

**DIE PROVINSIE OOS-KAAP
THE PROVINCE OF THE EASTERN CAPE**

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No. 2

GENERAL NOTICE

LEGISLATURE OF THE PROVINCE OF THE EASTERN CAPE

NOTICE 2 OF 1994

PUBLICATION OF PROVINCIAL EXCHEQUER BILL [B1-94 (EC)], TENDER BOARD BILL [B2-94 (EC)], PROVINCIAL COMMISSIONS BILL [B3-94 (EC)], PROVINCIAL PUBLIC PROTECTOR BILL [B4-94 (EC)] AND PROVINCIAL SERVICE COMMISSION BILL [B5-94 (EC)] FOR GENERAL INFORMATION

It is hereby notified that the above-mentioned bills are published in terms of Rule 127 (2) of the Rules of the Legislature of the Province of the Eastern Cape, for general information and comment.

Any person who wishes to comment or remark on the said bills must submit it in writing to the Acting Secretary, Legislature of the Province of the Eastern Cape, Private Bag X0047, BISHO, to reach him by not later than **12 August 1994**.

C. E. DE BEER,

Acting Secretary:

Legislature of the Province of the Eastern Cape.

Date: 3 August 1994.

PROVINCIAL EXCHEQUER BILL, 1994**BILL [B1-94 (EC)]**

To provide for the regulation of the collection, receipt, control, custody and the issue of State moneys and the receipt, custody and control of other State property; the duties and powers of the Treasury; the granting of guarantees, indemnities and securities; and matters connected therewith.

BE IT ENACTED by the Provincial legislature of the Province of the Eastern Cape, as follows:

Definitions

1. (1) In this Act and any regulation and instruction issued in terms thereof, unless the context otherwise indicates—

"accounting officer" means a person referred to in sections 16 and 17;

"adjustments estimate" means an estimate of expenditure from the Revenue Fund submitted to the provincial legislature in respect of expenditure on services of the Province and which are confined to—

- (a) the shifting of funds between and within votes;
- (b) reappropriation of money which was appropriated in the preceding financial year, but was not spend;
- (c) appropriation of money for services of the Province for which no or insufficient moneys have been appropriated in the relevant financial year and which may only be appropriated—
 - (i) from money obtained from the sale of assets of the province;
 - (ii) as a result of an authorization issued under section 7;
 - (iii) in respect of expenditure already announced by the responsible member in his speech during the tabling of the Appropriation Act in the Provincial legislature; or
 - (iv) in respect of expenditure regarded as being unforeseen and unavoidable by the Treasury; or
- (d) any other change or adjustment to an Appropriation Act which applies in the relevant financial year and which the Treasury deems necessary; and
- (e) additional conditional and unconditional allocation by Parliament;

"Appropriation account" means an account mentioned in section 15;

"Appropriation Act" means an Act by which the estimates of expenditure or adjustments estimate is appropriated as a charge against the Revenue Account approved by the provincial legislature;

"Auditor-General" means the person appointed as such in terms of section 191 (2) of the Constitution;

"Bank" means a bank mentioned in the Banks Act, 1990 (Act No. 94 of 1990);

"credit" means an allocation of an amount of money in the Paymaster-General's Account to an accounting officer;

“department” means a department which has been established in terms of the law for the Province;

“estimates of expenditure” means an estimate of expected expenditure from the Revenue Fund on the services of the Province during a financial year which are submitted to provincial legislature and which contain particulars of the purposes for which moneys, appropriated in an Appropriation Act shall be utilized and includes any estimates of supplementary expenditure on such services during that financial year which it is deemed necessary to provide for after the first-mentioned estimate has been submitted to the provincial legislature, but before it has been approved;

“Exchequer Account” means the account mentioned in section 3 (1);

“financial year” means the period extending from 1 April in any year to 31 March in the next succeeding year;

“head of department” means an officer appointed in terms of the law as the head of a particular department in the Province;

“Instruction” means an instruction issued by the Treasury in terms of section 25;

“National Treasury” means the national financial authority in the Public Service which is vested in the Department of State Expenditure mentioned in the Public Service Act, 1994, and whose powers in relation to any matter are exercised by the Minister of Finance or an officer in that department who, by virtue of a division of work in that department, deals with that matter;

“Paymaster-General’s Account” means the account mentioned in section 9 (1);

“Provincial debt” means money borrowed by the Province in terms of any law or which accrued to the Province in terms of section 239 of the Constitution and which is to be repaid from the Revenue Fund;

“Revenue” means all moneys received whether directly or as transfer payments from the National Revenue Fund by way of taxes, imposts or duties and all casual and other receipts of the Province, whatever the source, which may be appropriated by the provincial legislature, and includes money borrowed in terms of the provisions of any law, but does not include the amount of any fine not exceeding R50 imposed upon any person by any court of law, in so far as such amount has not been paid, or revenue accruing to the National Revenue Fund or any other provincial revenue fund;

“regulation” means a regulation made by the responsible member in terms of section 24;

“Revenue Account” means the account mentioned in section 2;

“Revenue Fund” means the fund established by section 159 of the Constitution;

“standard interest rate” means the rate of interest determined in terms of a national Exchequer Act;

“State moneys” means—

- (a) all Revenue; and
- (b) all other moneys, whatever, received or held by an accounting officer for, or on account of, the Province;

"State property" means any property of the Province, the disposal of which is not governed by any other law;

"statutory body" means any local authority, board, fund, institution, company, corporation or other organization established or constituted by or under any law in terms of which funding may be provided from the Revenue Account or Auditor-General the accounts of which are to be audited by the Auditor-General;

"the Constitution" means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);

"the responsible Member" means the member of the Executive Council of the Province responsible for financial matters;

"Treasury" means the provincial financial authority in the province which is vested in the department responsible for financial matters, and whose powers with regard to any matter are exercised by the responsible Member or any officer in that department who, by virtue of a division of work in that department, deals with that matter, unless the context otherwise indicates.

"trust money" means money kept by an accounting officer or other person in the service of the Province on behalf of a person or body, which money is not State money;

"trust property" means property kept by an accounting officer or other person in the service of the Province on behalf of a person or body, which property is not State property;

"vote" means a vote shown in a schedule to an Appropriation Act;

(2) A reference in any law to the State Revenue Fund pertaining to a power assigned to a province or vesting in a province, shall be deemed to be a reference to the Revenue Fund in so far as that power is assigned to or vests in the Province.

CHAPTER I

REVENUE, EXPENDITURE AND ACCOUNTING SYSTEM

Account of Revenue Fund

2. The Treasury shall make provision in its books in respect of the Revenue Fund for a Revenue Account which shall be credited with all revenue accruing to it in terms of this Act or any other law, and from which shall be defrayed all expenditure and be paid any amounts with which it is charged in terms of this Act or any other law.

The Exchequer Account

3. (1) The Treasury shall maintain at a Bank an account, titled "the Account of the Exchequer of the Province", into which shall, subject to the provisions of paragraph (a) of subsection (2) (a), be deposited all revenue.

(2) (a) The Treasury shall appoint principal receivers of revenue in respect of all provincial revenue received by the province.

(b) The principal receivers of revenue contemplated in paragraph (a) shall each cause the revenue of his office received from time to time, less the amount of any drawbacks and other refunds, to be deposited in the Exchequer Account.

(c) Such deposits shall be made on each appropriate working day.

(3) The Bank shall on each appropriate working day render to the Treasury, in such form as the Treasury may determine, returns of revenue deposited in the Exchequer Account.

