PUBLIC PROTECTOR SOUTH AFRICA

ANNUAL REPORT

1April 2003 -
31March 2004

THE OFFICE OF THE PUBLIC PROTECTOR

Vision

To be efficient, effective, accessible and assist all organs of state to establish and maintain good governance.

Mission

We are committed to independently and impartially investigating, on own initiative or on receipt of complaints, and reporting on improper or unfair conduct by organs of state, thereby facilitating fair and equitable remedial action, thus assisting Parliament in strengthening constitutional democracy.

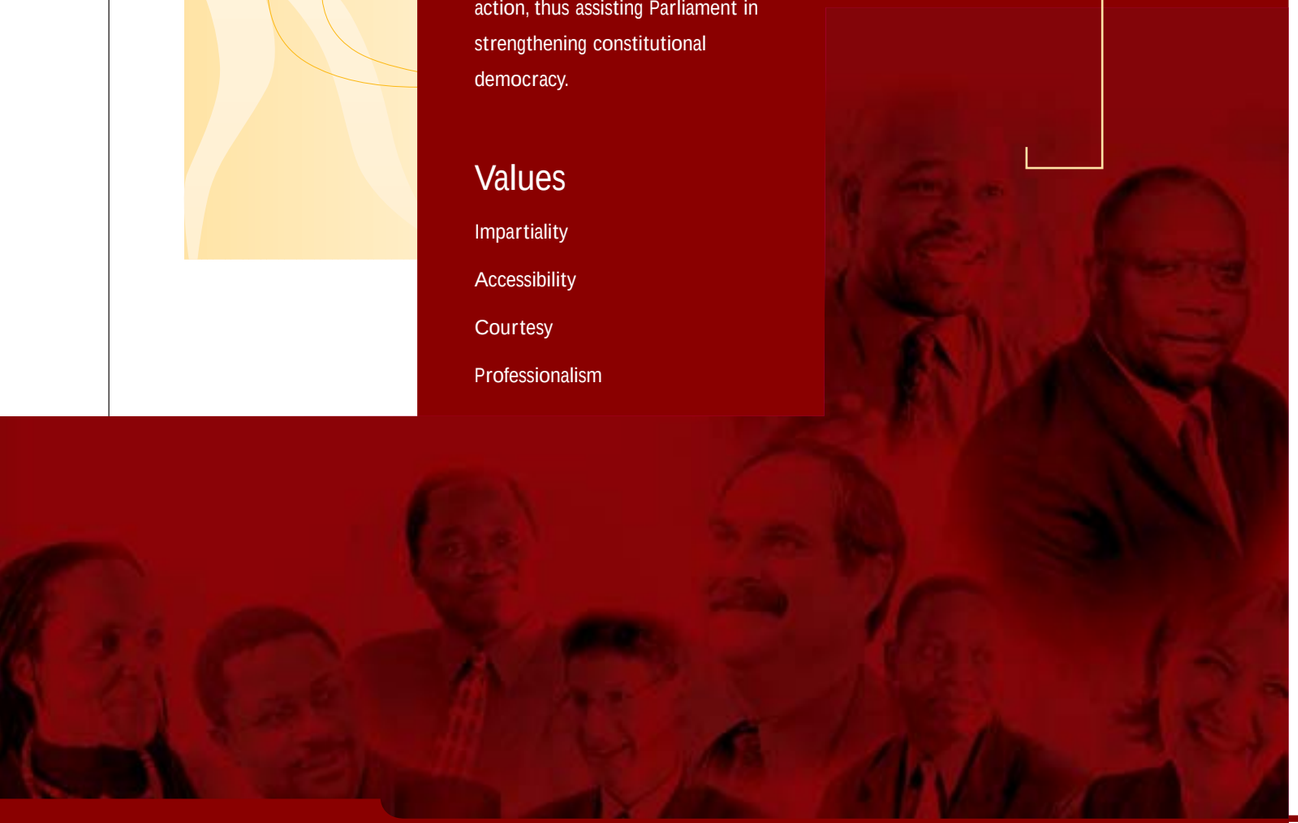
Values

Impartiality

Accessibility

Courtesy

Professionalism



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 second Annual Report to Parliament which covers the period 1 April 2003 to 31 March 2004. This includes the Audit Committee Report. It is the 27th report of the office of the Public Protector since its inception in 1995.

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 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 efforts.

ADV M L MUSHWANA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 31 March 2004

FOREWORD: Adv M L Mushwana (PP RSA)

Adv M L Mushwana

We aptly chose to name the year under review a year of PARADIGM SHIFT (PS). The choice of the theme PS is consequent to a successful development, achievement and setting up of specific structures, strategic objectives and goals aimed at improving service delivery within the office of the Public Protector.

These structures, strategic objectives and goals constitute a framework on which future improved and efficient service delivery would be based and initiated. In a nutshell, we refer to a few such structures, strategic objectives and goals below.

Strategic Plan Vision 2010:

The office of the Public Protector (OPP) has, since inception, been operating without an adopted strategic plan (SP), if any at all. The consequences of such a deficiency are self explanatory: "Steering a ship without a compass".

The SP for the OPP has now been adopted. Its adoption brings about new and enhanced operational strategies, thus ensuring improved and efficient service delivery. As its main target, the SP identifies three objective areas, namely Outreach, Investigations and Administration.

To further concretise the implementation of the SP the following steps will be undertaken: Each unit within the OPP will formulate and design its operational plan. Performance agreements will, for the first time in the history of the OPP, be signed. Performance measurement instruments will, once again, be formulated for the OPP.

Employment Equity Act (EEA):

The OPP is now in full compliance with the provisions of the EEA. We are close to the final drafting of a complete collection of policies for the entire office. It is envisaged that these policies will have been completed by the middle of 2004.

Skills Development Act:

A skills assessment process within the OPP has been successfully embarked upon. A training programme for implementation during 2004 has been compiled. During the ensuing year and in implementing the new organigram referred to below, a training officer will be employed to attend to training needs within the OPP.

New Organigram:

A new organigram for the OPP has been drafted and has since been tabled and approved by the National Assembly. The organigram is designed in such a way that it would cater for effective implementation of the Strategic Plan. It has however since transpired that additional posts that should ideally have been included, were left out inadvertently.
These are such posts as Chief Director of Corporate Services and Information Technology Manager. Steps will be taken to establish these posts.

During the preceding year at least one Assistant investigator has been appointed in each Provincial office to specifically drive and monitor the Outreach programme in each particular province.
At a national level a Senior investigator has been appointed to monitor the entire rural Outreach programme in the country.

Special Investigation Unit:

To expedite investigations of high profile complaints, deal with complicated complaints and overly long investigations, a special investigative unit, specifically attached to the Public Protector, has been established. This unit has already succeeded in dealing with some of the most difficult and complicated complaints within a short space of time. Some of its achievements are contained in complaints listed in this report.

Own Initiative Investigations: As the preceding year progressed, we intensified own initiative investigations. A number of such complaints are ongoing except for the one reported herein. The office will thus no longer just wait for complaints to be brought to it, but will continue to proactively investigate acts of improper conduct and maladministration.

Root Cause Investigations:

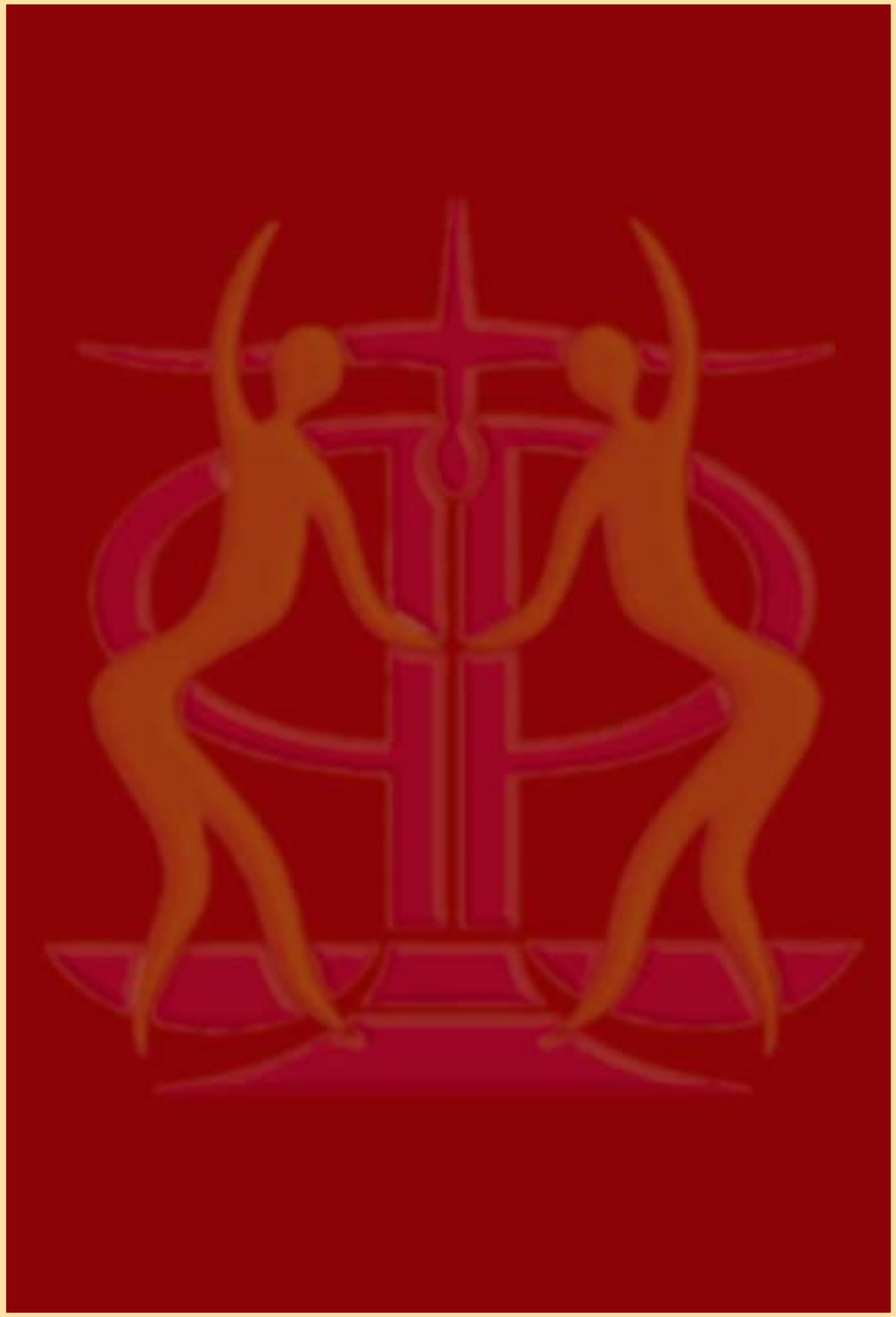
The core function of the OPP is investigation of complaints. More often than not, we have tended to concentrate and have expanded our efforts and investigations on the consequences of complaints rather than the root causes thereof. We are moving gradually towards investigations of root causes, followed by compilation of reports. This approach will help the office to increase its impact on the improvement of service delivery within state organs.

Vision and Mission:

Our vision and our mission, adopted during the course of the year under review, solidify our resolve to render qualitative service delivery to the people of South Africa and in that way help to strengthen, protect and deepen democracy in partnership with Parliament.

The reader is invited to read more about the OPP in the pages that follow.

Courtesy of South African Tourism



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BACKGROUND TO THE OFFICE OF THE PUBLIC PROTECTOR

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 the execution thereof are regulated by the Public Protector Act.

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 Public Protector's office.

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 state must assist and protect the institution to ensure its independence, impartiality, 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.

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 etc. – 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 about 21 countries with Ombudsman offices at national level and about 6 other 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.

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 the 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.

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.

Particular powers and duties

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

- 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;
- 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
- make recommendations and take appropriate remedial action.

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:

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

Any report issued by the Public Protector must be open to the public unless exceptional circumstances require that a report be kept confidential.

PROFILE OF THE PUBLIC PROTECTOR, ADV MABEDLE LAWRENCE MUSHWANA

Adv Mabedle Lawrence Mushwana

Born in 1948 at Bordeaux in Limpopo Province, Mabedle 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 diplomas and later also 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 this position to take up office as the second Public Protector of South Africa on 1 November 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.

STATISTICAL OVERVIEW:
1 April 2003 to 31 March 2004

Cases brought forward from 31 March 2003 (National office):	**2 557**
Cases brought forward from 31 March 2003 (North West Provincial office):	**2 142**
Cases brought forward from 31 March 2003 (Eastern Cape Provincial office):	**823**
Cases brought forward from 31 March 2003 (KwaZulu-Natal Provincial office)	**826**
Cases brought forward from 31 March 2003 (Western Cape Provincial office)	**438**
Cases brought forward from 31 March 2003 (Mpumalanga Provincial office)	**225**
Cases brought forward from 31 March 2003 (Northern Cape Provincial office)	**60**
Cases brought forward from 31 March 2003 (Free State Provincial office):	**297**
Cases brought forward from 31 March 2003 (Limpopo Provincial office):	**152**
Total:	7 520

NEW CASES RECEIVED

	National office	North West	Eastern Cape	KwaZulu-Natal	Mpumalanga	Western Cape	Northern Cape	Free State	Limpopo
April 2003	438	434	100	117	53	75	25	117	148
May 2003	417	455	138	129	64	151	28	95	125
June 2003	371	414	110	121	71	100	25	80	100
July 2003	475	472	131	140	66	119	20	66	106
August 2003	377	348	234	82	38	69	14	55	66
September 2003	412	530	424	107	31	147	12	66	84
October 2003	409	524	248	102	59	125	26	67	98
November 2003	327	435	135	52	69	103	16	41	90
December 2003	271	308	99	62	39	102	21	41	60
January 2004	344	499	64	108	53	146	45	92	90
February 2004	368	388	68	78	61	105	48	87	106
March 2004	373	371	111	118	52	160	60	78	101
Total	4582	5178	1862	1216	656	1402	340	885	1174

Grand total: 17 295

CASES FINALISED

	National office	North West	Eastern Cape	KwaZulu-Natal	Mpumalanga	Western Cape	Northern Cape	Free State	Limpopo
April 2003	428	439	101	63	44	92	18	122	51
May 2003	540	558	100	76	56	92	28	129	89
June 2003	320	666	92	57	34	113	21	69	53
July 2003	371	461	85	134	45	133	14	104	90
August 2003	318	317	138	69	54	109	10	80	54
September 2003	411	521	104	120	81	110	16	165	82
October 2003	487	493	171	54	39	122	13	81	82
November 2003	276	403	166	75	49	104	9	35	83
December 2003	205	377	90	59	28	70	13	9	55
January 2004	299	308	172	62	59	115	21	47	99
February 2004	363	357	128	88	45	90	25	71	91
March 2004	419	259	148	85	50	112	11	68	59
Total	4437	5159	1495	942	584	1262	199	980	888

Grand total: 15 946

Cases carried forward to April 2004 (National office):	**2 702**
Cases carried forward to April 2004 (North West Provincial office):	**2 161**
Cases carried forward to April 2004 (Eastern Cape Provincial office):	**1 190**
Cases carried forward to April 2004 (KwaZulu-Natal Provincial office)	**1 100**
Cases carried forward to April 2004 (Mpumalanga Provincial office)	**297**
Cases carried forward to April 2004 (Western Cape Provincial office)	**578**
Cases carried forward to April 2004 (Northern Cape Provincial office)	**201**
Cases carried forward to April 2004 (Free State Provincial office)	**202**
Cases carried forward to April 2004 (Limpopo Provincial office)	**438**
Total:	8 869

PERFORMANCE

At the end of the reporting period, 8 280 cases were carried forward to the next financial year as reported earlier in this report. Considering that the office had 74 filled posts on the rank of investigator and senior investigator at the end of the reporting period, it means that on average each investigator has 111 cases under investigation on his or her table.

It is considered that the ideal would be to have a workload of between 20 and 100 live cases per investigator. Thus a caseload of 111 is still manageable, although too high.

However, if one breaks down the statistics per office, the caseload of cases under investigation per investigator, looks as follows:

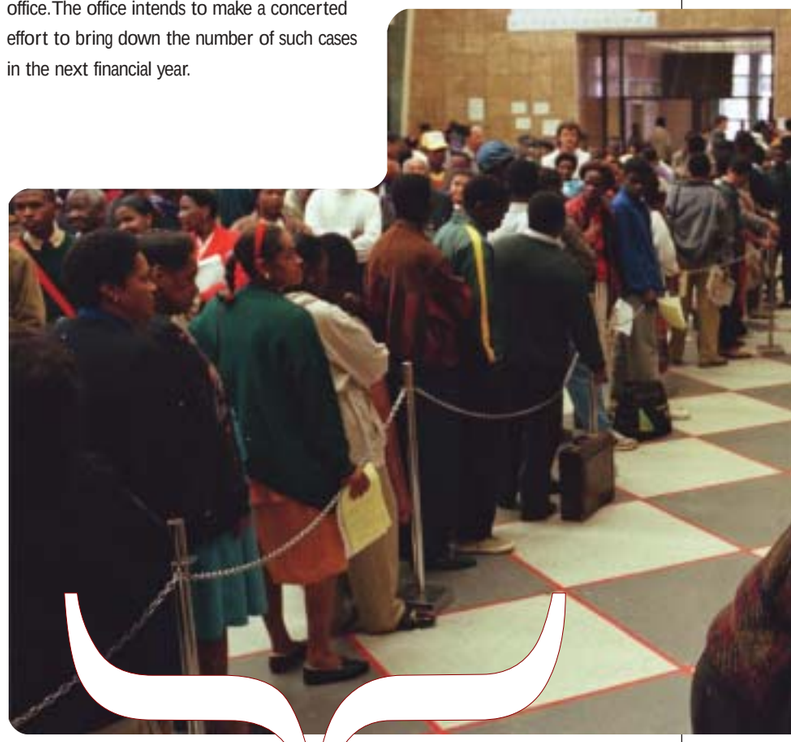
National office:	122
North West Provincial office:	102
Eastern Cape Provincial office:	76
KwaZulu-Natal Provincial office:	157
Mpumalanga Provincial office:	149
Western Cape Provincial office:	144
Northern Cape Provincial office:	29
Free State Provincial office:	67
Limpopo Provincial office:	105

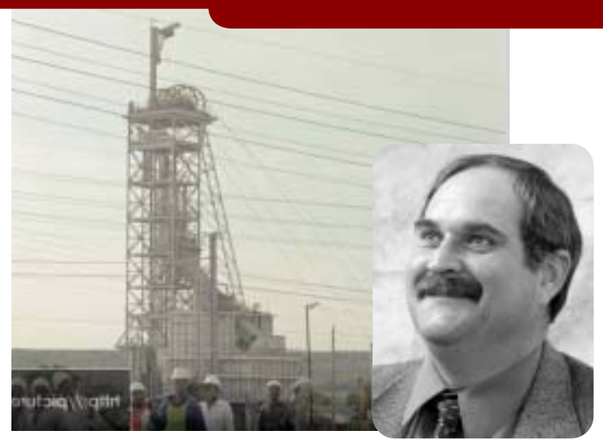
It has been a concern that some cases take too long to finalise, with the result that the relevancy of whatever comes out of such an investigation may be water under the bridge by the time such complaints are concluded. It has been recognised that, although it is not always the fault of the investigators that cases take too long, there is much that can be done to try and reduce the time it takes to finalise cases.

