
- e) Applicants not being able to utilise the appeal process as laid down in the Social Assistance Act.

The aim of such a systemic investigation would be to identify the root causes of delays in accessing, capturing and processing social security grants. A draft project plan has been drafted and is ready for implementation in the next financial year.

#### **8.4 Maintenance matters investigation**

Many complaints are received from complainants (specifically women) regarding the plethora of problems experienced by them in accessing the maintenance system in our courts. It was considered to embark on a systemic investigation in order to identify specific problems and make recommendations to the Department of Justice and Constitutional Development (hereinafter referred to as the Department) to address these complaints.

However, it was established that the Commission on Gender Equality has done extensive research and published a report on the very subject. This report, namely: "Implementation of the Maintenance Act in the Magistrates' Courts" was issued during March 2004 and not only identified the various maintenance problems experienced by women all over South Africa, but also captured numerous recommendations to the Department.

We consulted with the Commission and it was decided that the Public Protector would not proceed to compile his own report. Instead the Public Protector and the Gender Commission would work in conjunction to monitor the Department's implementation of the recommendations captured in the report.

It was also decided that the best way in which to proceed was to meet with the Deputy Minister of the Department of Justice. Such a meeting is to take place in the new financial year.

With a view to the meeting with the Deputy Minister, statistics were collated of all maintenance complaints dealt with by the Public Protector countrywide. The Gender Commission was requested to do the same. However, the Gender Commission informed us that they do not have the capacity to proceed with the project at this stage. The Commission is currently in the process of appointing a complaints officer to assist with the project. The Commission therefore indicated that they will be in a position to collate their statistics and finalise the appointment of staff, in order to continue with the project in the next financial year.

In the meantime the Public Protector will request certain Magistrates' offices to inform him of progress as regards the implementation of the recommendations of the said report.

#### **8.5 Protection of whistleblowers within the legislative framework of the Protected Disclosures Act, 2000 and the role of the Public Protector**

The Protected Disclosures Act, 2000 ("the PDA") provides for procedures in terms of which employees disclosing information regarding unlawful or irregular conduct by their employers or by other employees, can be protected. Disclosures have to be made mainly to legal advisors, the employer, a member of the Cabinet or an Executive Council of a province, or designated entities (such as the Public Protector), to qualify for protection against occupational detriment.

Following analyses of complaints received by the office, as well as the plight of some 'high profile' whistleblowers highlighted in the media during the past years, the Public Protector deemed it necessary to embark on a project to interrogate the role of the Office in this regard and to consider whether or not the PDA in its current form affords adequate protection to whistleblowers.

It was also ascertained that the South African Law Reform Commission (SALRC) was tasked by the Parliamentary Portfolio Committee on Justice and Constitutional Development to investigate, inter alia, the feasibility of extending the ambit of the PDA beyond the purview of the employer/employee relationship. Following their research, the SALRC issued a Discussion Paper, inviting responses from interested parties to enable them to further inform their findings and formulate recommendations to be reported to the said Committee. The Office had discussions with the SALRC and undertook to furnish the SALRC with the Public Protector's response to the Discussion Paper upon conclusion of the project.

The methodology followed during the project involved the consideration of views expressed by South African and international academics as well as civil society organizations, an assessment of 'whistle blowing' cases dealt with by the Office, consultations with several whistleblowers, a comparative study of local and international 'whistle blowing' legislation and the examination of other statutory provisions.

The Public Protector furnished the Commission with a 40-paged document in February 2005, which represents the response of the office to the said Discussion Paper. The following is a brief outline of the issues, and proposed amendments to the PDA, that were considered, together with the Public Protector's comments and recommendations:

#### **8.5.1 Extension of the ambit of the PDA beyond the employer/employee relationship**

The Public Protector concurred that a more inclusive approach to defining the term "employee/worker" should be adopted. With reference to a complaint investigated by the office, it was suggested that consideration be given to extending the definition of employee/worker in the PDA to include former employees. In relation to proposed amendments of the term "employer", the Public Protector remarked that it might be feasible to invent a new term (such as 'work provider') to avoid any confusion and to distinguish the meaning of "employer" from that in the Labour Law. As regards a suggestion reflected in the Discussion Paper that the principle of joint and several liability be adopted (where there are more than one employer e.g. in the case of a temporary employment service as well as the 'employer-client') in respect of both employers' compliance with the PDA, the Public Protector directed attention to the position in United Kingdom (UK) legislation. In view of the fact that the PDA is largely modelled on legislation in the UK, it was suggested that consideration be given to adopting a similar approach as in the UK.

#### **8.5.2 The definition of 'occupational detriment'**

The proposed (amended) definition of occupational detriment was supported, but the Public Protector remarked that it would be in the interest of legal certainty to add the phrase "or disciplinary action" to the proposed definition.

#### **8.5.3 The proposed amendment of section 8 (persons or bodies to which protected disclosures can be made)**

**The Public Protector suggested that the following institutions be added to this section:**

- a) The South African Revenue Service (in relation to tax irregularities);
- b) The Financial Intelligence Centre (money laundering activities);
- c) The Pension Fund Adjudicator (pension funds registered in terms of the Pension Funds Act, 1956);
- d) The Independent Complaints Directorate (misconduct by members of the SAPS);
- e) The Judicial Inspectorate of Prisons (treatment of prisoners and conditions and practices in prisons); and
- f) The Public Service Commission (compliance with applicable procedures and application of personnel and public administration practices in the Public Service).

With regard to the proposed inclusion of “ombudsman” in section 8(1) of the PDA, the Public Protector remarked that some institutions use the term ‘ombudsman’ even though they are not independent or recognised oversight agencies. It is proposed that the term be more closely defined (for instance: ‘recognised industry ombudsman’). In this regard it was also pointed out that the addition of the said entities could add to their responsibilities. It was therefore suggested that these institutions be consulted and provided with an opportunity to comment on their inclusion.

#### **8.5.4 Citizen’s whistle blowing and the role of the Public Protector**

It was pointed out that the PDA was designed to regulate disclosures relating to the employment environment and relationship in both the public and private sector. Extending the PDA to provide for ‘citizen’s whistle blowing’ in respect of public bodies would entail defining a number of issues, such as the detriment against which protection would be applicable, the remedies available, etc. Experience has shown that extending a statute to cover areas not originally intended by the Legislature often results in serious interpretation and implementation difficulties. The view was held that the concept of protecting the ‘citizen whistleblower’ should not be incorporated in the PDA.

With reference to the functions of the Public Protector, it was further submitted that the concerns in regard to citizen’s whistle blowing referred to in the Discussion Paper, can be adequately addressed by providing in the proposed amendment of the PDA that section 35 of the Promotion of Access to Information Act be amended by adding the following provision:

“The information officer of the Office of the Public Protector must refuse a request for access to a record of the Office if it contains information which was obtained or is held by the Office for the purposes of investigating or having investigated any matter by virtue of the powers afforded to the Public Protector by the Constitution and national legislation.”

#### **8.5.5 Immunity from criminal and civil liability**

The Public Protector remarked that there appears to be a significant body of opinion suggesting that it would make no sense to shield whistleblowers against victimisation and “occupational detriment”, but not afford them indemnity from possible criminal and civil liability arising out of a protected disclosure.

It was also pointed out that, in practical terms, several whistleblowers interviewed raised real concerns of reprisal (disciplinary and/or civil actions) as a result of breach of a duty of confidentiality. It is important to note that often the making of a protected disclosure invariably results in a breach of such duty in terms of oath, contract, agreement or law. The office therefore deemed it necessary that whistleblowers be provided immunity in this respect. In addition, it was noted that the proposed amendment contains the phrase: “... an obligation by way of oath, contract or practice or under an agreement...”. The Public Protector suggested that the words “or by law” be added in this phrase (as is the case in some foreign legislation).

Furthermore, the Public Protector remarked that immunity in situations where the whistleblower was involved in the illegal activity or wrongdoing disclosed, and where this would have the effect of him/her not being held accountable for his/her actions, is however more problematic. The opinion is held that blanket immunity in this regard could lead to abuse of the PDA. The Public Protector cited the relevant provisions of the Queensland Whistleblowers Protection Act, which seem to have managed to strike a balance between adequate protection of whistleblowers and possible abuse of the whistle blowing regime. It was suggested that consideration be given to introducing similar provisions in the PDA.

### 8.5.6 Further considerations for the protection of confidentiality in terms of the PDA

Consultations with whistleblowers revealed that confidentiality and protection of identity are their primary concerns. Accordingly, it was submitted that the proposed new provision will minimize the risk of reprisals and address the fears of whistleblowers, and was therefore supported.

However, the Office remarked that it is anticipated that recipients of disclosures could be in a precarious position if they are faced with an application for access to information in terms of the Promotion of Access to Information Act, 2000. A number of foreign jurisdictions made provision for the limitation of requests for access to information. The New Zealand Protected Disclosures Act provides that a request for information under the Official Information Act 1982 may be refused, as contrary to this Act, if it might identify a person who has made a protected disclosure. Similarly, the Public Protector recommended that the grounds for refusal of access to records be expanded. It was suggested that sub-paragraph (aa) of sections 38 and 66 of the Promotion of Access to Information Act be amended to add the phrase "or a person who made a protected disclosure in terms of the Protected Disclosures Act, 2000".

### 8.5.7 Extension of remedies available to whistleblowers

The Public Protector concurred with the proposed amendments to clarify and extend the remedies at the disposal of a whistleblower. Attention was drawn to the fact that some foreign jurisdictions deemed it necessary to establish personal accountability for those responsible for whistleblower reprisal. It was suggested that consideration be given whether some of these could fit into the PDA and the South African law at large. The Public Protector also commented in this regard that some foreign laws place a duty on public sector entities to protect their officers from reprisals.

Regarding the issue of extending legal aid to whistleblowers, it was suggested that the SALRC approach the Legal Aid Board as well as the Department of Justice and Constitutional Development for their inputs in this regard.

### 8.5.8 The duty on employers to determine and implement internal procedures for disclosures

The opinion is held that whistleblowers are particularly vulnerable if they do not know the requirements for making a protected disclosure, as provided for by the PDA. Accordingly, the proposal that a duty be placed on employers to put in place and implement internal procedures for making disclosures, were supported. The Public Protector also referred to legislation in New Zealand and remarked that it might be feasible to adopt a similar approach in South Africa.

### 8.5.9 Duty to investigate disclosures

The Public Protector remarked that, from investigations conducted by the office, it was found that most whistleblowers fear that nothing will be done in response to their efforts to disclose wrongdoing. Reference was made to legislation in some Australian states which imposes a duty on authorities to investigate disclosures, but with the right to decline investigation in certain circumstances. Similarly, it was noted that Australian legislatures require authorities that received disclosures, to give feedback to the whistleblower. The Public Protector held the view that consideration be given to introduce similar provisions in the PDA.

In addition, the Public Protector stated that it might be expedient to deal with the following matters in the PDA or by way of regulation:

- a) A schedule listing the designated entities referred to in section 8 of the PDA and briefly explaining their core business, powers and functions, to enable whistleblowers to determine which body would be the most appropriate to approach;

- b) Stipulation of timeframes within which action should be taken by the recipient of a disclosure and within which feedback should be given to the whistleblower;
- c) Referral of disclosures to more appropriate agencies/persons where the original recipient does not have the power/jurisdiction to appropriately deal with it;
- d) An obligation on the whistleblower to maintain confidentiality;
- e) An obligation on the whistleblower to co-operate with and assist investigators tasked to investigate the information disclosed; and
- f) A duty to annually submit to the Department of Justice and Constitutional Development statistics and details of protected disclosures dealt with by public bodies. Such provisions could be similar to section 35 of the Promotion of Access to Information Act, 2000. The Department should include such statistics in its annual report to Parliament (see section 84 of the said Act). This information would enable Parliament to determine the successes and shortcomings of the PDA.

#### **8.5.10 The criminalization of false disclosures and subjecting a whistleblower to occupational detriment**

The contention that these actions should not be criminalised was supported. The Public Protector remarked that it is noteworthy that a review of the adequacy of the New South Wales Protected Disclosures Act in April 2004, found that only three criminal actions alleging detrimental action by the whistleblower had been instituted in Australia, all of which were unsuccessful.

#### **8.5.11 The requirement of good faith when making a protected disclosure to a legal advisor**

The Public Protector shared the argument that the good faith requirement is unnecessary when disclosures are made to legal practitioners. This provision appears to be based on the concept of legal professional privilege. However, the aforesaid principle does not apply to trade union representatives and a proposed addition to section 5 of the PDA was therefore not supported.

#### **8.5.12 Other legislation**

The Public Protector discussed the provisions of several laws in South Africa that impose a duty to report corruption, irregularities, illegalities, etc. on certain persons (Prevention and Combating of Corrupt Activities Act, 2004; Financial Intelligence Centre Act, 2001; National Nuclear Regulator Act, 1999; National Environmental Management Act, 1998). The view was expressed that it is anticipated that the lack of co-ordination between these laws and the PDA could be problematic. The dilemma foreseen is that these Acts are fragmented, some of which offer no protection whilst other laws provide for limited protection. The opinion was held that the relationship of such laws vis-à-vis the PDA should be duly considered. A possible interim solution was suggested to include a similar provision as section 22 of the Queensland Whistleblowers Protection Act, which deals with "involuntary disclosures". The latter section provides that a disclosure may be a public interest (protected) disclosure even though it is made under a legal requirement.

It was concluded that these fragmented laws seem to jeopardise legal certainty and it is suggested that the SALRC consider how the matter could be addressed. One solution could be to incorporate provisions of the PDA into these statutes by reference.

#### **8.5.13 General protected disclosure – whistle blowing to the media**

The PDA discourages a whistleblower to make a disclosure to the media in the first instance. A person who makes a disclosure in terms of section 9 (general protected disclosures) has to meet a number of requirements. The Public Protector remarked that this section is fairly extensive and some of the concepts might be difficult to potential whistleblowers to understand. It could further be argued that to subject a whistleblower to such stringent requirements before he/she can approach the media, may erode the fundamental right of freedom of expression and public accountability of organisations. The view was therefore expressed that it might be feasible to revisit the provisions of section 9 of the PDA.

The Public Protector concluded by commenting that the PDA should be reviewed comprehensively and urgently. The SALRC was commended for the work that had been done thus far. The Office of the Public Protector was in general supportive of the preliminary views and recommendations contained in the Discussion Paper. The Office trusts that these comments and inputs will assist in amending the PDA to achieve its core objectives.

#### **8.6 RDP Housing Investigation - Kouga Municipality**

Many complaints were received during an outreach initiative by the Eastern Cape Provincial office of the Public Protector, regarding delays with the processing of applications for, as well as the provisioning of, low cost RDP housing by the Kouga Municipality.

Letters were written to the various complainants to get details of their housing applications. A decision on how to proceed with the investigation will be taken in the next financial year, once responses to our letters have been received from all the complainants.

#### **8.7 Systemic Civil Pensions Investigation**

An alarming pattern of delays was noted on the part of Departments and Provinces to submit properly completed pension withdrawal forms to the Government Employees Pension Fund (GEPF), in some instances up to five years. Pensioners are prejudiced by such delays, especially since, in terms of section 26 of the Government Employee Pension Law, the GEPF only becomes liable to pay interest on benefits 60 days after receipt at the GEPF of the correctly completed withdrawal documents.

**The purpose of the systemic investigation is:**

- a) To determine the reasons for the delay in payment of benefits;
- b) To determine the remedies to improve the situation; and
- c) To determine whether amendments to policies and/or legislation in this regard are needed and to assist in the policy changes.

A project plan has been approved and it is envisaged to complete the investigation by 25 November 2005.

#### **8.8 Project Unemployment Insurance**

A systemic investigation is being considered to address the reasons for the undue delay in the processing and payment of unemployment insurance benefits to contributors or to dependants of deceased contributors, in light of the alarming pattern of delays noted by the Office of the Public Protector on the part of the Unemployment Insurance Fund in finalizing claims for benefits. A project plan is to be submitted to the Public Protector in the next financial year, when a final decision on the need for such a systemic investigation will be taken.

#### **8.9 Witness Protection Programme investigation**

Recent complaints to the Public Protector have indicated that there appears to be certain deficiencies in the Witness Protection Programme. These deficiencies are alleged to lead to prejudice of witnesses participating in the programme in the following areas:

- a) Deficiencies in the relevant legislation and policies;
- b) Violation of basic human rights (assault, ill-treatment, lack of medical care, insufficient allowance);  
and
- c) Lack of after care.

A project plan was approved and the investigation is in its final stages. A report is expected to be issued in the next financial year.



COMPANY REFUSE FINANCIAL ASSISTANCE  
 I KNEW THAT NO SURPRISE AS A VICTIM OF  
 APARTHEID TIMES NOW I'M 54 YEARS BUT  
 STILL FIGHTING THE SAME BATTLE PLEASE  
 MADAM TO YOU AND PUBLIC PROTECTOR HIMSELF  
 TO WORK AND GET DISABILITY INJURED ON DUTY  
 IS IT MUST ~~BE~~ MEAN A DARK FUTURE TO THE WORKER  
 AND FAMILY, OR INJURED ON DUTY MEANS A CURSE.