(4) The Treasury may utilize any moneys in the Exchequer Account for the defrayment of expenditure chargeable to the account mentioned in section 2.

(5) The Treasury shall, subject to the provisions of this Act, ensure that there shall at all times be sufficient moneys in the Exchequer Account for transfer in accordance with section 9 (1).

Appropriation of moneys in Revenue Fund, and estimates of expenditure and revenue

4. (1) The moneys in the Revenue Fund shall be appropriated by the Provincial legislature as a charge against the Revenue Account by an Appropriation or other Act for the requirements of the Province: Provided that until such time as provision has been made in an Appropriation Act for such requirements during a financial year, such moneys shall be deemed to have been appropriated by an Act for such requirements, subject to the proviso to subsection (2).

(2) Issues by virtue of the proviso to subsection (1) shall be deemed to be issues by virtue of the Appropriation Act for the financial year in question, and as a charge against the Revenue Account: Provided that of the amount voted by the Provincial legislature by an Appropriation Act for the immediately preceding financial year not more than—

- (a) forty-five percent thereof shall be appropriated for the first four months; and
- (b) ten percent thereof shall be appropriated in respect of each of the following months; and
- (c) the total thereof is exceeded in all,

in respect of these issues.

(3) Moneys deemed to have been appropriated as contemplated in the proviso to subsection (1) shall only be utilized for services in respect of which expenditure was authorized by an Appropriation Act during the immediately preceding financial year, or in respect of which some other authorization by another Act exists.

(4) When applying this section, where—

- (a) no Appropriation Act for the immediately preceding financial year has been prepared; or
- (b) certain functions (hereinafter referred to as additional functions) were imposed on the Province after an Appropriation Act had been passed for the immediately preceding financial year,

the total amount on which calculations are made for the purposes of subsection (1) shall in respect of paragraph (a) be an amount determined by the responsible member and in respect of paragraph (b) the total amount of the Appropriation Act of the immediately preceding financial year together with the costs of such additional functions for a full year, and such additional functions shall for the purposes of subsection (3) be deemed to be part of the relevant Appropriation Act.

(5) The responsible Member—

- (a) shall for every financial year, in a form determined by the Minister responsible for national financial matters, submit to the Provincial legislature estimates of revenue and expenditure to be defrayed from the Revenue Account; and
- (b) may submit to the Provincial legislature and adjustments estimate to be so defrayed.

Duration of Appropriation Act, and expenditure in a financial year

5. (1) An Appropriation Act shall not be construed as authorizing the utilization of moneys appropriated therefor in a financial year other than the financial year to which it expressly relates.

(2) Subject to the provisions of subsection (3) and section 7, expenditure shall in each financial year be incurred in accordance with standing statutory appropriations and, in respect of each vote, in accordance with the main divisions thereof, the particulars of which shall be contained in the estimates of expenditure and the adjustments estimate.

(3) Expenditure on a service in respect of which no or insufficient provision has been made in an Appropriation Act, shall not be brought to account as a final debit against a vote, unless—

- (a) in the case of insufficient provision, a saving under any main division of the vote concerned is being applied towards such expenditure, unless the Treasury directs otherwise; or
- (b) the responsible Member has granted written authority therefor beforehand in terms of section 7.

Column 2 items

6. (1) The amounts appearing in "Column 2" of a schedule to an Appropriation Act in respect of any vote shall, subject to the provisions of section 7 (1) (b) (ii), not be exceeded, and savings thereon may, with the approval of the responsible Member, be applied towards the defrayment of any other expenditure for which insufficient appropriation has been made under that vote.

(2) An amount appearing in "Column 2" of a schedule to an Appropriation Act in respect of any vote, may be increased with such a portion of the moneys appropriated for the Vote: Improvement of conditions of service of the Province, as the accounting officer in consultation with the Treasury may determine.

Authority by the responsible Member for utilization of moneys in certain circumstances

7. (1) Notwithstanding the provisions of sections 4 and 6, the responsible Member may grant authority for moneys in the Revenue Fund to be utilized during a financial year—

- (a) to defray expenditure of an exceptional nature which has not been provided for in an Appropriation Act and which cannot without serious prejudice to the public interest be postponed until Appropriation therefor can be made by the Provincial legislature; or
- (b) to defray—
 - (i) expenditure in connection with an expected excess on a vote which cannot, without serious prejudice to the public interest, be postponed until appropriation therefor can be made by the Provincial legislature; and

- (ii) expenditure in connection with an expected excess of amounts which appear in "Column 2" of a schedule to an Appropriation Act: Provided that the total amount in respect of which authority may be granted in terms of this section shall not at any time exceed an amount equal to two per cent of the total amount appropriated by the then current Appropriation Act or which is available by virtue of the proviso to section 4 (1).

(2) Steps shall be taken, not later than during the next ensuing session of the Provincial legislature, for the appropriation of any amounts which have been or will be utilized in terms of subsection (1).

(3) The authority contemplated in subsection (1) shall be granted only if it complies with the criteria stated in the definition of "adjustments estimate" in section 1 (1).

Power of Treasury to limit or suspend incurring of expenditure

8. (1) Notwithstanding anything to the contrary contained in any law, including any law whereby money is appropriated for any statutory body, fund or account, the Appropriation Act, or an authority granted in terms of section 7, shall be construed as merely indicating the maximum amount which may be utilized for the service or purpose concerned, and the Treasury may withhold or suspend the disbursement of moneys which have been appropriated or in respect of which authority has been granted in terms of section 7 (1), if in the opinion of the Treasury circumstances make such withholding or suspension desirable.

(2) The Treasury shall keep a record of every withholding or suspension in terms of subsection (1) and shall without delay notify the accounting officer and the Auditor-General of every such withholding or suspension.

(3) Any amount the payment of which was in terms of subsection (1) withheld or suspended may be utilized during the financial year concerned for a purpose approved by the Treasury.

(4) The Treasury shall keep a record, and without delay notify the Auditor-General, of every approval granted in terms of subsection (3).

Account of Paymaster-General

9. (1) In addition to the Exchequer Account, the Treasury shall maintain at the Bank an account entitled the Account of the Paymaster-General and may cause so much of any moneys—

- (a) appropriated by law;
- (b) which may, by virtue of the provisions of section 7, be utilized for any purpose; or
- (c) deemed to be appropriated by law, as have been requisitioned in terms of subsection (3),

to be transferred from the Exchequer Account to the Paymaster-General's Account.

(2) (a) The Treasury shall grant to an accounting officer, on a requisition by him, and out of the moneys in the Paymaster General's Account, credits out of which disbursements for the services for which he is responsible, shall be made by him.

(b) The Treasury may limit the granting of creditors referred to in paragraph (a) to the amounts which, in its opinion, are required for current payments in respect of the service or purposes for which it may be utilized.

(3) The Treasury shall not grant a credit in respect of an amount of which payment was withheld or suspended in terms of section 8 (1), unless an approval has been granted in terms of section 8 (3).

(4) An accounting officer shall keep account of all credits granted to him in terms of subsection (2) as well as all disbursements therefrom.

(5) An accounting officer may, in addition to State moneys, deposit other moneys for which he is accountable in the Paymaster-General's Account and may make disbursements from that account.

(6) In regard to the Paymaster-General's Account the Treasury shall maintain for each accounting officer an account of all credits, deposits, disbursements and withdrawals.