In an effort to reduce the time it takes for the office to finalise investigations, special attention was given to all those matters under investigation for a period longer than two years. The following measures were put in place during the course of the reporting period in order to prioritise certain complaints:

- A list of all such cases was compiled, which is updated quarterly to include those cases which have since become older than two years;
- Chief Investigators/Provincial Representatives hold monthly meetings with each investigator to discuss the progress in such cases, to determine the reasons for delay, to advise the investigator how to expedite the investigation, and to report monthly to the Control Investigator on the current situation.
- The Control Investigator gives a monthly statistical report to the Public Protector on the progress made with finalizing such cases.

At the end of the reporting period, including the cases that became older than two years on 31 March 2004, a total of 471 cases had been under investigation for longer than two years. This represents 5.7% of all open cases in the office. The office intends to make a concerted effort to bring down the number of such cases in the next financial year.





Johann Raubenheimer

PROVINCIAL OFFICES

During the period under review, our eighth Provincial office was established in Polokwane, Limpopo. This office, which was launched on 4 April 2003, was officially opened by the Deputy President, Mr Jacob Zuma. With the National office in Pretoria, the Public Protector now has a presence in all nine provinces. Steps are being taken to establish a Gauteng Provincial office.

North West Provincial office

The North West Provincial office was opened on 1 April 1999, taking over from its predecessor, the office of the Bophuthatswana Ombudsman. This office, which is situated in Mafikeng, has regional offices in Kuruman, Mabopane, Phokeng and Vryburg and a clinic at Themba.

Although the number of new cases received and cases finalised for the year under review was less than for the previous period, which was reviewed in the previous Annual Report, this office still maintained a high level of industry.

While the office adopted the Ombudsman Case System in September 2002 it has not been possible to integrate the system into the regional offices and to make the system available, for the reporting period, to investigators at regional offices. As such, the manual system previously in operation has been retained but this will be phased out when the new Case Management System which is presently being developed at the National office, is implemented. During March 2004, the staff attended a workshop where they received a preview of the new Case Management System, for which in situ training will be provided at the Provincial offices.

The year under review has seen a fair amount of movement in members of staff from this office to other provinces and one investigator who left the office to join the office of the Premier in Limpopo. Mr Andrew Kgasago, who joined the office in January 2003 was transferred to the new Rustenburg office, which relocated from Phokeng into the centre of Rustenburg. Officers who have taken up posts in other provinces are Ms Dikeledi Letsapa-Oageng who left in June 2003 to join the Provincial office in Bloemfontein and two other investigators who were successful in applying for a post as Senior investigator were Mr S'mangaliso Vilakazi going to the Eastern Cape and Mr Sello Motupi to the National office in Pretoria. In September 2003, Mr Steven Serumaga-Zake was welcomed as a member of the investigating staff and at the beginning of March 2004 Mr Tefo Segoje returned from Kimberley, where he had been seconded since February 2003.

At the end of March 2004, the Provincial Representative, Mr Mike d'Enis, retired from the office. On 1 July 1983, he joined the office of the Bophutatswana Ombudsman as the Deputy Ombudsman where he served until April 1999 when the office, the only Ombudsman's office of any of the former TBVC states, was incorporated into the office of the Public Protector. The new Provincial Representative is Advocate Johann Raubenheimer, previously of the National office.

In the previous Annual Report mention was made of the intention to upgrade the Provincial offices but that before doing so, as heritage site, permission was necessary before work could commence. The necessary permission has now been obtained and the upgrade project is scheduled to commence later this year. In the meantime, following the erection of security fencing, the parking area has been paved and the erection of more carports for staff and guests has been completed.

Public Awareness and Outreach

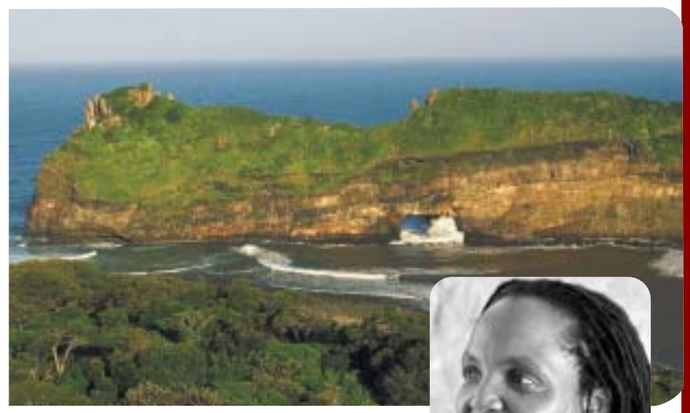
Apart from the already established clinics at Klerksdorp, Potchefstroom, Madikwe, Mogwase and Temba, a new clinic was established at Lichtenburg in January 2004. As part of its outreach programme, this office has attended meetings at Groot Marico, Kuruman and the Rustenburg area, all of which proved to be successful. With the relocation of the office from Phokeng to Rustenburg, sight was not lost of the need to continue the service previously enjoyed by the Phokeng community and as such daily clinics are presently held at the old Phokeng office. Provision has been made to secure more suitable premises in the Phokeng Plaza, which will not only be more accessible to the residents of Phokeng but will provide a greater measure of security than is presently enjoyed at the old office, which is situated in what used to be the Phokeng clinic.

Eastern Cape Provincial office

This office was established in Bisho in 1999 by the current Provincial Representative, Advocate Nomsa Thomas with six clerks temporarily seconded from the Eastern Cape Provincial government. The office was officially opened by the former Deputy Minister of Justice, Ms Cheryl Gillwald, on 22 June 1999.

The Provincial Representative was subsequently joined at various intervals by professional and administrative staff who make up the current complement of eight professional staff members, one administrative clerk, one secretary and two typists. The professional staff compliment consists of two Senior investigators and six investigators, of which three are admitted attorneys.

Although the seat of the present Eastern Cape Provincial government is in Bisho where the majority of government head offices are



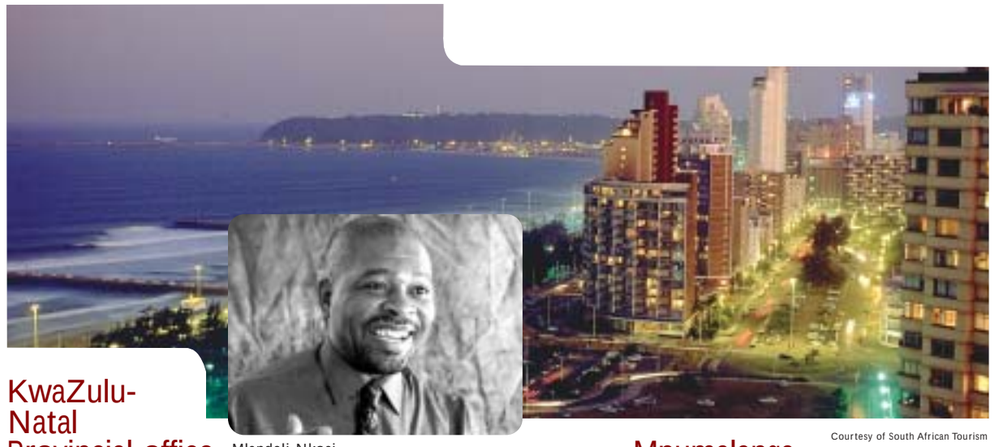
Nomsa Thomas

situated, the region serviced by the Eastern Cape Provincial office is predominantly rural and also comprises the administrative areas of the former Transkei and Ciskei.

This office deals with a wide variety of cases, but traditionally it dealt primarily with social service related complaints.

Public Awareness and Outreach

During the period under review, the office embarked on a successful outreach programme that consequently brought to light issues relating to inadequacies in state-funded housing schemes. Places visited and serviced were Port Alfred, Kirkwood, Paterson, Alexandria, Cradock, Burgersdorp, Steynsburg, Venterstad, Umtata and Queenstown. A more comprehensive outreach and awareness programme is planned for the next financial year, as well as a shift towards investigations directed at eradicating the root causes of matters frequently reported to this office.



Courtesy of South African Tourism

KwaZulu-Natal Provincial office

Mlandeli Nkosi

Situated in Durban, the KwaZulu-Natal Provincial office was officially opened by His Majesty King Zwelithini on 9 May 2001.

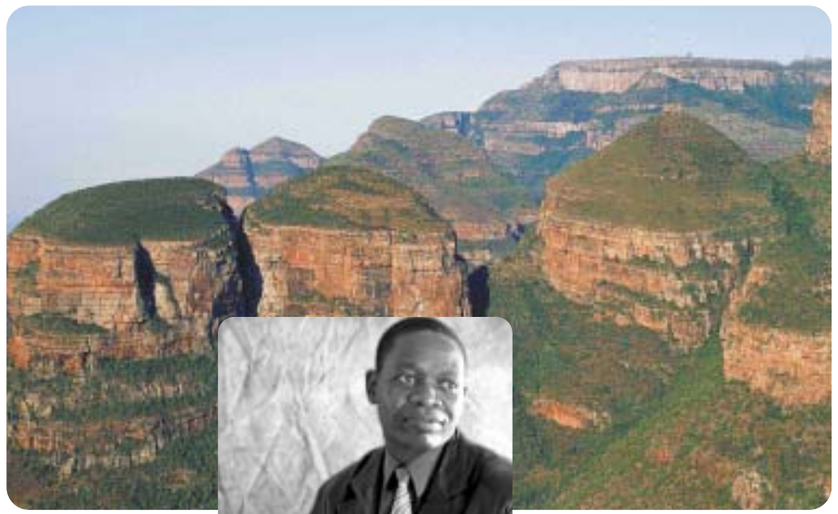
Today the staff complement consists of the Provincial Representative, one Senior investigator, seven investigators, a secretary/receptionist, a typist and a registry clerk.

Complaints received during the period under review concern the various Provincial departments, but most of them involve the Department of Social Welfare and Pensions, Home Affairs and Education.

The office discovered that many Senior Officials were not familiar with the mandate of the OPP. Two meetings were arranged on the premises wherein the KZN Cabinet members were addressed by staff from the office of the Public Protector (OPP).

Public Awareness and Outreach

This office has also embarked on an outreach programme. As an introductory phase, staff members travelled to all districts throughout the Province and consulted with the various District Managers and Chief Magistrates, so as to solicit their assistance with regard to the use of their facilities, such as halls and offices. The office received an enthusiastic response and all are willing to assist wherever possible. This office will now be considering which areas can be adequately serviced by visiting points and which areas require satellite offices.



Reginald Ndou

Mpumalanga Provincial office

The Mpumalanga Provincial office, situated in Nelspruit, was officially opened by the then Premier of Mpumalanga, the Hon N J Mahlangu, on 17 May 2001.

The staff component in this office has grown from five to eight. The office currently comprises a Provincial representative, a Senior investigator, two investigators, an Assistant investigator, a secretary/receptionist, an administration clerk and a typist. The office has had no resignations and as such has retained its original staff.

The office has seen a steady growth in the number of cases received. Whereas in the previous reporting period the total number of cases received was 548, the number has now risen to 654. The office finalised 584 cases, and in two of the matters formal reports were written.

Public Awareness and Outreach

The office of the Public Protector has adopted a revised vision statement which emphasises taking our services to the people. This Provincial office has therefore also identified the outreach programme as one of its key objectives in terms of which visiting points are to be established in every Municipal District area. Their purpose is to provide local communities with localised venues for lodging complaints.

To this end, visiting points have been established in the three Municipal Districts in the Province. All the visiting points will be activated from April 2004. In all, seven visiting points have been identified.

Projections are that with the rollout of the outreach programme, the number of cases received will rise drastically. To promote this programme, the office has consulted widely with stakeholders and has also been giving radio talk shows since November 2003. To date, talk shows have been given on five radio stations.

Western Cape Provincial office

The Western Cape Provincial office, situated in Cape Town, was officially opened by the Hon. Dr Frene Ginwala, former Speaker of the National Assembly, on 23 May 2001.

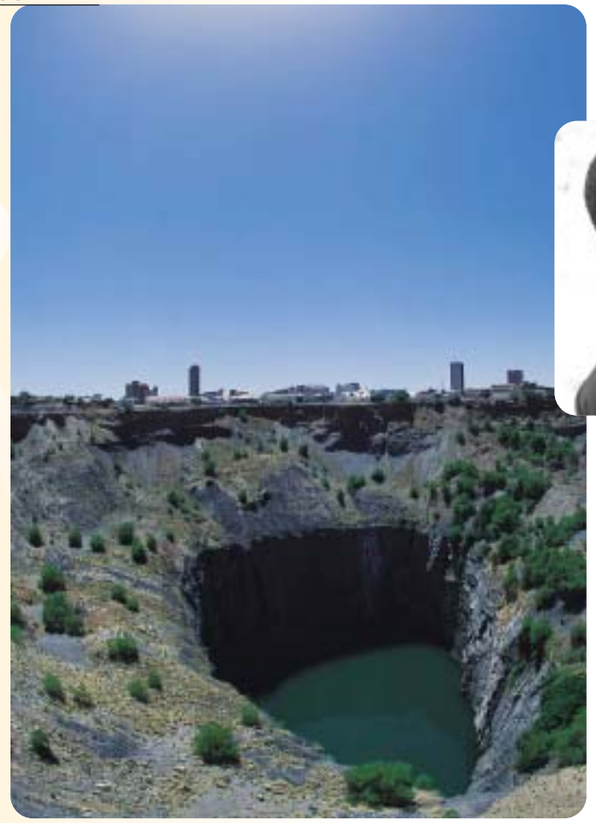
The office grew again this year, both in terms of staff and caseload, which has increased by about 50 %. This increased caseload has meant that an additional typist and a new receptionist were needed. Ms Vuyelwa Lutshiti joined the office at the end of 2003 and has busily welcomed the growing number of callers and visitors to the office in Adderley Street.

The office has continued to build stronger relationships with state departments and civil society in the Western Cape. It is pleasing to report a continued improvement in co-operation by organs of state represented in the province and even greater levels of mutual assistance are anticipated as the office makes its contribution to improved service delivery.

Gary Pienaar

Public Awareness and Outreach

Periodically the Western Cape office participates in the proceedings of the Provincial Anti-Corruption Forum in the Western Cape Provincial Administration building. The Forum is an initiative of the Provincial Administration that includes, amongst other institutions, the Public Service Commission, the Provincial Director of Public Prosecutions, the South African Revenue Services, the Provincial Forensic Audit office, the City of Cape Town Internal Audit office, South African Police Services, the Auditor-General, the Open Democracy



Courtesy of South African Tourism

Botromia Sithole

Advice Centre, etc. The discussions centred on ongoing efforts of the various departments to fight corruption.

The office's outreach programme was initiated on a small scale and three outreach clinics were being conducted prior to the office employing an assistant investigator to focus full-time on this priority area of its activities.

These clinics were held at Thembalethu, George in October 2003, at Zwelithemba, Worcester in November 2003 and at Atlantis, Haartebeeskraal in December 2003. Complaints covered a wide range of issues, but related mostly to housing problems.

Since then, a full-scale 'scouting' trip has been undertaken to the West Coast region of the Province. The purpose was to introduce the office to municipal officials and to identify suitable sites for conducting future outreach clinics. Most of the complaints in this region concern the allocation of fishing permits.

Northern Cape Provincial office

The Northern Cape Provincial office situated in Kimberley was officially opened on 25 June 2002 by the former Premier of the Northern Cape, the Hon. E M Dipico. The office, which was originally situated at the Auditor General Building approximately five kilometres from the centre of town, moved into the city centre in October 2003. This move was necessitated by the fact that the office was not sufficiently accessible to the public due to the distance and lack of public transport to the office.

The staff component presently consists of the Provincial Representative, an investigator, an Assistant investigator, a secretary/receptionist and an administration clerk.

Consequent to the relocation of the office to the centre of town and public awareness campaigns conducted by the office, the number of complaints received by this office has doubled. Unlike previously, when more than 60% of the complaints received emanated from the Kimberley area and Francis Baard district, complaints are now also received from other parts of the Province. Most of the complaints received during the period under review were against government departments and municipalities across the Province.

Public Awareness and Outreach

As part of an outreach programme, this office has addressed three District Municipalities – the Siyanda, the Namakwa and the Francis Baard District Municipalities at their full council meetings. Other local municipalities such as the Dikgatlong and Umsobomvu Municipalities were also addressed.

In order to spread awareness about the role, powers and functions of the Public Protector, the office has collaborated with Government Departments. When the Department of Local Government and Housing conducted an information programme on 11 March 2004 in Richmond and Britstown, the office made use of the opportunity to address the public.

Similarly, when the Department of Justice launched Equality Courts at the Galeshewe Stadium in Kimberley, the office profited from the occasion by addressing the public.

As in the other Provincial offices, an Assistant investigator was also appointed in this office to concentrate on outreach and it is the office's intention to cover the better part of this vast Province during the next reporting period.

Free State Provincial office

This office, situated in Bloemfontein, was officially opened by the then Premier of the Free State, the Hon. W I Direko on 20 August 2002. It is pleasing to report that since then, the number of complaints received by this office has increased significantly during the period under review.

Whilst the case load has increased since the last Annual Report, the staff component has expanded with the appointment of another investigator and an Assistant investigator. Two more investigators are due to be appointed in the first half of 2004.