WHY TRANSNET NOT HELP? COMPANY IS NOT WORKER-  
 FRIEND. THEY DOESN'T SEE ME AS A HUMAN BEING  
 WHILE BUT FROM PENSION MONEY TRIED A BUSINESS TRY  
 TO BOOST MY SMALL INCOME UNTIL THE POLITICAL  
 VIOLENCE LEAD TO ITS CLOSURE AND AGAIN WHY  
 THEY NOT SEE MY LUCKY THAT THE GOVERNMENT  
 TRIES TO BOOST ME AGAIN AS A RESULT BUSINESS  
 GET AFFECTED SO I MUST RISE AGAIN.

TRANSNET CLOSE HIS EYES AND EARS DELIBERATELY  
 BUT PRETENDS TO BE SYMPATHETIC IN SAYING, IF GIVEN  
 A PORTION MY FINANCIAL POSITION WILL BE  
 WEAK. BUT DOESN'T UNDERSTAND THAT:

- ① I WILL DEPOSIT 10% SO THAT I BE GIVEN A LOAN  
 OF R50 000-00,
- ② MY SON AND DAUGHTER GOING  
 BE PAYING FOR COLLEGE FEES BECAUSE JOB SKILL  
 TRAINING MEANS A CHANCE TO FACE EMPLOYMENT
- ③ WHILE OPERATING A BUSINESS I WILL KEEP  
 PROFITS CONSTANTLY UNTIL WE AFFORD TO BUILD UP  
 A CONCRETE HOUSE FOR MY FAMILY AND A LUMP  
 OF LESSENED PENSION WILL BE CURED.

I WOULD ACCEPT THIS R51,000-00 SAID TO BE HELD  
 BY MY PENSION IF GIVEN A PORTION WHICH THEY REFUSE.  
 THANKS MADAM  
 YOURS FAITHFULLY

Based on Transnet's final recommendations to the Compensation Fund, complainant was advised that commutation of the whole of his pension could not be approved, as it was not in his best interest to do so. They granted approval for the commutation of a portion of his benefits, totalling a lump sum payment of around R51,000. The Compensation Fund subsequently instructed Transnet to pay the amount to complainant.

**9.2 COMPLAINT: 7/2 – 3127/02**

Complainant (an advocate) approached the Public Protector with the complaint that numerous accounts delivered by him to the Legal Aid Board, were not paid. All attempts on his side to solve the matters, failed.

The investigator contacted the Legal Aid Board and established the causes of delay, and complainant's accounts were settled. He wrote the following letter of appreciation:

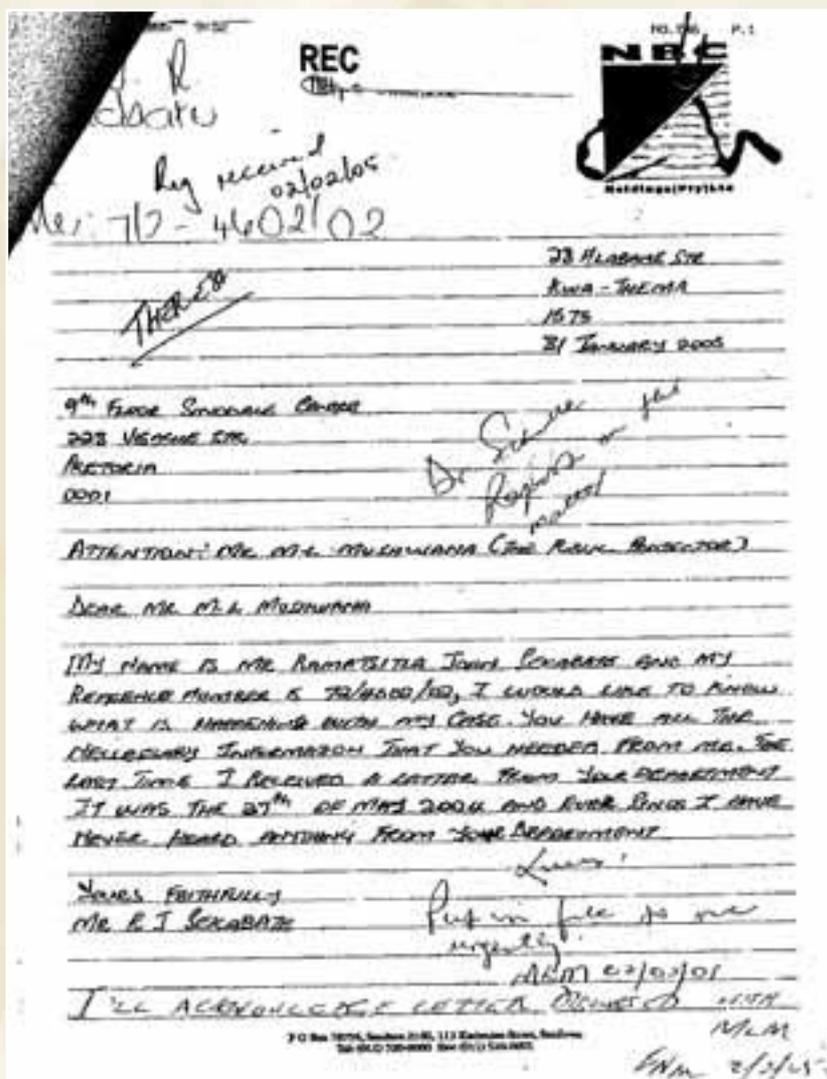
**9.3 COMPLAINT: 7/2 – 4602/02**

Complainant applied for unemployment insurance benefits in 2000. The application was complicated since the Unemployment Insurance Fund's computer records reflected that a person sharing the same surname, identity number and employer as complainant had unlawfully, apparently, but successfully applied for benefits at the Pietermaritzburg Labour Centre in 1992. The Unemployment Insurance Fund was unable to produce documentary proof of application and payment for this period, as their records have been destroyed.

The Unemployment Commissioner's office declined to pay complainant benefits and advised him that he should lodge an 'appeal' against the 'decision' with the Pietermaritzburg Labour Centre, being the place where the disputed 1992 application arose. Complainant lodged the appeal in 2002. However, the Pietermaritzburg Labour Centre responded that the matter could not be treated as an appeal as there was no refused application on record, falling under their jurisdiction. They advised that the matter should be referred to the Gauteng North Provincial office of the Unemployment Insurance Fund. They suggested that the complainant be given the benefit of the doubt on making an affidavit to the effect that he had not received any benefits.

The Unemployment Insurance Commissioner's office indeed then referred the matter to the Gauteng North Provincial office, and also to the Fraud Prevention Unit for further investigation. Complainant complained to the Public Protector that the Unemployment Insurance Fund is yet to furnish him with the result of the police investigation, and to finalise his claim for benefits. Enquiries were forwarded to the Unemployment Insurance Commissioner's office during 2003, and when no response was received, a meeting was requested with the Unemployment Insurance Commissioner. After it transpired that the Unemployment Insurance Fund did not receive this office's enquiries, the meeting did not take place. The enquiries were re-sent to the Unemployment Insurance Commissioner's office but still no response was received.

In March 2004, the Unemployment Insurance Fund requested the investigator to follow the matter up directly with the Gauteng North Provincial office. Since the investigator's written and telephonic enquiries to the responsible official, no response has been received. In the mean time, complainant addressed a complaint to the Public Protector that the complainant had not been given reports concerning the progress of his complaint:

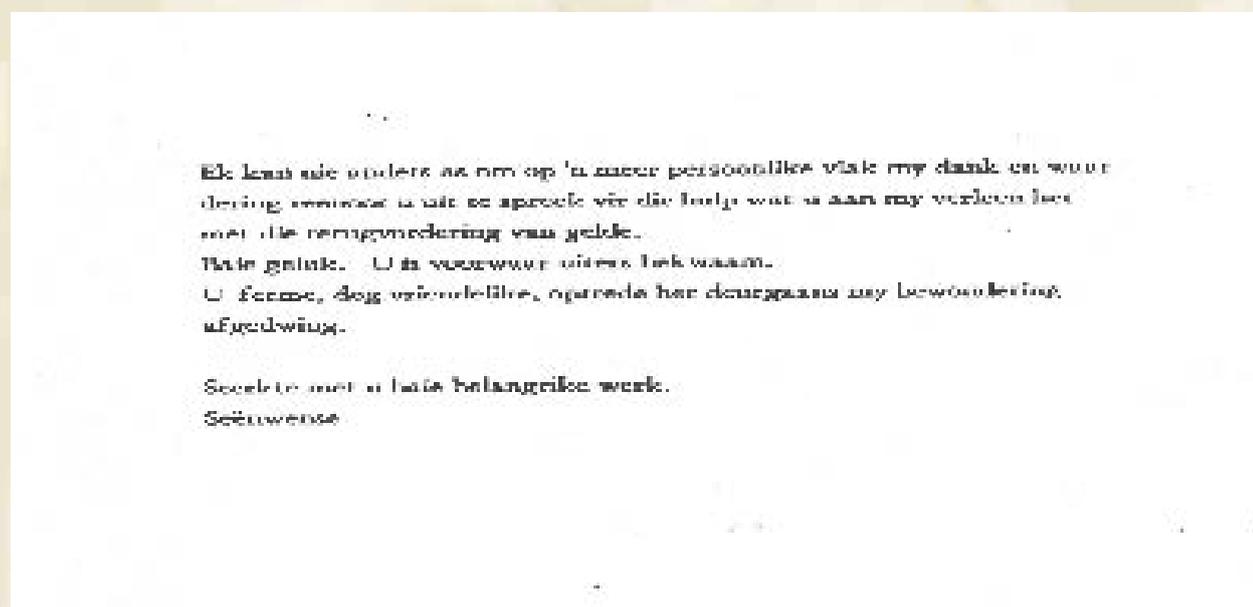


Telephonic progress reports had in fact been given to complainant about the difficulties experienced, but his irritation was understandable. Subsequently, it was decided to consider an investigation into all undue delays experienced to obtain responses from the Unemployment Insurance Fund, as well as the delays being experienced by claimants in having their claims for benefits processed and finalised by the Unemployment Insurance Fund. The project is still in the planning phase and is expected to commence in the next financial year.

#### 9.4 COMPLAINT: 7/2 – 1480/03

The complainant approached the Public Protector with a complaint relating to service that was bought back from the then Transvaal Education Department in 1985. Although some concerns were raised about the time period that had lapsed in the matter, it was the view that the complainant would suffer prejudice if her complaint is not investigated. When the complainant applied for a severance package in 1998, National Treasury advised her that an amount equal to the amount she paid to buy back service would be deducted from her pension benefit as a debt to the employer. All the complainant's attempts to correct this mistake with the present Department of Education, failed to elicit any response.

Enquiries were made with officials of the Department of Education. They were reluctant to assist in the matter, but the investigator persisted with the investigation. In the end it was established that the then Transvaal Education Department failed to transfer the money to National Treasury during 1985. Although the incident occurred almost 20 years ago, through intervention and mediation, the Department of Education finally admitted to the allegations raised against it and reimbursed the complainant in full. The complainant sent the two following letters of appreciation:



**9.5 COMPLAINT: 7/2 – 1643/03**

The complainant approached the Public Protector about the delay in finalising his appeal. It was established that the complainant was awaiting the outcome of his application for a transcript of the court record, but that no response had been forthcoming from the Clerk of the Court. Upon making enquiries with the Clerk of the Court at the relevant Magistrate's Court it transpired that the transcribed court record were at that time with the presiding officer for his reasons and that, upon receipt thereof, the matter would be forwarded to the High Court for the allocation of a trial date. Through the intervention of the office of the Public Protector the process was expedited. The complainant later confirmed that he was in receipt of the transcribed court record and was awaiting a trial date for his appeal. He wrote the following letter of appreciation:

REF: 7/2-1643/03

THE PUBLIC PROTECTOR  
PRIVATE BAG 4667  
PRETORIA  
0001

RECEIVED
27 AUG 2004
602-18530870

GREETING FIRST:

I LIKE TO THANKS YOUR CO-OPERATION FROM YOUR OFFICE

I'D RECEIVED YOUR LETTER ON 2004-09-02. SO I'M HERE TO THANK BECAUSE THE CLERK OF THE CRIMINAL COURT THEY GIVING ME THE COPIES OF MY TRANSCRIPTS RECORDS. SO I SAYING TO YOUR OFFICE DON'T BE NEVER TRYED HANDLE IN THIS WAY AND I WILL ALWAYS PRAYING TO GOD BLESSING YOU/INCREASING YOUR LIFE TO LIVE

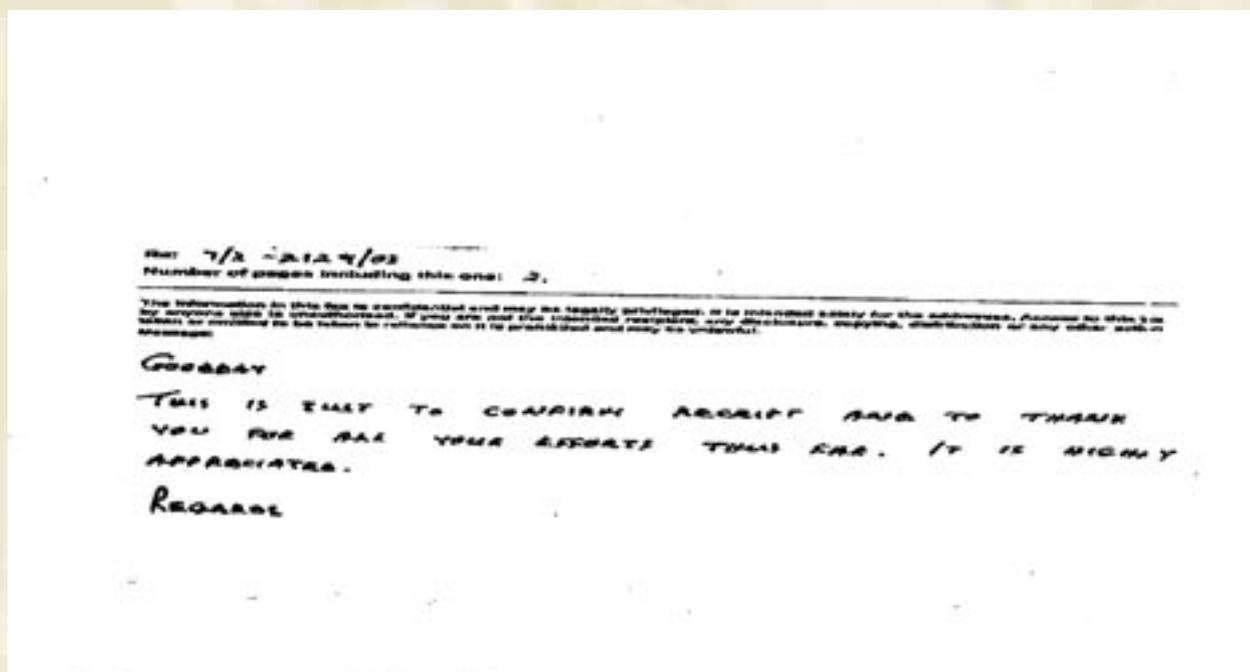
MY GOD BLESS YOU AND LET US HOPE THAT MY DREAM WILL COME TRUE ONE DAY, HOPING TO HEAR FROM YOU SOON AND I CAN'T FORGET YOUR CO-OPERATION ALL MY LIFE. KEEP IT REAL AND I WISH YOU ALL THE BEST.