(7) An accounting officer shall as soon as is practicable after his accounts for any financial year have been closed, surrender to the Treasury, for redepositing in the Exchequer Account, any unexpended moneys in respect of which he received credits in terms of subsections (2) and (8), and the Treasury shall credit therewith the account in the Revenue Fund which was charged with the anticipated expenditure concerned.

(8) If it appears after 31 March of any financial year that the expenditure by an accounting officer on services in that financial year may possibly exceed the amount of the credits granted to him by the Treasury in terms of subsection (2), he shall as soon as possible, provided appropriate funds for that financial year are still available under the vote concerned, requisition the Treasury for a credit to cover such expected excess, and the Treasury may, in the manner prescribed in subsections (1) and (2), grant the necessary credit and cause the moneys in question to be transferred in the following financial year.

(9) An accounting officer shall limit the amount of his requisitions on the Treasury for credits to the amounts which in his opinion are essential to meet his current monthly disbursements, and the Treasury shall, subject to the provisions of section 8 (1), grant credits to the extent of such amounts and to such extent only.

(10) The Treasury shall limit the amount of its requisitions on the National Treasury for credits in respect of moneys accruing to it in terms of section 155 (2) (c) of the Constitution as a charge against the National Revenue Account, to amounts necessary to defray its current expenditure, and the National Treasury shall grant credits for such amounts.

(11) Notwithstanding anything to the contrary contained in this section, the Treasury may, on a requisition by the Secretary of the Provincial legislation, pay to the said Secretary the moneys appropriated for the services of the Provincial legislation, or which, by virtue of the provisions of section 7, may be utilized therefor, or are deemed to be appropriated therefor by law, and the Treasury shall for that purpose grant the said Secretary credits.

(12) The Treasury may temporarily utilize moneys in the Paymaster-General's Account, which in its opinion are available therefor—

- (a) to grant advances to an accounting officer on such conditions as it may determine;
- (b) to make transfers to the Exchequer Account for the purposes of the financing of anticipated deficits in that account, and moneys so transferred shall be deemed to be moneys borrowed in accordance with the provisions of a law; and
- (c) for temporary investment on such conditions as it may determine.

Power of the Treasury to utilize moneys in the Exchequer Account for certain purposes

10. (1) The Treasury may utilize available moneys in the Exchequer Account—

- (a) for temporary investment in the Republic on such conditions as it may determine;
- (b) for the payment of legitimate claims arising from a guarantee, an indemnity or a security furnished by or accruing to the Province; and
- (c) for the refund of money inadvertently or incorrectly paid into the Exchequer Account.

(2) The moneys utilized under subsection (1) for specific purposes, shall be deemed to have been appropriated for such purposes.

(3) The member of the Executive Council responsible for the department concerned in a matter referred to in section 22, shall as soon as practicable lay upon the table in the Provincial legislature a statement reflecting the utilization of moneys in terms of subsection (1) (b).

Authority for opening of bank accounts

11. (1) An account in respect of Revenue may only be opened on the written authority of the Treasury at a bank and where an account has been so opened, the relevant bank, subject to section 157 (2) of the Constitution, shall not allow the account to be overdrawn.

(2) The Treasury shall annually revise the allocation of banking accounts to a bank in respect of the Exchequer Account and Paymaster-General Account in consultation with the South African Reserve Bank.

Establishment of trading and related accounts

12. (1) The Treasury may authorize an accounting officer to establish trading and related accounts in respect of services and goods supplied by the Province to itself or any other institution.

(2) Expenditure in respect of the supply of services and goods referred to in subsection (1), as determined by the Treasury, shall be financed from moneys in the accounts—

- (a) which have been appropriated by the Provincial legislature;
- (b) which, notwithstanding anything to the contrary in this Act or any other law contained, have been received in payment for services and goods referred to in subsection (1);
- (c) which have been obtained from the sale of redundant and unserviceable supplies related to the supply of the services and goods in question;
- (d) which have been obtained with the concurrence of the Treasury from any other source.

(3) The Revenue Account shall be credited with any profit at the end of a financial year and any loss shall be made good from appropriated moneys.

Systems of bookkeeping and accounting

13. The Treasury may, after consultation with the Auditor-General—

- (a) prescribe particular systems of bookkeeping and accounting which have been prescribed by the National Treasury in terms of a National Exchequer Act, which accounting officers shall follow; and

- (b) give guidance, in such manner as it deems necessary, to accounting officers in connection with the systems prescribed by the National Treasury and Treasury.

Accounting for Exchequer Account, and preparation of statements

14. (1) The Treasury shall account for the Exchequer Account and shall keep such accounts and records as are necessary to exercise proper control over the Revenue Fund.

(2) The Treasury shall as soon as practicable after the end of each month, cause statements to be published in the *Provincial Gazette* showing the receipts into and transfers from the Exchequer Account during the period from the first day of the relevant financial year to the end of that month as well as the balances in the Exchequer Account at the beginning and at the end of such period.

(3) As soon as practicable after the accounts in respect of any financial year have been closed, but in any case within five months after the closing of a financial year, the Treasury shall prepare statements, as prescribed by the National Treasury, of—

- (a) the Exchequer Account;
- (b) the Revenue Account;
- (c) the Paymaster-General's Account;
- (d) the Provincial debt and the amount of debt created and redeemed during the financial year;
- (e) the interest and dividends received in the accounts of the Revenue Fund and the interest paid on the Provincial debt;
- (f) all other moneys controlled by the Treasury.

(4) The Treasury shall within the period referred to in subsection (3), also prepare statements, in support of the Revenue Account in respect of the financial year in question, of the receipts under the various headings shown in the estimates of revenue and of the transfers from the Exchequer Account of each of the votes shown in any Appropriation Act for that year.

(5) The Treasury shall transmit the statements referred to in subsections (3) and (4) to the Auditor-General for examination as soon as they have been prepared.

Appropriation Accounts

15. (1) An accounting officer shall as soon as possible, but not later than four months after the closing of a financial year, prepare and transmit to the Auditor-General for examination, an appropriation account in respect of such year and in respect of each vote under his control and shall at the same time send a copy thereof to the Treasury: Provided that the Auditor-General may, in any case where in his opinion it is justifiable, grant extension for the submission of the required account, for such period as in his opinion is necessary for the completion thereof.

(2) In an appropriation account an accounting officer shall in respect of each main division of a vote specify—

- (a) on the receipt side thereof the amount appearing for the financial year in question—
 - (i) in the estimate of expenditure and adjustment estimate; and

- (ii) authorizations granted in terms of section 7 which have not been appropriated in terms of subsection (2) of that section: Provided that a clear distinction is made between the receipts referred to in paragraph (i) and this paragraph;
- (b) on the expenditure side thereof the amount actually expended during the same period: Provided that the amount of any advance by an accounting officer to defray expected expenditure which is not supported by acceptable expenditure vouchers, shall not be included on the expenditure side.
- (3) Each appropriation account rendered to the Auditor-General shall be accompanied by—
 - (a) explanations of the causes of variation, in excess of two per cent, between expenditure and the amount contemplated in subsection (2) (a);
 - (b) an indication of the amount of any surplus to be surrendered or of any deficit;
 - (c) a statement to the effect that the preceding financial year's surplus, if any, has been surrendered;
 - (d) an indication of the aggregate of any balance in a suspense account which may be chargeable to the vote.
- (4) Appropriation accounts, and particulars furnished in terms of this section, shall be signed by the accounting officer.
- (5) (a) Whenever a person is charged under section 17 (1) with the responsibility of accounting for State moneys and State property in respect of any particular portion of a vote, the particulars relating to that portion shall be dealt with separately in the appropriation account in respect of the vote in question.
(b) A person referred to in paragraph (a) shall furnish the accounting officer concerned with sufficient particulars so as to enable him to comply with the provisions of subsections (1), (2) and (3).