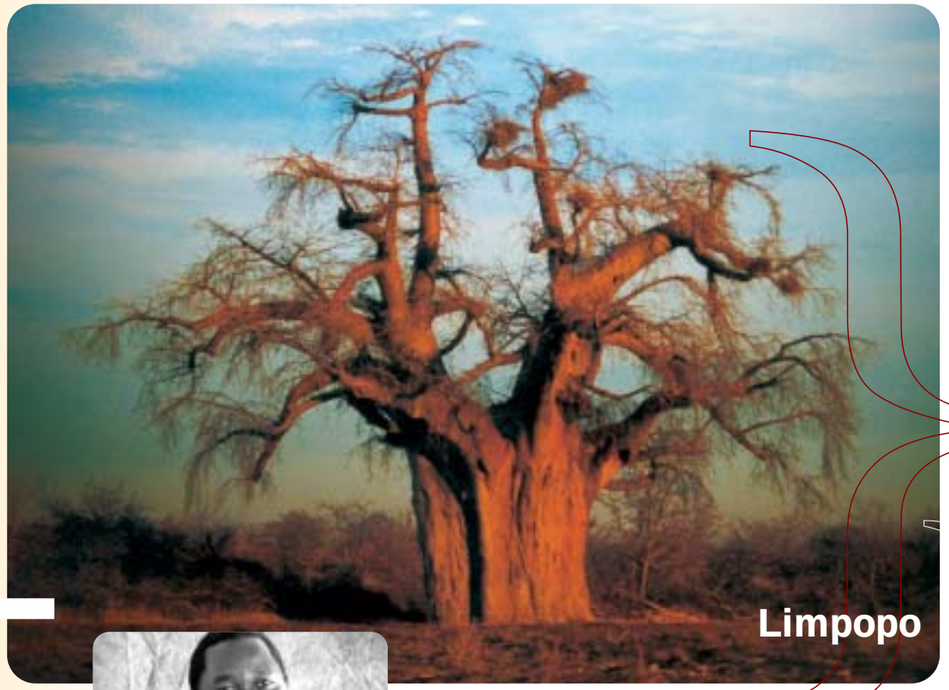
At present, the Free State Provincial office has a staff complement of eight: the Provincial Representative, one Senior investigator, two investigators, an Assistant investigator, a receptionist, a secretary and an administration clerk.

Since the establishment of the office in August 2002, a total of 1 363 cases have been finalised. This case load was initially handled by two investigators alone, until June 2003, when a third investigator was appointed, which is indicative of the level of productivity of this office.

Of the investigations dealt with by this office, two culminated in formal hearings conducted locally, namely the Silwana/erf and Dihlabeng Municipality cases. These cases, which are reported on more fully below, were both significant. Not only were the taxpayers' interests protected against alleged abuse of power by a local municipality, but an important principle was also emphasised, namely that transparency with regard to activities, decisions and procedures followed by a local municipality should prevail. A second important principle which was also highlighted was that there should be a clear distinction between the executive and political

Sunè Griessel

Courtesy of South African Tourism



Naledzani Mukkwevho

spheres of activity of institutions such as municipalities, municipal councils and political parties.

Public Awareness and Outreach

Initially, government institutions, NGO's and the general public in and around Bloemfontein were the main targets of this office's ongoing efforts at creating and building public awareness. This was due mainly to limited resources and manpower.

A surge in complaints emanating from other areas in the Province however reflected the need for the office's services in the rural areas and this is also indicative of the public's growing awareness of and confidence in the institution.

During the latter part of 2003, reconnaissance visits were undertaken to outlying areas of the Province for purposes of conducting a needs analysis. Zastron, Dewetsdorp, Welkom, Phuthaditjhaba, Harrismith, Koppies, Parys, Ladybrand, Botshabelo, Thaba'Nch, Bothaville, Kroonstad and Ventersburg were visited.

Certain of these rural areas were identified as future venues for establishing regular visiting points or clinics to enable the office to be more accessible. Consultation with other role players and members of local communities further confirmed the need for such points where complaints can be received and dealt with on the spot. A formal programme to this effect has therefore been initiated.

From a practical point of view and with due regard to the available staff and the demographics of the above areas, it was decided to divide the Province into three areas, namely the Northern, Eastern and Southern "districts". As the first phase of this project, the towns where clinics would be run on a monthly basis were identified.

It is pleasing to report that the first few clinics have already started operating (Koppies, Zastron and Puthaditjaba).

Limpopo Provincial office

This office which already started operating in June 2002, was officially launched in April 2003. Initially headed by a Senior investigator, a Provincial Representative was appointed in November 2003.

In addition to the Provincial Representative, the staff complement now consists of a Senior investigator, an investigator, an Assistant investigator, a Secretary, an Administration clerk and a typist.

The office has shown a marked growth since January 2003. From just over 180 complaints from June to December 2002, the office registered 1092 complaints between January and December 2003.

Public Awareness and Outreach

This growth was the result of a rigorous public awareness campaign which involved all major radio stations and newspapers in the Province. The office is now well known in the Province as evidenced by the fact that 297 complaints had already been received by the end of March 2004.

The main challenge that the office faces is to increase its accessibility to the public, taking into consideration that Limpopo is a vast province with a population which is largely rural. However, significant inroads have been made in this regard with the establishment and putting into operation of three visiting points in Ellisras (Lephalale), Thoyoyandou and Nebo (Sekhukhune). This office envisions exciting times ahead as it intensifies both its outreach and public awareness campaigns.

Types of complaints

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

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

Specific Investigations

Summary

1. Matters formally reported on

Gender Inequality

Alleged inequality in the payment of certain pension benefits by the Government Employees Pension Fund

Improper Conduct

Alleged impropriety regarding the purchase of property by the Ehlanzeni District Municipality.

Allegations of impropriety in connection with the sale by the Department of Public Works to Mrs Z Mbeki, of a property in Summerstrand, Port Elizabeth.

Allegations of improper soliciting of funds for a political party by officials of the Dihlabeng Local Municipality.

Allegations of impropriety in connection with the sale of a property to an employee by the Mangaung Municipality.

Improper Prejudice

Allegations of homophobic statements by Mr Peter Marais, erstwhile Premier of the Western Cape Province.

Complaint against the Transnet Second Defined Benefit Fund.

Complaint relating to a pension benefit payable to the estate of a deceased member of the GEPF.

Jurisdiction

Alleged prejudice of interests of so-called Parallel Medium Schools by the administrative actions of the Gauteng Department of Education.

Maladministration

Allegations of irregularities concerning the affairs of the State Theatre.

Alleged irregularities pertaining to the Namaqualand Housing Project.

Alleged irregularities that occurred in the management of the affairs of the National Library of South Africa.

Allegations of improper payment to MEC's in Mpumalanga.Complaint relating to the Eggo Sand Silica Mine.

Complaint regarding the closure of the Khahlela

Pre-Primary School by the Department of Education.

Undue Delay

Complaint of alleged irregularities by the North West Department of Education, which resulted in an undue delay in processing outstanding payments.

Reports on investigations conducted in terms of the Executive Members' Ethics Act, 1998 Allegations pertaining to Mr M P Lekota, Minister of Defence.

Alleged breach of the Executive Ethics Code by the Deputy President, Mr J Zuma.

2. Matters not formally reported on

3. Investigation undertaken on own initiative.

Matters formally reported on

To inform Parliament of specific complaints, but also to provide insight into the type of complaints dealt with during the year under review, cases which were reported on follow below. These cases have been divided into such categories as gender inequality, improper conduct, improper prejudice, jurisdiction, maladministration and undue delay.

Gender inequality

Case number 3143/98:

Alleged gender inequality in the payment of certain pension benefits by the Government Employees Pension Fund.

The OPP received a complaint pertaining to alleged gender inequality in the payment of certain pension benefits by the Government Employees Pension Fund ("GEPF"). The complaint relates to pension ***purchased*** by men and women. Although the calculation of the purchase price is exactly the same for both genders, a disparity between the sexes apparently occurred in the payment of a gratuity in the case of a voluntary severance package.

The formula applicable in calculating the gratuity of a voluntary severance package provides for the inclusion of the period of pensionable service rendered before and after 1 May 1996, because of the different contributory percentages which were effective before and from that date. Prior to 1 May 1996 female members contributed 6% of the pensionable emoluments to the pension fund and males 8%. Since 1 May 1996 the situation has been rectified and all members contribute 7,5%.

The complainant asserted that, if a man and woman of the same age, actual service, salary notch and pension fund, both purchase service, it would cost them exactly the same amount (post April 1996) in terms of Rule 11.4 of the GEPF. However, the complainant submitted calculations (using the formula to calculate the gratuity of a severance package encapsulated in the Annexure to the Rules of the GEPF), to substantiate the inequality between the genders in relation to the gratuity benefit. These calculations specifically highlight the inequality with regard to purchased service. The calculations encapsulate the complainant's factual position and compare it with what the position would be, had she been a male member of the GEPF.

The office raised the complaint on several occasions with National Treasury (Chief Directorate: Pensions Administration). The Pensions Administration confirmed that prior to 1 May 1996 the relevant legislation and regulations provided for a contributory rate of 6% for females and 8% for males. On the said date the Government Employees Pension Law (Proclamation 21 of 1996), was promulgated and regulatory aspects were amalgamated within the scope of this law. The rates

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were adjusted to 7,5% for any member. However, apparently the formulae encapsulated the different rates of contribution before 1 May 1996 in order to take into account periods of service prior to that date. The Pensions Administration further responded that the complainant's gratuity was calculated in accordance with the formulae applicable in terms of the Government Employees Pension Law. As the contribution percentage between males and females differed in terms of the previous Government Service Pension Act, 1973, it was necessary to ensure that the new rules relate to the former situation.

After careful consideration of the matter it was found that, even though it was the object of the said Proclamation to remove discrimination on the basis of gender, it is disconcerting that in the new dispensation the anomaly is still in place. In view of, inter alia, the fundamental right to equality enshrined in our Constitution, it was found that the differentiation between males and females should not be allowed to continue. Accordingly the complainant was found to have been improperly prejudiced.

It should however be noted that the relevant formula only affects female members of the GEPF who took a voluntary severance package, who received a gratuity and who had purchased service in terms of a specific formula.

It was thus recommended that the National Treasury take the necessary steps as a matter of urgency to have the formula contained in the Annexure to the Rules of the GEPF amended with retrospective effect. This amendment should have the effect that female members of the GEPF who took a severance package and received a gratuity calculated in terms of the said formula, be placed in the same position as male members with respect to purchased service. Affected female members of the Fund should therefore be paid such additional monies which they may be entitled to, after the formula has been amended.

The National Treasury advised that it accepted the finding and recommendation. However, despite meetings with departmental officials and numerous correspondences addressed to the National Treasury as well as to the Minister of Finance, the office encountered difficulties in ensuring implementation of the recommendation. The reasons for this were that the actuaries of the GEPF first investigated the financial implications of the recommendation (which apparently would be millions of Rands). Following this, the rule amendment had to be negotiated in the Public Service Coordinating Bargaining Council and be approved by the Minister of Finance in his capacity as the interim Board of Trustees. The final step would be the publication of the rule amendment in the Gazette.

The said procedures were recently finalised and the GEPF is processing additional amounts to the women prejudiced by gender inequality so as to place them on a par with their male counterparts.

It may be added that democracy does not always come cheap!

Improper conduct

Case number: 7/2-0204/02MP

Alleged impropriety regarding the purchase of property by the Ehlanzeni District Municipality.

The office received a complaint from a councillor of the Ehlanzeni District Municipality alleging impropriety regarding the purchase of a piece of property by the municipality. The complainant comprised various allegations, which can be summarised as follows:

- That the municipality failed to follow proper procedures in that the matter did not serve before the Finance and Procurement Committee;
- That the transaction was improperly handled since the intention to purchase the property was not advertised on the open market;
- That the transaction was not properly handled since no financial viability study was done to determine the cost-effectiveness of renting as opposed to purchasing the property;
- That the expenditure was not budgeted for; and
- That no proper business plan had been compiled to justify the price.

In its investigation, the office consulted with the complainant as well as officials of the municipality, including the Municipal Manager and the Chief Financial Officer. It also perused various documents provided by the municipality, including minutes of its council meetings.

Findings:

- That although the intention to purchase the property was not advertised on the open market, this was not a requirement as regards the acquisition of immovable property;
- That although the transaction was not discussed exclusively at the Finance and Procurement Committee, it had been discussed before a committee comprising amongst others, the Finance and Procurement Committee;
- That no evidence was provided to indicate that the municipality had considered the better option between a lease and a loan;
- That no proper evaluation was done on the building, and no engineering reports were submitted to the District Municipality;
- That there were indications that the Municipal Manager and the Chief Financial Officer might be regarded as having failed to comply with the provisions of the Code of Conduct for Municipal Staff members; and
- That the purchase had been budgeted for.

It was recommended that the municipality investigate, consider, and decide whether the Municipal Manager and the Chief Financial Officer had breached the provisions of the Code of Conduct for Municipal Staff Members, and if so, whether they should not be held accountable for such breach.

It was also recommended that the municipality ensure that all future transactions with financial implications should be handled in a diligent and proper manner.

It was further recommended that if any other officials of the municipality were found to have breached the Code of Conduct for Municipal Staff Members in respect of the purchase of the property, consideration be given to whether such officials should not be dealt with in accordance with the municipality's disciplinary procedures.

The Mayor has indicated to the OPP that he established a committee to look into the conduct of the Municipal Manager, amongst others. The committee recommended that both the Municipal Manager and the Chief Financial Officer be reprimanded for their conduct.

Subsequent to this however, the former MEC for Local Government, Traffic Control and Traffic Safety requested KPMG to do a forensic audit, and to include in the audit, the purchase of erf 437, Sonheuwel. KPMG handed its finalised report to the former MEC on 31 March 2004. The matter will be taken up with the new MEC for Local Government and Housing.

Case number: 3426/02

Allegations of impropriety in connection with the sale by the Department of Public Works to Mrs Z Mbeki, of a property in Summerstrand, Port Elizabeth.

In November 2003, a report was released on an investigation of allegations of impropriety in connection with the sale by the Department of Public Works to Ms Z Mbeki, of a property in Summerstrand, Port Elizabeth. This complaint was lodged by a Member of Parliament.

The investigation revealed that Ms Mbeki's late father-in-law, a former Deputy President of the Senate, had leased the property from the State for some time. He applied to purchase this property from the Department, at open market value. After a proper valuation had been conducted, his application was approved, but as he died before a deed of alienation could be signed, an enforceable contract of sale never existed.

Subsequent to Mr Mbeki's demise, Ms Mbeki applied to purchase the property from the Department with the purpose of securing a home for the surviving spouse, Ms E Mbeki. The application was approved, subject to the condition that a personal servitude of usufruct be registered in favour of Ms E Mbeki, against the title deed of the property. The deed of alienation was signed in November 2001 and the property was registered in her name seven months later.

Media reports in September 2002 suggested that Ms Mbeki had attempted to sell the property at twice the price she paid for it, shortly after it was registered in her name. However, according to the Department, Ms Mbeki indicated, prior to media enquiries, that her mother-in-law was waiving her right in terms of the usufruct as she no longer wished to utilize the residence.

When Ms Mbeki became the owner of the property, she acquired all the rights and privileges that accrue to any owner of an immovable property, subject to any conditions or limitations registered against the title deed. Her alleged decision to sell the property, at whatever price, was therefore a right that she was entitled to. Any unjustified investigation of the reasons for and details of her decision to sell it on the open market would constitute an unlawful infringement of her constitutional right to privacy. No justification for an enquiry into this matter could be found. What the Public Protector had to do and could consider was whether the sale of the property to her was irregular or improper.

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In October 2002, Ms Mbeki confirmed that she had instructed her attorneys to arrange for a reversal of the sale of the property, at the same price, on the basis of the waiver by her mother in law of her rights in terms of the usufruct. The property was sold back to the Department on 11 November 2002.

The following key findings were made:

- The decision of the Minister to sell the property to the late Mr Mbeki was not unlawful or improper;
- The decision of the Minister to sell the property to Ms Mbeki was also in accordance with the powers conferred upon her by law and was properly executed and motivated;
- Ms Mbeki's efforts to purchase the property were clearly motivated by the wish of the late Mr Mbeki to secure a home for his wife and family;
- There was nothing improper in Ms Mbeki's selling of the property at a price different to what she had paid for it; and
- As the sale of the property to Ms Mbeki was reversed on the same financial terms, the State suffered no prejudice.

Case number: 0024/03

Allegations of improper soliciting of funds for a political party by officials of the Dihlabeng Local Municipality.

In this matter, the complaint emanated from a letter, typed on an official letterhead of the Municipality and addressed to a number of businesses in the Bethlehem area stating that "(t)he ANC Councillors requested that we approach you on behalf of the ANC and ask for a donation to assist them financially to enable them to make a success of their Anniversary Celebrations". It was dated 8 January and signed on behalf of the Acting Municipal Manager.

The key findings made from the investigation were that:

- The request for a donation for the ANC that was initiated, drafted on an official letterhead and distributed by the Acting Municipal Manager and the Acting Financial Manager to local businesses in the area of the jurisdiction of Dihlabeng,was unlawful, improper and highly irregular;
- It compromised the integrity and credibility of the Municipality and was not done in its best interest; and
- The conduct of two officials involved, breached the Code of Conduct of Municipal Staff Members.

The following recommendations were made:

- The breach of the Code of Conduct for Municipal Staff Members by the two officials involved be dealt with in terms of the disciplinary procedures of the municipality, and in compliance with the provisions of the Code; and
- The Municipal Council take steps to ensure that officials of the Municipality were aware of the provisions and meaning of the Code, in compliance with the provisions of section 70 of the Local Government: Municipal Systems Act 2000.

The office has followed up on the implementation of recommendations with both the MEC responsible for Local Government in the Free State Provincial Government and the Municipal Council of the Dihlabeng Local Municipality and is awaiting their response. The follow up will continue until recommendations have been fully implemented.

Case number: 7/2-0168/03

Allegations of impropriety in connection with the sale of a property to an employee by the Mangaung Local Municipality.

In November 2003, a report was released on an investigation into allegations of impropriety in connection with the sale of a property to an employee by the Mangaung Local Municipality. This investigation followed complaints received regarding the sale, at a substantial discount, of an immovable property of the Mangaung Municipality to an employee.

It was alleged that the transaction was irregular as the erf in question had been reserved for a parsonage and that in the event of its being disposed of, it was to be sold at a public auction. The process followed to sell it to the employee, whilst other applications had also been submitted to the Municipality, as well as the price it was sold for, were also questioned.

The investigation revealed that this particular erf had been reserved as a parsonage for the adjacent property that was zoned for a church. However, the reservation had been a gesture of goodwill and no restrictive conditions were registered against the title deed of the erf. When the 'church erf' was later sold, there was no longer any reason for the erf to be reserved for a parsonage.