THANK YOU  
DAVID FRITH G. III

**9.6 COMPLAINT: 7/2 – 2129/03**

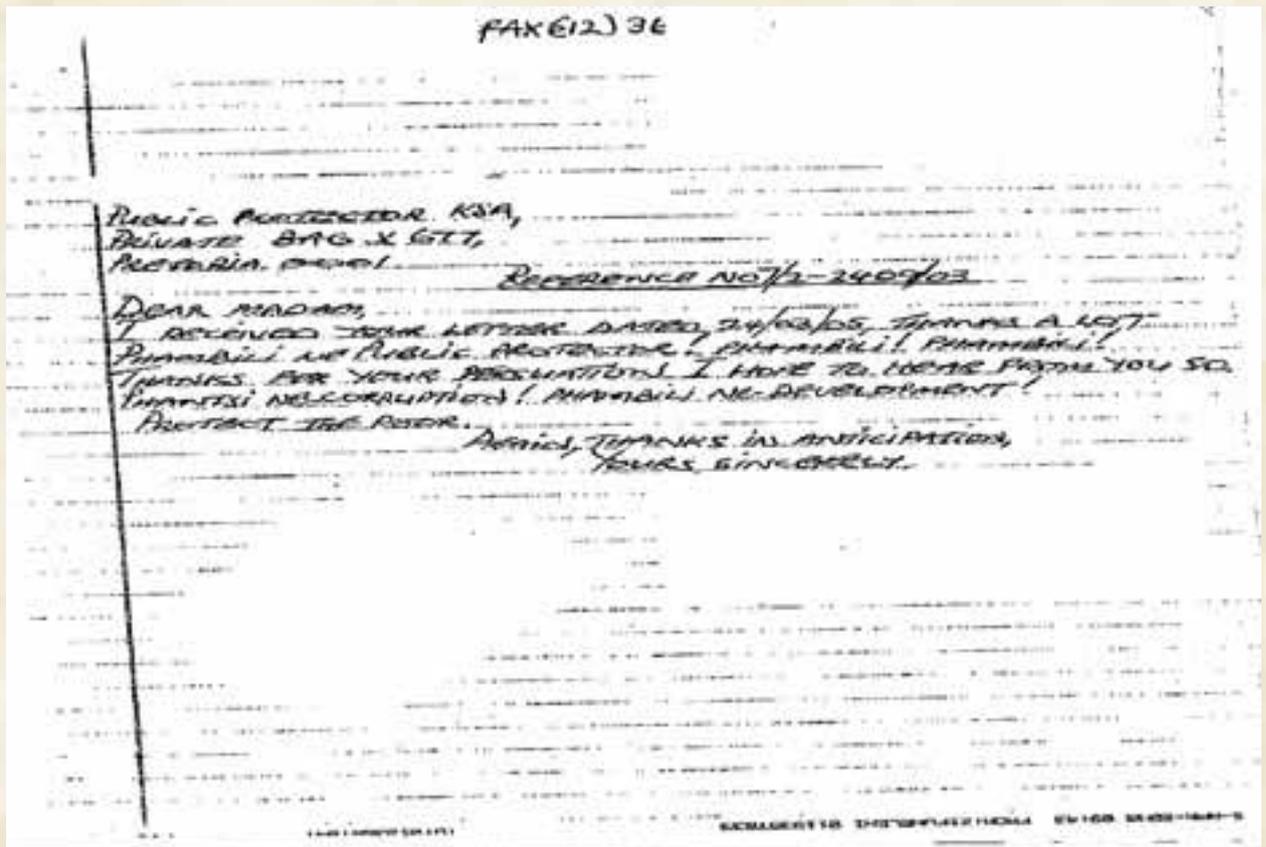
The complainant in this matter was an employee of the South African Post office. On 21 April 2002, he was involved in a motor vehicle accident while driving a vehicle belonging to the Post Office. As a result of injuries sustained in the accident, the complainant was incapacitated and the Post Office suffered damages to the vehicle. The complainant's financial advisor approached the Public Protector, questioning the legal basis upon which the Post Office recovered damages caused by the accident, from the complainant.

The Post Office alleged that it was entitled to deduct the damages suffered during the accident, from the complainant's pension fund in terms of section 10(B) of the Post Office Act, No 44 of 1958, but failed to advise whether damages were due to misconduct or negligence. From a labour law perspective there was no indication as to the grounds on which the complainant, who sustained serious injuries during the accident, was held liable for the damages. As a result of the enquiries by the investigator, the matter was re-evaluated by the Post Office, and it was decided to reimburse the complainant in full. The complainant recorded his appreciation by e-mail:

**9.7 COMPLAINT: 7/2 – 2409/03**

The complainant alleged mismanagement as well as fraud involving school funds by the chairperson of the School Governing Body (SGB). The complainant was a former member of the SGB. The complaint included a number of issues, e.g. complaints about broken doors and windows at the school, no laboratory and lack of skills by the administrative clerk.

The Department of Education followed up on the allegations and its report confirmed some of the allegations to be true. The Department introduced measures to assist the school and ensured that it would take further action in relation to this matter. The complainant responded as follows:



The promised action has not been taken as yet and the Public Protector is investigating why the department is taking so long to take the intended action.

#### 9.8 COMPLAINT: 7/2 – 0187/04

Complainant approached the Public Protector, after she was summonsed to a civil court for outstanding payments on a TV license that was still in the name of her late husband, who passed away in 1996. Her representations to the attorneys of the SABC were unsuccessful. The investigator approached the SABC, who cancelled the TV license, and terminated the debt collection action. In this case the complainant phoned to convey her appreciation.

#### 9.9 COMPLAINT: 7/2 – 1043/04

Complainant alleged that he was travelling on William Nicol Highway when his vehicle hit a pothole in the road. As a result the left hand front tyre of his vehicle was damaged. He incurred expenses of about R1,000 as a result of this incident and he claimed this amount as damages from the Department of Transport through his attorney. The Department denied liability and complainant could not afford to take the matter to court.

Complainant lodged a complaint with the Public Protector in April 2004. Due to a backlog in the investigators office, this matter was not attended to timeously. As a result the complainant sent the following letter of complaint:



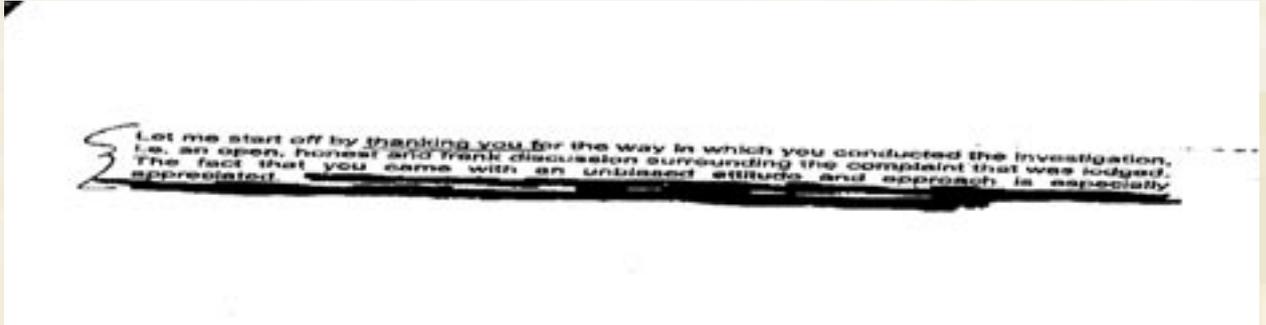
Although the complainant refers to correspondence dating back to December 2000 in the above letter, he is probably referring to correspondence between himself and his attorney, and the Department, as his complaint was only reported to the office of the Public Protector in April 2004. The issue was eventually raised with the Department and after several telephone conversations the Department finally responded in writing. They were still adamant that they are not liable for complainant's damages and they advanced compelling reasons.

After thorough consideration of the response from the Department it was found that the Department is not liable and complainant was advised accordingly. It is clear from the contents of his subsequent letter that he is not happy about the findings but this is understandable as the findings are not in his favour.



**9.10 COMPLAINT: 7/2 – 1330/04**

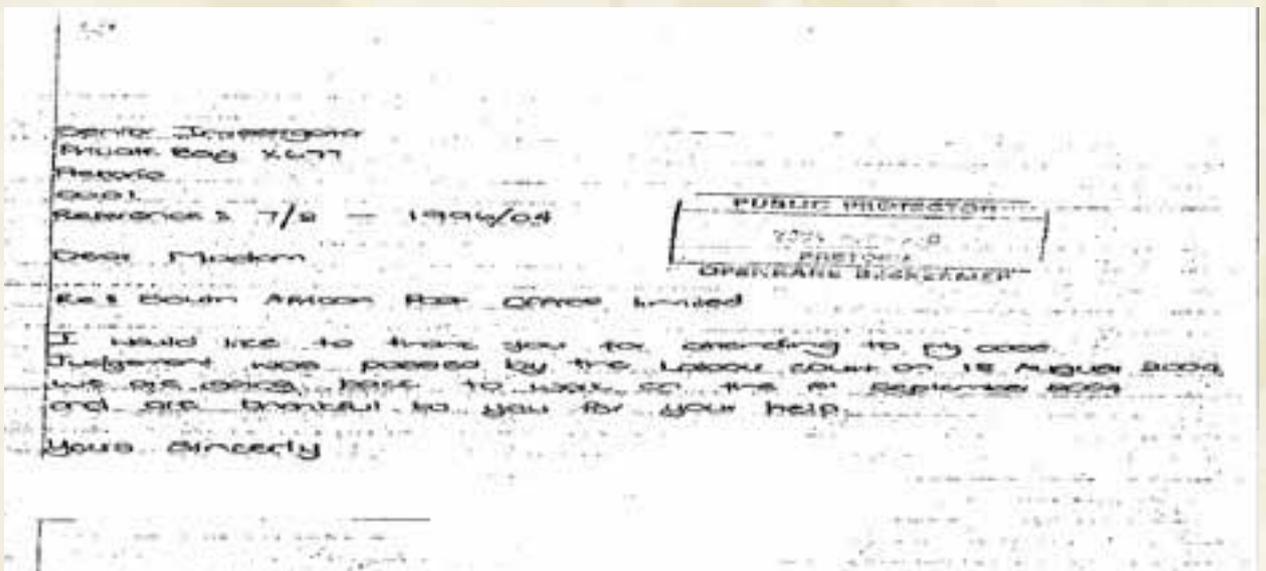
A complaint was received by the Public Protector, alleging that a senior official of the Department of Health: Radiation Safety Directorate had been running workshops on radiation safety for his own account, claiming that such workshops were being run by the Department. It was further alleged that he had been involved in this conduct since 2000, and that he had abused his power also by refusing to approve the course contents of other company's workshops on radiation safety, thereby limiting competition to his business. Investigations revealed that there is, in fact, such a business entity registered in the official's name, involved with radiation safety. The investigator met with the official involved and his supervisor in order to obtain their answers to the allegations. The officials were requested to furnish further information in writing. In their response, the following paragraph appears:



It transpired that the official indeed conducted radiation safety in his private capacity, but with the written approval of the Department, and that there had not been any instance where another company's course material on radiation safety had not been approved. It also transpired that the official, against whom the allegations were made, was in fact not involved in the approval process in respect of course materials for radiation safety workshops. The Public Protector was furnished with documents supporting the above.

**9.11 COMPLAINT: 7/2 – 1996/04**

The Public Protector received a complaint from a group of complainants pertaining to the alleged delay in the delivering of a judgement by the Labour Court. Apparently, all their attempts to enquire about the progress in the matter with the Registrar's Office had failed to elicit any response. Upon making enquiries with the Registrar of the Labour Court, it was established that judgement in the matter had been outstanding for almost a year. The investigator explained to the complainants that the Labour Court was currently inundated with labour matters and that every attempt was made to expedite the matter. Less than two months later, judgement was delivered in favour of the complainants and they could return to work. One of the group sent the following letter of thanks:



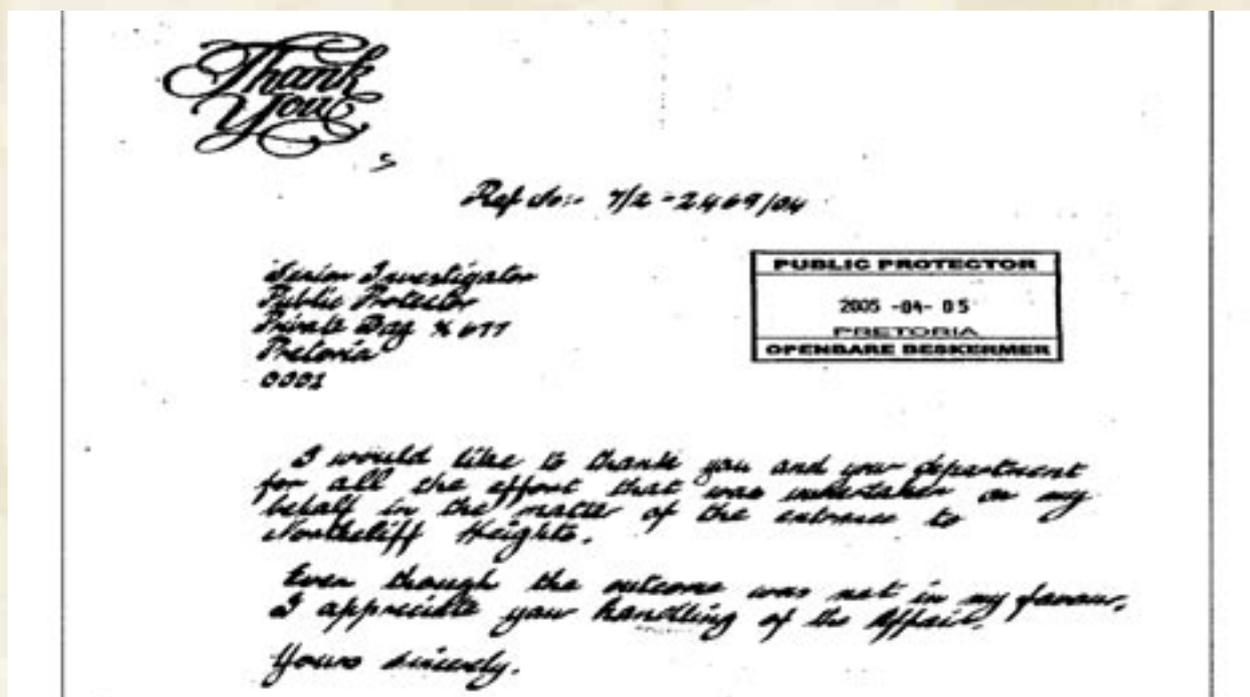
**9.12 COMPLAINT: 7/2 – 2469/04**

The Public Protector received a complaint about the proposed entrance to a new development in Northcliff Heights. The complainant alleged that the proposed entrance was situated in an extremely narrow and steep road. She was concerned about the impact the increase in traffic as a result of the development, would have on the quiet and peaceful neighbourhood. The complainant was of the view that other alternatives should be considered for the proposed entrance.

The matter was raised with the Department of Agriculture, Conservation and Environment. The Department responded that an application for exemption in terms of the Environment conservation Act, 1989, had been received from the developer. The exemption application was in respect of a change of land use, to allow for the development of a residential township on the remainder of a farm. One of the main objections against the granting of the exemption application was the fact that the density of the proposed development would not conform to the properties in the Northcliff area. Another concern was the impact the proposed development would have on the access road and its residents, as well as the plant life along the road as a result of the construction vehicles using this road.

After reviewing all information at its disposal, the Department concluded that the activity associated with the proposed development would not lead to a substantial detrimental impact on the environment. Furthermore, the Department supported an increase in density as a sustainable urban land-use practice and a way of responding to the growing housing demand in the Gauteng Province. Having regard to the concerns of the objector, it was agreed that construction vehicles would not make use of the access road for the duration of the construction period. The Department assured the Public Protector that the developer must comply with the conditions set out by the Department and that failure to comply with any of the conditions could result in the Department withdrawing the exemption.

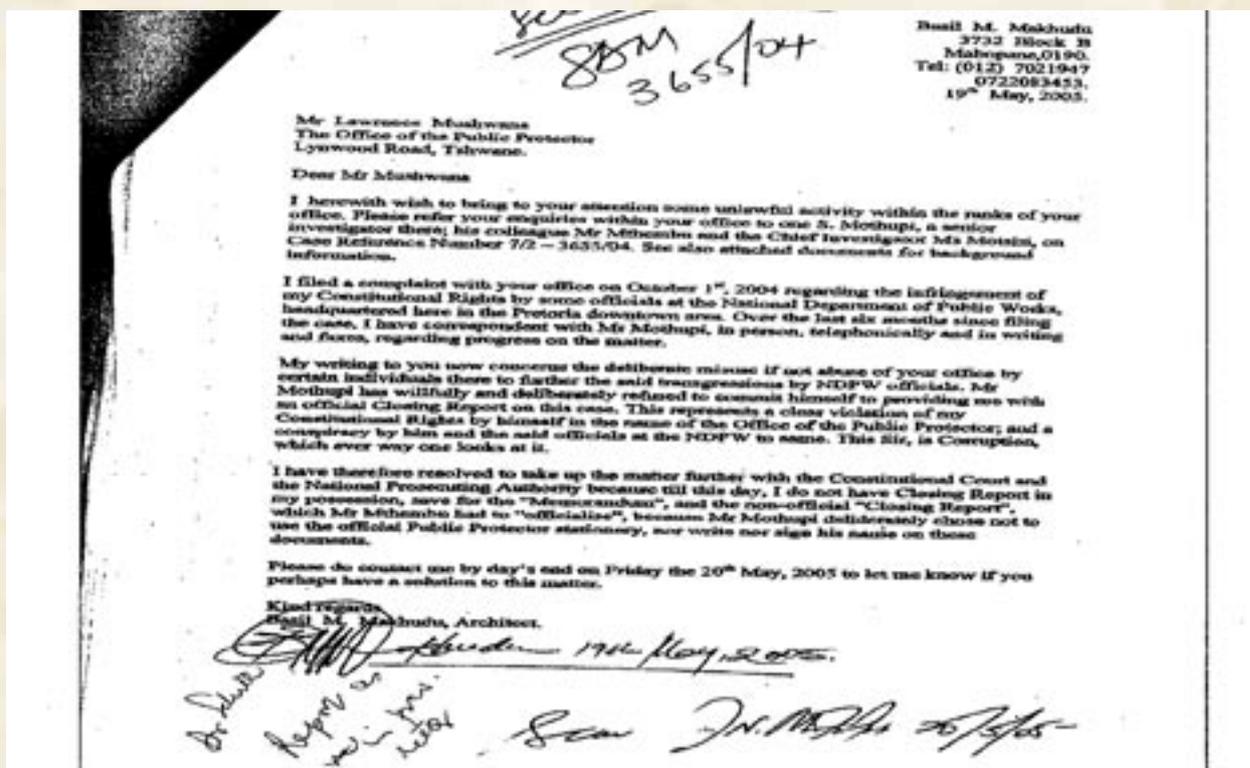
The investigator informed the complainant that the role of the Public Protector in this matter was not to establish whether the decision by the Department was right or wrong, but rather whether it was reasonable under the circumstances, and based on facts. The Public Protector could find no cause to interfere with the actions and decisions of the Department in the matter. Although the finding was not in favour of the complainant, the complainant was satisfied with the way in which the office of the Public Protector dealt with the complaint, and wrote the following letter of thanks.