Accounting officer

16. (1) There shall be an accounting officer for each vote who shall be charged with the responsibility of accounting for all State moneys received, all payments made by him and the acquisition, receipt, custody and disposal of all State property: Provided that up to and until 31 March 1995, the Director-General, appointed in terms of the Public Service Act, 1994, for the Province, shall be the accounting officer for all votes.

(2) An accounting officer shall exercise the powers conferred upon him and perform the duties assigned to him by law, by financial regulations, by Treasury Instructions or by the Treasury.

- (3) Unless otherwise directed by the Treasury, the accounting officer for—
 - (a) the vote or votes of a department shall be the head of the department appointed for that department;
 - (b) a statutory body for which no accounting officer has been designated under the provisions of any other law, shall be the chief executive officer of such statutory body.
- (4) During the absence of an accounting officer his powers shall be exercised and his duties performed by the officer acting in his place.

Responsibility of accounting for State moneys and State property by a person who is not an accounting officer

17. (1) The Treasury may notwithstanding the provisions of section 16 charge a person who is not an accounting officer with the responsibility of accounting for—

- (a) State moneys received and paid out by that person;
- (b) State property acquired, received, kept or disposed of by that person, in connection with a trading and related account, established under section 12 (1), or a particular portion of a vote whereof accounts are kept separately.

(2) Whenever a person is charged under subsection (1) with the responsibility of accounting for State moneys and State property in respect of a trading and related account or any particular portion of a vote, the Treasury may assign to such person any or all of the powers and duties referred to in section 16 (2) which an accounting officer may exercise or is required to perform in respect of such trading and related account or portion of a vote.

(3) A power or duty assigned to a person under subsection (2), shall be exercised or performed by such person in respect of the said trading and related account or portion of a vote to the exclusion of the accounting officer responsible for the vote of which that trading and related account or portion forms part.

(4) Whenever a person referred to in subsection (1) is absent, his powers shall be exercised and his duties performed by the person acting in his place.

CHAPTER II

GENERAL FINANCIAL CONTROL

Other powers of the Treasury

18. (1) Subject to the provisions of this Act and any other law, the Treasury shall have the power to—

- (a) given guidance in, and exercise control over, State moneys and other State property to bring about the systematic and orderly management thereof and to promote efficiency and economy in the utilization thereof;
- (b) direct that such expenditure charged against the Revenue Account, as it may determine, shall not be incurred without its approval having been obtained;
- (c) approve fees or other charges or the rates, scales or tariffs of fees or other charges not fixed or capable of being fixed by or in terms of any law and relating to revenue accruing to or expenditure from the Revenue Fund, and to direct that no such fee or charge or rate, scale or tariff thereof shall be introduced before the approval of the Treasury has been obtained;
- (d) grant approval for the rendering of a free service;
- (e) grant approval for the write-off of a loss of State money and other State property;
- (f) grant approval for the variation or cancellation of contracts to the detriment of the State;

- (g) require accounting officers to submit particular inputs in respect of budget matters to it, and in respect of such inputs—
 - (i) to analyze them and make recommendations thereabout to the responsible Member;
 - (ii) to make them or processed information thereof available to the National Treasury on its request;
- (h) require any accounting officer to submit to it information, returns, documents, explanations and motivations in regard to any matter affecting State moneys or other State property;
- (i) grant approval for the settlement of a claim by or against the Province or for the waiver of a claim by the Province;
- (j) authorize or condone non-compliance by an accounting officer with an instruction or other written request, stipulation or condition of the Treasury in connection with any matter;
- (k) investigate, and inspect systems for the control over, and administration of, State moneys and other State property and prescribe additional systems, other than those referred to in section 13;
- (l) determine against which vote or subdivision thereof expenditure on a service should be charged;
- (m) determine the terms and conditions on which Revenue due to the Province may be paid and on which State moneys may be disbursed;
- (n) approve remissions, as an act of grace, of moneys due to the Province;
- (o) approve refunds of Revenue to the Province as an act of grace;
- (p) approve payments, as an act of grace, from State money;
- (q) approve gifts of State moneys and other movable State property or the acceptance of gifts to the Province;
- (r) approve the alienation, letting or other disposal of movable State property;
- (s) afford guidance in the handling of and exercise control over all trust money and trust property temporarily deposited or left in the care of an accounting officer or other person in the service of the Province;
- (t) give guidance in the application of norms and standards prescribed by the National Treasury in respect of improvements to immovable property financed in full or in part from the Revenue Fund;
- (u) approve acceptance of sponsorships to the Province:

Provided that when the amount involved in any case contemplated in paragraph (n), (o), (p) or (q), other than any such case in connection with movable State property, exceeds R100 000 or relates to a tax, other duty or impost imposed by law, such remission, refund, payment or gift shall not be made unless moneys for that purpose have been appropriated by the Provincial legislature: Provided further that if, in the opinion of the Provincial Treasury, the circumstances connected with the payment of any such tax, other duty or impost justify a refund as an act of grace of the whole or a portion of the amount in question, the Treasury may approve such refund to an amount, not exceeding R100 000 as a charge against the vote concerned.

(2) The Treasury may in its discretion approve the write-off of the whole or any portion of an amount owing to the Province by a person, if it is satisfied that—

- (a) the amount is irrecoverable;

- (b) recovery of the amount would be uneconomical;
- (c) recovery of the amount would cause undue hardship to the debtor or his dependants because they are deprived of the minimum essential means of livelihood;
- (d) the assets of the debtor or of the estate of the debtor, if he is deceased (whether or not such assets are pledged to the State) are indispensable to his dependants or are of relatively little value, and the debtor or his estate, as the case may be, is unable to pay the amount of any portion thereof, except by the disposal of such assets and such disposal would cause undue hardship; or
- (e) it would be to the advantage of the Province to effect a settlement of its claim in question or to waive such claim.

(3) Whenever a power is conferred by any law to determine any rate, scale, tariff, fee or charge for the purposes of any revenue accruing to, or expenditure from, the Revenue Fund, such a determination shall, notwithstanding the provisions of such law, not be made before the approval of the Treasury thereof has been obtained: Provided that the provisions of this subsection shall not apply to any such a determination by the Premier of the Province.

(4) Where a voucher or other proof of receipt or payment is in any way defective or has been lost or destroyed and—

- (a) the Treasury in the case of accounts of accounting officers and other persons in the service of the Province;
- (b) subject to the provisions of any other law, the executive authority of a statutory body, in the case of such accounts of such statutory body,

is satisfied with the explanation of the responsible person, the Treasury, or the executive authority of a statutory body, as the case may be, may make an order dispensing with the production of a voucher or such other proof or may make such other order as may appear just in the circumstances.

Delegation of powers of the Treasury

19. (1) The Treasury may on such conditions as it may determine, delegate to an accounting officer any power conferred upon it by section 18 (1) and (2) or 21 (5).

(2) Where the Treasury has delegated any power under subsection (1), it may authorize the accounting officer concerned to further delegate that power to the holder of any post designated by the Treasury.

(3) An accounting officer shall not be divested of any power delegated by him or under his authority and may amend or withdraw any decision made in the exercise of that power.

(4) The Treasury shall not be divested of a power delegated by it or under its authority and may amend or withdraw any decision made in the exercise of such power, including a decision of an accounting officer whereby a decision contemplated in subsection (3) is amended or withdrawn.