Several applications were received to purchase the erf, including that of Mr X, an employee of the Municipality. His application received preference in terms of the practice of 'first come first served' which was applied by the Municipality at the time. These applications were attended to at a low level in the administration and the Office of the Executive Director: Finance advised that the erf be sold at a public auction. However, neither this advice, nor the fact that there were several applications, was submitted to the City Manager and the Executive Mayor when Mr X's application was recommended for approval.

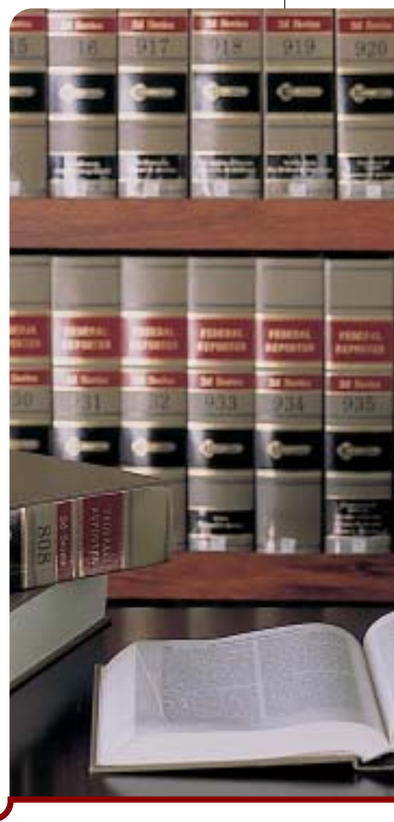
A one third rebate on the selling price of the property was granted to Mr X after he had applied for it, on the basis that development costs of the erf could be high. The granting of the rebate was further motivated by regarding it as an incentive to the employee, comparing it to a rebate granted to a church organisation and regarding it as a way of attracting investment and improving the racial mix in the particular residential area.

The following key findings were made:

- The procedure and the process followed to recommend to the Executive Mayor that the erf be sold to Mr X contained serious elements of maladministration;
- The maladministration was the result of a lack of a proper policy regarding the administration of applications to purchase immovable property from the Municipality;
- The determining of the selling price merely on the basis of the municipal valuation of the property did not seem to be a proper practice.
- The rebate granted to Mr X on the selling price was not properly motivated and justified;
- The lack of a proper policy regarding the granting of rebates to employees gave rise to the ad hoc and discretionary approach to the application for a rebate by Mr X;
- The maladministration in the process of the sale to Mr X and the granting and acceptance of a one third rebate on the selling price, created the perception that the sale of the erf was manipulated in favour of an employee, to the detriment of other interested members of the Mangaung community. The perception compromised the integrity and credibility of the Municipality.
- Although there clearly existed a perception of wrongdoing, no willful intent on the part of any official, including Mr X, and the Executive Mayor, to manipulate the sale of the erf to Mr X, could be found;
- The contract between Mr X and the Municipality appeared to be a valid deed of alienation. However, the manner in which it was concluded and its contents in respect of the selling price could not be condoned;
- It would be in the interests of accountability, transparency and proper governance that the selling price of the property be renegotiated between the Executive Mayor and Mr X with a view to rectifying the perceptions of impropriety.

Recommendations:

- That the Executive Mayor of the Mangaung Municipality, in consultation with the City Manager, take urgent steps to:
  - Expedite the development of the policy in respect of the administration of applications to purchase immovable property of the Municipality. The policy should include measures to ensure that the City Manager and the Executive Mayor are properly informed of all the relevant details pertaining to the property applied for, including a proper valuation of the price that it could be sold for on the open market, as well as of all the applications received up to the date of the submission of a recommendation in respect thereof;
  - Develop a policy regarding the granting of rebates on the selling price of immovable property of the Municipality. The policy should also address the granting of rebates to employees; and
  - Submit the policies referred to above to the Municipal Council for consideration and approval, by virtue of the provisions of paragraph 1.2 (a)(xxiv) of the Delegation of Powers Policy of the Municipality, approved by the Council on 12 September 2002.



- That the Executive Mayor, in consultation with the City Manager, re-negotiate the selling price of the property with Mr X in order to rectify the perceptions of impropriety that were created by the granting of the rebate and to ensure that the credibility and integrity of the Municipality be sustained.
- That the Member of the Executive Council for Local Government and Housing of the Free State Provincial Government monitor the implementation of the recommendations referred to above in compliance with the provisions of section 155(6) of the Constitution, 1996 and section 105 of the Local Government: Municipal Systems Act, 2000.

The office has established that the above recommendations are in the process of being implemented.

Improper prejudice

Case number: 7/2-0204/02WP

Allegations of homophobic and unconstitutional statements by Mr Peter Marais, erstwhile Premier of the Western Cape Province.

The OPP received a complaint that Mr Peter Marais, then Premier of the Western Cape and previously Mayor of the City of Cape Town, had uttered allegedly homophobic statements. The statements were said to be in breach of various rights contained in the Constitution of the Republic of South Africa Act, No. 108 of 1996, and to have caused improper prejudice. The statements were, further, alleged to have been in breach of Mr Marais' oath of office as Premier and of his Constitutional obligation to uphold the rights and values enshrined therein.

The complaint referred to:
a) Mr Marais' public opposition to marketing Cape Town as the gay ['pink'] tourism capital;
b) his alleged general homophobia, as evidenced in the reported statement that he had 'condemned homosexuals';
c) his allegedly unfounded statement that a group of 'gays' within the Democratic Alliance were plotting to remove him from office;
d) his alleged disrespect for the rights and values of equality and human dignity contained in the Constitution, as evidenced inter alia in his reported statement that Christians must choose between the Bible and the Constitution as the latter was written by communists.

The complainant asserted further, that Mr Marais' occupation of the post of Premier of the Western Cape Province and Mayor of Cape Town at the time that most of the alleged statements were made should entail some limit to his freedom of speech to make his personal views known. These posts were occupied as a public official, representative of a population with a wide range of views, argued the complainant. The complainant was also concerned that some of Mr Marais' allegedly improper statements appeared on the Western Cape Provincial Government Website. This seemed to reflect some form of official endorsement of his allegedly improper and unconstitutional statements.

The complainant alleged that the broader Cape Town and Western Cape gay community had been improperly prejudiced by Mr Marais' refusal to allow them, as a 'previously disadvantaged grouping, to promote [their] individuality and commerce internationally to a specific target market'.

It was not possible to find that Mr Marais had made all the alleged statements precisely as claimed, largely because it was not possible to conclusively verify the accuracy of the rapportage of those

statements. While Mr Marais admitted making some of the statements attributed to him, he denied having made certain of them. Where he admitted making certain statements and adopting certain policy decisions, he was able to satisfactorily contextualise and justify them. It appeared that, where he had become aware of the possibility that an incorrect impression had been created by rapportage of certain of his statements, he showed that he had taken prompt corrective action.

It was, therefore, not possible to find that either the individual complainant or the gay community that he claimed to represent had been improperly prejudiced.

The particular circumstances in this matter rendered it inappropriate to make a finding regarding the complaint that public representatives should be constrained in some way from making public statements on matters of conscience.

The oath of office of senior public representatives requires them to uphold constitutional values. However, the available case law is not directly in point, but suggests that generally, it is permissible to express disagreement with constitutional standards. The applicable legislation, primarily the South African Constitution and the Western Cape Provincial Constitution, the Executive, the Executive Members' Ethics Act and the Western Cape Members of Parliament Code of Conduct Act, does not deal directly with the issue.

However, the relevant legislation does afford the provincial legislature the power to set detailed standards of conduct relating to the conduct and performance of the provincial executive, including the Premier. It was consequently decided to refer this element of the complaint to the Western Cape Provincial Legislature for consideration.

Case number: 0622/02

Complaint against the Transnet Second Defined Benefit Fund.

Background

On 8 July 2002 a report was issued on an investigation conducted by the OPP in connection with a complaint against the Transnet Second Defined Benefit Fund (the Fund). The Public Protector (PP) found that the reasons that were advanced by the Board of Trustees (the Board) for excluding the complainant (the ex-spouse of the deceased) and her daughter (born out of the marriage between the complainant and the deceased) from benefiting from the pension of the deceased, were "unconvincing". Finding further that the deceased, had in fact maintained the complainant and her daughter during his life-time, the PP concluded that to exclude the two of them from receiving a portion of the pension, caused them to be improperly prejudiced.

It was, inter alia, recommended to the Board that the complainant and her daughter be regarded as dependants in terms of the Rules of the Fund (the Rules) and that they should therefore be entitled to a portion of the deceased's pension.

The response by the Fund

In response to the report by the PP, the Board reconsidered their position and decided to regard the complainant as a dependant in terms of the Rules. With reference to the provisions of Rule 23(3), it was resolved to award them a benefit equal to 30% of the pension that was paid to the deceased during his life.

As far as the daughter was concerned, the Board reconsidered her claim to be regarded as that of a dependant. It was decided that as she was not factually dependant on the deceased at the time of his death, she did not qualify in terms of the Rules for any benefit from the Fund.

Further representations

Following the decisions by the Board, referred to above, the complainant made further and numerous representations to the OPP.

Even though the initial view was that the Board was functus officio and that it therefore could not change the decisions, it was later decided that the Board should be approached again in a further attempt to have the matter amicably resolved.

These further efforts included a comprehensive study by selected members of staff of the prescripts applicable to the Fund and the information at our disposal. Several meetings were held between staff members of the OPP and the representatives of the Fund to discuss the matter in depth.

Findings and observations

The position of the complainant

The complainant objected to the decision of the Board to award to the surviving spouse a benefit equal to 70% of the pension of the deceased. This decision was based on the contention that because they were married after his date of retirement and as the age difference between them was more than 5 years, Rule 23(2)(c)(ii) applied. This would mean that the surviving spouse was only entitled to a portion of 70% of the pension.

During the investigation it was established that the provision under consideration had only become effective on 1 May 1994, without any retrospective effect. The OPP was in agreement with the Board that to apply it to couples who were married prior to this date, such as the deceased and his wife, could have an unfair and improper result.

The benefit due to the surviving spouse herefore had to be calculated in terms of Rules 21(1)(a) and 23(1)(a). The latter prescript does not allow for a discretion as to the percentage of the pension that "shall" be paid to the surviving spouse. It was thus agreed with the Board that the surviving spouse was entitled to 70% of the pension.

The portion of the pension awarded to the complainant

The decision by the Board to award 30% of the pension to the complainant was taken in terms of Rule 23(1) and (3). It was therefore based on the definition of "dependant" contemplated by Rule 2.

Rule 23(3) provides that where the dependant is someone other than the spouse of the deceased, a pension shall be paid to him/her. Payment would however be subjected to the following:

- The discretion of the Fund. The Board therefore have to apply their minds to the question as to whether or not payment should and could be made to the dependant concerned;
- A basis determined by the Fund that cannot exceed 80% of the pension calculated in terms of subrule 2(a) or 2(b). As subrule 2(a) applied in the complainant's case this meant that the pension paid to her could not be more, but could be less, than 80% of the 70% paid to the surviving spouse.

As a proper interpretation of Rule 23(3) could lead to the absurd result that, in theory, it would be possible for the Board to award pensions that would amount to more than 100% of the pension paid to the deceased pensioner, each case has to be considered on its own merits. To award pensions of more than a 100% of the pension of the deceased would cause other members of the Fund to be prejudiced and would therefore also be unlawful. The important point to be realized in this regard was that the Board has a discretion to determine the percentage that would be awarded to a dependant other than a spouse.

In this case the Board exercised their discretion in a manner that would favour the complainant the most by awarding her the remaining 30% of the pension. As indicated above, the Board had no discretion in respect of the 70% benefit awarded to the surviving spouse.

The recommendation made by the PP in respect of her dependency was properly implemented and this part of her complaint could not be taken any further.

The decision not to regard the daughter as a dependant

The decision not to implement the initial recommendation in respect of the daughter was based on insufficient evidence to indicate that she had been factually dependent on her father at the time of his death.

Rule 2 provides for different definitions of "dependant". Subparagraphs (iii) and (v) thereof were relevant to the enquiry concerning the daughter's position. These subparagraphs (for as far as it is relevant) provide as follows:

"(iii) a child contemplated in subparagraph (ii) but who is older than 18 years and younger than 26 years and who is studying full time or is physically or mentally handicapped …"

"(v) a person, who in the opinion of the Board, was in fact dependent upon the pensioner for maintenance". (my emphasis)

It was important to note, when interpreting subparagraph (iii), that the requirements following the expression "but" can only apply to a child as contemplated in subparagraph (ii). This clearly means that in order for these extra qualifications to apply, the child must be unmarried and ***in the discretion of the Board have been dependent on the pensioner at the time of his/her death.***

The discretion of the Board in respect of dependency is clearly limited to factual dependency and the common law principle of maintenance of a child by his/her parent was not in dispute. It was therefore necessary for the members of the Board to apply their minds to the information available to them to determine whether, at the time of his death, the deceased was factually providing the daughter with financial support. Only if they could reasonably come to that conclusion could they consider whether the remainder of the requirements of subparagraph (iii) could and should apply.

From the information received it appeared that the only information in respect of maintenance regarding the daughter that was available to the Board consisted of indications that the Maintenance Court had dismissed her application brought against her father and that she was in fact financially supported by the complainant. Under the circumstances they could not conclude that it would be reasonable to find that the requirement of factual maintenance was met. For the same reason subparagraph (v) could not be applied.

The information and documentation provided to the PP by the complainant and the Fund did not contain any additional indication that the daughter was in fact receiving maintenance from her father at the time of his death. The PP was therefore not in a position to question the reconsidered decision taken by the Board.

The complainant was advised that the only possible way forward regarding this matter would have been to provide the Board with substantive proof that the deceased had supported the daughter. If that were not possible, the matter could not be taken any further. However, had she been able to convince the Board that the daughter had in fact been dependent on her father, one would have to have taken into account that the 30% of the pension awarded to the complainant would then have to have been divided.

In the absence of substantive proof to this effect, the matter was finalised.

Case number: 4583/03

Complaint relating to a pension benefit payable to the estate of a deceased member of the GEPF.

The OPP investigated a complaint relating to a pension benefit that was payable to the estate of the complainant's late father (who was a member of the government pension fund), in 1994, but which was not received at the time.

The estate received a payment of R6 898.19 in 1994 and the executor and beneficiaries assumed that this payment constituted the pension benefit payable to the estate. It later transpired that this payment was in fact made in respect of departmental benefits and that a pension benefit in the amount of R140 365.67 was due to the estate.

After the OPP 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 the matter had prescribed and that there was no liability or any legal basis to pay interest.

The key findings and conclusions made from the investigation were that:

- The Pensions Administration failed to act in a diligent manner when the cheque was sent to a deficient address in 1994. In consequence, the beneficiaries received the pension benefits nine years after it had been due and payable. The actions and inactions of the Pensions Administration in this regard resulted in prejudice to the beneficiaries.
- In terms of section 12(3) of the Prescription Act, 1969, a debt shall not be deemed to be due (and accordingly prescription shall not commence to run) until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises: Provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care. From the facts it is evident that the beneficiaries did not know that the pension benefit was payable and they could not reasonably be expected to have known this. Furthermore, prescription is raised in action proceedings by way of special plea and it is important to note that the Public Protector is different from a court of law or tribunal. In addition, I am firmly of the view that it would be unfair to allow state agencies and officials, who acted negligently to the detriment and prejudice of the public, to hide behind concepts such as prescription.
- Even though the Government Employees Pension Law (Proclamation 21 of 1996) commenced after the benefit in casu had been payable, a basis for the payment of interest in certain circumstances is encapsulated in section 26 of this Law, which governs the GEPF.
- The guiding principle in determining the form and quantum of redress is that if possible the effect of the remedial action should be to restore the complainant to the position s/he would have occupied had the problem not occurred . The only equitable manner in which this could be achieved in this matter, was to recommend that interest be paid on the payment delayed by the Pensions Administration.

It was recommended that the GEPF pay interest on the pension benefit of R140 365.67, from 1 August 1994 to the actual date of payment (19 August 2003).

It is important to mention that this matter has not yet been finalised. The above formed part of a preliminary report to the National Treasury. The office will continue to follow up compliance with the recommendations.

Jurisdiction

Case number: 7/2-311/03

Alleged prejudice of interests of so-called Parallel Medium Schools by the administrative actions of the Gauteng Department of Education.

The Office of the Public Protector was approached by the Gauteng Association of Parallel Medium Schools (GAPMS), with claims that the interests of the so-called multicultural parallel medium schools are being prejudiced by the administrative actions of the Gauteng Department of Education (GDE), which in turn is implementing policy developed by the National Department of Education.

The complainants alleged that the post distribution model prescribed by the Minister of Education for the determination of educator post establishment of public schools, does not adequately address the post provisioning needs of public schools offering instruction in more than one language, with particular reference to the so-called "parallel medium schools".

After notifying the Department of the complaint, a meeting was held between their representatives and officials of my office. The Department expressed the opinion that the PP may not have the necessary jurisdiction to proceed with an investigation, based on the view that "the complaints are not directed against any administrative action of an organ of state, but rather attack current education policies and regulations and therefore a legislative function of an organ of State".

The representatives also indicated that while the above-mentioned views represent the Minister's opinion in this matter, the Department would co-operate with the office, should the PP decide to proceed with an investigation.

Consideration was given to the fact that although a Classical Ombudsman office, such as the office of the Public Protector, does not have the power to make or change laws, Classical Ombudsman Offices do make recommendations, in some instances, about the need to consider changes to legislation. Internationally, it is accepted that an Ombudsman's mandate to contribute to effective government administration includes the power to examine the fairness of statutes and regulations. An Ombudsman may recommend that unfair legislative prescripts be reconsidered with a view to their being amended or repealed when a matter is considered to be contrary to law, where a statutory provision or other rule of law is unjust or unfair, or where there is a mistake of law. The power to recommend a reconsideration of a law has, in the experience of the OPP, been used sparingly. It is, however, an important feature when an investigation reveals that the cause of the unfairness is the law itself or the effect it is having, and that the unfairness cannot be rectified without an amendment to the law.

The principle is therefore well established that an Ombudsman would not be precluded from investigating a specific action performed in the execution of government policy, and if the action is found to cause improper prejudice, to recommend that a piece of legislation or a policy forming the basis of such action be reconsidered or amended. Some decisions or policies of an authority may also be contrary to law. It is within the mandate of a Classical Ombudsman (such as the Public Protector) to investigate the legality of those matters.

From the empowering provisions relating to the competence and jurisdiction of the South African Ombudsman, the Public Protector, as well as the provisions of the South African Schools Act, the Language in Education Policy, the School Education Act of the Gauteng Province, and the provisions of the Constitution, it was clear that legislative prescripts and governmental policies that result in conduct that is alleged or suspected to be improper or to result in any impropriety or prejudice, could be investigated by the PP.