**9.13 COMPLAINT: 7/2 - 3655/04**

The complainant was dismissed by the Department of Public Works on 14 March 2003. He requested the Public Protector to investigate his alleged unfair dismissal, undue delay by the Department to process payment of his pension benefits and the allegation that the Department denied him access to its premises to conduct business. The complaint of alleged unfair dismissal was not investigated because the complainant had referred it to the relevant Bargaining Council. The investigation regarding his pension benefits revealed that due to his departmental liability which exceeded his total pension benefits, he was not entitled to any benefits. The complainant indicated that he would query the departmental liability with the Department.

A preliminary investigation was conducted regarding the complainant's allegation that he was denied access to the Department's premises. The Department denied the allegations. The complainant was then requested to specify by whom and when access was denied, but he failed to do so. He was advised of closure of the file until he furnished the required information. The complainant, dissatisfied with the advice, wrote to the Public Protector, complaining against the investigator and his supervisor.

**The Public Protector responded as follows:**

"I refer to your faxed letter dated 19 May 2005 that I only received today as I was out of office.

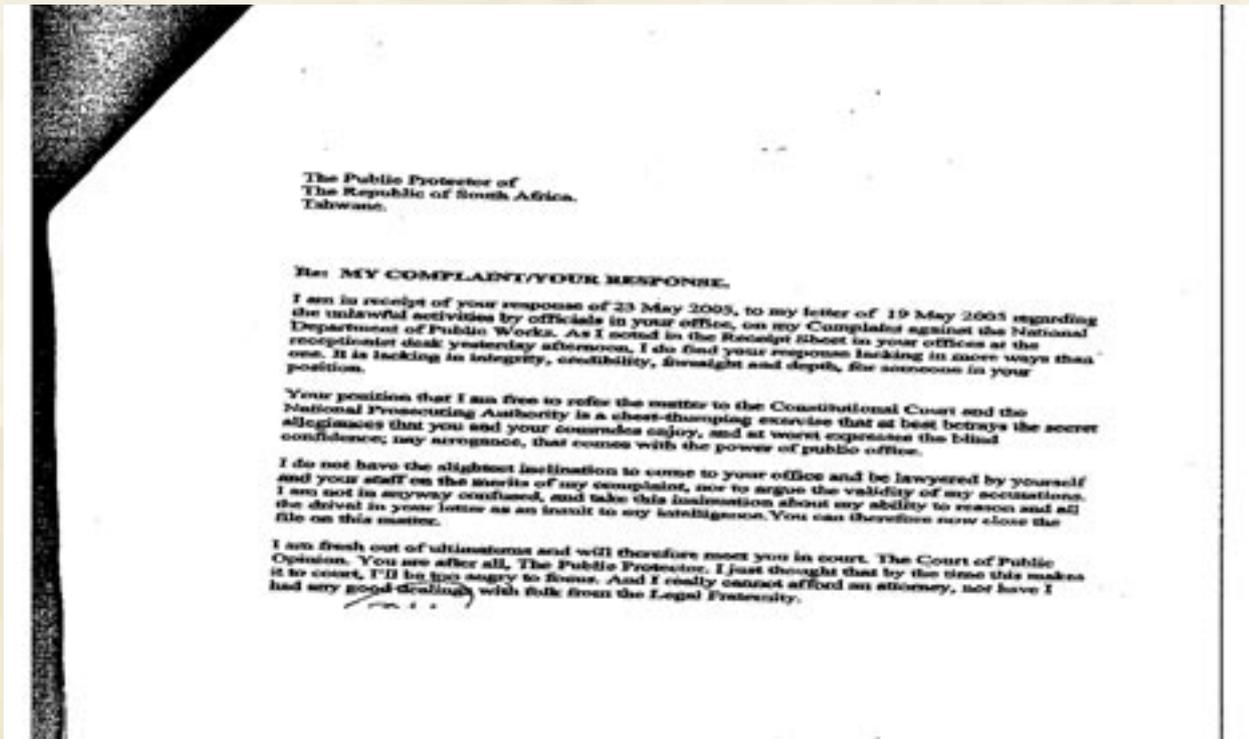
Having read your letter together with all documents in your file, I am not sure I understand your complaint in particular, your failure to furnish this office with information contained in our letter dated 28 February 2005. There is clearly a misunderstanding somewhere and I don't wish to respond to your accusations as that may add to the apparent confusion.

You are however free to refer this matter to institutions you referred to in your previous letter. If however, you still want us to deal with your complaint, kindly communicate with my private assistant Linda at 012 366 7000 and make an appointment at which all affected officials will be present.

I do not accept your ultimatum that I must respond to you by 20 May 2005.

If we do not hear from you by 15th of June 2005 we will close our file as we have, as a courtesy reopened it to deal with issues that you raised with me".

The complainant reacted with the following letter:



Complainant approached the President and a report has since been submitted to the President. The office file is now closed.

#### 9.14 COMPLAINT: 7/2 – 0518/05

Complainant lodged a complaint on 27 January 2005 that he had lodged an appeal on 5 March 2003 with the Magistrates' Court and heard nothing thereafter. He made 5 enquiries that went unanswered. The investigator made telephone calls to the Magistrates' Court, which revealed that the complainant should be requisitioned from prison, and a date set for his appearance in court, but that the Clerk of the Court was battling to locate the complainant. The investigator furnished the Clerk with the address and details of the complainant. In the meantime the complainant sent the letter of complaint below. The Complainant was informed of the position and the matter is finalised.

7/2-518/2005

345

PUBLIC PROTECTOR  
2005-03-05  
CHETSON  
OPENBARE BESKERMER

CHIEF INVESTIGATOR  
PUBLIC PROTECTOR  
PRIVATE BAG 677  
PRETORIA  
0001

ACQUAINT: APEAL APPLICATION PANDEMONIUM RESULTS

EMPHATICALLY ON THE 04/02/2005 I HAVE RECEIVED AN ACKNOWLEDGEMENT RECEIPT DATED 03/01/2005 - INFORMING ME THAT MY MATTER IS STILL BEING HELD.

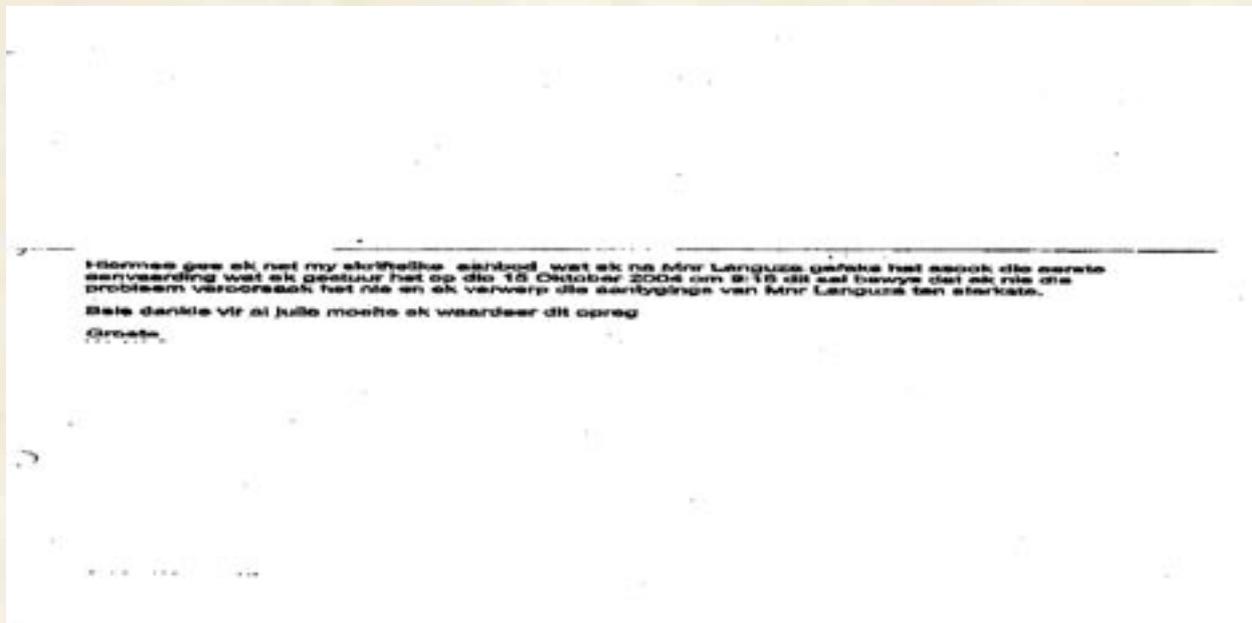
CURRENTLY I OFFERED URGENT REQUEST TO BE FURNISHED EXTREMIST OF THIS PANDEMONIUM STATE OF MY APEAL APPLICATION CONCERNED WITH

YOUR URGENT RESPONSE WILL DETERACT THE COMPLAINT STATE PRESSURE EXERTED BY COURT.

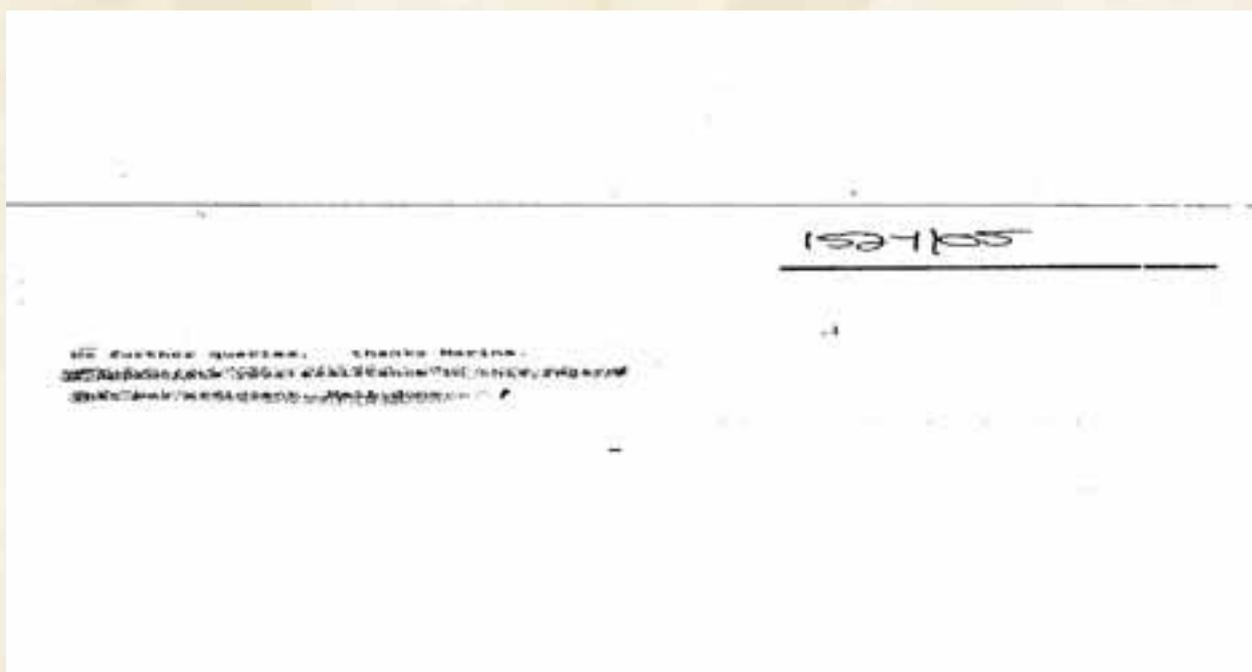
**9.15 COMPLAINT: 7/2 – 0910/05**

The complaint relates to an undue delay by the Department of Education: Gauteng, to pay pension benefits to the complainant after he resigned on 30 November 2001. The Department made him an offer to pay interest for the period payment was delayed. He accepted the offer, but they failed to pay over the interest amount. The Public Protector intervened and confirmed that the offer still stands. It was ensured that the complainant sent through another letter of acceptance in order for the payment to be made.

The complainant wrote the following thank you letter.

**9.16 COMPLAINT: 7/2 – 1527/05**

Complainant approached the Public Protector regarding outstanding pension benefits. Complainant resigned from the Department of Education almost a year ago, and all attempts to expedite payment had failed. The investigator contacted officials at the Government Employees Pension Fund, who by then had received the outstanding documentation. Benefits were paid immediately to complainant. Complainant sent an e-mail to say thank you:



**10. HUMAN RESOURCE MANAGEMENT**

**10.1 SERVICE PROVIDED**

**10.1.1 MAIN SERVICES PROVIDED AND STANDARDS**

<b>Main Services</b>	<b>Actual Customers</b>	<b>Potential Customers</b>	<b>Standard of Service</b>	<b>Actual Achievement against Standard</b>
Outreach Initiatives	Public in rural areas, Govt Depts and Institutions, NGO's	Public in rural areas, Govt Depts and Institutions, NGO's	Three visiting points per province	43 Visiting points established
Effective & Efficient Investigator	Public in rural areas, Govt Depts and Institutions, NGO's, Complainants	Public in rural areas, Govt Depts and Institutions, NGO's, Complainants	Identification of systemic investigations, Identification of root cause investigations, reports (general and parliamentary)on investigations completed.	Five Systemic investigations identified and in process, five Special Reports to Parliament, 10 Reports to other legislatures and public bodies, and all other finalized cases have been informally perorted on.
Improve Admin. Support	OPP - internal clients	OPP - internal clients	Appointment of IT Manager, HR Manager, Manager: Communications; Ensure Provincial offices are equipped with IT hardware	IT Manager, HR Manager, Manager: Communications - appointed; Provincial Offices trained and hardware in place.

**10.1.2 CONSULTATION ARRANGEMENTS WITH CUSTOMERS** N/A

Type of Arrangement	Actual Arrangements	Potential Customers	Actual Achievements
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**10.1.3 SERVICE DELIVERY ACCESS STRATEGY**

Access Strategy	Actual Achievement
<ul style="list-style-type: none"> <li>a) Awareness Campaign</li> <li>b) Appointment of Asst investigators (to assist with campaign)</li> </ul>	<ul style="list-style-type: none"> <li>a) 29% increase in cases</li> <li>b) 12 appointments finalized during financial year</li> </ul>

**10.1.4 SERVICE INFORMATION TOOL**

Types of information Tool	Actual Achievement
<ul style="list-style-type: none"> <li>a) Radio</li> <li>b) Brochures</li> <li>c) Community meetings and workshops</li> <li>d) Workshops and meetings with Govt Depts and Institutions and NGO's</li> </ul>	<ul style="list-style-type: none"> <li>d) 29% increase in cases received and knowledge of the office</li> </ul>

**10.1.5 COMPLAINTS MECHANISM**

Complaints Mechanism	Actual Achievement
<ul style="list-style-type: none"> <li>a) Lodge complaints via correspondence/ telephone</li> <li>b) Own initiative investigations</li> <li>c) Identification of root cause and systemic investigations</li> <li>d) Clinics and visiting points</li> <li>e) Receiving complaints at workshops and meeting</li> <li>f) Visibility at functions (e.g. rand Easter Show)</li> </ul>	<ul style="list-style-type: none"> <li>a) 22 350 Complaints received</li> <li>b) Five own initiative investigations identified</li> <li>c) Five Systemic investigations identified</li> <li>d) 43 Clinics and visiting points established</li> </ul>

## 10.2 PERSONNEL COSTS

### 10.2.1 PERSONNEL COSTS BY PROGRAMME, 2004/ 2005

PROGRAMME	Total Expenditure	Personnel Expenditure	Training Expenditure	Professional and Special Services	Personnel Cost as a Percent of Total Expenditure	Average Personnel Cost per Employee
OPP	54,001,000	36,803,000	447,000	3,524,000	68%	195,760
<b>TOTAL</b>	<b>54,001,000</b>	<b>36,803,000</b>	<b>447,000</b>	<b>3,524,000</b>	<b>68%</b>	<b>195,760</b>

### 10.2.2 PERSONNEL COSTS BY SALARY BANDS, 2004/2005

Salary Bands	Personnel Expenditure	Personnel Cost as a Percent of Total Expenditure	Average Personnel Cost Per Employee
Lower Skilled (Levels 1-2)			-
Skilled (Levels 3-5)			-
Highly Skilled Production (Levels 6-8)			-
Highly Skilled Supervision (Levels 9-12)			-
SMS (Levels 13-16)			-
OTHER			-
<b>TOTAL</b>	<b>36,803,000</b>	<b>68%</b>	<b>195,760</b>