(5) Where any power has been delegated to the holder of a post, that power may be exercised by the person who for the time being performs the functions attached to such post.

Unauthorised expenditure

20. (1) An expenditure concerned shall be unauthorized if—

- (a) a payment is made by an accounting officer without provision having been made therefor by or by virtue of the provisions of any law;
- (b) a payment or part of a payment on a service authorized by an Appropriation Act results in—
 - (i) the total amount appropriated for the vote concerned, regard being had to any increase referred to in section 6 (2), being exceeded;
 - (ii) a prohibition, by virtue of the provisions of section 5 (3), on the expenditure being, brought to account as a final debit; or
 - (iii) the amount shown in "Column 2" of the schedule to an Appropriation Act in respect of a service being exceeded and an authority referred to in section 7 (1) (b) (ii) has not been obtained, or an increase referred to in section 6 (2) has not been made therefor;
- (c) an accounting officer is unable to produce to the Auditor-General in respect of a payment an appropriate Treasury authority required in terms of the provisions of this Act or any other law;
- (d) an accounting officer makes a payment inconsistent with a provision of any law.

(2) Unauthorized expenditure contemplated in subsection (1) shall not form a charge against the Revenue Fund until—

- (a) in the case of paragraph (a), (b) or (c) of that subsection, the expenditure concerned has been authorized by law of the Provincial legislature; or
- (b) in the case of paragraph (d) of that subsection, the expenditure concerned has been validated by law of the Provincial legislature.

(3) Unauthorized expenditure or any part thereof determined by the Provincial legislature which has not been authorized or validated as contemplated in subsection (2), shall if the accounting officer cannot or is unwilling to recover the amount concerned from the beneficiary or the person responsible for the unauthorized expenditure, be recovered by the Treasury from the accounting officer.

(4) The provisions of paragraphs (a), (c) and (d) of subsection (1) shall *mutatis mutandis* apply in respect of a statutory body unless otherwise provided by law, and for the purposes of paragraph (c) a reference to Treasury authority shall be construed as a reference also to an authority of a member of the Executive Council, or an executive authority or any other relevant authority, as the case may be.

(5) Unauthorized expenditure referred to in subsection (4) or any part thereof determined by the Provincial legislature shall not form a charge against a fund or account concerned until it has been authorized, validated or made available in accordance with the normal budgetary procedure applicable to the fund or account concerned: Provided that any unauthorized expenditure which has not been authorized or validated shall not be recovered from the accounting officer if he cannot or is unwilling to recover the amount concerned from the beneficiary or the person responsible for the unauthorized expenditure.

Recovery of losses and damages

21. (1) If a person who is or was in the employ of the Province and caused the Province a loss or damage because he—

- (a) failed to collect State moneys for the collection of which he is or was responsible;
- (b) is or was responsible for an irregular payment of State moneys or for a payment of such moneys not supported by a proper voucher;
- (c) is or was responsible for fruitless expenditure of State moneys due to an omission to carry out his duties;
- (d) is or was responsible for a deficiency in, or for the destruction of, or damage to, State moneys, stamps, face-value documents and forms having a potential value, securities, equipment, stores or any other State property;
- (e) due to an omission to carry out his duties or in any other manner, is or was responsible for a claim against the Province.

the accounting officer concerned or the holder of a post designated by the Treasury shall determine the amount of such loss or damage or the amount necessary to replace State property in which there is a deficiency or which was destroyed, as prescribed by the Instructions and, subject to the provisions of subsection (5), order, by notice in writing, the said person to pay to him, within thirty days from the date of such notice, the amount so determined.

(2) If a person who is in the employ of the Province and who has in terms of subsection (1) been ordered to pay an amount, fails to pay such amount within the period stipulated in the notice in question, the amount shall, subject to the provisions of subsections (4), (6) and (7), be deducted from his monthly salary: Provided that such deduction shall not in any month exceed one-fourth of his monthly salary, unless such a person agrees, in writing, that a larger amount may be deducted.

(3) If a person who was in the employ of the Province and who has, in terms of subsection (1), been ordered to pay an amount, fails to pay such amount within the period stipulated in the notice in question, the accounting officer concerned shall, subject to the provisions of subsections (4), (6) and (7), recover such amount from the person concerned by legal process.

(4) If a person who has been ordered to pay an amount in terms of subsection (1) makes, within the period stipulated in the notice in question, an offer to pay the amount in instalments, the accounting officer, or the holder of a post designated by the Treasury, may allow payment in such instalments as he may consider reasonable: Provided that if the redemption of the amount in terms of the offer will not be effected within a period of twelve months, calculated from the date on which the first instalment is payable, the approval of the Treasury shall be obtained for the payment thereof over a period in excess of the period mentioned, and the Treasury may determine the other terms and conditions subject to which the amount shall be paid.

(5) If for any reason whatsoever, an accounting officer, or the holder of a post designated by the Treasury, is of the opinion that an amount determined in terms of subsection (1) should not be recovered or should be recovered in part only from the person responsible therefor, he may request the Treasury to exempt that person from payment of the whole or a portion of such amount, and the Treasury may in its discretion approve of the whole or a portion of such amount not being recovered.

(6) A person who has in terms of subsection (1) been ordered to pay an amount may, within a period of 30 days from the date of such order, in writing request the accounting officer concerned, stating the grounds for his request, that a request as contemplated in subsection (5), be addressed to the Treasury, and if the accounting officer concerned refuses to address such a request to the Treasury or if the Treasury refuses to approve, as contemplated in the said subsection, of the whole or a portion of the amount in question not being recovered as requested, such person may within 30 days after he has been notified in writing of any such refusal, appeal against such refusal to the responsible Member, and the responsible Member may, in accordance with what he considers fair and reasonable after such further investigation as he may deem necessary, dismiss the appeal or order that the appellant be exempted either wholly or partly, from the payment of such amount.

(7) A person who has, in terms of subsection (1), been ordered to pay an amount may, instead of appealing to the responsible Member under subsection (6), apply within a period of 30 days from the date of such order, or within such further period as the court may allow, to a competent court for an order setting aside such first-mentioned order or reducing such amount, and the court may upon such an application, if it is not convinced by the accounting officer concerned on the merits of the case that the order was rightly made or that that amount is correct, make an order setting aside such first-mentioned order or reducing that amount, as the case may be.

(8) If an amount is in terms of subsections (5), (6) or (7) reduced, the reduced amount shall *mutatis mutandis* be recovered in accordance with the provisions of subsections (1), (2), (3) and (4).

Guarantees in respect of loans

22. (1) If a responsible Member in the Executive Council and, if he is not the member of the Executive Council responsible for financial affairs, also the member of the Executive Council responsible for financial affairs, is convinced that the provisions of subsection (3) have been complied with, the said responsible Member, with the concurrence of the member of the Executive Council responsible for financial affairs, if he is not such responsible Member, and after the provisions of section 157 (3) of the Constitution have been complied with, may, from time to time, subject to the conditions of subsection (3) and the conditions which he may with the concurrence of the member of the Executive Council responsible for financial affairs, if he is not such responsible Member, determine, including the waiver of such legal exception as he may deem fit, furnish a guarantee in respect of the financial obligations arising from a loan granted or to be granted by a local government or by a board or body established by or under any law, hereinafter referred to as a body corporate, situated within the Province.