It was therefore found that the complaint lodged by the Gauteng Association of Parallel Medium Schools falls within the jurisdiction of the OPP and competence as provided for by the provisions of the Constitution, 1996 and the Public Protector Act, 1994.

When the finding was submitted to the Minister, it was established that the Minister had in the meantime established a task team to deal with this matter. It was subsequently resolved that the further investigation by the OPP would be kept in abeyance pending the outcome of the investigation by the task team.

Maladministration

Case number: 0022/00 WP

Allegations of irregularities concerning the affairs of the State Theatre.

The OPP conducted an investigation into allegations of irregularities concerning the affairs of the State Theatre. The investigation was the result of a number of complaints lodged by two former Directors of the 'Transformation' Board of the Performing Arts Council of the Transvaal ("PACT"), Mesdames X and Y. The investigation found a number of shortcomings and several recommendations were made.

After the change of government in 1994, it was decided to replace the existing Board of PACT with the 'Transformation' Board whose primary task it was to transform the nature and structure of the company's operations. Subsequent to its inauguration, and following a question by Mrs X, the new Board discovered that PACT's Annual Financial Statements had failed to disclose the existence of a 'Special Reserve Fund' ("SRF").

The complainants' grievances were based on the manner in which the SRF was handled by the responsible Minister, the Department of Arts, Culture, Science and Technology ("DACST") and the Transformation Board; the resistance to their enquiries about these matters; and the actions taken against them because of their insistence that proper and transparent governance should prevail at the newly-named State Theatre.

Preliminary enquiries made after receipt of the complaints revealed that a number of investigations had already been initiated to address some of the issues raised by the complainants. These included a forensic investigation initiated by DACST and conducted by Deloitte & Touche; an investigation by an Advisory Panel appointed by the Minister; and an investigation conducted by the Special Investigating Unit ("SIU"). The final forensic report was submitted to DACST in 2000 and included findings of a number of shortcomings and made several recommendations. The Advisory Panel submitted two reports to the Minister towards the end of 1998, and the SIU submitted its report to the Department and Parliament's Standing Committee on Public Accounts during 2002.

Having considered these reports, as well as the information gathered during the investigation by the OPP, a number of findings were made, including that:

- The fact that the Transformation Board was not consulted regarding the scope and mandate of the forensic investigation had led to certain important issues not being investigated. It also enhanced suspicions of a cover-up.
- There was, however, good reason for not consulting with the Board, viz. it was not clear to DACST which Board members could be trusted.
- The failure by the Transformation Board Chairperson (Dr John Kani) and the Chief Executive Officer ("CEO") (the late Mr Alan Joseph), as members of the Standing Committee of Trustees of the Employees' Trust Fund, to keep the Board informed of the conduct of the affairs of the Standing Committee contributed to the irregularities identified by the forensic audit.
- The failure by the Board to insist upon being kept informed of decisions and actions taken on its behalf by the Standing Committee also played a significant role in contributing to the broader maladministration of the affairs of the State Theatre.
- Indications remained that the administration of trust fund disbursements may have been contrary to the stated purpose of the Employees' Agreement that established the fund.
- There were a number of serious shortcomings in the conduct and management of the affairs of the Transformation Board and the State Theatre.

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- The complainants had repeatedly made a number of sensible suggestions and undertook a number of actions with a view to the State Theatre's Board of Directors and management addressing these problems. Their proposals were not adopted or implemented and the problems highlighted by their actions remained unresolved and, in many instances, worsened.
- The complainants received limited support within the Board, or from the senior management of the State Theatre, DACST and the Ministry in order to ensure that proper procedures were followed and adequate controls were put in place.
- The major problem of a lack of experience and inadequate understanding of their powers and responsibilities by most members of the Transformation Board (identified by the forensic investigation) appears to have meant that personal offence was taken by those on the receiving end of the complainants' objections and criticisms.
- The Chairperson of the Board failed to take firm action to call any person to account in terms of their existing responsibilities in accordance with the law and relevant standards or, indeed, to ensure that appropriate additional procedures were implemented and observed.
- The suspicion remained that the Transformation Board Vice-Chairperson's (the late Mr Sam Moss) involvement in the creation and concealment of the SRF and the trust funds had led to his reluctance to permit open discussion of the forensic investigation by the Board.
- The CEO failed or refused to place matters on the agenda for discussion at meetings of the Board or its Executive Committee, despite adherence by the complainants to agreed procedures for doing so.
- The CEO also failed to timeously furnish the Board with crucial information regarding the trust funds.
- The complainants endeavoured repeatedly to convince the Board to adhere to the law and to implement the principles of good governance as recognised and advocated by inter alia the first King Report on corporate governance.
- It is clear that the complainants were acting reasonably and with due diligence, and largely within their powers and responsibilities in doing so. This is not to deny that the complainants, by their own admission, sometimes resorted to 'unconventional' and extraordinary methods in pursuit of their goals.
- The complainants were improperly and unreasonably ostracised, criticised and subjected to unacceptable treatment because of their efforts. There is no credible basis for a finding that the complainants were motivated by considerations of race, as was alleged by some parties.
- As a result of these efforts, more particularly as a result of the difficulties in securing proper and adequate information for and on behalf of the Board (in the face of disturbing Board passivity); the complainants' insistence on adherence to the law and corporate governance best practice by the Board; as well as in order to defend themselves against challenges to their actions, the complainants incurred significant legal and administrative costs for their own account. This would have been unnecessary had the Board and the State Theatre management dealt with their legitimate concerns in a fair, timely and proper manner.
- The senior management of the Board and of the State Theatre was inadequate. A climate of fear, suspicion and division was allowed to develop within the institution and its structures. Senior management, for whatever reasons, aggravated rather than ameliorated these developments.
- The response by DACST and the Minister merely exacerbated the problem. In part, this response arose from disagreement concerning the appropriate interpretation and implementation of the Department's 'arms length' policy in relation to arts and culture institutions in receipt of public funds via the Department. It was also due to the Department's uncertainty regarding the credibility and trustworthiness of the various parties, given the nature of the allegations exchanged by the principal role-players.
- Some form of disciplinary action was instituted by DACST against the complainants in terms of Clause 24 (b) (iii) of the State Theatre's Articles of Association, inter alia as a result of the complaints lodged against the complainants with the Department by the Board Chairperson and the CEO.
- The complainants ought not to have faced disciplinary action of any kind on the grounds of the activities undertaken by them as investigated by my Office. From the investigation, it is clear that they were not the cause of either the State Theatre's or the Board's problems, as some parties alleged. If anything, the complainants' conduct and activities may fairly be described as largely symptomatic of these problems.
- The negative statements about, and the allegations made against, the complainants by Minister Ngubane and others were not warranted by the facts established during the investigation.
- The delay in implementing the recommendations in the Deloitte & Touche report contributed to the perpetuation and aggravation of the problems existing earlier.
- It is possible to express disagreement with the choice of options proposed by the Advisory Panel, as it appears to represent a missed opportunity to deal with the underlying problems facing the State Theatre and its structures.
- There appears to be some continued uncertainty about the adequacy of legislative and other prescripts (apart from the Public Finance Management Act, 1999) regulating the broader relationship between the State Theatre and the newly-named Department of Arts and Culture.

Recommendations:

- That the State Theatre Board consider entering into discussions with the complainants regarding compensation for their reasonable and demonstrable legal and administrative expenses incurred during their efforts to have the matters considered during the investigation addressed and resolved.
- That the PP's report be disseminated by the new Department of Arts and Culture (DAC) to all members of:
  - The PACT Board immediately preceding the appointment of the Transformation Board;
  - The Transformation Board;
  - The (subsequent) 'Interim' Board; and
  - The current Board.
- That the State Theatre Board, in conjunction with the Department, conduct an audit of the legislative and other prescripts regulating the relationship between them and their respective responsibilities and accountability. Wherever it is found that clear prescripts are lacking, the Department, in consultation with the Board, should take urgent steps to ensure that such regulatory measures are adopted and properly codified.
- That the State Theatre Board conduct an audit to determine whether the company has implemented and is maintaining compliance with the King Reports' recommendations on corporate governance.
- That the Department advise and, preferably, consult the Board before undertaking any investigation of the State Theatre or similar cultural institution, unless the objective interests of the investigation require otherwise.
- That the Department, in consultation with the State Theatre Board, take steps to ensure that they implement all the adopted recommendations of the Advisory Panel report and all the outstanding recommendations of the Deloitte and Touche forensic investigation reports referred to in my report.
- That the State Theatre give consideration to consulting with the Public Accountants and Auditors Board concerning the question of whether its financial manager's simultaneous employment by the State Theatre and its auditors was improper. The matter should then be handled accordingly.

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The report was submitted, in terms of section 182 (1) (b) of the Constitution, 1996 and section 8 (1) of the Public Protector Act, 1994, to the Chairperson of the Parliamentary Standing Committee on Public Accounts, the Minister of Arts, Culture, Science and Technology, the Members of the Executive Councils responsible for arts and culture in the provincial governments of Gauteng, Limpopo, Mpumalanga and North West, the Director-General of the Department of Arts and Culture, the Chairperson of the State Theatre Board, and the complainants, Mesdames X and Y.

The OPP is following up with the relevant institutions to determine the extent of compliance with our recommendations.

Case number: NW 00/736

Alleged irregularities pertaining to the Namaqualand Housing Project.

In June 2000 the Auditor-General's office in the Northern Cape provided the Provincial OPP in Mafikeng with information regarding certain administrative and financial irregularities that were uncovered while they were compiling their statutory report on the accounts of the Northern Cape Provincial Housing Board for the period 1994 to 31 March 1999. In particular, concern was raised about the lack of proper administrative controls and the possible adverse financial implications for the provincial Department of Housing & Local Government ("the Department") arising out of the Namaqualand Housing Project ("the project"). Consequently, it was decided to initiate an investigation into this matter.

The objectives of this investigation were to establish whether:

- The prescribed procedures that had to be followed by the Department in initiating and managing the project were adhered to; and
- The Department sustained any pecuniary loss as a consequence of any material non-compliance with the prescribed procedure.

Acting in terms of the provisions of section 7 of the Public Protector Act, 1994, it was decided to conduct this investigation using an informal investigative methodology.

In investigating this matter, assistance was received from, amongst others, the Special Investigating Unit, which had been involved in investigating housing subsidy allocations in the Northern Cape province since 1998. More recently, the Directorate of Special Operations (D.S.O.) in Cape Town has also become involved in this matter. It was given the onerous task of further investigating and initiating criminal prosecutions against roleplayers involved with the project.

Legislation and regulations pertaining to housing and which were relevant to the investigation, included:

- The Constitution of the Republic of South Africa, 1996
- The Housing Arrangements Act, 1993
- The Housing Act, 1997
- The Northern Cape Interim Housing Act, 1998
- The Implementation Manual: Housing Subsidy Scheme and other assistance measures; and
- The National Housing Code.

During 1997 the Premier of the Northern Cape, Mr E M Dipico, and the MEC for Housing and Local Government, Mr O P Dikgetsi, were approached by a delegation of political leaders from the Namaqualand region. The delegation complained that, since its initiation in 1994, Namaqualand had not benefited from the Housing Subsidy Scheme whereas several housing projects had been authorised and completed in other regions of the Province. The Premier and the MEC acknowledged that their complaint was legitimate and agreed to address this issue.

The Director: Housing and Infrastructure at the Northern Cape Department of Housing and Local Government ("the Director") advised that Namaqualand Developers ("the developer") was awarded the contract for construction of 1 300 houses in 27 areas of the Department, entered into a written agreement with the developer, which was represented by Mr Parker, for the construction of the subsidised houses.

By 29 January 2003 the sum of R22 018 237.90 from a maximum budget of R23 920.00 had already been expended on the project. According to statistics from the Department, the developer completed the building of 540 houses, whilst 195 were still under construction on 29 November 2002. This implied that the developer had yet to commence construction on 565 houses with a budget of only R1 901 762.10 remaining for this purpose. Disturbingly, Departmental records indicated that as at 6 August 2003 the Department had paid out R24 086.14, implying that the maximum budget had been exceeded, but the project was far from complete, with 524 houses still remaining to be built as at 10 July 2003.

After the investigation, the following key findings were made:

- This project was initiated in February 1998 with the express intention of ensuring speedy delivery of 1 300 houses to 27 historically disadvantaged communities in the Namaqualand region. By July 2003, over five years after the commencement of the project, only 612 houses had been completed; of these only approximately 87 had been transferred to the beneficiaries;
- The Department failed to abide by the principles applicable to housing development as expounded in section 2 of the Housing Act, 1997 as well as the Implementation Manual. Consequently the Department would probably incur pecuniary losses amounting to several million rand.
- These were clear indications of a breakdown in service delivery for which the provincial Department of Housing and Local Government must be held accountable.

Consequent to the observations and findings made in this report, it was recommended that:

- The Head of the Department of Housing and Local Government in the Northern Cape obtain a legal opinion in order to ascertain whether the Department had any recourse in law against parties that have failed to perform in terms of the contracts that were entered into ;
- The member of the Executive Council for Housing and Local Government request the Auditor General's office in the Northern Cape, who had recently been appointed to conduct an audit of housing projects administered by the Department, to ascertain inter alia:
  - progress made in completing construction of the 1 300 houses constituting this project;
  - The cost of all materials supplied to the project thus far, cost of materials consumed on the project, the cost of materials held in stores in the Namaqualand area and the cost of materials still to be supplied by the materials supplier;
  - The cost of government transport used to transport material required by the developer;
  - The veracity of transport charges claimed by the private transport companies that were hired to transport building materials to the various construction sites; and
  - The maximum budget for the project after confirming the correct subsidy amount each beneficiary was entitled to receive.
- Once the legal opinion had been obtained and the forensic audit completed, disciplinary action be considered against any officials that may have failed or neglected to perform their duties with due care and diligence;
- The Department initiate action for the recovery of storage costs of building materials that have been stored at its warehouses in the Namaqualand region;
- The Head of the Department obtain an adequate guarantee (security) from the materials supplier, or alternatively consider the possibility of instituting legal proceedings against it;
- The Department consider legal action for the recovery of the administration fees paid;
- In future the Department adhere to housing prescripts, as provided for in the national housing code, and avoid entering into agreements for unauthorised expenditures such as administration fees;
- The Head of the Department consider initiating disciplinary action against the officials responsible for agreeing to pay administration fees;
- The Head of the Department urgently take steps to verify and re-calculate the kilometres travelled by government vehicles in executing tasks on behalf of the developer and thereafter deduct this cost from the balance owing to the developer;
- The Department obtain a legal opinion and consider initiating steps for the recovery of the transport cost charged by the materials supplier, in the sum of R650 000.00;

- The maximum budget available be re-calculated, taking into account the fact that the developer had already completed construction of several construction of several hundred houses before the subsidy amount was increased to R18 400.00 on 1 April 1999 and was thus entitled to receive only R17 250.00 per unit for these houses;
- The member of the Executive Council for Housing and Local Government ensure that a Departmental policy on the implementation of increases in subsidy amounts is formulated;
- In future, the Department ensure that the variation of subsidy amounts for abnormal development costs are applied on a rational and consistent basis throughout the province;
- All hidden costs associated with this project be calculated and properly accounted for;
- All officials assist the investigating team from the Directorate of Special Operations during the course of their criminal investigation;
- The Head of the Department implement internal controls and audits, including a risk management strategy, as contemplated in section 3.2 of the amended treasury regulations published in terms of the Public Finance Management Act, 1999 in the Government Gazette (number 23463) of 25 May 2002;
- The Head of the Department ensure that a Departmental skills audit is conducted to determine whether employees have the necessary skills, competencies and knowledge to perform their duties effectively;
- The Head of Department implement appropriate corrective measures following the finalisation of the skills audit;
- The Head of Department take steps to establish a proper complaint-reporting and handling mechanism for the Department so that complaints relating to housing development projects are reported to the appropriate authority and are duly attended to; and
- The Head of Department instruct the conveyancers to expedite transfer of the completed houses to the beneficiaries.

The OPP was informed that its report had been tabled and debated at the last sitting of the Provincial Legislature who ratified my recommendations.

There has been some delay with regard to the forensic audit by the Auditor-General's office in Kimberley, who informed the PP that the MEC appeared rather hesitant as far as this was concerned. The OPP took this up with the MEC who replied that they were not unwilling, but that they would want to be informed of the scope and aspects to be covered by the audit. The Auditor-General's office responded to this request and it has come to the OPP's knowledge that KPMG has been appointed to conduct the audit.

The MEC also informed the OPP that the recommendations by the Public Protector regarding the administrative aspects have already been implemented.

Case number: 3603/01

Alleged irregularities that occurred in the management of the affairs of the National Library of South Africa.

In response to a number of complaints lodged with the OPP in connection with alleged irregularities that occurred in the management of the affairs of the National Library of South Africa (the National Library) and the alleged improper conduct of certain managers, an investigation was conducted in terms of the Public Protector Act, 1994. The investigation included a search of the offices of the National Library and the seizure of documents.

The following key findings were made from the investigation:

- The allegations of favouritism and a lack of proper procedure with regard to the appointment of certain staff members of the National Library were without merit.
- There was no substance to the allegation that a vehicle of the National Library was registered in the name of an employee.
- The allegation that repairs were effected to the vehicles of employees at the expense of the National Library could not be substantiated and no indication of the alleged improper conduct could be found.
- The allegation of improper use of the printing facilities of the National Library for personal gain could not be substantiated.
- The National Library had adequately addressed the alleged improper use of credit cards and cellular phones.
- No indication of the alleged improper outsourcing of work by the National Library could be found.
- The failure by the National Librarian to provide the staff and their unions with a copy of the report by Sichinga Consulting Group, which was not the result of workshops conducted during February and March 2002, cannot be justified.
- The discrepancy in the salaries of certain staff members at the same post levels appeared to be substantial and the explanation provided for the difference was not satisfactory.
- As far as the job grading was concerned, the National Library appeared to have taken the necessary steps to develop and implement a proper policy.
- Acting allowances awarded in the past had given rise to discrepancies. It was discontinued at the insistence of the labour unions representing the staff. The restructuring process that was underway would minimize the need for persons to act in certain positions.
- The implementation of the Employment Equity Plan of the National Library was subject to the availability of funds.
- The allegation of impropriety in connection with the awarding of a contract for an information technology system by the National Library had some merit. Although the decision by the Steering Committee of the Foundation for Library and Information Service Development to repeat the process could be criticised, no indication of improper prejudice suffered by any of the bidders could be found. The dissemination of confidential information to one of the bidders by a member of the Committee did not compromise the selection process. The member concerned resigned shortly after her misconduct was discovered.