\*information per salary level not available

## 10.2.3 SALARIES, OVERTIME, HOME OWNERS ALLOWANCE, AND MEDICAL ASSISTANCE BY PROGRAMME, 2004/2005

Programme	Salaries		Overtime		Home Owners Allowance		Medical Assistance	
	Amount	Salaries as a % of personnel costs	Amount	Overtime as a % of personnel costs	Amount	Home Owners Allowance as a % of total personnel costs	Amount	Medical Assistance as a % of personnel costs
OPP								
<b>TOTAL</b>	<b>24,512,000</b>	<b>78%</b>	<b>0</b>	<b>0%</b>	<b>440,480</b>	<b>0.00%</b>	<b>139,160</b>	<b>0.00%</b>

zero.1%

zero.1%

## 10.2.4 SALARIES, OVERTIME, HOME OWNERS ALLOWANCE, AND MEDICAL ASSISTANCE BY SALARY BAND, 2004/2005

Salary Band	Salaries		Overtime		Home Owners Allowance		Medical Assistance	
	Amount	Salaries as a % of personnel costs	Amount	Overtime as a % of personnel costs	Amount	Home Owners Allowance as a % of total personnel costs	Amount	Medical Assistance as a % of personnel costs
Lower Skilled (Levels 1-2) Skilled (Levels 3-5) Highly Skilled Production (Levels 6-8) Highly Skilled Supervision (Levels 9-12) SMS (Levels 13-16) OTHER								
<b>TOTAL</b>	<b>24,512,000</b>	<b>78%</b>	<b>0</b>	<b>0%</b>	<b>440,480</b>	<b>0.00%</b>	<b>139,160</b>	<b>0.00%</b>

\*Information not available per salary level

zero.1%

zero.1%

## 10.3 EMPLOYMENT AND VACANCIES

## 10.3.1 EMPLOYMENT AND VACANCIES BY PROGRAMME, 2004/ 2005

PROGRAMME	NUMBER OF POSTS	NUMBER OF POSTS FILLED	VACANCY RATE	NUMBER OF POSTS FILLED ADDITIONAL TO THE ESTABLISHMENT
OPP	275	188	83	0
<b>TOTAL</b>	<b>275</b>	<b>188</b>	<b>83</b>	<b>0</b>

## 10.3.2 EMPLOYMENT AND VACANCIES BY SALARY BANDS, 2004/ 2005

SALARY BAND	NR. OF POSTS	NR. OF POSTS FILLED	VACANCY RATE	ADDITIONAL TO THE ESTABLISHMENT
Lower Skilled (Levels 1-2)	3	3	-	-
Skilled (Levels 3-5)	72	49	28%	-
Highly Skilled Production (Levels 6-8)	77	59	23%	-
Highly Skilled Supervision (Levels 9-12)	102	58	43%	-
SMS (Levels 13-16)	19	18	10%	-
OTHER	2	1	50%	-
<b>TOTAL</b>	<b>275</b>	<b>188</b>	<b>32%</b>	<b>-</b>

## 10.3.3 EMPLOYMENT AND VACANCIES BY CRITICAL OCCUPATION, 2004/ 2005

CRITICAL OCCUPATION	NUMBER OF POSTS	NUMBER OF POSTS FILLED	VACANCY RATE	NUMBER OF POSTS ADDITIONAL TO THE ESTABLISHMENT
CFO	1	1	0	N/A
<b>TOTAL</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>N/A</b>

## 10.4 JOB EVALUATION

### 10.4.1 SALARIES, OVERTIME, HOME OWNERS ALLOWANCE, AND MEDICAL ASSISTANCE BY SALARY BAND, 2004/2005

Salary Levels	NR. OF POSTS	NUMBER OF JOBS EVALUATED	POSTS UPGRADED		POSTS DOWNGRADED	
			NR.	% OF TOTAL	NR.	% OF TOTAL
Lower Skilled (Levels 1-2)	3	3	3	100%	N/A	N/A
Skilled (Levels 3-5)	72	72	28	40%		
Highly Skilled Production (Levels 6-8)	77	77				
Highly Skilled Supervision (Levels 9-12)	102	102				
SMS (Levels 13-16)	19	19				
OTHER	2	2				
<b>TOTAL</b>	<b>275</b>	<b>275</b>	<b>31</b>	<b>11%</b>	<b>-</b>	<b>-</b>

### 10.4.2 PROFILE OF EMPLOYEES WHOSE SALARY POSITIONS WERE UPGRADED DUE TO THEIR POSTS BEING UNGRADED, 1 APRIL 2004 TO 31 MARCH 2005

BENEFICIARIES	AFRICAN	ASIAN	COLOURED	WHITE	TOTAL
FEMALE	21	1	3	4	29
MALE	2				2
EMP. WITH A DISABILITY					

### 10.4.3 EMPLOYEES WHOSE SALARY LEVEL EXCEED THE GRADE DETERMINED BY JOB EVALUATION, 1 APRIL 2004 TO 31 MARCH 2005

TOTAL NR. OF EMPLOYEES WHOSE SALARY LEVEL EXCEEDED THE GRADE DETERMINED BY JOB EVALUATION IN 2004/05 : NONE

% OF TOTAL EMPLOYMENT: N/A

### 10.4.4 PROFILE OF EMPLOYEES WHOSE SALARY LEVEL EXCEED THE GRADE DETERMINE BY JOB EVALUATION, 2004/05

BENEFICIARIES	AFRICAN	ASIAN	COLOURED	WHITE
FEMALE N/A	N/A	N/A	N/A	N/A
MALE N/A	N/A	N/A	N/A	N/A
EMPLOYEES WITH A DISABILITY	N/A	N/A	N/A	N/A

### 10.5 ANNUAL STAFF TURNOVER

#### 10.5.1 ANNUAL TURNOVER BY SALARY BAND, FOR THE PERIOD 1 APRIL 2004 TO 31 MARCH 2005

SALARY BAND	NUMBER OF EMPLOYEES PER BAND AS ON 1 APRIL 2004	APPOINTMENTS AND TRANSFERS INTO THE OFFICE	TERMINATIONS AND TRANSFERS OUT OF THE OFFICE	TURN-OVER RATE
Lower Skilled (Levels 1-2)	3	0	0	0
Skilled (Levels 3-5)	47	15	4	11
Highly Skilled Production (Levels 6-8)	31	24	6	18
Highly Skilled Supervision (Levels 9-12)	61	1	3	-2
SMS (Levels 13-16)	13	2	0	0
OTHER	1	0	0	0
<b>TOTAL</b>	<b>156</b>	<b>44</b>	<b>13</b>	<b>27</b>

**10.5.2 ANNUAL TURNOVER RATES BY CRITICAL OCCUPATION, FOR THE PERIOD  
1 APRIL 2004 TO 31 MARCH 2005**

CRITICAL OCCUPATION	NUMBER OF EMPLOYEES AT AS 1 APRIL 2004	APPOINTMENTS AND TRANSFERS INTO THE OFFICE	TERMINATIONS AND TRANSFERS OUT OF THE OFFICE	TURNOVER RATE
CFO	1	1	1	0
<b>TOTAL</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>0</b>

**10.5.3 REASONS WHY STAFF ARE LEAVING THE OFFICE**

TERMINATION TYPE	NUMBER	% OF TOTAL
Death	2	0%
Resignation	11	0.03%
Expiry of Contract		
Dismissal - Operational Requirements		
Dismissal - Misconduct		
Dismissal - Inefficiency		
Discharged due to ill health		
Retirement		
Other		
<b>Total number of employees who left as a % of the total employment</b>		<b>0.04%</b>

10.5.4 PROMOTIONS BY CRITICAL OCCUPATION, 2004/ 2005

CRITICAL OCCUPATION	NUMBER OF EMPLOYEES PER BAND AS ON 1 APRIL 2004	PROMOTION TO ANOTHER SALARY LEVEL	SALARY BANDS PROMOTION AS A % OF EMPLOYEES BY SALARY LEVEL	PROGRESSION TO ANOTHER NOTCH WITHIN SALARY LEVEL	NOTCH PROGRESSION AS A % OF EMPLOYEES BY SALARY BAND
CFO	1	1	-	0	0
<b>TOTAL</b>	<b>1</b>	<b>1</b>	<b>-</b>	<b>0</b>	<b>0</b>

10.5.5 PROMOTION BY SALARY BAND, 2004/ 2005

SALARY BAND	NUMBER OF EMPLOYEES PER BAND AS ON 1 APRIL 2004	PROMOTION TO ANOTHER SALARY LEVEL	SALARY BANDS PROMOTION AS A % OF EMPLOYEES BY SALARY LEVEL	PROGRESSION TO ANOTHER NOTCH WITHIN SALARY LEVEL	NOTCH PROGRESSION AS A % OF EMPLOYEES BY SALARY BAND
Lower Skilled (Levels 1-2)	3	0		2	66%
Skilled (Levels 3-5)	47	0		36	50%
Highly Skilled Production (Levels 6-8)	31	3	9%	20	25%
Highly Skilled Supervision (Levels 9-12)	61	6	9%	50	49%
SMS (Levels 13-16)	13	4	30%	7	36%
OTHER	1	0	8%	0	
<b>TOTAL</b>	<b>156</b>	<b>13</b>	<b>156</b>	<b>115</b>	<b>88%</b>

## 10.6 EMPLOYEE BREAK-DOWN

### 10.6.1 TOTAL NUMBER OF EMPLOYEES (INCLUDING EMPLOYEES WITH DISABILITIES) IN EACH OF THE FOLLOWING OCCUPATION CLASSES AS ON 31 March 2005

OCCUPATIONAL CATEGORIES (SASCO)	MALE			FEMALE				TOTAL	
	AFRICAN	COLOURED	INDIAN	WHITE	AFRICAN	COLOURED	INDIAN		WHITE
Legislators, senior officials and managers	6	1	1	4	5			2	18
Professionals	21	3	3	4	11		1	6	48
Technicians and associate professionals	27			1	17		1		50
Clerks	5				40		3	11	63
Service and sales workers									
Skilled agricultural and fishery workers									
Craft and related trade workers									
Plant and machinery operators and assemblers									
Elementary occupations	4								9
<b>TOTAL</b>	<b>63</b>	<b>4</b>	<b>4</b>	<b>9</b>	<b>78</b>	<b>6</b>	<b>5</b>	<b>19</b>	<b>188</b>
Employees with disabilities			1					2	3

**10.6.2 TOTAL NUMBER OF EMPLOYEES (INCLUDING EMPLOYEES WITH DISABILITIES)  
IN EACH OF THE FOLLOWING OCCUPATION BANDS AS ON 31 March 2005**

OCCUPATIONAL BANDS	MALE				FEMALE				TOTAL
	AFRICAN	COLOURED	INDIAN	WHITE	AFRICAN	COLOURED	INDIAN	WHITE	
Top Management	1		1	4	5			2	1
Senior Management	5								
Professionally qualified and experienced specialists and mid-management	21	1	3	4	11	1	1	6	17
Skilled technical and academically qualified workers, junior management, foreman and superintendents	27	3		1	17	1	1		48
Semi-skilled and discretionary decision making	5				40	4	3	11	50
Unskilled and defined decision making	4				4				63
<b>TOTAL</b>	<b>63</b>	<b>4</b>	<b>4</b>	<b>9</b>	<b>78</b>	<b>6</b>	<b>5</b>	<b>19</b>	<b>188</b>
Employees with disabilities			1					2	3

## 10.6.3 RECRUITMENT FOR THE PERIOD 1 APRIL 2004 TO 31 MARCH 2005

OCCUPATIONAL BANDS	MALE			FEMALE			TOTAL		
	AFRICAN	COLOURED	INDIAN	WHITE	AFRICAN	COLOURED		INDIAN	WHITE
Top Management	2								2
Senior Management	1								1
Professionally qualified and experienced specialists and mid-management	10	2		1	15				28
Skilled technical and academically qualified workers, junior management, foreman and superintendents	3				5	1		1	10
Semi-skilled and discretionary decision making									
Unskilled and defined decision making									
<b>TOTAL</b>	<b>16</b>	<b>2</b>		<b>1</b>	<b>20</b>	<b>1</b>		<b>1</b>	<b>41</b>
Employees with disabilities									

**10.6.4 PROMOTIONS FOR THE PERIOD 1 APRIL 2004 TO 31 MARCH 2005**

OCCUPATIONAL BANDS	MALE			FEMALE			TOTAL		
	AFRICAN	COLOURED	INDIAN	WHITE	AFRICAN	COLOURED		INDIAN	WHITE
Top Management				2	2				4
Senior Management									6
Professionally qualified and experienced specialists and mid-management	4				2				
Skilled technical and academically qualified workers, junior management, foreman and superintendents	3								3
Semi-skilled and discretionary decision making									
Unskilled and defined decision making									
<b>TOTAL</b>	<b>7</b>			<b>2</b>	<b>4</b>				<b>13</b>
Employees with disabilities									0

10.6.5 TERMINATIONS FOR THE PERIOD 1 APRIL 2004 TO 31 MARCH 2005

OCCUPATIONAL BANDS	MALE				FEMALE				TOTAL
	AFRICAN	COLOURED	INDIAN	WHITE	AFRICAN	COLOURED	INDIAN	WHITE	
Top Management			1		1			1	3
Senior Management									
Professionally qualified and experienced specialists and mid-management									
Skilled technical and academically qualified workers, junior management, foreman and superintendents	3		1		2			2	6
Semi-skilled and discretionary decision making	1				1				4
Unskilled and defined decision making									
<b>TOTAL</b>	<b>4</b>		<b>2</b>		<b>4</b>			<b>3</b>	<b>13</b>
Employees with disabilities								1	1

10.6.6 DISCIPLINARY ACTION FOR THE PERIOD 1 APRIL 2004 TO 31 MARCH 2005

OCCUPATIONAL BANDS	MALE				FEMALE				TOTAL
	AFRICAN	COLOURED	INDIAN	WHITE	AFRICAN	COLOURED	INDIAN	WHITE	
Disciplinary action	1								1

10.6.7 SKILLS DEVELOPMENT FOR THE PERIOD 1 APRIL 2004 TO 31 MARCH 2005

OCCUPATIONAL CATEGORIES (SASCO)	MALE				FEMALE				TOTAL
	AFRICAN	COLOURED	INDIAN	WHITE	AFRICAN	COLOURED	INDIAN	WHITE	
Legislators, senior officials and managers	7		2	3	4			3	19
Professionals	11		2	4		1		6	24
Technicians and associate professionals	17	2	3		11		3		36
Clerks	1				17		1	5	29
Service and sales workers									
Skilled agricultural and fishery workers									
Craft and related trade workers									
Plant and machinery operators and assemblers									
Elementary occupations									
<b>TOTAL</b>	<b>36</b>	<b>2</b>	<b>7</b>	<b>7</b>	<b>32</b>	<b>6</b>	<b>4</b>	<b>14</b>	<b>108</b>
Employees with disabilities			1					2	3

10.7 PERFORMANCE REWARDS

10.7.1 PERFORMANCE REWARDS BY RACE, GENDER AND DISABILITY,  
1 APRIL 2004 TO 31 MARCH 2005

	BENEFICIARY PROFILE			COST	
	NR. OF	TOTAL NR. OF EMPLOYEES IN GROUP	% OF TOTAL WITHIN GROUP	COST (R'000)	COST PER CAPITA
<b>AFRICAN</b>					
MALE	35	63	55%		
FEMALE	47	78	60%		
<b>INDIAN</b>					
MALE	3	4	75%		
FEMALE	4	5	80%		
<b>COLOURED</b>					
MALE	-	4	0%		
FEMALE	4	6	66%		
<b>WHITE</b>					
MALE	6	9	66%		
FEMALE	11	19	57%		
<b>EMP WITH A DISABILITY</b>					
MALE	2	2			
FEMALE	1	1			
<b>TOTAL</b>	<b>110</b>	<b>188</b>	<b>58%</b>	<b>1,610</b>	<b>16</b>

\*Costing per group not available in this format

10.7.2 PERFORMANCE REWARD BY SALARY BAND FOR PERSONNEL BELOW SMS,  
1 APRIL 2004 TO 31 MARCH 2005

SALARY BANDS	BENEFICIARY PROFILE			COST	
	NR. OF BENEFICIARIES	NUMBER OF EMPLOYEES	% OF TOTAL WITHIN GROUP	COST (R'000)	PER CAPITA COST
LEVELS 1-2	1.00	3.00	33%	11	11
LEVELS 3-5	29.00	49.00	59%	250	10
LEVELS 6-8	20.00	59.00	33%	350	20
LEVELS 9-12	48.00	58.00	82%	800	19
<b>TOTAL</b>	<b>98.00</b>	<b>169.00</b>	<b>57%</b>	<b>1,411</b>	<b>14</b>

**10.7.3 PERFORMANCE REWARDS BY CRITICAL OCCUPATIONS, 1 APRIL 2004 TO 31 MARCH 2005**

CRITICAL OCCUPATIONS	BENEFICIARY PROFILE			COST	
	NR. OF BENEFICIARIES	NUMBER OF EMPLOYEES	% OF TOTAL WITHIN OCCUPATION	TOTAL COST (R'000)	AVERAGE PER EMPLOYEE
N/A					
<b>TOTAL</b>					