(2) A guarantee which is to be furnished in terms of subsection (1) can only be considered by the responsible Member and, if he is not the member of the Executive Council responsible for financial affairs, also by the member of the Executive Council responsible for the financial affairs, if the application for such a guarantee is accompanied by a written recommendation for the furnishing of such a guarantee by the executive authority of the local authority or body corporate to which the guarantee is to be furnished, as the case may be.

(3) A guarantee furnished in terms of the provisions of subsection (1) must comply with the conditions that—

(a) the proceeds of the loan so guaranteed—

- (i) shall be employed in the public interest within the area under its jurisdiction by the local government in respect of whose loan a guarantee is to be furnished or within the area of the Province or part thereof, by the body corporate;
- (ii) shall not be employed for the financing of current expenditure;
- (iii) shall, in the case of a guarantee granted in respect of a loan by a local government, be employed in accordance with the provisions of any law passed in the Province covering borrowing of money by a local government; and
- (iv) will be accounted for separately by the local government or body corporate concerned, as the case may be;

(b) the responsible member, on the basis of information supplied to him by the executive authority of the local government or body corporate concerned, as the case may be, shall satisfy himself as to the fact that—

- (i) the funds which are required cannot be obtained by means other than a guaranteed loan;
- (ii) no reasonable doubt exists that the local government or body corporate concerned will be able to comply with the conditions and obligations under which the loan will be granted;
- (iii) the provisions of the loan agreement concerned—
 - (aa) comply with the generally accepted principles of loan agreements;
 - (bb) will be legally and technically correct; and
 - (cc) will fully enunciate the obligations of the Province which will act as guarantor and the manner in which expenditure the Province may have to incur in terms of the guarantee, will be recovered;
- (iv) taking into account the fact that a guarantee for the loan is required, the cost of the loan is market related;
- (v) the availability of the loan proceeds will not be prejudicial to financial discipline within the local government or the body corporate concerned.

(4) The payment by the Province which acts as guarantor of legitimate claims arising from a guarantee furnished in terms of the provisions of subsection (1)—

- (a) shall be deemed to have been appropriated for such purposes; and
- (b) shall be reported to the Provincial legislature by the responsible Member as soon as possible, but not later than six months after such payment was made, and he shall simultaneously present to the said legislature a report containing the circumstances relating to such payment.

(5) The member of the Executive Council responsible for the financial affairs of the Province shall as soon as possible but in any case not later than six months after the closing of the financial year, cause a statement to be published in the *Provincial Gazette* indicating in respect of each guarantee furnished by the Province in terms of subsection (1) the name of the local government or body corporate in respect of which a guarantee has been furnished, the amount of the commitments which may ensue from each such guarantee, and, if foreign currency is so involved, the relative amount and the financial year in which the relevant guarantee will expire,

(6) Notwithstanding anything to the contrary in this Act or any other law, a guarantee by a Province in respect of the financial obligations arising from a loan shall be furnished only in terms of this section and subject to the provisions of section 157 (3) of the Constitution.

(7) A reference to "responsible Member" in this section, shall be deemed to be a reference to the member of the Executive Council who administers a department which is directly or indirectly involved with the matter underlying the expenditure of the proceeds of the loan in respect of which a guarantee was furnished in terms of subsection (1), and if there is doubt as to who the responsible Member is, the member of the Executive Council concerned shall be determined by the member of the Executive Council responsible for financial affairs.

Application of certain provisions concerning powers of responsible Member, and delegation of his powers

23. (1) Whenever a law requires a member of the Executive Council to do anything in or after consultation with or with the concurrence of the responsible Member, such requirement shall, unless one of the members concerned has otherwise directed, be deemed to have been complied with if consultation has taken place between the heads of the departments concerned or their representatives.

(2) Except in a case to which subsection (1) applies, the responsible Member may delegate to an officer in the department in which the provisions of this Act or any other law are administered by him, any power or function conferred on or assigned to him by this Act or such other law, in relation to the revenue, expenditure or property of the Province or a statutory body, with the exception of a power to make regulations and a power or function contemplated in sections 4 (3), 7, 21 (6) and 24 (3), but shall not thereby be divested of a power or function so delegated, and may amend or withdraw a decision of such an officer by virtue of any such delegation.

Regulations

24. (1) The responsible Member may make regulations—

- (a) prescribing further duties and responsibilities of accounting officers;
- (b) providing for the designation of officers as principal receivers of revenue and prescribing their duties and responsibilities as such;
- (c) providing for the refund from current revenue of moneys collected in error;
- (d) providing for the designation of officers or other persons as financial managers and of officers as departmental accountants and prescribing their duties and responsibilities as such;
- (e) prescribing a system which shall be observed in regard to the collection, receipt, banking, custody, disbursement, control over and accounting for, and disposal of and supervision over, State moneys and the accounts kept in connection therewith;
- (f) prescribing the conditions under which gifts to the Province may be accepted and utilized;
- (g) providing for the control over and stocktaking of securities, stamps and other State property;
- (h) providing for the manner in which and procedures according to which accounting officers and the Treasury shall exercise the powers and perform the duties assigned to them by this Act;

- (i) providing for the financial arrangements regarding a service rendered by one department to another;
- (j) providing in general for the administration of the provisions and the achievement of the objects of this Act.

(2) Different regulations may, under subsection (1), be made in respect of different categories of State moneys or other State property, or different categories of persons entrusted with the collection, receipt, banking, custody, disbursement, disposal and control of, accounting for, and supervision over State moneys and other State property.

(3) The responsible member may, if in his opinion circumstances warrant it, provide that a regulation made under subsection (1) need not be complied with or need not be complied with to the extent determined by him.

(4) The regulations issued in terms of a National Exchequer Act, shall *mutatis mutandis* apply to the Province until replaced or amended by regulations issued by the responsible Member.

Instructions

25. (1) The Treasury may from time to time issue Instructions and other directives, which shall not be inconsistent with the Regulations, in regard to—

- (a) any matter mentioned in section 18;
- (b) any matter mentioned in section 24;
- (c) any manner in which accounting officers shall make submissions to the Treasury and the persons by whom such submissions shall be signed;
- (d) the administration, in general, of the provision of this Act and the regulations and the achievement of the objects thereof.

(2) The Treasury may, if in its opinion circumstances warrant it, approve a departure from an Instruction.

(3) Treasury Instructions issued in terms of a national Exchequer Act, shall *mutatis mutandis* apply to the Province, until replaced or amended by Instructions issued by the Treasury.

Revenue Instructions

26. An officer designated as principal receiver of revenue may, from time to time, and shall whenever required by the Treasury to do so, issue to all persons who are responsible for the collection, control and disposal of any revenue in respect of which he is the principal receiver, or of such other revenues as the Treasury may determine, such instructions (entitled Revenue Instructions) as the Treasury may approve, or require him to issue in regard to such collection, control and disposal.

CHAPTER III

SHORT TITLE

Short title

27. This Act shall be called the **Provincial Exchequer Act, 1994. (E.C.).**

PROVINCIAL TENDER BOARD BILL, 1994**BILL [B2-94 (EC)]**

To provide for the regulation of the procurement of supplies and services for, the disposal of movable property of, and the hiring or letting of anything or the acquisition or granting of any right for or on behalf of, the Province, and to that end to establish a Provincial Tender Board and to define its functions; and to provide for incidental matters.