Recommendations:

- That the National Librarian conduct an audit of the personnel records of all employees of the National Library to ensure that all the required information, such as curriculum vitae and proof of qualifications, have been properly recorded and filed;
- That the National Librarian, in consultation with the management of the National Library and the Board, reconsider the decision not to provide the staff and the labour unions involved with a copy of the report by Sichinga Consulting Group. It should, however, have been dismissed together with a response by the management to the perceptions recorded as well as an indication as to the steps that had been taken or that were envisaged to address the other matters that were raised in the report.
- That the National Librarian urgently conduct an audit of the discrepancies in the salaries of staff employed at the Cape Town and Pretoria campuses with a view to addressing any unfair or improper differences; and that
- That the Board take urgent steps to ensure that the implementation of the Employment Equity Plan of the National Library be prioritised in terms of budget planning.

Case number: 7/2-0095/02MP

Allegations of improper payment to MEC's in Mpumalanga.

The OPP received a complaint from the Democratic Alliance in Mpumalanga. The gist of the complaint was that the Members of the Executive Council in Mpumalanga were being paid rent for living in their own residences in contravention of the Ministerial Handbook, which dealt with benefits payable to them.

In its investigation, the OPP considered the Ministerial Handbook as it stood at the time of the payments, as well as various legal opinions on the matter. It also considered the amended Handbook and various pieces of legislation applicable in the matter.

It was found that the provisions of the Handbook as they read at the time of the payments were ambiguous and could be read to support the case for such payments, and also the opposite view.

It was also found that the provisions of the new Handbook relating to housing benefits, are unambiguous, and make it clear that a member's benefits include an allowance for housing so that no extra money over and above such allowance is payable in a case where a member uses his or her own residence for official purposes.

It was therefore recommended that the Mpumalanga Provincial Treasury should bring to the attention of all departments or their Chief Financial Officers, the amended provisions of the Handbook.

It was also recommended that when an interpretation of any provisions of the Handbook with financial provisions is required, no payments should be made until clarity has been sought and obtained from Cabinet, which is the final arbiter in terms of the Handbook.

It was further recommended that any Member of the Executive Council who continued to receive payment for living in his/her or own house after the coming into effect of the amended Handbook which, is in excess of 10% of his or her package, which makes up the housing allowance, should refund the difference.

The OPP has been informed that the matter has served before the Executive Council where it was decided that MEC's who received payment in contravention of my recommendation, refund the monies to the government. The Provincial Auditor General has indicated that his office will verify the refunds when doing an audit of all departments in this financial year.

Case number: 02/646

Complaint relating to the operations of the Eggo Sand Silica Mine.

(Department of Minerals and Energy)

The OPP received a complaint regarding the operations of the Eggo Sand mine, located in the Brits area of the North West Province, from a neighbour who owns property immediately adjacent to it. Eggo Sand mine is an opencast mine, which commenced operations in 1972. Its primary resource is silica sand. In essence, the complainant alleged that the mine created a nuisance, polluted the environment and was flouting the laws applicable to mining and the environment.

The investigation of the matters raised was premised on several considerations, the most important of which was the alleged inaction of government officials, potential long-term harm to the natural environment, as well as adverse health and safety implications for workers and the community in the area adjoining the mine.

The following allegations were investigated:

- The mine was operating without a valid mining authorisation;
- Mineworkers' health and safety were being jeopardised;
- The mine was an environmental hazard because it causes significant air and noise pollution in the area;
- Mining was being conducted within the Magaliesberg Protected Nature Environment (MPNE);
- Mining activities were taking place in a designated road reserve; and
- The draft Environmental Management Programme (EMP) for the mine failed to adequately address environmental, health, safety and rehabilitation aspects.

During the course of the investigation it became evident that there were two competing interests involved, viz. the protection of the national environment contrasted with the optimal exploitation of our mineral resources. The objective of our report was to recommend solutions to this seemingly intractable dispute that would, in the final analysis, ensure an equitable outcome.

Following the observations and findings made during the investigation of the allegations, it was recommended that:

- The Director: Mineral Development (North West Region) of the Department of Minerals and Energy (DME) ensure that all mining operations make application for and operate with an approved mining authorisation, in terms of the provisions of the Minerals Act, 1991 (the Act);
- The Minerals Development Section of DME ensure that mines that continue to operate without proper approval granted in terms of the law be given notice of their non-compliance and be ordered to stop their operations should they fail to comply with the prescripts of the Act;
- Mining authorisations be issued only after the relevant Director: Mineral Development is completely satisfied that sufficient rehabilitation guarantees are in place (taking into consideration the "polluter pays principle") and that the mine's Environmental Management Programme (EMP) adequately addresses all the legitimate concerns of the interested and affected parties;
- The Director: Operational Medicine of DME ensure that the recommendations discussed with mine management after the inspection on 29 May 2002 are fully implemented;
- The Mine Health and Safety Section of DME ensure that there is regular and independent monitoring of health and safety aspects at the mine;
- The Mine Health and Safety Section require the mine to prepare and implement a mandatory Code of Practice for an Occupational Health Programme on Personal Exposure to Airborne Pollutants, in accordance with the guidelines that came into effect on 1 August 200;
- DME ensure that independent risk assessment and monitoring by qualified and experienced professionals in the field of air and noise pollution are undertaken in order to assess the potential health risks to the surrounding communities;
- The risk assessment be followed up by action by DME against the source, if required;
- DME ensure that the EMP for the mine is amended to take into account the potential adverse environmental health impacts and the amelioration thereof;
- DME establish a Mine Monitoring Committee comprising neighbours, mine management, officials from DME and the provincial Department of Agriculture, Conservation and Environment (DoACE) as well as any other interested and affected parties;
- DME inform the mine's neighbours as to how, and to whom, they may report any alleged transgressions of environmental standards by the mine; i.e. the complaint-reporting mechanism had to be formalised;
- DoACE obtain legal opinion on whether or not excavations by the mine in the area of the Magaliesberg Protected Nature Environment (MPNE) could be allowed without the requisite authorisation;
- Should the opinion referred to above be that the mine requires such authorisation, Do ACE inform the mine accordingly and also sensitise them to the fact that failure to obtain the required authorisation might result in criminal charges being lodged against them;
- Do ACE ensure that the prescribed actions are taken against any mining operation that violates the provisions of the Environment Conservation Act, 1989 that apply in respect of Protected Nature Environments (PNE);
- DME take steps to

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ensure that the area of the MPNE that has already been subject to mining is properly rehabilitated;
- The South African National Roads Agency enforce its right to utilise the road reserve by taking appropriate steps to ensure that any unauthorised activities are addressed holistically rather than in isolation;
- DME take appropriate steps to ensure that the mine fully complies with the conditions attached to the approved EMP;
- DME ensure that the EMP fully addresses the amelioration of all impacts from mining activities, such as dust pollution, noise levels and workers' health and safety;
- DME take steps to ensure that the rehabilitation costs of the mining area are calculated by an independent professional and that it represents a figure that is both reliable and reasonable; and
- The Director: Minerals Development (North West Region) of DME ensure compliance with regulation 801, published by the Minister of Minerals & Energy in Government Gazette No. 20219 on 25 June 1999, and titled "Performance Assessment & Monitoring of Environmental Management Programme".

The OPP has established that the recommendations are in the process of being implemented.

Case number: 0231/03

Complaint regarding the closure of the Khahlela Pre-Primary School by the Limpopo Department of Education.

An investigation by the OPP of a complaint regarding the closure, early in 2003, of the Khahlela Pre-Primary School by the Limpopo Department of Education, revealed that teachers had been redeployed to other schools by the Department in terms of a policy relating to the abolishment of pre-primary schools. This effectively closed the school which was subsequently no longer regarded as a state school. The Principal and parents of some of the children involved obtained the services of volunteer teachers and continued with classes.

During the investigation it transpired that the school had been converted into a primary school as from 1998 and that it was recognised as such by the Department despite the fact that it had never been registered as a primary school. At the time of the re-deployment of the teachers, it provided education for learners up to Grade 4.

The PP released a report in January 2004 wherein, amongst others, the following findings were made:
- The Department had failed to properly manage and supervise the affairs and performance of the functions of the school over a period stretching from 1998;
- The redeployment of the teachers at the end of February 2003, which effectively closed the school, was improper and unlawful;
- The manner in which the school was closed violated the constitutional rights to basic education of the children involved. It also did not take the best interests of these children into account, as is required by the Constitution;
- There appeared to be a number of children attending the school who were younger than the prescribed age;
- There was no proper communication or consultation between the Department and the parents and the community concerned regarding difficulties relating to the school;
- There appeared to be a lack of communication between different levels within the Department regarding matters relating to the affairs of schools, that warranted urgent attention.

In the report it was recommended that the Member of the Executive Council responsible for Education in the Limpopo Provincial Government take urgent steps to:
- Normalize the situation and create an atmosphere that is conducive to the education of the learners involved;
- Ensure that learners attending the school are of the prescribed age;
- Consider and take an informed decision, and action, with regard to the future of the school, in compliance with the provisions of the laws applicable;
- Inform parents, learners and the community served by the school of its future and status;
- Improve the levels and methods of communication, supervision and administration within the structures of the Department dealing with schools situated in remote areas; and
- Investigate the failure by the Circuit Manager and other officials responsible for the maintenance and administration of the school, to properly supervise its operations and affairs, with a view to possible disciplinary action.

The OPP has established that the above recommendations are in the process of implementation.

Undue delay

Case number: 01/1224

Complaint of alleged irregularities by the North West Department of Education, which resulted in an undue delay in processing outstanding payments

This report dealt with an investigation into a complaint of irregularities by the North West Department of Education ("the Department"), which resulted in an undue delay in processing outstanding payments for services rendered by Mabopane Technical Services CC (hereinafter referred to as "the CC").

In May 2000 the Department awarded a tender for the service and repair of machinery and equipment at the Odi Manpower Centre to the CC. This was part of a tender for the service and repair of equipment at Mmabatho, Odi and Kudube "Manpower" Centres.

The total amount budgeted for this tender was R450 000. This total was split into three, each training centre being allocated an amount of R150 000. Mr H M Mogotsi (hereinafter referred to as "the complainant"), on behalf of the CC, was awarded the tender in respect of the Odi Manpower Centre.

In May 2000 Mr Mogotsi lodged a complaint alleging that sometime after embarking on the contract of service he was informed for the first time that the tender was restricted to R150 000. To him, this came as a surprise because, he alleges, he had not previously been informed of such restrictions. Furthermore, the CC had already rendered services in the sum of R640 189 but was paid only R144 575.60. The complainant further alleged that he had, on several occasions, tried, unsuccessfully, to resolve the matter with the Department.

After assessing the complaint it was decided that the following issues, arising from the complaint, required further investigation:
- Was there a valid tender?
- What procedures did the Department and the Tender Board have to follow before the tender was awarded and were they correctly implemented?
- Were the procedures for acceptance and notification after the approval of the tender correctly followed?
- What were the conditions for the execution of the contract?
- Does the contract provide for remedies in case of dispute or unsatisfactory performance, and if so, were these remedies utilised?
- Why was there a delay in processing payments for services rendered, which resulted in the Department having taken more than three months to process payments to the CC?
- Why was only R144 575.60 paid and not R640 189.00, as claimed by the contractor?
- Was any harm or prejudice suffered by either of the parties to the contract with regard to the servicing of equipment at the Odi Manpower Centre (hereinafter referred to as "the centre")?
- Was there any form of maladministration and, if so, its nature and extent?
- What remedial action, if any, was required to prevent a recurrence of this problem?

Following investigation of the matter, the following findings were made:

- The correct procedures for the awarding of a tender were followed save that the letters to the CC from the Tender Board and the Department failed to draw attention to the contract limit of R150 000.00;
- A binding contract between the Department and the CC was concluded;
- The complainant did not acquaint himself fully with the Tender Conditions and Specifications;
- The complainant was not supervised and was, without due regard to the laid down conditions of the tender, permitted to proceed with the repairs and servicing of equipment and to exceed the budgeted amount;
- The complainant did not furnish the centre with a comprehensive written report, a recommendation and a detailed estimate of the cost of parts, assemblies and labour in order to enable the centre to reach a decision as to further action to be taken;
- The complainant started with the repairs without an official order from the Department;
- The Department, when realising that the complainant had proceeded with the repairs before authorisation, failed to take any steps to prevent him from continuing;
- The delay in processing the CC's payments was due to the fact that incomplete claim forms were submitted, the invoices were not accompanied by the VA 2 forms and were not signed by the rector to certify that the work had been done;
- The tender was limited to R150 000.00 and the Tender Board was the only institution which could authorise any expenditure not budgeted for;
- The Department did not follow the stipulated procedure for resolving disputes as provided for in paragraph 9.20. of the Department's Tender Conditions and Specifications; and
- The Department had conducted an inspection in loco but its findings were never discussed or made available to the complainant.

It was recommended that:

- an expert be appointed to evaluate the work carried out by the CC at the centre;
- the purpose of the evaluation should be to determine:
  i) whether the work done by the CC benefited the centre;
  ii) the value of the work completed; and
  iii) whether the charges were reasonable;
- the Department should only take a decision after having had due regard to the report and recommendations received from the expert;
- thereafter a meeting should be held between the Department and the complainant to try and resolve this matter;
- should the Department decide not to follow the recommendations as set out in this report, their intentions be made clear to the complainant;
- in order to avoid a recurrence of a service provider overspending on a contract with a limited budget it is, inter alia, recommended that:
  – the letters of appointment and acceptance of the tender issued by the Tender Board and the Department reflect the financial limit placed on the services to be provided in terms of the contract;
  – all the tender conditions and specifications laid down by the Tender Board and the Department be strictly adhered to;
  – whenever it was deemed necessary to issue briefings and instructions to successful contractors, they should be reduced to writing and handed to the contractor/service provider by an authorised official of the Department;
  – only officials with proper written delegated authority be allowed to give instructions to service provider/contractors and that such officials should be identified in writing to the contractor/service provider;
  – a contractor or service provider should not be permitted to proceed with any work or service for the Department without first obtaining an official order and that such service or work be properly supervised by a duly authorised official of the Department, who should be identified to the service provider/contractor; and
  – the Department take steps to establish why the contractor was allowed to perform services without supervision and why the conditions for the execution of the contract were not adhered to. Should it be established that officials of the Department failed to adhere to set procedures, appropriate corrective action must be taken.

The OPP has established that certain of my recommendations have already been implemented by the Department.

Reports on investigations conducted in terms of the executive members' ethics act, 1998

Case number: 2167/03

Allegations pertaining to Mr M P Lekota, the Minister of Defence.

This report related to an investigation which followed a complaint by Mr D Gibson, a member of Parliament and the Chief Whip of the Democratic Alliance, against Mr M Lekota, Minister of Defence.

Mr Gibson's complaint was based on a number of media reports regarding Minister Lekota's holding of directorships, shares in companies and other business interests.

It was alleged that he did not disclose these interests as required by law. It was also alleged that these interests might give rise to a conflict of interest.

Prior to the lodging of this complaint with my office, the matter regarding the non-disclosure of the holding of shares, directorships of companies and other interests had been dealt with by the Joint Parliamentary Committee on Ethics and Members' Interests and Minister Lekota, had been sanctioned by the National Assembly.

The PP found that the interests that Minister Lekota had not disclosed in Parliament were the same as those he did not declare to the Secretary of the Cabinet in terms of the Executive Ethics Code.

The PP did not find it necessary to pronounce on the matter of the Minister's failure to disclose his interests to the Secretary of Cabinet for the reasons mentioned above.

Regarding the allegations of a possible conflict of interest, it was found that the financial interests and directorships that Minister Lekota held were not of such a nature that they might give rise to a conflict of interest and therefore a contravention of the provisions of the Executive Ethics Code.

Case number: 3602/03

Alleged breach of the Executive Ethics Code by the Deputy President, Mr J Zuma.

The Chief Whip of the Official Opposition, Mr D Gibson MP, lodged a complaint with me in terms of the provisions of the Executive Members' Ethics Act, 1998. According to Mr Gibson, allegations made in connection with the Deputy President, Mr J Zuma, justified a concern regarding substantial benefits received and liabilities incurred by him that may not have been declared in terms of the Executive Ethics Code (the Code).

Initially, the PP declined the request for an investigation as he considered the information provided by Mr Gibson to be insufficient. Mr Gibson responded, urging the PP to reconsider on the basis of the information that was contained in a draft charge sheet in a criminal matter where Mr Zuma's financial advisor was charged with, inter alia, fraud and corruption. He also insisted that the PP consider other information in connection with the financial interests of Mr Zuma that was provided by the Speaker of the National Assembly by the National Director of Public Prosecutions. The PP considered further information provided by Mr Gibson and decided to conduct an investigation.

As far as the allegations contained in the draft charge sheet are concerned, the PP found that an investigation would be improper and unlawful. This decision was based on the fact that the matters referred to therein were sub judice and that any investigation thereof at that stage might improperly and unlawfully have interfered with the prosecution and the right of the accused to a fair trial.

Other allegations in connection with the declaration in terms of the Code of certain of Mr Zuma's interests and liabilities were investigated. The PP found that the interests and liabilities relevant to the provisions of the Code had been properly declared in the confidential part of the Register of Financial Interests (the Register).

During the investigation, the PP noted with concern that the current format of the Register as well as the failure to keep details meticulously could lead to difficulties in interpreting the contents of the Register, which might lead to wrong perceptions and unfair comment. The PP thus suggested that the Secretary to the Cabinet take urgent steps to address these shortcomings.

The PP has so far been assured that this matter has been attended to as requested.

Matters not formally reported on

Every year my office receives thousands of complaints which can be resolved in an informal manner and which are not formally reported on. A selection of complaints covering a variety of matters finalised in this manner follows:

National departments

Case number: 03/92 NW

Complaint against the Administration of Justice (Magistrate's Court).

The complainant approached the OPP alleging that there had been a delay in finalizing an application to set aside an interdict and restraining order in terms of the Prevention of Family Violence Act, 1993, by the Molopo Magistrate's Court.

Investigation revealed that:

- The complainant had made an application to have the interdict set aside as far back as 20 November 1998;
- The presiding magistrate had failed to finalize the case because he was suspended from duty pending the outcome of an internal investigation against him;
- The case had been postponed several times thereafter due to the unavailability of the magistrate;
- Due to the delay, the complainant had approached various officials at the Department of Justice – however to no avail.