**10.7.4 PERFORMANCE RELATED REWARDS (CASH BONUS) BY SALARY BAND FOR SMS, 1 APRIL 2004 TO 31 MARCH 2005**

SALARY BANDS	BENEFICIARY PROFILE			TOTAL COST (R'000)	AVE COST PER EMPLOYEE	TOTAL COST AS A % OF THE TOTAL PERSONNEL BUDGET
	NR. OF BENEFICIARIES	NUMBER OF EMPLOYEES	% OF TOTAL WITHIN GROUP			
Band A	11	16	61%	183	17	0.50%
Band B	1	2	50%	16	16	0.04%
Band C						
Band D						
<b>TOTAL</b>	<b>12</b>	<b>18</b>	<b>65%</b>	<b>199</b>	<b>199</b>	<b>0.52%</b>

**10.8 FOREIGN WORKERS**

**10.8.1 FOREIGN WORKERS, 1 APRIL 2004 TO 31 MARCH 2005 BY SALARY BAND**

SALARY BANDS	1 April 2004		31 March 2005		Change	
	NUMBER	% OF TOTAL	NUMBER TOTAL	% OF	NUMBER	% CHANGE
Lower skilled (Levels 1-2)						
Skilled (Levels 3-5)						
Highly skilled production (Levels 6-8)						
Highly skilled supervision (Levels 9-12)						
SMS (Levels 13-14)						
<b>TOTAL</b>	<b>N/A</b>	<b>-</b>	<b>N/A</b>	<b>-</b>	<b>N/A</b>	<b>-</b>

10.8.2 FOREIGN WORKERS, 1 APRIL 2004 TO 31 MARCH 2005, BY MAJOR OCCUPATION

MAJOR OCCUPATION	2004/04/01		2005/03/31		Change	
	NUMBER	% OF TOTAL	NUMBER TOTAL	% OF	NUMBER	% CHANGE
N/A	N/A	N/A	N/A	N/A	N/A	N/A
<b>TOTAL</b>	-	-	-	-	-	-

10.9 LEAVE

10.9.1 ANNUAL LEAVE, 1 JANUARY 2004 TO 31 DECEMBER 2004

Salary Bands	Total days taken	Average per employee
Lower skilled (Levels 1-2)	34	17
Skilled (Levels 3-5)	547	15
Highly skilled production (Levels 6-8)	467	11
Highly skilled supervision (Levels 9-12)	1002	20
SMS (Levels 13-14)	331	22
<b>TOTAL</b>	<b>2381</b>	<b>85</b>

\* information shown is for the period 1 April 2004 to 31 March 2005 (similar to last year)

10.9.2 CAPPED LEAVE, 1 JANUARY 2004 TO 31 DECEMBER 2004

Salary Bands	Total days of capped leave taken	Average number of days taken per employee	Average capped leave per employee as at 31 December 2004
Lower skilled (Levels 1-2)	0	0	0
Skilled (Levels 3-5)	4	4	46
Highly skilled production (Levels 6-8)	0	0	42
Highly skilled supervision (Levels 9-12)	5	2.5	45
SMS (Levels 13-14)	7	3.5	64
<b>TOTAL</b>	<b>16</b>	<b>10</b>	<b>197</b>

## 10.9.3 LEAVE PAYOUTS, FOR THE PERIOD 1 APRIL 2004 TO 31 MARCH 2005

Salary Bands	Total days of capped leave taken	Average number of days taken per employee	Average capped leave per employee as at 31 December 2004
Leave payout for 2004/ 2005 due to non utilization of leave for the previous cycle	0	0	0
Capped leave payouts on termination of service for 2004/ 2005 30-Jun-04	0	0	0
Current leave payout on termination of service for 2004/ 2005	49 610	9	5 512
<b>TOTAL</b>	<b>49 610</b>	<b>9</b>	<b>5 512</b>

## 10.9.4 SICK LEAVE, 1 JANUARY 2004 TO 31 DECEMBER 2005

COST (R'000)	Total days	% taken with medical certificates	Number of employees using sick leave	% of total employees using sick leave	Average days per employee	Estimated cost
Lower skilled (Levels 1-2)	11	-	1	33%	11	3,320
Skilled (Levels 3-5)	302	-	27	37%	12	180
Highly skilled production (Levels 6-8)	121	-	26	44%	5	858
Highly skilled supervision (Levels 9-12)	209	-	33	32%	6	1,179
SMS (Levels 13-14)	35	-	7	36%	5	12,964
<b>TOTAL</b>	<b>678</b>	<b>-</b>	<b>94</b>	<b>34%</b>	<b>-</b>	<b>18,501</b>

\* information shown is for the period 1 April 2004 to 31 March 2005 (similar to last year)

**10.9.5 DISABILITY LEAVE (TEMPORARY AND PERMANENT), 1 JANUARY 2004 TO 31 DECEMBER 2004**

Salary Band	Total days taken	% days taken with medical certificates	Number of employees using disability leave	% of total employees using disability leave	Average days per employee	Estimated cost
Levels 1-2						
Levels 3-5	125		2		60	52 625
Levels 6-8						
Levels 9-12	117		2		56	49 257
Professional 13-14						
SMS						
<b>TOTAL</b>	<b>242</b>		<b>4</b>		<b>116</b>	<b>101 882</b>

\* information shown is for the period 1 April 2004 to 31 March 2005 (similar to last year)

**10.10 HIV/AIDS AND HEALTH PROMOTION**

**10.10.1 HIV/AIDS AND HEALTH PROMOTION PROGRAMMES**

Units/categories of employees identified to be at high risk of contracting HIV and related diseases (if any)	Key steps taken to reduce risk
N/A	N/A

### 10.10.2 DETAILS OF HEALTH PROMOTION AND HIV/AIDS PROGRAMMES

Question	Yes	No	Details, if yes
1. Has the Office designated a member of the SMS to implement the provisions contained in Part VI E of Chapter 1 of the PSR 2001? If so, provide her/his name and position	X		2 SMS managers serve on the committee
2. Does the Office have a dedicated unit or has it designated specific staff members to promote the health and well being of your employment? If so, indicate the number of employees who are involved in this task and the annual budget that is available for this purpose	X		Number of staff involved 4 No specific budget-but the Office has committed to give whatever financial support is required
3. Has the Office introduced an Employee Assistance or Health Promotion Programme for your employees? If so, indicate the key elements/service of this programme		X	In process of developing a comprehensive Employee Wellness Programme (currently a social club has been established at Head Office and the Provinces).
4. Has the Office established (a) committee(s) as contemplated in Part VI E 5 of Chapter 1 of the PSR, 2001? If so, please stakeholder(s) that they represent	X		Ms B Mkhwebane-Tshehla Ms P Mogaladi; Ms S Thoke; Mr N Maoka
5. Has the Office reviewed its employment policies and practices to ensure that these do not unfairly discriminate against employees on the basis of their HIV status? If so, list the employment policies/ practices so reviewed	X		HIV/AIDS Policy EE and AA policies Employment policies
6. Has the Office introduced measures to protect HIV-positive employees or those perceived to be HIV-positive from discrimination? If so, list the key elements of these measures	X		HIV/AIDS Policy EE and AA policies
7. Does the Office encourage its employees to undergo Voluntary Counselling and testing? If so, list the results that you have achieved	X		No official results to list yet
8. Has the Office developed measures/ indicators to monitor and evaluate the impact of its health promotion programme? If so, list these measures/ indicators		X	

### 10.11 LABOUR MATTERS

#### 10.11.1 COLLECTIVE AGREEMENTS, 1 APRIL 2004 TO 31 MARCH 2005

Total collective agreements	None
-----------------------------	------

**10.11.2 MISCONDUCT AND DISCIPLINE HEARINGS FINALIZED, 1 APRIL 2004 TO 31 MARCH 2005**

<b>OUTCOMES OF DISCIPLINARY HEARINGS</b>	<b>NUMBER</b>	<b>% OF TOTAL</b>
Verbal warning	0	
Written warning	1	%
Final written warning	0	
Not guilty	0	
Case withdrawn	0	
Dismissal	0	
<b>TOTAL</b>	<b>1</b>	<b>0%</b>

\*No hearing required

**10.11.3 TYPES OF MISCONDUCT ADDRESSED AT DISCIPLINARY HEARINGS**

<b>TYPE OF MISCONDUCT</b>	<b>NUMBER</b>	<b>% OF TOTAL</b>
Sexual Harrasment	1	0%

\*No hearing required

**10.11.4 GRIEVANCES LODGED FOR THE PERIOD 1 APRIL 2004 TO 31 MARCH 2005**

	<b>NUMBER</b>	<b>% OF TOTAL</b>
Number of grievances resolved	0	
Number of grievances not resolved	1	
Total number of grievances lodged	1	

**10.11.5 DISPUTES LODGED WITH COUNCILS FOR PERIOD 1 APRIL 2004 TO 31 MARCH 2005**

	<b>NUMBER</b>	<b>% OF TOTAL</b>
Number of disputes upheld	0	
Number of disputes dismissed	1	
Total number of disputes lodged	1	

**10.11.6 STRIKE ACTIONS FOR THE PERIOD 1 APRIL 2004 TO 31 MARCH 2005**

<b>Total number of person working days lost</b>	<b>0</b>
Total cost (R'000) of working lost days	1
Amount recovered (R'000) as a result of no work no pay	1

**10.11.7 PRECAUTIONARY SUSPENSIONS FOR THE PERIOD 1 APRIL 2004 TO 31 MARCH 2005**

<b>NUMBER OF PEOPLE SUSPENDED</b>	<b>0</b>
Number of people whose suspension exceeded 30 days	0
Average number of days suspended	0
Cost (R'000) of suspensions	0

10.12 TRAINING

10.12.1 TRAINING NEEDS IDENTIFIED, 1 APRIL 2004 TO 31 MARCH 2005

OCCUPATIONAL CATEGORIES	Gender	Number of employees at 1 April 2004	Training needs identified at start of reporting period			
			Leaver-ships	Skills programmes and other short courses	Other forms of training	Total
Legislators, senior officials and managers	Male	11			12	12
	Female	7			7	7
Professionals	Male	29			17	17
	Female	19			7	7
Technicians and associate professionals	Male	31			22	22
	Female	19			14	14
Clerks	Male	5			1	1
	Female	58			28	28
Service and sales workers	Male					-
	Female					-
Skilled agricultural and fishery workers	Male					-
	Female					-
Craft and related trade workers	Male					-
	Female					-
Plant and machinery operators and assemblers	Male					-
	Female					-
Elementary occupations	Male	4				-
Sub-total	Female	5				-
	Male	80			52	-
	Female	108			56	52
<b>Total</b>		<b>188</b>	-	-	<b>108</b>	<b>108</b>

## 10.12.2 TRAINING PROVIDED, 1 APRIL 2004 TO 31 MARCH 2005

OCCUPATIONAL CATEGORIES	Gender	Number of employees at 1 April 2004	Training needs identified at start of reporting period			
			Leaver-ships	Skills programmes and other short courses	Other forms of training	Total
Legislators, senior officials and managers	Male	11			12	12
	Female	7			7	7
Professionals	Male	29			17	17
	Female	19			7	7
Technicians and associate professionals	Male	31			22	22
	Female	19			14	14
Clerks	Male	5			1	1
	Female	58			28	28
Service and sales workers	Male					-
	Female					-
Skilled agricultural and fishery workers	Male					-
	Female					-
Craft and related trade workers	Male					-
	Female					-
Plant and machinery operators and assemblers	Male					-
	Female					-
Elementary occupations	Male	5				-
Sub-total	Female	4				-
	Male	80			52	-
	Female	108			56	52
<b>Total</b>		<b>188</b>	-	-	<b>108</b>	<b>108</b>

## 10.13 INJURY ON DUTY

### 10.13.1 INJURY ON DUTY, 1 APRIL 2004 TO 31 MARCH 2005

Nature of injury on duty	Number	% of total
Required basic medical attention only		
Temporary Total Disablement		
Permanent Disablement		
Fatal	1	0%
<b>TOTAL</b>	<b>1</b>	<b>0%</b>

## 10.14 CONSULTANTS

### 10.14.1 REPORT ON CONSULTANT APPOINTMENTS USING APPROPRIATED FUNDS

Project title	Total Number of consultants that worked on the project	Duration: Work days	Contract value in Rand
Develop & Implement a Personnel Performance Management and Development System (PPMDS) for the OPP	3	132	483000
Assist PP with implementation of OPP corporate strategy and business plan	1	66	164000
<b>Total Number of Projects</b>	<b>Total Individual Consultants</b>	<b>Total Duration: Work days</b>	<b>Total Contract value in Rands</b>
<b>2</b>	<b>4</b>	<b>198</b>	<b>647000</b>

**10.14.2 ANALYSIS OF CONSULTANT APPOINTMENTS USING APPROPRIATED FUNDS, IN TERMS HISTORICALLY DISADVANTAGED INDIVIDUALS (HDI's)**

<b>Project Title</b>	<b>Percentage ownership by Historically Disadvantage Individuals (HDI) groups</b>	<b>Percentage Management by HDI Groups</b>	<b>Number of Consultants from HDI Groups that work on the Project</b>
Develop & Implement a PPMDS for the OPP	100% BLACK 33% BLACK FEMALE	100% BLACK 33% BLACK FEMALE	3
Assist PP with implementation of OPP corporate strategy and business plan	100% BLACK(FEMALE) Independent Consultant	100% BLACK(FEMALE) Independent Consultant	1

**10.14.3 REPORT ON CONSULTANTS USING DONOR FUNDS**

N/A

<b>Project title</b>	<b>Total Number of consultants that worked on the project</b>	<b>Duration: Work days</b>	<b>Contract value in Rand</b>
Total Number of Projects	Total Individual Consultants	Total Duration: Work days	Total Contract value in Rands

**10.14.4 ANALYSIS OF CONSULTANT APPOINTMENTS USING APPROPRIATED FUNDS, IN TERMS HISTORICALLY DISADVANTAGED INDIVIDUALS (DHI's)**

N/A

<b>Project title</b>	<b>Percentage ownership by HDI groups</b>	<b>Percentage Management by HDI Groups</b>	<b>Number of Consultants from HDI Groups that work on the Project</b>

## 11. COMMUNICATION

The Communications Manager has been appointed with effect from December 1 2004, to ensure the formulation of the OPP communications strategy, and to perform related functions.

### 11.1 INTERNATIONAL TRIPS DURING THE 2004/2005 FINANCIAL YEAR

DATE	COUNTRY	PURPOSE
29 March-1 April 2004	Lesotho	Public Protector attended the Executive Committee meeting of the African Ombudsman Association
26 April-29 April 2005	London	Public Protector facilitated a workshop on the Prevention of Corruption in the Common Wealth
26 April-30 April 2004	Korea	Adv. Cilliers, Senior Investigator addressed the 8th Asian Ombudsman Association Conference on behalf of the Public Protector on the "Ombudsman", the Citizen and the Government
24 August-28 August 2004	China	Exchange visit with the Ministry of Supervision
4 October-5 October 2004	Ghana	Preparation for the African Ombudsman Conference
September 2004	Canada	IOI Conference: PP made a presentation on the "Social Conditions"
11 May to 21 May 2004	London	Adv Mukhevhlo attended training on the role of the Ombudsman in public service offered by the public administration international
13 September to 24 September 2004	London	Mr Mholo attended training on the role of the Ombudsman in public service offered by the public administration international
<b>7. WORKSHOPS ATTENDED - LOCAL</b>		
18 June 2004	Pretoria	Invitation to address the Department of Justice on the role of the Public Protector and the Victims Charter on 18 June 2004 (E. Cilliers and P. Brandford)
17 September 2004	Pretoria	Invitation to address the Department of Justice on the role of the Public Protector and the new Children's Bill
21-26 February	Bela-Bela	Team Building workshop

## 12. REPORT OF THE AUDIT COMMITTEE

We are pleased to present our report for the financial year ended 31 March 2005.

### 12.1 Audit Committee Members and Attendance

The Audit Committee consists of the members listed hereunder and meets twice per annum as per its approved terms of reference. During the current year three meetings were held.

NAME OF MEMBER	NUMBER OF MEETINGS ATTENDED
Ms T Mashanda (Chairperson)	3
Mr B Adam (External member: resigned December 2004)	2
Prof H de Jager (External member)	3
Mr A Rampersadh (Office of the Public Protector)	3
Ms T Haderli (Office of the Public Protector)	2

### 12.2 Audit Committee Responsibility

The Audit Committee reports that it has complied with its responsibilities arising from section 38(1)(a) of the PFMA and Treasury Regulation 3.1.13. The Audit Committee also reports that it has adopted appropriated formal terms of reference as its audit committee charter, has regulated its affairs in compliance with this charter and has discharged all its responsibilities as contained therein.

### 12.3 The Effectiveness of Internal Control

The system of internal control is considered to be adequate as the various reports of the Internal Auditors, the Audit Report on the Annual Financial Statements and management letter of the Auditor-General have not reported any significant or material non compliance with prescribed policies and procedures.

### 12.4 The Quality of in year Management and monthly/quarterly reports submitted in terms of the Act and the Division of Revenue Act

The Committee is satisfied with the content and quality of monthly and quarterly reports prepared and issued by the Accounting Officer and the Office of the Public Protector during the year under review.

### 12.5 Evaluation of Financial Statements

#### The Audit Committee has:

- Reviewed and discussed with the Auditor-General and the Accounting Officer the audited annual financial statements to be included in the annual report;
- Reviewed the Auditor-General's management letter and management's response; and
- Reviewed changes in accounting policies and practices.