BE IT ENACTED by the Provincial legislature of the Province of the Eastern Cape, as follows:

Definitions

1. In this Act, unless the context otherwise indicates—

“**Board**” means the Tender Board established under section 2;

“**employee**” means an employee as defined in section 1 of the Public Service Act, 1994;

“**Executive Council**” means the Executive Council of the Province as referred to in section 149 of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);

“**guidelines**” means the set of principles determined by the national government, within which the procurement process should function;

“**officer**” means an officer as defined in section 1 of the Public Service Act, 1994;

“**Province**” means the Province of the Eastern Cape and “provincial” shall bear a like meaning;

“**Republic**” means the Republic of South Africa referred to in section 1 of the Constitution of the Republic of South Africa, 1993;

“**the responsible member**” means the member of the Executive Council of the Province responsible for financial matters;

“**this Act**” includes any regulation made under this Act;

“**Treasury**” means the Treasury as defined in section 1 of the Exchequer Act, 1994.

PART 1**THE TENDER BOARD****Establishment of the Tender Board**

2. (1) As from a date to be fixed by the Executive Council by notice in the *Provincial Gazette*, there shall be established a Board to be known as the Provincial Tender Board.

(2) The powers and functions exercised or performed prior to the date referred to in subsection (1) by the tender boards which exercised such powers and performed such functions in relation to the procurement of supplies and services for, the disposal of movable property of, and the hiring or letting of anything or the acquisition or granting of any right for or on behalf of, the Province or the government of any area which forms part of the national territory, shall for the purposes of this Act be deemed to have been exercised or performed by the Tender Board referred to in subsection (1).

Constitution of the Board

3. (1) The Board shall consist of not fewer than 12 and not more than 16 members to be appointed by the Executive Council, of whom not more than half but not fewer than 6 shall be officers or employees.

(2) The Executive Council may appoint an alternate member for each member of the Board, and any alternate member so appointed may attend and take part in the proceedings at any meeting of the Board during the absence, or vacancy in the office, of the member for whom he has been appointed as alternate member.

(3) No person shall be qualified to become or remain a member or alternate member of the Board, if he or she is a member of the National Assembly, the Senate, a provincial legislature or a local government or is an office-bearer in a political party.

(4) The members or alternate members of the Board shall not be appointed unless the responsible Member has invited interested parties by notice in the *Provincial Gazette* to nominate candidates for consideration by the Executive Council within 14 days of the publication of such notice.

(5) The responsible Member shall appoint any member of the Board as chairman and any other member as vice-chairman who shall act as chairman of the Board when the chairman is absent or is unable to perform his duties, and when both the chairman and the vice-chairman are absent from a meeting of the Board, the members present thereat may elect one of their number to preside at such meeting.

(6) Subject to the provisions of subsection (7), a member or alternate member of the Board shall hold office for such period, not exceeding three years, as the Executive Council may determine at the time of his appointment, and shall be eligible for reappointment at the termination of his term of office.

(7) A member or alternate member of the Board shall vacate his office—

- (a) if he resigns;
- (b) if he is absent from two consecutive meetings of the Board without leave of the chairman; or
- (c) if his term of office is terminated under subsection (8).

(8) The Executive Council may at any time terminate the term of office of any member or alternate member of the Board if there are good reasons for doing so.

(9) If a member or alternate member of the Board dies, or ceases to be a member or alternate member in terms of subsection (7) or (8), the Executive Council may, subject to the provisions of subsections (3) and (4), appoint any person in the place of such member or alternate member for the unexpired period of office of such member or alternate member.

(10) Members or alternate members of the Board who are not in the full-time service of the Province, may, in respect of their services, be paid such remuneration and allowances as may be determined by the responsible member.

Powers of the Board

4. (1) Within the framework of the principles set out in the guidelines, the Board shall have the sole power to procure supplies and services for the Province, and, subject to the provisions of any other Act of the Provincial Legislature, to arrange the hiring or letting of

anything or the acquisition or granting of any right for or on behalf of the Province, and to dispose of movable provincial property, and may for that purpose—

- (a) on behalf of the Province conclude an agreement with a person within or outside the Republic for the furnishing of supplies and services to the Province or for the hiring or letting of anything or the acquisition or granting of any right for or on behalf of the Province or for the disposal of movable provincial property;
- (b) with a view to concluding an agreement referred to in paragraph (a) in any manner it may deem fit, invite offers and determine the manner in which and the conditions subject to which such offers shall be made;
- (c) inspect and test or cause to be inspected and tested supplies and services which are offered or which are or have been furnished in terms of an agreement concluded under this section, and anything offered for hire;
- (d) accept or reject any offer for the conclusion of an agreement referred to in paragraph (a);
- (e) take steps or cause steps to be taken to enforce an agreement concluded under this section;
- (f) on behalf of the Province, resile from any agreement concluded under this section and, in an appropriate case, claim damages;
- (g) subject to the provisions of subsection (2), on such conditions as it may determine, exempt any person with whom such an agreement has been concluded from compliance with such agreement or condone the failure of such person to comply with such agreement;
- (h) subject to the provisions of subsection (2), negotiate a settlement with a person referred to in paragraph (g), or amend the agreement concerned with the approval of such person;
- (i) issue directives to Provincial departments with regard to the procurement of supplies and services for, the disposal of movable property of, and the hiring or letting of anything or the acquisition or granting of any right for or on behalf of, the Province, in order to achieve the objects of this Act;
- (j) invite expert or technical advice, and call upon any officer or employee to provide expert or technical advice in so far as it is legally permissible for such officer or employee to provide the required advice to the Board;
- (k) exercise such other powers as may be prescribed by regulation under section 9.

(2) No exemption, condonation, settlement or amendment which may be to the prejudice of the Province shall be granted, negotiated or made under paragraphs (g) and (h) of subsection (1) without the prior approval of the Treasury.

(3) Any approval referred to in subsection (2) may be granted in respect of a specific agreement or in respect of two or more or all agreements entered into for the procurement of a specific supply or service.

(4) The Board may, with the approval of the responsible member in each case, and on such conditions, including conditions regarding compensation (if any) as the responsible member may approve, exercise any power which the Board may in terms of the Act exercise for and on behalf of the Province, for and on behalf of any body established by or under any law.

Committees of the Board and delegation of powers

5. (1) The Board may appoint committees from among its members and designate a chairman for every such committee.

(2) The Board may from time to time delegate any of its powers to any of its committees, any person (including any member of the Board), any body of persons or the holder of any post designated by the Board.

(3) Where the Board has delegated any power under subsection (2), it may authorise the committee, person, body of persons or holder of the post concerned to delegate that power to any person, body of persons or the holder of a post.

(4) Any delegation under subsection (2) or (3) may be made subject to such conditions and restrictions (if any) as may be determined by the Board or the committee, person, body of persons or holder of the post concerned.

(5) The Board shall not be divested of any power delegated by it or under its authority and may amend or withdraw any decision made in the exercise of such power, including any decision of any committee, person, body of persons or holder of any post amending or withdrawing any decision referred to in subsection (6).

(6) Any committee, person, body of persons or holder of a post shall not be divested of any power delegated by it or him and may amend or withdraw any decision made in the exercise of that power.

(7) Where any power has been delegated to the holder of a post, that power may be exercised by the person who at any time performs the functions attached to such post.

Decisions of the Board

6. (1) No decision of the Board or act performed under authority of the Board shall be invalid by reason only of a vacancy on the Board, or of the fact that a person who was not entitled to sit as a member of the Board sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members of the Board who were present at the time and entitled to sit as members.

(2) The Board shall on request give reasons for its decisions to interested parties.

(3) No organ of State and no member of any organ of State or any other person shall improperly interfere with the decisions and operations of the Board.

(4) All decisions of the Board shall be recorded.