The OPP consulted with the Chief Magistrate of the Malopo Court and it was decided to submit the case on review to the Mmabatho High Court. After the review on 2 April 2003, it was ordered that the part-heard rescission application was to be set aside and the matter was to be referred back to the Magistrate's Court to commence hearing de novo by another magistrate.

Case number: 7/2-0363/03WP

Complaint against the Department of Correctional Services.

In this matter, the complainant was a prisoner in a Malmesbury prison entitled to contact visits in terms of his prison classification. During the weekend of 1 February 2003 the complainant was visited in prison by his spouse. The visit was monitored and supervised by a prison official in terms of Department of Correctional Services (DCS) policies. The complainant alleged that, as the two of them had been discussing a domestic issue, his wife became emotional and started to cry. The complainant alleged that as it was clear that his wife needed comforting, he allowed her to lean on his shoulder. He further stated that it was at that stage that the prison official who was monitoring and supervising the visit approached them in a rude and aggressive manner, instructing them to 'sit properly' and telling the complainant the he would not warn him again. The complainant pleaded with the official to exercise some patience as his spouse was traumatised. The prison official walked away, still instructing that they should 'sit properly' and stating that 'he could not care less what happened'.

This allegedly caused his wife to become more emotional and the complainant was disturbed. When her visit came to an end and, continued the complainant, the prison official "rudely and unlawfully instructed my wife not to visit me again if she should wear the clothes she had on". The implication appeared to be that the complainant's wife was inappropriately dressed. The complainant lodged a complaint with the Human Rights Commission which, in turn, referred the matter to the OPP.

The OPP's enquiry was based on two issues:

- whether the complainant and his wife were unfairly treated;
- whether the prison official was guilty of improper conduct when he allegedly instructed the complainant's wife to dress 'properly'.

Insofar as the first point was concerned, there was a dispute of fact in that:

(i) the version of the prison official, corroborated by four of his colleagues, including a female correctional official, was that the complainant's wife wore a denim mini skirt with a slit which was cut particularly high and that she allowed the complainant to put his knees in between hers while leaning on his shoulder;
(ii) the complainant had previously been guilty of improper / indecent conduct during previous visits when he had placed his hand on his wife's breast during the visit;
(iii) the complainant had placed his hand under his wife's dress, which action she had covered up with a jacket over her legs; and
(iv) that he had allowed his wife to place her hands underneath his shirt during previous visits.

The complainants' wife corroborated his version.

In the circumstances, on a balance of probabilities, it was not possible to establish which of the two versions was true. On the other hand, it was felt that the B Orders and the Regulations, particularly Regulation 104(6) (a) were not sufficiently clear to empower the prison official to act in the manner he had.

Regulation 104(6)(a) reads as follows: "[a]ny person who, during a visit to a prison, conducts himself improperly or contrary to the good order and discipline of such prison, may be ordered by the head of the prison to leave the prison…" .

'Improper conduct' is not defined in the Regulations.

With regard to the second point, my office's investigations revealed that the prison official had no legal authority to be prescriptive about the dress code of visitors to the prison.

In response to the OPP's intervention, the prison management undertook to sensitise over-zealous prison officials in order to prevent a recurrence. A copy of the letter / circular to this effect has been requested from the prison in order to confirm the implementation of this undertaking.

Case number: 7/2-0464/03WP

Complaint against the Department of Education.

The complainant alleged that:

- the Western Cape Education Department (the Department) had stopped paying for a bus for the transportation of disadvantaged learners who reside in Klipheuwel;
- the Department had not notified the community;
- due to the failure by the Department to notify the community of their intention to stop paying for the bus, most parents were unable to make alternative transport arrangements for their children, due to financial constraints;
- fifty eight (58) learners had been unable to attend school and they had ended up playing at the nearby river during school hours; and
- two learners had since died whilst playing at the river during school hours. The office was not provided with proof of this allegation.

During the investigation by the office, it emerged that the children who had died had drowned during the Easter weekend, not during school hours. Furthermore, it emerged that the Klipheuwel learners were being transported without approval. The Department had informed both the school and the driver of this.

Due to the fact that the Department was not implementing its existing policy on the transportation of disadvantaged learners, the office intervened and brought the discrepancy to the attention of the Department. With effect from June 2003, the Klipheuwel learners have once again been provided with transportation paid for by the Department of Education in terms of its existing policy.

Case number: KZN 0492/03

Complaint against the Department of Education.

The complainant approached the OPP in April 2003. He alleged that the Department of Education had employed him as an educator from 1996 until August 2002, when he resigned. He further alleged that he, in October 2002, had completed all the necessary forms with the Department in respect of his claim for the withdrawal benefits from the Government Employees Pension Fund. He alleged that the Department had, for a period exceeding six months, failed to forward his claim to National Treasury.

Upon investigation by the office it was found, and conceded by the Department, that this had unduly delayed complainant's claim. The Department was advised to process the complainant's claim and forward it to National Treasury urgently, which it did. The complainant received his pension withdrawal benefits to the amount of R31 207.08 in November 2003.

Case number: KZN 0051/03

Complaint against the Department of Home Affairs.

In this matter, the complainant, a widow, had, pursuant to the passing away of her husband in August 2002, approached the Department of Home Affairs to obtain a death certificate. To her surprise, the officials at the Department had informed her that, in terms of the records of the Department, she and her late husband had been divorced a few years before her husband's death.

The OPP investigated this complaint and established that the Department of Home Affairs could not verify the validity or otherwise of the alleged divorce. No documentary evidence of the alleged divorce could be found. As a result of my office's intervention, the Department issued the complainant with both a marriage certificate and death certificate in November 2003.

Case number: 218/03 NC

Complaint against the Department of Home Affairs.

The complainant, a lady, obtained her ID book in May 1999. However it turned out that her ID number identified her as a male. This caused considerable inconvenience as she had just been employed but could not open a bank account, take out insurance policies or enter into certain contracts.

On 26 September 2003 when she approached the Department of Home Affairs to rectify the mistake, she paid R45.00 to apply for another identity document and was informed that it would take a year for another identity document to be issued.

On 29 December 2003, she again went to Home Affairs where she met the supervisor of the section, who requested a letter from the clinic identifying her as a female. This the complainant provided. She was advised to reapply and was informed that she would receive her new Identity document in a year's time.

The complainant then approached the OPP who intervened. Within six weeks the matter had been resolved and a new ID number was issued.

Case number: 7/2-0852/03WP

Complaint against the Department of Home Affairs.

The complainant is a party to an existing civil marriage entered into during 2001. During the subsistence of the marriage, her husband resumed a previous intimate relationship with another woman with the result that the marriage between him and the complainant broke down. The husband then moved in with the other woman and commenced divorce proceedings against the complainant.

For reasons that are not clear, the husband suddenly abandoned the divorce action and proceeded to register a customary union with the Department of Home Affairs in terms of the Recognition of Customary Marriages Act, 1998. The registration of the customary union took place on 8 January 2003, according to the records of the Home Affairs Department. It appears that the husband claimed without proof that the customary union had preceded the civil marriage and was entered into during 1995. The Department accepted the husband's story without verifying it. As a result of the registration of the customary union, the complainant's civil marriage was expunged from the computerised population register. The complainant lodged a complaint with the OPP.

In its intervention, the OPP sought to establish the following:

- Whether the Department followed a fair administrative procedure in deleting or "expunging" the complainants' civil marriage from the population register, which decision clearly adversely affected the complainant.
- Whether the decision made was administratively fair and lawful.

In other words, the enquiry focused ***inter alia*** on whether the Department's conduct met the standards set in the Promotion of Administrative Justice Act, 2000.

Investigation of the complaint revealed the following:

- Pertaining to procedure: the complainant was not given adequate notice that her civil marriage would be removed from the computerised population register.
- She was not given any opportunity to make representations.

- No representations from her were taken into consideration before the decision was made to remove her marriage from the computerised population register.
- The registration of the customary union was not effected within 12 months after the commencement of the Act as prescribed by Section 3(a) of the Act.

Pertaining to the fairness and lawfulness of the administrative decision, the following was found:

- irrelevant factors were taken into consideration;
- there was a lack of legal authority for the decision taken, ie it was ***ultra vires***;
- the complainant suffered improper prejudice in that, as a consequence of the conduct of the Department's officials, which has caused confusion regarding her marital status and income, she is now unable to access social grants for her children, unable to open banking accounts, and her husband is busy appropriating the matrimonial property (such as furniture, etc.) for himself and his new wife.

In the premises, the OPP has requested the Department to restore the status quo ante.

The impact of this investigation may be felt country-wide, as the Department has informed the OPP that there are thousands of similar cases where marriages of couples may have been summarily and arbitrarily deleted from the computerised population register by reason of the purported registration of customary unions in terms of the Recognition of the Customary Marriage Act, 1998. Consequently, the OPP is closely monitoring the Department's response to the request.

Case number: 7/2-0544/03WP

Complaint against the Department of Labour (CCMA).

The complainant's primary complaint to the OPP involved allegations of maladministration, undue delay and discourteous conduct by officials at the Commission for Conciliation Mediation and Arbitration (CCMA). The complainant alleged that the CCMA's convening senior commissioner and registrar had allegedly failed to respond to certain letters that she had addressed to them individually and jointly.

In February 2003 the complainant had referred a matter concerning her alleged unfair dismissal to the CCMA for resolution. The matter was set down for 16 April 2003, but on that day both the presiding commissioner and the former employer were absent. Another Commissioner was asked to stand in. That Commissioner issued a certificate of outcome that the matter remained unresolved and set the matter down for arbitration.

The complainant informed the OPP that she was very unhappy with the outcome of the proceedings and the way the Commissioner had been substituted, and that the presiding Commissioner had suggested that she request the convening senior commissioner's and the registrar's intervention in expediting the date for arbitration as she had already waited over two months.

Consequently, the complainant wrote several letters to the aforementioned officials, requesting their intervention in expediting the arbitration proceedings. As the complainant alleged that she had received neither an acknowledgement of receipt nor any other response to her letters, she decided to file a complaint with my office.

The OPP conducted an investigation into the complaints in the following manner:

1. by sending the CCMA a 'Notice of Investigation' and requesting them to respond to the allegations detailed therein;

2. conducting interviews with the relevant officials, including the senior convening commissioner and registrar; and

3. convening a meeting, the aim of which was to explain the mandate of my office to the CCMA, to gain an understanding of the CCMA's processes and procedures and to attempt to resolve the dispute amicably.

The OPP notified the CCMA of its provisional findings and made ***inter alia*** the following provisional recommendations:

1. that the CCMA should offer the complainant a written apology, and ensure that she henceforth receive excellent service from them;
2. that the CCMA should assign an official to deal promptly and effectively with complaints against it.

The following remedial steps were subsequently taken:

1. the CCMA accepted full responsibility for not acknowledging the complainant's correspondence;
2. a written apology was tendered to the complainant, and
3. the hearing of her matter was prioritised.

The CCMA drew the OPP's attention to the fact that they already provide a complaints-handling mechanism, but conceded that it had not operated effectively in this instance. An undertaking was given that continuing attention would be given to such 'teething problems'.

Case number: 7/2-0301/04 WP

Complaint against the Department of Labour (CCMA).

In this matter, the complainant had travelled to South Africa from the United Kingdom in order to attend a scheduled arbitration hearing at the Commission for Conciliation, Mediation and Arbitration ("CCMA"). Three days before the hearing was due to take place, the CCMA realised that it had made an administrative error: its premises were due to undergo refurbishment on the date scheduled for the arbitration and would be closed. Furthermore, no Commissioner was available to arbitrate the dispute on the scheduled date. The CCMA unilaterally decided to postpone the hearing to another date. However, the employer party was unavailable on that date (its representatives were due to be out of the country on business) and the complainant was due to have returned to the UK.

The implication of the CCMA's error and subsequent decision to postpone the hearing of the matter was that the complainant would be obliged to return to the UK and then fly back to South Africa again on a later date, at his own expense. He argued that this constituted improper prejudice.

The complainant contacted the OPP the day before the date originally scheduled for the arbitration, requesting our urgent intervention. After receipt of the complaint, an investigator immediately telephoned the CCMA's Western Cape Convening Senior Commissioner ("CSC") to discuss the matter.

Discussions ensued, aimed at identifying the cause of and responsibility for the error, and possible alternative solutions to the intended postponement. The CSC requested an opportunity to examine the CCMA's case file and then conceded the CCMA's error and its responsibility for the complainant's predicament. After a further telephone call to ascertain the employer party's openness to a compromise solution, the CSC made a commitment to adopt extraordinary remedial measures to allow the hearing to take place on the date originally scheduled, albeit at a different venue.

The complaint was resolved within the space of a couple of hours.

Case number: 0517/03 WP

Complaint against the Department of Public Works.

The complainant alleged that:

- he had tendered for a one-year contract with the Department of Public Works (the Department) for the servicing of fire-fighting equipment;
- he had signed the guarantee papers and an acceptance of tender agreement with the Department;
- the agreement he signed with the Department also included the servicing of fire fighting equipment in the Parliamentary precinct and Parliamentary Villages;
- On 26 March 2003 he had received a letter from the Department to the effect that all servicing of fire fighting equipment at Parliamentary Villages and in the Parliamentary precinct must cease with effect from 1 April 2003, which was a date before the expiry of the twelve-month contract period;
- the notice period in the above-mentioned letter was very short; and
- as a result of the letter referred to above, he had suffered very serious financial losses because the Department had, thereby, unilaterally and without good reason cancelled the major part of the contract.

The OPP perused the tender documents and approached the Department with the allegations because the acceptance of tender agreement and other documentation provided by the complainant indicated ***prima facie*** that there had been a breach of contract on the part of the Department.

The Department reconsidered the matter and agreed to exercise its discretion to extend the tender for a further twelve months in order to rectify any prejudice suffered by the complainant, who agreed to this resolution.

Case number: 7/2 - 1/ 0102/03 LP

Complaint against SAPS.

The complainant was arrested and his fire-arm was confiscated together with other goods. Upon discharge all the goods were released except the fire-arm. The South African Police Services (SAPS) denied any knowledge of the gun and it did not appear in their register. Following investigation of the matter by the OPP, two police officers made affidavits to the effect that the firearm had been destroyed on instruction from their head office.

When the investigator insisted on the reason for the disposal, she, the instigator, was sent from pillar to post, even by senior officials at SAPS. When pressure was brought to bear, SAPS contended that the destroyed firearm had not belonged to the complainant, even though the make and serial numbers were the same. The investigator took up the matter with the Provincial Commissioner and indicated that she was about to pursue a case of perjury against members of SAPS who had lied under oath in their affidavits. The Commissioner appointed an investigator, and within two weeks the firearm had been discovered in the SAPS' safe.

Case number: 0737/03

Complaint against SAPS.

The complainant in this matter applied for Police Clearance for both himself and his wife as they both intended emigrating.

They paid the necessary fee (revenue stamps) for the processing of their applications. On further enquiries by the complainant he learnt that their applications had never been received by the Pretoria office for processing.

He then decided to apply again. The South African Police Services (SAPS) demanded that he pay an application fee again. He refused and SAPS in turn refused to take his matter and complete the necessary forms for submission to Pretoria. He then approached the OPP for assistance and intervention.

The OPP took the matter up with senior SAPS officials and the problem was amicably resolved. SAPS agreed to assist him and do the necessary without the complainant having to pay again as the service had already been paid for.

Case number: 03/1412 NW

Complaint against SAPS.

Mr X approached the OPP alleging that members of the South African Police Services (SAPS) had arrested, assaulted and detained his wife on notion of being an illegal immigrant. Despite producing documents from the Department of Home Affairs suggesting threat his wife was a legitimate citizen of the country, the SAPS members dealing with the matter, had allegedly ignored the documentation from the Department of Home Affairs submitted to them in this regard.

During the investigation, the Station Commissioner, where the complainant's wife had been detained, responded that they were still awaiting a response from Home Affairs officials to decide on the suspect's fate. When questioned as to when Home Affairs officials had visited the Police Station, the Station Commissioner replied that Home Affairs Officials were duty bound to visit the Police Station on a daily basis to establish whether or not there were any outstanding immigration matters.

During a follow-up meeting with the Chief Immigration Officer of the Department of Home Affairs, the latter indicated that Immigration Officials visit police stations only when called upon to do so by the SAPS.

Due to the intervention of the OPP, the complainant's wife was immediately released and an informal recommendation was made to the Area Commissioner of the SAPS that a policy should, in conjunction with the Department of Home Affairs, be formulated, to address the detainment of suspected illegal immigrants.

Case number: 0009/04

Complaint against SAPS.

The complainant's complaint was directed at the South African Police Services.

The complainant advised the OPP that his son, and two other minor children were alleged to have been sexually/indecently assaulted by the accused. The matter was reported in November 2002, to the Umzinto Police Station, and was being investigated. Initially, bail was refused, but due to the many delays, some of which were occasioned by the South African Police Services (SAPS), bail was then granted and the accused was alleged to have gone back to the very same community in which the victims live.

During this time the OPP was advised that the three dockets had gone missing. Two of them were subsequently found, but the docket relating to the complainant's son was still missing. The complainant advised the OPP that the investigating officer had approached him, requesting the minor child to make another statement about the incident (which had taken place more than a year ago). The complainant advised the OPP that he was very upset, as he could not understand why he had to subject his minor son to this unnecessary trauma yet again.

The investigator contacted the Unit Commander of the Police Station, and advised him of the anguish that not only the minor child was experiencing, but also the parents. She questioned him on the missing docket, and the Unit Commander promised her that he would personally do everything possible regarding this matter.

Two weeks later the OPP was advised that the docket had been found, and that this matter would be set down for hearing in a short while. The investigator was also advised that she would be kept informed of the progress and further remand dates in this matter.

Provincial departments

Case number: 7/2 - 0361/02

Complaint against the Free State Department of Health.

A complaint was lodged with the OPP alleging unfair treatment by a certain nurse at a hospital in Bloemfontein.

The complainant was feeling so ill that she went straight to the hospital without first obtaining a referral letter from a Community Clinic. Upon arrival the complainant alleged that a government employee (the nurse on duty) at the hospital confronted her and told her to leave that "office" because she was not in possession of a referral letter. She tried to explain, but was again ordered to leave.

Wanting to avoid confrontation she then approached the matron who referred her to a Community Clinic for treatment of hypertension. It was alleged that, whilst she was paying for her consultation fees, the same nurse who had ordered her about, again ordered her to come to her "office". In the office, this nurse allegedly ordered her not to set her foot at the hospital ever again. Then the nurse grabbed the telephone, phoned another nurse informing her that the complainant was a nuisance, and that the Community Clinics should refuse to treat her.