The audit Committee concurs and accepts the conclusions of the Auditor-General on the annual financial statements and is of the opinion that the audited annual financial statements be accepted and read together with the report of the Auditor-General.

pp

Chairperson of the Audit Committee

15 August 2005

## 13. ANNUAL FINANCIAL STATEMENTS

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## 13.1 REPORT OF THE ACCOUNTING OFFICER for the year ended 31 March 2005

### REPORT BY THE ACCOUNTING OFFICER TO THE EXECUTIVE AUTHORITY AND PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

#### 13.1.1 LEGISLATIVE MANDATE

The mandate and core function of the Office of the Public Protector (OPP) is derived from Chapter Nine of the Constitution of the Republic of South Africa, Act 108 of 1996. Its additional mandate is further provided for in the Public Protector Act 23 of 1994, as amended. The specific mandate of the Office of the Public Protector is to strengthen constitutional democracy by investigating any conduct in organs of state in any sphere of government that is alleged or suspected to be improper or to result in impropriety or prejudice, to mediate, negotiate, conciliate, report and recommend remedial actions.

#### 13.1.2 GENERAL REVIEW OF STATE OF FINANCIAL AFFAIRS

For the financial year under review, the Office operated under two main programmes vis-à-vis:

Programme 1: Investigations and Admin Support; and

Programme 2: Public Awareness and Outreach.

The office identified the need to set up a separate programme to address the issue of outreach and public awareness to ensure visibility, accessibility and focus on core services that make an impact on the poorest of the poor. A great deal of initiative was put into this programme to ensure that members of the public were informed on the existence, role and functions of the Office of the Public Protector.

For the year under review, the Office of the Public Protector defined a strategic plan, which was successfully implemented. The Office of the Public Protector's main goals for the past year was as follows:

##### a) Efficient and Effective Investigations

The emphasis was to focus on identifying root cause investigations and ensured non-recurrence of similar cases, thereby improving service delivery by recommending corrective remedial action.

##### b) Outreach Programme

The purpose was to ensure accessibility of the Office of the Public Protector's services to all, including the poorest of the poor.

##### c) Improve Administrative Support

The purpose was to provide for the strategic leadership as well as for a variety of essential support services, such as Financial and Human Resource Management.

The identified strategic goals were accomplished with generally high levels of success and overall spending was achieved within budget. A budget of **R49.160m** was allocated and in addition thereto, a rollover of **R3.8m** and the **R3.2m** that was committed for the proposed salary dispensation for staff was carried forward from the previous financial year. In total the office had a revised budget of **R56.160m** and was able to spend **R54.001m**, resulting in an accumulated surplus of **R6.816m**, including interest earned, as at 31 March 2005.

The greater portion of the overall spending emanated from Programme 1: Investigations and Administrative Support, which is the main Programme in terms of service delivery. The office was successful in establishing a total of 47 visiting points across the country that is serviced once a month. The process of conducting such programmes, informed the office on the suitability of areas where two (2) satellite offices will be established for the 2005/2006 financial year. The suitable areas identified were based on the number of cases received and the distance from the existing Provincial Offices. Satellite offices will therefore be established in Siyabuswa in Mpumalanga and George in the Western Cape.

### 13.1.3 PERFORMANCE INFORMATION

In March 2004, the Office of the Public Protector adopted and implemented its strategic plan. Three (3) main goals were identified namely:

#### a) Efficient and Effective Investigations

This goal was successfully achieved and mechanisms were put in place to correct identified challenges for the implementation of this goal.

#### b) Outreach Programme

This goal was achieved with much success, to the extent that new strategies should be considered to manage stakeholders' expectations.

#### c) Improved Administrative Support

The Office of the Public Protector formulated and implemented a new Performance Management System. All the outstanding organisational policies and procedures were formulated.

The Employment Equity Programme is beginning to show positive results with a number of previously disadvantaged groups assuming management positions (level 13 and above). The representation at management level since 2003 has improved significantly. The comparison is as follows:

Population Group	Representation in October 2003	Representation in March 2005
Black males	6	6
Black females	1	5
Coloured males	0	0
Coloured females	0	0
Indian males	2	1
Indian females	0	0
White males	4	4
White females	2	2
<b>Total</b>	<b>15</b>	<b>18</b>

A significant number of employees were appointed as per the approved Organogram.

A detailed performance of the office is discussed under the performance section of this report. This included filling of critical posts such as that Chief Financial Officer, Senior Manager: Human Resources, Senior Manager: Communication and Manager: Information Technology.

#### **13.1.4 CAPACITY CONSTRAINTS**

The Outreach Programme, which was initiated to inform citizens on the existence and functions of the office, has substantially increased the number of cases received for investigation. This influx has resulted in staff not being able to cope with the increased workload. Although the organisational post established blueprint does make provision for the appointment of additional staff, the budget allocated is insufficient. However, the office continues to commit itself in rendering an efficient service delivery programme in spite of its staffing constraints.

As reported previously, the delay in finalizing the appointment of the Deputy Public Protector further impacts on the functioning of the Public Protector. The introduction of the Supply Chain Management legislative framework further contributes to the office's staffing capacity constraints.

#### **13.1.5 CORPORATE GOVERNANCE ARRANGEMENTS**

##### **i) Audit Committee**

The office has a fully functional audit committee supported by formal terms of reference, which serves as its charter. It is commendable to note that the committee has discharged all of its responsibilities with high levels of commitment and efficiency.

##### **ii) Risk and Internal Control**

The Audit Committee together with internal audit plays a pivotal role in assessing risk and internal control in the office. Management commits to taking ownership of this function. The office has reviewed and implemented its Risk and Fraud Prevention Plan. It can be reported that most of the issues that were identified within the risk areas of environment and information security was addressed when the office relocated its national office.

The office has also implemented the necessary procedures and control mechanisms for risk management, which has contributed to the overall management of this activity. The office further commits itself to ensure that this area of control is always deserving of the necessary attention and priority.

##### **iii) Internal Audit**

The internal function for the office has been outsourced to the consortium PricewaterhouseCoopers Inc. and Fazel and Associates. However, towards the end of November 2004, Fazel and Associates had to withdraw itself from the consortium due to operational reasons and all audit assignments were transferred over to Price Waterhouse Coopers Inc. for completion.

#### **13.1.6 EVENTS AFTER REPORTING DATE**

There are no events to report on after the reporting date.

#### **13.1.7 PROGRESS WITH FINANCIAL MANAGEMENT IMPROVEMENT**

The office continually strives in its quest to enhance and manage financial administration and management in the office. Reviewing systems, policies and procedures as well as assessing the staffing components help the office to achieve this objective. Other issues addressed are:

- a) Review and update the fraud prevention plan;
- b) Implement segregation of duties;
- c) Reviewing procurement and related functions.

**13.1.8 BUSINESS ADDRESS**

**Physical Address:**

174 Lynnwood Road  
Hillcrest Office Park  
PRETORIA

**Postal Address:**

Private Bag X677  
PRETORIA  
0001

**13.1.9 APPROVAL**

The attached financial statements, set out on pages 110 to 125 have been approved.



**MR A RAMPERSADH**  
**ACCOUNTING OFFICER**  
**31 MAY 2005**

## 13.2 REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON THE FINANCIAL STATEMENTS OF THE OFFICE OF THE PUBLIC PROTECTOR FOR THE YEAR ENDED 31 MARCH 2005

### 13.2.1 AUDIT ASSIGNMENT

The financial statements as set out on pages 110 to 125, for the year ended 31 March 2005, have been audited in terms of section 188 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), read with sections 4 and 20 of the Public Audit Act, 2004 (Act No. 25 of 2004) and section 4(2) of the Public Protector Act, 1994 (Act No. 23 of 1994). These financial statements, the maintenance of effective control measures and compliance with relevant laws and regulations are the responsibility of the accounting officer. My responsibility is to express an opinion on these financial statements, based on the audit.

### 13.2.2 NATURE AND SCOPE

The audit was conducted in accordance with Statements of South African Auditing Standards. Those standards require that I plan and perform the audit to obtain reasonable assurance that the financial statements are free of material misstatement.

An audit includes:

- a) Examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements;
- b) Assessing the accounting principles used and significant estimates made by management; and
- c) Evaluating the overall financial statement presentation.

Furthermore, an audit includes an examination, on a test basis, of evidence supporting compliance in all material respects with the relevant laws and regulations which came to my attention and are applicable to financial matters.

The audit was completed in accordance with Auditor-General Directive No. 1 of 2005.

I believe that the audit provides a reasonable basis for my opinion.

### 13.2.3 AUDIT OPINION

In my opinion, the financial statements fairly present, in all material respects, the financial position of the Office of the Public Protector at 31 March 2005 and the results of its operations and cash flows for the year that ended, in accordance with generally accepted accounting practice and in the manner required by the Public Finance Management Act, 1999 (Act No. 1 of 1999).

### 13.2.4 APPRECIATION

The assistance rendered by the staff of the Office of the Public Protector during the audit is sincerely appreciated.



**F J Joubert for Auditor-General**

Pretoria

28 July 2005



**13.3 INCOME STATEMENT** for the year ended 31 March 2005

	Notes	2005 Actual R'000	2004 Actual R'000
<b>REVENUE</b>			
Grants and transfers	2	49,160	43,519
Other income	3	-	10
Income from investments	4	903	1,099
<b>TOTAL REVENUE</b>		<b>50,063</b>	<b>44,628</b>
<b>EXPENDITURE</b>			
Administrative expenses	5	8,567	6,392
Staff costs	6	36,803	30,513
Financial transactions in assets and liabilities	7	4	173
Gifts, sponsorships and donations	8	3	-
Other operating expenses	9	7,033	3,835
Depreciation	10	1,516	1,040
Finance Costs	11	75	48
<b>TOTAL EXPENDITURE</b>		<b>54,001</b>	<b>42,001</b>
<b>(Deficit)/Surplus for the year</b>		<b>(3,938)</b>	<b>2,627</b>

**13.4 BALANCE SHEET** as at 31 March 2005

	Notes	2005 Actual R'000	2004 Actual R'000
<b>ASSETS</b>			
<b>Non-current assets</b>	12	<b>4,858</b>	<b>3,091</b>
Property, plant and equipment	13	4,262	2,540
Intangible assets		596	551
<b>Current assets</b>	14	<b>8,268</b>	<b>14,091</b>
Trade and other receivables	15	729	720
Cash and cash equivalents		7,539	13,371
<b>Total assets</b>		<b>13,126</b>	<b>17,182</b>
<b>EQUITY AND LIABILITIES</b>			
<b>Capital and reserves</b>		<b>6,816</b>	<b>10,754</b>
Accumulated Surplus		6,816	10,754
<b>Long term Liabilities</b>	21	<b>2</b>	<b>22</b>
Non-current finance lease liability		2	22
<b>Current liabilities</b>	16	<b>6,308</b>	<b>6,407</b>
Trade and other payables	17	1,860	3,193
Provisions	21	4,429	3,103
Current finance lease liability		19	110
<b>Total equity and liabilities</b>		<b>13,126</b>	<b>17,182</b>

**13.5 CASH FLOW STATEMENT** for the year ended 31 March 2005

	Notes	2005 Actual R'000	2004 Actual R'000
<b>OPERATING ACTIVITIES</b>			
Cash generated from/(utilised in) operations	18	(3,263)	3,941
<b>Net cash from/(used in) operating activities</b>		<b>(3,263)</b>	<b>3,941</b>
<b>Net cash from/(used in) investing activities</b>	19	<b>(2,384)</b>	<b>(528)</b>
<b>Net cash from/(used in) financing activities</b>	20	<b>(185)</b>	<b>(140)</b>
<b>Net increase/(decrease) in cash and cash equivalents</b>		<b>(5,832)</b>	<b>3,273</b>
Cash and cash equivalents at the beginning of the year	15	13,371	10,098
<b>Cash and cash equivalents at end of the year</b>		<b>7,539</b>	<b>13,371</b>

### 13.6 STATEMENT OF CHANGES IN EQUITY for the year ended 31 March 2005

	Notes	R'000
<b>Accumulated surplus</b>		
<b>Balance as at 1 April 2003</b>		<b>8,127</b>
Net surplus for the period 31 March 2004		2,627
<b>Balance as at 31 March 2004</b>		<b>10,754</b>
Net deficit for the period 31 March 2005		(3,938)
<b>Balance at 31 March 2005</b>		<b>6,816</b>

**13.7 NOTES TO THE FINANCIAL STATEMENTS for the year ended 31 March 2005****1. Accounting Policy**

The financial statements have been prepared, unless otherwise indicated, in accordance with generally accepted accounting practice and incorporate the following policies, which have been applied consistently with prior years in all material respects. However, where appropriate and meaningful, additional information has been disclosed to enhance the usefulness of the financial statements and to comply with the statutory requirements of the Public Finance Management Act, Act 1 of 1999 (as amended by Act 29 of 1999) and the Treasury Regulations for Departments and Constitutional Institutions issued in terms of the Act.

**1.1 Basis of preparation**

The financial statements have been prepared on the historical cost basis.

**1.2 Revenue recognition**

Revenue constitutes a transfer payment from the Department of Justice and Constitutional Development (DOJCD). This revenue is wholly funded by National Treasury and is recognised as income when transferred by the Department of Justice and Constitutional Development.

Interest is accrued on favourable balances with commercial banking institutions, and recognised as income.

**1.3 Expenditure**

Current expenditure is recognised in the income statement when the goods and/or services are received or rendered.

**1.4 Unauthorised, irregular, and fruitless and wasteful expenditure**

Unauthorised expenditure means:

- a) The overspending of a vote or a main division within a vote, or
- b) Expenditure that was not made in accordance with the purpose of a vote or, in the case of a main division, not in accordance with the purpose of the main division.

Unauthorised expenditure is treated as a current asset in the balance sheet until such expenditure is recovered from a third party, authorised by Parliament, or funded from future voted funds.

Irregular expenditure means expenditure, other than authorised expenditure, incurred in contravention of, or not in accordance with a requirement of any applicable legislation, including:

- a) The Public Finance Management Act,

Fruitless and wasteful expenditure means expenditure that was made in vain and could have been avoided had reasonable care been exercised.

All irregular and fruitless and wasteful expenditure is charged against income in the period in which they are incurred.

**1.5 Debts written off**

The office does not allow for trade or staff debtors to be incurred during its ordinary course of operations. However, it may incur debts such as advances, claims, prior year un-reconciled balances in suspense accounts or general ledger accounts.

## NOTES TO THE FINANCIAL STATEMENTS for the year ended 31 March 2005

Therefore, the office has adopted the following policy in connection with the writing off of debts:

- a) Debts which are older than one year.
- b) Debts which are untraceable and not economically viable to employ tracing agents.
- c) Debts that could not be traced to supporting documentation.

The following principles were applied:

- a) Recovery of debt would be uneconomical.
- b) Recovery would cause undue hardship to the debtor or his/her dependents.
- c) It is advantageous for the State to effect settlement of the claim or to waive the claim.

All debts written off require the express written authorisation of the Accounting Officer.

### 1.6 Property, plant and equipment

Property, plant and equipment comprise computer equipment, office equipment, furniture and fittings and motor vehicles. These assets are stated at cost less accumulated depreciation.

The assets are depreciated on the straight-line method over the following periods, considered to be their estimated useful lives:

- |                         |         |
|-------------------------|---------|
| a) Computer equipment   | 3 years |
| b) Furniture & fittings | 5 years |
| c) Office equipment     | 5 years |
| d) Motor Vehicle        | 5 years |

Assets held under finance leases are depreciated over their expected useful lives on the same basis as owned assets or, where shorter, the term of the relevant lease.

The gain or loss arising from the disposal or retirement of an asset is determined as the difference between the sales proceeds and the carrying amount of the asset and is recognised in income.

### 1.7 Intangible assets

Intangible assets consist of computer software. The intangible assets are amortised on the straight-line method over 3 years, which is considered to be its useful life.

### 1.8 Impairment

At each balance sheet date, the office reviews the carrying amount of its tangible and intangible assets to determine whether there is any indication that those assets maybe impaired. If any such indication exists, the recoverable amount of the assets is estimated in order to determine the extent of the impairment loss (if any). Where it is not possible to estimate the recoverable amount for an individual asset, the recoverable amount is determined for the cash-generating unit to which the asset belongs.

If the recoverable amount of an asset (cash-generating unit) is estimated to be less than its carrying amount, the carrying amount of the asset (cash generating) is reduced to its recoverable amount. Impairment losses are immediately recognised as an expense, unless the relevant is carried at a revalued amount under another standard, in which case the impairment loss is treated as a revaluation decrease under the standard.

**NOTES TO THE FINANCIAL STATEMENTS for the year ended 31 March 2005**

Where an impairment loss subsequently reverses, the carrying amount of the asset (cash-generating unit) is increased to the revised estimate of its recoverable amount, but so that the increased carrying amount does not exceed the carrying amount that would have been determined had no impairment loss been recognised for the asset (cash generating unit) in prior years. A reversal of an impairment loss is recognised as income immediately, unless the relevant asset is carried at a revalued amount under another standard, in which case the reversal of the impairment loss is treated as a revaluation increase under that other standard.