The complainant reported this to the OPP, who approached the Superintendent of the hospital concerned. The investigation that was conducted resulted in disciplinary action being instituted against the said nurse. The nurse was subsequently found guilty of misconduct and was given a final written warning. Her conduct was reported to the South African Nursing Council.

Case number: 7/2 – 1/ 0312/03 LP

Complaint against the Limpopo Department of Health and Welfare.

The complainant alleged that she had not been short-listed for a post in the Limpopo Department of Health and Welfare due to nepotism and corruption. In this case, twenty people had been short-listed; twelve

of whom were from the same village and had used common transport on the date of the interview. Ten candidates were appointed, and of the ten, eight of them were from one village. All the appointed applicants allegedly had no tertiary qualifications and neither were they studying towards such a qualification, as was required in terms of the advertisement.

On inquiry, the office was informed that had been no applicants with the required qualifications and those who had been short-listed were the best qualified. My investigator investigated the recruitment policies and processes of the Department and even requested the Department to submit all the original application forms, CVs, and certificates of all the applicants, as well as recommendations of the panel.

The Head of the Department was not prepared to release the abovementioned documents. The investigator informed the Head of the Department that in terms of the Public Protector Act she was bound to submit those records for purposes of investigation, failing which she would be subpoenaed. The requested documents were submitted and the allegations were confirmed. The Department ceased to fill the posts and instituted a disciplinary inquiry against those involved in the appointments. The senior manager who was in charge of the appointments was found guilty and suspended for one month without pay.

Case number: 7/2-0356/03 WP

Complaint against the Western Cape Department of Environmental Affairs and Tourism.

The OPP received a complaint regarding allegations of unfair treatment in the handling of permits and exemptions by Marine and Coastal Management (MCM), a division of the Department of Environmental Affairs and Tourism.

The complainant alleged that:

- during August 2000, he had applied for a permit for white shark cage diving and he believed that, being one of the original role players in the white shark industry, his application would receive a favourable response. His application was unsuccessful and he was informed that the permit quota was full;
- his application was not given the consideration it deserved;
- no explanation was given to him as to why MCM had not granted him a permit, but had instead given an exemption to dive to four non-permit holders;
- when the discrepancy referred to above was brought to MCM's attention, 'doors were closed on him' by MCM for nine months; and
- during June 2002, he submitted another application for a permit for white shark cage diving to MCM, but received no response except a letter acknowledging receipt of his application.

The OPP approached MCM with the above allegations and was informed that:
In view of the fact that the permit quota was full, the complainant should make representations to the Department in terms of the Marine Living Resources Act No. 18 of 1998 (the Act). The complainant was advised by the office to make representations to the Department and he was granted an exemption in terms of section 81 of the Act. The exemption was issued with certain conditions, amongst others, the following:

(i) that this eco-tourist effort would not result in a measurable adverse impact on the shark population in the area of operation;
(ii) that the exemption would expire at the end of 2003;
(iii) that the exemption should not be construed as meaning that a permit would be granted to him when the new permits were allocated in the forthcoming allocation; and
(iv) full compliance with all applicable permit conditions and adherence to the Code of Conduct.

The matter was discussed with the complainant and he was satisfied with the outcome of the matter. The OPP is currently pursuing the matter of MCM's alleged lack of response to the complainant's requests for clarity regarding the initial refusal of his permit, as well as reasons for such initial refusal.

Case number: 7/2 - 0746/03 LP

Complaint against the Limpopo Department of Local Government and Housing.

The complaint relates to the Promotion of Access to information Act. The complainant applied for a post of Senior Manager Legal Services and Labour and was interviewed on 22 May 2003. He was not appointed, although he was the best candidate in terms of the panel's results and recommendations. This information came to the complainant's knowledge and he decided to challenge the Head of the Department's decision. He then made an application to the Head of the Department in terms of section 11 of the Promotion of Access to Information Act 2 of 2000 on 23 June 2003.

The Head of the Department failed to respond even though he acknowledged the complainant's application. On 18 August 2003, the complainant approached the OPP for assistance. The office contacted the Head of the Department and referred him to section 27 of the Promotion of Access to Information Act, which states that *"if an information officer fails to give the decision on a request for access to the requester concerned within the period contemplated in section 25(1), the information officer is, for the purposes of this Act, regarded as having refused the request"*.

The Head of the Department referred my office's letter to the Premier's office. Initially the Premier's office acknowledged receipt of the investigator's letter and promised to handle the matter, but later withdrew and informed the investigator that she would receive a response from the Head of the Department as they had advised him in this regard. The complainant was furnished with the requested documents after a long struggle and indeed the allegations that he was the best candidate and was recommended were confirmed.

The investigator then advised the complainant to refer the matter to Bargaining Council as the office of the Public Protector cannot make a ruling on a labour matter such as this. The complainant referred the matter to Bargaining Council and it was ruled that he should be appointed, which has in fact happened.

Case number: 02/179 NW

Complaint against the North West Department of Roads and Public Works.

The complainant approached the OPP four years after the death of her son, alleging that she was yet to receive her deceased son's pension (death) benefits. The complainant alleged that officials of the Department had advised her in 1999 to wait until the Department contacted her again, before any payment would be made. According to the complainant however, the Department had not contacted her again.

After several letters, telephone enquiries and a meeting with the Head of the Department, the necessary documents were forwarded to the National Treasury. The matter was pursued until payment of the benefits was made to the Master of the High Court in Pretoria in May 2003.

Representatives from the office met with the Department's MEC in July 2003, where the reported matter and other similar issues pertaining to delays in the payment of pension benefits were raised. Following this meeting, a number of changes were introduced in the Department, viz. a post of Director: Legal Support Services was filled; the Pension section was reshuffled and a new Chief Director: Corporate Services and a Director: Human Resource Management were appointed.

Case number: 7/2 - 0665/03

Complaint against the Free State Department of Public Works, Roads and Transport.

In this matter, the complainant alleged that a Traffic Officer acted illegally and discourteously when issuing a traffic fine during April 2003 near Kroonstad.

The complainant alleged that:
He was driving on a public road in the district of Kroonstad, when he was stopped by a Traffic Officer on the day in question, for speeding. He tried to explain his reasons for exceeding the speed limit, but his request that his explanation be added or included as comments to this traffic fine/ticket, was refused. He then requested to see the Traffic Officer's appointment certificate and again the Traffic Officer refused to comply with this request. He approached the OPP for assistance.

The OPP took the matter up with the Department of Public Works, Roads and Transport. The Department's attention was drawn to the provisions of Section 3A(5) and (6) of the National Road Traffic Act, No. 93 of 1996, which reads as follows:

"3A(5) An authorised officer shall not exercise any power or perform any duty unless he or she is in possession of his or her certificate of appointment".

"3A(6) An authorised officer shall produce his or her certificate of appointment at the request of any person having material interest in the matter concerned".

The Director of Traffic Management of the Department responded by acknowledging that the official admitted that he had not been in a position to produce the certificate on demand as required by the Act, and that the action of the official concerned therefore should not have any legal force or effect to prejudice the complainant. The charges against the complainant were consequently withdrawn because of the acknowledgement by the Department, without the complainant having to go to Court.

Local government

Case number: 012/02 NC

Complaint against a municipality.

The complainant approached the Provincial office of the PP in Kimberley after the municipality had failed to compensate him for the damage caused to his electrical appliances as a result of an over loading of electricity, supplied by the municipality, to the complainant's house.

Apparently 380 volts instead of 200 volts were fed through into the house as a result of a neutral conductor that was lost (burnt off) on the municipal distribution line. Initially the municipality advised the complainant that household appliances were supposed to be insured and as such he should claim from his insurer. Unfortunately the said appliances were not insured.

Even if this matter constituted a civil claim against the municipality, which should have been dealt with by an attorney, the Acting Provincial Representative decided to intervene because there was nothing that precluded the OPP from pursuing the matter.

Since the municipality could not come up with a clear position, the OPP proposed a meeting between the parties, for the purpose of assisting them to reach an agreement or negotiated settlement and this proposal was supported by both parties, i.e. the municipality and the complainant.

This move was sanctioned by section 6 *(4)(b) of the Public Protector Act 23 of 1994. In terms of this section-*

(4) The Public Protector shall, be competent –
(a) …..
(b) to endeavour, in his or her sole discretion, to resolve any dispute or rectify any act or omission by
(i) mediation, conciliation or negotiation
(ii) …..
(iii) any other means that may be expedient in the circumstances.

The meeting therefore took place and an agreement was reached whereby the council paid a certain amount of money to the complainant as compensation for the damaged property.

Due to the intervention of the OPP there was no need to engage services of attorneys by both parties and as result they saved money as the matter was amicably resolved. Unnecessary litigation which would otherwise have been paid for by tax payers, was avoided.

Case number: 105/03 NC

Complaint against a municipality.

The complainant owned a building at an industrial area in Upington. A copper water metre that belonged to the municipality was stolen at the said building. The municipality replaced the water metre immediately with the same product and then ordered the complainant to pay the replacement cost of R580, 81. Theft of water metres was prevalent in the area.

The complainant objected to the payment of the replacement costs as the water metre had belonged to the municipality and as it was possible that the new water metre could also be stolen as it was cooper. He would have preferred that a plastic water metre be installed to replace the stolen one as this would have reduced the risk of theft. However, the municipality insisted that the complainant should pay the costs and stated that it would implement a policy that would make the property owners liable for replacement costs of stolen water metres.

The complainant then approached the OPP for assistance and the matter was raised with the municipality. The OPP set out to establish the following:

- To whom did the water metre belong and
- Whether the municipality had a policy that dealt with water metres?

The municipality took the initiative by withholding any further steps to claim outstanding amounts (replacement costs) until the matter had been resolved with my office. This was a positive step because, even if the matter took just over 6 months to be resolved, the complainant was never prejudiced.

Instead of defending its position, the municipality conducted its own internal investigations by referring the issue to the Council's legal representative. A legal opinion was later obtained by the council from which the council's view on this matter was given.

The Council's decision was as follows:

1. That the practice that the owner of premises should be held liable for the cost of replacing stolen water metre was stopped.
2. That the cost for future replacement of stolen water metres would be borne by the municipality and would be budgeted for.
3. That any action against a private person (i.e. owner of premises) to recover costs associated with the replacement of stolen water metres, be withdrawn with immediate effect.

The Council was in the process of formulating a policy around the installation, testing, repair and replacement of water metres. In response to the two questions put to the municipality, the Councils' decision meant that the water metre belonged to them and that there was no policy to deal with replacement of water metres.

Case number: 7/2 - 0685/03

Complaint against the Mangaung Municipality.

This complainant was a businessman and the owner of several guesthouses in and around Bloemfontein. He complained that from July 1997 until January 2001, the Mangaung Municipality had charged him for water and electricity supply at a higher business tariff rate (applicable to ordinary residential property, which to his mind should not be applicable to guesthouses smaller than three rooms).

He alleged that when he registered his guesthouses in 1997, information was provided by the Municipality that guesthouses smaller than three rooms would be charged the same tariff as an ordinary residential property. The Municipality had however amended this provision in 2001, and he then expected to be charged the lower beneficial business tariff from that time, which did not happen. He alleged that he had raised this objection with the local Municipality several times unsuccessfully, with the result that he approached the OPP for assistance.

This matter was taken up with the Mangaung Municipality who acknowledged that a bona fide mistake had been made in relation to the assessments, and the complainant was refunded an amount of Fourteen Thousand Two Hundred and Twenty Five Rand and Ten Cents (R14 225,10), being the excessive amount charged over a stated period.

Case number: 7/2-1764/03

Complaint against the Mbizana Local Municipality.

The OPP received a complaint from a member of the Mzamba Surf Life Saving Club at Port Edward. The complaint related to an allegation by the members of the above club that the Mbizana Local Municipality was refusing to give its share from the amount of R200 000 set aside by the same municipality to assist Lifesavers Clubs operating in its area of jurisdiction.

The OPP took up the matter and contacted the Municipal Manager. It transpired that the municipality had indeed made the said amount available but it that it had been resolved that all groupings of lifesavers should form an association which would on behalf of the various clubs in the area deal with the municipality as it was not practical to fund individual clubs. It also transpired from the investigation that all other groups complied with the municipal resolution and the association had been formed. The complainant's group refused to join the association but continued to demand its share of the fund.

The office considered the facts and evidentiary documentation regarding minutes of the meetings held by the municipality and lifesavers clubs, including the complainant's club. It thus transpired that the Council Resolution that the clubs should form an association was a fair prerequisite. The OPP explained to the complainant that the resolution had same binding effects as municipal bye-laws. The complainant was therefore advised that in the circumstances, prejudice could not be found. Consequently, the complainant's club has now joined the association.

Public entities

Case Number: 1361/03 EC

Complaint against ESKOM.

Background

The complainant alleged in a report to the OPP that ESKOM, after not having read the electricity meter on his property for some time, presented him with an account that he regarded as exorbitant and that he accordingly refused to pay. The complainant turned to the OPP as a last resort after he had made several trips from his home in Middledrift to the offices of ESKOM in Grahamstown and Port Elizabeth in unsuccessful efforts to resolve the matter. Municipal officials had entered the complainant's property by scaling a boundary wall and blocked his electricity supply at the meter. The complainant, who relied on electricity to run freezers containing frozen chicken that he traded for a living, had responded by tampering with the electricity meter, thereby 'illegally' restoring the electricity supply to his home.

Investigation

The OPP communicated with ESKOM. Despite an agreement being reached with ESKOM to maintain the electricity supply to the complainant's home while arrangements were made with him to debate his account, the supply was again interrupted. The OPP intervened immediately to enforce the agreement and to make firm arrangements with ESKOM to meet the complainant to debate the account.

According to the complainant, ESKOM had been estimating his electricity usage without actually taking the readings. However, according to ESKOM, the electricity meter had been properly read and the recorded readings were not estimates. ESKOM further submitted that the complainant did not know how to read his account properly and that his tampering with the meter had given him the benefit of free electricity.

A subsequent meeting between the complainant and officials from ESKOM at first failed to resolve the impasse. However, after reviewing the account, ESKOM conceded that it had taken the meter reader's word for the fact that he had read the meter and could not independently verify that the meter had in fact been read. It also conceded that the complainant did in fact understand his account and that there was merit in his argument that he was unlikely to have used the electricity for which he had been charged. As a consequence, ESKOM reduced the complainant's account to a negligible amount, waived criminal charges against him relating to his alleged tampering with the electricity meter and installed a card system to avoid repetition of the problem. The OPP is considering the feasibility of an investigation into the root causes of misunderstandings between ESKOM and its clients.

Case number: 03/131 NW

Complaint against the SABC.

Until 2000 the complainant had paid his TV licence using an account number supplied by the SABC. In 2000 the SABC allegedly changed the account number without informing the complainant of the said change with the result that the complainant's further payments had gone astray. After duly informing the SABC of the situation, the complainant terminated his payments until the matter could be resolved. However, the SABC allegedly failed to attend to the matter and the complainant's account fell into arrears, with interest charged since 2000. As a result, the SABC instituted legal action against him.

It was in this regard that the complainant approached the OPP for assistance. Intervention by the OPP resulted in the following:

- The legal action against the complainant was withdrawn;
- All payments made into the "old" account were transferred into the "new" account;
- All interest charged on the account was cancelled; and
- The complainant was allowed to pay some of the arrears that had accumulated in instalments.

Case number: 7/2 - 0137/03

Complaint against the South African Local Authorities Pension Fund (SALAP).

A complaint was lodged with the OPP for a claim of unpaid pensions from the Mangaung Municipality during March 2003.

The complainant allegedly was employed by the Municipality from 1984 till 1999 when he retired due to old age. The South African Local Authorities Pension Fund (SALAP) then paid him a total amount of Twenty One Thousand and Twenty Nine Rand and Twenty Nine Cents (R21 029,29), with which the complainant was not happy. He then approached the OPP as he had tried in vain to recover an alleged outstanding amount from SALAP.

The OPP took the complaint up with the Municipality first and was advised that the complainant's pension (transfer value of Forty Seven Thousand Six Hundred and Eighty Nine Rand (R47 689,00) had been transferred from the Free State Municipal Pension Fund, and then to the Sala Pension Fund. The Municipality advised the complainant to contact the Sala Pension fund in Cape Town. The complainant did not know how to approach the Sala Pension Fund in Cape Town and was desperate for assistance.

The investigator contacted Sala by telephone and the complainant's benefits were recalculated. It was then discovered that the complainant was in fact owed an additional payment calculated over another six (6) years for his pension benefit. After recalculation and tax deductions, the complainant received his outstanding benefits of Sixty One Thousand Two Hundred and Ninety Five Rand and Twenty Cents (R61 295,20) one and a half months later.

Investigation undertaken on own initiative

From time to time the OPP undertakes an investigation on own initiative as provided for by the Public Protector Act, 1994. An example of such an investigation during the period under review follows:

Case number: 0705/03

Investigation of conditions at the Helen Joseph Hospital.

During the course of a media interview with the PP, a reporter expressed concern at conditions at the Helen Joseph Hospital. He alleged that the hospital was overcrowded and that service at both the Casualty and the Pharmacy Departments was extremely poor.

Two Senior investigators from the OPP visited the hospital to conduct an in loco inspection. Patients who were interviewed confirmed that an unacceptably long time was spent waiting in queues before receiving medication. Staff members also confirmed that their working conditions, such as the shortage of trained staff and medication, contributed to the slow delivery of services at the hospital.

Shortly afterwards investigators again visited the hospital and inspected the Casualty and the Pharmacy Departments. At the Casualty department, patients informed the investigators that those visiting the hospital for the first time had to wait particularly long before being registered. They also highlighted the fact that the admission centre was extremely slow in capturing information on computers, which added to the delays. On average, patients had to wait for more than two hours before being assisted.

At the Pharmacy, investigators observed that queues were unacceptably long and people interviewed confirmed that they had been waiting for hours for medication.

The OPP arranged a meeting with the Senior Management who undertook to address the situation. Within a month the OPP received a letter informing it that:

- Management had drafted a Project Plan for the MEC's consideration;
- Management had approached a company specialising in queueing systems and had requested that company to conduct a study of their problems and make a recommendation;
- Approval would be sought for the appointment of at least three pharmacists to relieve the workload at the Pharmacy;
- The Deputy Director: Pharmaceutical Services had conducted a study of possible upgrade measures. A document had been produced containing recommendations for the improvement of the working environment of the Pharmacy. These recommendations complied with the minimum standards of the Pharmacy Act.

Since then the hospital continues to provide the OPP with progress reports.