**1.9 Receivables**

Receivables included in the balance sheet arise from the cash payments that are recoverable, or income accruing to the office. Receivables also include unauthorised, irregular and fruitless or wasteful expenditure incurred.

**1.10 Payables**

Payables included in the balance sheet arise from expenditure incurred before year-end, but which remain unpaid at year-end.

**1.11 Surplus**

With the approval of National Treasury, surpluses are rolled over to the next financial year.

**1.12 Leases**

Finance leases as per the Treasury Regulations refers to a contract that transfers the risks, rewards, rights and obligations incident to ownership to the lessee and is recorded as a purchase of equipment by means of long-term borrowing. All other leases are classified as operating leases.

Assets held under finance leases are recognised as assets of the entity/group at their fair value at the date of acquisition. The corresponding liability to the lessor is included in the balance sheet as a finance lease obligation. Finance costs, which represent the difference between the total leasing commitments and the fair value of the assets acquired, are charged to the income statement over the term of the relevant lease so as to produce a constant periodic rate of interest on the remaining balance of the obligations for each accounting period.

Rentals payable under operating leases are charged to income on a straight-line basis over the term of the relevant lease.

**1.13 Employee benefits*****Short-term employee benefits***

The cost of all short-term employee benefits is recognised during the period in which the employee renders the related service. Provision has been made for benefits where the employer has a present obligation to pay the benefit as a result of the employees' services rendered to balance sheet date. The provisions have been calculated at undiscounted amounts based on current salary rates.

***Gratuity***

In terms of the Public Protector's conditions of service, the Public Protector is entitled to a taxable lump sum gratuity on vacation of his office. The gratuity calculation is based on his/her basic salary and his/her period in office. The provision raised in the annual financial statements is therefore the actual amount that would be payable had the Public Protector vacated his office on last day of the respective financial year.

## NOTES TO THE FINANCIAL STATEMENTS for the year ended 31 March 2005

### 1.14 Cash and cash equivalents

Cash and cash equivalents comprise cash on hand and cash held with banks, all of which is available to the office.

### 1.15 Financial Instruments

#### **Recognition**

Financial assets and financial liabilities are recognised on the balance sheet when the office becomes a party to the contractual provisions of the instrument.

All "regular way" purchases and sales of financial liabilities are recognised using trade date accounting.

#### **Measurement**

Financial instruments are initially measured at cost, which includes transaction costs. Subsequent to initial recognition these instruments are measured as set out below.

#### **Financial assets**

The office's principle financial assets are accounts receivable and cash equivalents.

##### a) Trade receivables

Trade receivables are stated at their nominal value as reduced by appropriate allowances for estimated irrecoverable amounts.

#### **Financial liabilities**

The office's principle financial liabilities are accounts payable.

All financial liabilities are measured at amortised cost, comprising original debt less principle payments and amortisation's, except for financial liabilities held-for-trading and derivative liabilities, which are subsequently measured at fair value.

#### **Trade payables**

Trade and other payables are stated at their nominal value.

### 1.16 Government grants

The revenue received from National Treasury is viewed as a government grant.

This grant is recognised as income when received from the Department of Justice and Constitutional and Development.

The office also receives government assistance from Department of Public Works in respect of the office premises. The office is not charged rental for its premises leased from the Department.

### 1.17 Provisions

Provisions are recognised when the office has a present obligation as a result of past event and it is probable that this will result in an outflow of economic benefits that can be estimated reliably.

### 1.18 Comparatives

Comparative figures have been adjusted where necessary to conform to changes in presentation in the current year. The comparative figures shown in these financial statements are limited to the figures shown in the previous year's audited financial statements and such other comparative figures that the Office may reasonably have available for reporting.

**NOTES TO THE FINANCIAL STATEMENTS** for the year ended 31 March 2005

<b>2. Grants and transfers</b>	<b>2005</b>	<b>2004</b>
	<b>R'000</b>	<b>R'000</b>
National Departments	49,160	43,519
<b>Total</b>	<b>49,160</b>	<b>43,519</b>
<b>3. Other Income</b>	<b>2005</b>	<b>2004</b>
	<b>R'000</b>	<b>R'000</b>
Profit on disposal of assets	-	10
<b>Total</b>	<b>-</b>	<b>10</b>
<b>4. Income from investments</b>	<b>2005</b>	<b>2004</b>
	<b>R'000</b>	<b>R'000</b>
Interest income	903	1,099
<b>Total</b>	<b>903</b>	<b>1,099</b>
<b>5. Administrative Expenses</b>	<b>2005</b>	<b>2004</b>
	<b>R'000</b>	<b>R'000</b>
General and administrative expenses	3,037	2,699
Auditor's Remuneration	167	268
- Audit fees	162	255
- Administrative	5	13
Travel and subsistence	4,311	3,185
Rentals in respect of operating leases (minimum lease payments)	1,052	240
- Buildings	1,052	240
<b>Total</b>	<b>8,567</b>	<b>6,392</b>
<b>6. Staff costs</b>	<b>2005</b>	<b>2004</b>
	<b>R'000</b>	<b>R'000</b>
Wages and salaries	26,176	23,579
- Basic salaries	24,883	21,186
- Performance awards	1,230	2,383
- Periodic payments	63	10
Social contributions (Employer's contributions)	9,330	6,056
- Medical	1,142	1,021
- Other related costs	8,188	5,035
Other long-term employee benefits (Leave provision)	1,297	878
<b>Total</b>	<b>36,803</b>	<b>30,513</b>

**NOTES TO THE FINANCIAL STATEMENTS** for the year ended 31 March 2005

<b>7. Financial transactions in assets and liabilities</b>	<b>2005</b>	<b>2004</b>
	<b>R'000</b>	<b>R'000</b>
Other material losses	-	164
Loss on disposal of assets	4	9
- disposals	4	9
<b>Total</b>	<b>4</b>	<b>173</b>

<b>8. Gifts, donations and sponsorships paid</b>	<b>2005</b>	<b>2004</b>
	<b>R'000</b>	<b>R'000</b>
<b>Total</b>	<b>3</b>	<b>-</b>

<b>9. Other operating expenses</b>	<b>2005</b>	<b>2004</b>
	<b>R'000</b>	<b>R'000</b>
Staff training and development	310	250
Consultants, contractors and special services	3,201	970
Equipment items expensed as per entity policy	5	-
Maintenance, repairs and running costs	78	227
- Machinery and equipment	36	85
- Other maintenance, repairs and running costs	42	142
Entertainment expense	73	59
Other	3,366	2,329
<b>Total</b>	<b>7,033</b>	<b>3,835</b>

<b>10. Depreciation</b>	<b>2005</b>	<b>2004</b>
	<b>R'000</b>	<b>R'000</b>
Office equipment	287	240
Motor vehicles	38	0
Computer equipment	928	608
Furniture and fittings	263	192
<b>Total</b>	<b>1,516</b>	<b>1,040</b>

<b>11. Finance Costs</b>	<b>2005</b>	<b>2004</b>
	<b>R'000</b>	<b>R'000</b>
Obligations under finance leases	75	48
<b>Total</b>	<b>75</b>	<b>48</b>

**NOTES TO THE FINANCIAL STATEMENTS** for the year ended 31 March 2005**12. Property, plant and equipment**

	<b>Computer Equipment R'000</b>	<b>Furniture &amp; Fittings R'000</b>	<b>Office Equipment R'000</b>	<b>Motor Vehicle R'000</b>	<b>Total R'000</b>
<b>OWNED - 2005</b>					
Cost					
Balance at 1 April 2003	2,007	1,348	1,099	-	4,454
Additions	1,746	817	473	206	3,242
Disposals	(22)	-	-	-	(22)
Balance at 31 March 2004	3,371	2,165	1,572	206	7,674
<b>Depreciation</b>					
Balance at 1 April 2003	1,108	343	463	-	1,914
Current year charge	928	263	287	38	1,516
Disposals	(18)	-	-	-	(18)
Balance at 31 March 2004	2,018	606	750	38	3,412
<b>Book value at 31 March 2004</b>	<b>1,713</b>	<b>1,559</b>	<b>822</b>	<b>168</b>	<b>4,262</b>
<b>OWNED - 2004</b>					
Cost					
Balance at 1 April 2003	1,509	1,032	841	-	3,382
Additions	507	316	262	-	1,085
Disposals	9)	-	-	(4)	(13)
Balance at 31 March 2004	<b>2,007</b>	<b>1,348</b>	<b>1,099</b>	<b>-</b>	<b>4,454</b>
<b>Depreciation</b>					
Balance at 1 April 2003	503	151	224	-	878
Current year charge	608	192	240	-	1,040
Disposals	(3)	-	(1)	-	(4)
Balance at 31 March 2004	1,108	343	463	-	1914
<b>Book value at 31 March 2004</b>	<b>899</b>	<b>1,005</b>	<b>636</b>	<b>-</b>	<b>2540</b>

**NOTES TO THE FINANCIAL STATEMENTS for the year ended 31 March 2005**

<b>13. Intangible Assets</b>	<b>2005</b>	<b>2004</b>
	<b>R'000</b>	<b>R'000</b>
<b>Computer software</b>		
Opening balance	551	-
Additions	45	551
Depreciation	-	-
<b>Closing net carrying amount</b>	<b>596</b>	<b>551</b>
<b>Total Intangible Assets</b>		
- Computer Software	596	-
<b>Book value at 31 March</b>	<b>596</b>	<b>551</b>
<b>14. Trade and other receivables</b>	<b>2005</b>	<b>2004</b>
	<b>R'000</b>	<b>R'000</b>
Trade receivables	729	80
Other receivables	-	640
<b>Total</b>	<b>729</b>	<b>720</b>
<b>15. Cash and cash equivalents</b>	<b>2005</b>	<b>2004</b>
	<b>R'000</b>	<b>R'000</b>
Cash at bank	7,527	13,364
Cash on hand	12	7
<b>Total</b>	<b>7,539</b>	<b>13,371</b>
For the purpose of the cash flow statement:		
Cash and cash equivalents at the beginning of the year	<b>13,371</b>	<b>10,098</b>
<b>16. Trade and other payables</b>	<b>2005</b>	<b>2004</b>
	<b>R'000</b>	<b>R'000</b>
Trade and creditors	559	1,549
Commitments	1,301	1,644
<b>Total</b>	<b>1,860</b>	<b>3,193</b>

**NOTES TO THE FINANCIAL STATEMENTS** for the year ended 31 March 2005

17. Provisions	2005 R'000	2004 R'000
<b>Audit fees</b>		
Opening balance	248	269
Increase/(decrease) in provision for audit fees	4	(21)
<b>Closing balance</b>	<b>252</b>	<b>248</b>
<b>Salary and related expenses</b>		
Opening balance	1,486	1,995
Increase/(decrease) in provision for salary and related expenses	920	(509)
<b>Closing balance</b>	<b>2,406</b>	<b>1,486</b>
<b>Levies provision</b>	112	140
Opening balance	24	(28)
Increase/(decrease) in provisions for levies	136	112
<b>Closing balance</b>		
<b>Public Protector Gratuity</b>	1,258	888
Opening balance	377	369
Increase in provision for Public Protector Gratuity	1,635	1,257
<b>Closing balance</b>		
<b>Total provisions</b>	3,104	3,292
Opening balance	1,325	(189)
Increase/(decrease) in total provisions	4,429	3,103
<b>Closing balance</b>		

**NOTES TO THE FINANCIAL STATEMENTS for the year ended 31 March 2005**

	2005 R'000	2004 R'000
<b>18. Reconciliation of (deficit)/surplus for the year to cash (utilised in)/generated from operations</b>		
<b>(Deficit)/surplus for the year</b>		
- Depreciation on property, plant and equipment	(3,938)	2,627
- Loss/(profit) on disposal of property, plant and equipment	1,516	1,040
- Investment income	4	(1)
- Finance costs	(903)	(1,099)
- Increase/ (decrease) in provisions	75	48
<b>Operating cash flows before working capital changes</b>	1,325	(189)
<b>Working capital changes</b>	<b>(1,921)</b>	<b>2,426</b>
- (Increase)/decrease in receivables	<b>(1,342)</b>	<b>1,515</b>
- (Decrease)/increase in payables	(9)	27
<b>Cash (utilised in)/generated from operations</b>	<b>(1,333)</b>	<b>1,488</b>
	<b>(3,263)</b>	<b>3,941</b>

	2005 R'000	2004 R'000
<b>19. Net cash from/(used in) investing activities</b>		
Interest received	903	1,099
Proceeds on disposal of property, plant and equipment	-	9
Acquisition of property, plant and equipment	(3,242)	(1,085)
Acquisition of intangible assets	(45)	(551)
<b>Cash (used in) investing activities</b>	<b>(2,384)</b>	<b>(528)</b>

	2005 R'000	2004 R'000
<b>20. Net cash from/(used in) financing activities</b>		
Opening balance	132	224
Add: Finance Costs	75	48
Less: Closing balance	(21)	(132)
<b>Cash used in financing activities</b>	<b>(185)</b>	<b>(140)</b>

**NOTES TO THE FINANCIAL STATEMENTS** for the year ended 31 March 2005**21. Finance Lease obligations**

Reconciliation between the total of the minimum lease payments and the present value:

	Up to 1 year R'000	1 to 5 years R'000	More than 5 years R'000	Total R'000
<b>Year ended 31/3/2004</b>				
Future minimum lease payments	125	24	-	149
Finance cost	15	2	-	17
<b>Present value</b>	<b>110</b>	<b>22</b>	<b>-</b>	<b>132</b>
<b>Year ended 31/3/2005</b>				
Future minimum lease payments	21	2	-	23
Finance cost	2	-	-	2
<b>Present value</b>	<b>19</b>	<b>2</b>	<b>-</b>	<b>21</b>

	2005 R'000	2004 R'000
<b>Analysed for financial reporting purposes:</b>		
Non-current finance lease liability (recoverable after 12 months)	2	22
Current finance lease liability (recoverable within 12 months)	19	110
<b>Net finance lease liability</b>	<b>21</b>	<b>132</b>

It is the policy of the entity to lease certain of its equipment under finance leases. The average lease term is three years. For the year ended 31 March 2005 the average effective borrowing rate was 12%. Interest rates are fixed at the contract date.

The entity/group's obligations under finance leases are secured by the lessor's charge over the leased assets.

## NOTES TO THE FINANCIAL STATEMENTS for the year ended 31 March 2005

### 22. Contingent Liabilities

#### Pending lawsuits:

The Office of the Public Protector is currently involved in a law suit for an amount of R150 000.00. This matter is with the Office of the State Attorney and is scheduled for court in September 2005.

#### Merit Awards:

The Office of the Public Protector has, for the purpose of calculating merit awards, implemented a new performance management system for the assessment of employee's performance during the year ended 31 March 2005. Although as at 31 March 2005, employees are entitled to merit awards, the Office of the Public Protector is unable to estimate the amount that will be paid to employees.

	2005 R'000	2004 R'000
<b>23. Key management personnel</b>		
Public Protector	733	686
Chief Director	1,065	542
Directors	5,582	4,846
<b>Total</b>	<b>7,380</b>	<b>6,074</b>

The 15 directors include the Chief Financial Officer, Chief Administrative Officer, Chief Investigators and the Provincial Representatives.

## 14. THE YEAR AHEAD

The annual review of the whole strategy was conducted and the amendments in August 2004 of the National Treasury Regulations and Guidelines on strategic planning gave impetus to the development of the five year strategic and performance plan.

The office of the Public Protector defined five strategic goals over the next five years namely:

- a) Investigations and Reporting
- b) Corporate Services
- c) Communications
- d) Outreach
- e) The Learning Organisation

### 14.1 Investigations and Reporting

Seven objectives were defined in order to conduct efficient and effective investigations, take appropriate remedial action, make recommendations and report thereon.

#### To investigate

Conduct investigations as project where feasible and appropriate

#### Reporting

Take or recommend remedial action

Develop strategic investigative guidelines and procedures

Develop mechanisms to expedite the finalization of investigation (Backlogs)

Develop a framework to cost investigations

### 14.2 Corporate Services

In order to properly allocate, and to efficiently and effectively utilize resources, the following objectives were defined:

- a) Human Resource Management;
- b) Human Capital Management;
- c) Training and Development;
- d) Employee Wellness;
- e) Human Resource Management Information Systems; and
- f) Performance Management systems;
- g) To improve administration and support services; and
- h) To improve Financial Management.

### 14.3 Communication

In order to improve internal and external communication through information sharing, public education, and enhance the profile of the Office of the Public Protector the following objectives were identified:

- a) Develop and implement Communication Strategy;
- b) Raise the profile of the OPP; and
- c) Promote and enhance relationships with stakeholders.

### 14.4 Outreach Programme

In order to ensure the accessibility of the OPP, the following objectives were identified:

- a) Develop Outreach Strategy and Plan;
- b) Additional Regional and satellite offices; and
- c) Increase public awareness.

### 14.5 The Learning Organisation

In order to develop and instill a culture of continuous learning and to develop and maintain a proper information system that supports the activities of the OPP, the following programmes and systems will be developed and implemented:

- a) Knowledge Management institution of the OPP;
- b) Establish and Migrate AORC;
- c) Exchange Programme;
- d) Develop Precedent System;
- e) OPP Library Services; and
- f) Information Communication Technology.

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