PART II

MISCELLANEOUS PROVISIONS

Expenditure

7. Subject to the provisions of this Act, or an agreement concluded under this Act, all expenditure in connection with the performance of the functions and the exercise of the powers of the Board shall be defrayed from moneys appropriated by the Provincial legislature for the purpose.

Administrative work

8. (1) All administrative work, including the payment and receipt of moneys, in connection with the performance of the functions and the exercise of the powers of the Board shall be performed by officers and employees designated by the Director-General of the Province.

(2) The chairman of the Board or any other person designated by the Board shall be competent to execute all documents on behalf of the Board.

Regulations

9. (1) The responsible member may make regulations regarding—
- (a) the detailed composition of the Board within the provisions of this Act, the calling of, the procedure and quorum at meetings of the Board or any committee thereof, including the manner of voting and the number of votes required for a decision of the Board or a committee thereof;
 - (b) the manner in which and the conditions subject to which preferences may be granted;
 - (c) any matter that may in terms of this Act be prescribed;
 - (d) in general, any other matter which the responsible member may consider it necessary or expedient to prescribe in order to achieve or promote the objects of this Act.
- (2) Notwithstanding anything to the contrary contained in any law, any regulations made in terms of subsection (1) may, in addition to any other remedies prescribed therein, provide for the imposition by the Board of a monetary penalty, calculated on such basis or bases as may be prescribed therein, on any person with whom the Board concluded an agreement on behalf of the Province on the strength of information furnished by such person which, subsequent to the conclusion of such agreement, is shown to have been incorrect information, and may prescribe the manner in which any such monetary penalty may be recovered.

Advisory duties

10. The Board shall advise the responsible member on the following:
- (a) promoting the use of full and open competition in procurement;
 - (b) establishing policies, procedures and practices to ensure procurement of the requisite quality within the time available at the lowest practicable cost, to minimise fraud and waste in procurement and to eliminate unnecessary overlapping or duplication of functions and effort;
 - (c) achieving greater uniformity and simplicity in procurement;
 - (d) promoting economy, efficiency and effectiveness in procurement;
 - (e) minimising disruptive effects of provincial procurement on particular industries, areas or occupations;
 - (f) improving understanding of provincial procurement policy and procedures by everyone concerned with provincial procurement in both the public and private sectors;
 - (g) promoting fair dealing and equitable relationships among parties to provincial contract; and
 - (h) any other matters relating to provincial procurement.

Transitional provision

11. The Tender Board directives, issued by the State Tender Board in terms of the State Tender Board Act, 1968 (Act No. 86 of 1968), and which were in force immediately prior to the commencement of this Act, shall apply *mutatis mutandis* to the Province and be deemed to have been issued under section 4 (1) (i) of this Act, until amended or replaced in terms of this Act.

Short title

12. This Act shall be called the **Provincial Tender Board Act, 1994. (E.C.)**

PROVINCIAL COMMISSIONS BILL, 1994

BILL [B3-94 (EC)]

To make provision for conferring certain powers on commissions appointed by the Premier for the purpose of investigating matters of public concern; and to provide for matters incidental thereto.

Application of this Act with reference to commissions appointed by the Premier

1. (1) Whenever the Premier has, in terms of section 147 (1) (d) of the Republic of South Africa Constitution, 1993, appointed a commission (hereinafter referred to as a "commission") for the purpose of investigating a matter of public concern, he may by proclamation in the *Provincial Gazette*—

- (a) declare the provisions of this Act or any other law to be applicable with reference to such commission, subject to such modifications and exceptions as he may specify in such proclamation; and
- (b) make regulations with reference to such commission—
 - (i) conferring additional powers on the commission;
 - (ii) providing for the manner of holding or the procedure to be followed in the course of investigation or for the preservation of secrecy;
 - (iii) which he may deem necessary or expedient to prevent the commission or a member of the commission from being insulated, disparaged or belittled or to prevent the proceedings or findings of the commission from being prejudiced, influenced or anticipated;
 - (iv) providing generally for all matters which he considers it necessary or expedient to prescribe for the purposes of the investigation.

(2) Any regulation made under paragraph (b) of subsection (1) may provide for penalties for any contravention thereof or failure to comply therewith, by way of—

- (a) in the case of a regulation referred to in subparagraph (i), (ii) or (iv) of the said paragraph, a fine not exceeding three thousand rand or imprisonment for a period not exceeding eight months;
- (b) in the case of a regulation referred to in subparagraph (iii) of the said paragraph, a fine not exceeding four thousand rand or imprisonment for a period not exceeding one year.

(3) Notwithstanding anything to the contrary in any other law contained, a magistrate's court shall have jurisdiction to impose any penalty prescribed by any such regulation.

Commission's sittings

2. A commission may sit at any place in the Province of the Eastern Cape for the purpose of hearing evidence or addresses or of deliberating.

Commission's powers as to witnesses

3. (1) For the purpose of ascertaining any matter relating to the subject of its investigations, a commission shall in the Province have the powers which a Provincial Division of the Supreme Court of South Africa has within the province to summon witnesses, to cause an oath or affirmation to be administered to them, to examine them, and to call for the production of books, documents and objects.

(2) A summons for the attendance of a witness or for the production of any book, document or object before a commission shall be signed and issued by the secretary of the commission in a form prescribed by the chairperson of the commission and shall be served in the same manner as a summons for the attendance of a witness at a criminal trial in a superior court at the place where the attendance or production is to take place.

(3) If required to do so by the chairperson of a commission a witness shall, before giving evidence, take an oath or make an affirmation, which oath or affirmation shall be administered by the chairperson of the commission or such official of the commission as the chairperson may designate.

(4) Any person who has been summoned to attend any sitting of a commission as a witness or who has given evidence before a commission shall be entitled to the same witness fees from public funds, as if he had been summoned to attend or had given evidence at a criminal trial in a superior court held at the place of such sitting, and in connection with the giving of any evidence or the production of any book or document before a commission, the law relating to privilege as applicable to a witness giving evidence or summoned to produce a book or document in such a court, shall apply.

Sittings to be public

4. All the evidence and addresses heard by a commission shall be heard in public: Provided that the chairperson of the commission may, in his discretion, exclude from the place where such evidence is to be given or such address is to be delivered any class of persons or all persons whose presence at the hearing of such evidence or address is, in his opinion not necessary or desirable.

Hindering or obstructing a commission

5. Any person who wilfully interrupts the proceedings of a commission or who wilfully hinders or obstructs a commission in the performance of its functions shall be guilty of an offence and liable on conviction to a fine not exceeding three thousand rand or to imprisonment for a period not exceeding eight months or to both such fine and imprisonment.

Offences by witnesses

6. (1) Any person summoned to attend and give evidence or to produce any book, document or object before a commission who, without sufficient cause (the onus of proof whereof shall rest upon him) fails to attend at the time and place specified in the summons, or to remain in attendance until the conclusion of the enquiry or until he or she is excused by the chairperson of the commission from further attendance, or having attended, refuses to be sworn or to make affirmation as a witness after he has been required by the chairperson of the commission to do so or, having been sworn or having made affirmation, fails to answer fully and satisfactorily any question lawfully put to him, or fails to produce any book, document or object in his possession or custody or under his control, which he has been summoned to produce, shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

(2) Any person who, after having been sworn or having made affirmation, gives false evidence before a commission on any matter, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment.

Short title

7. This Act shall be called the **Provincial Commissions Act, 1994. (E.C.)**

PROVINCIAL PUBLIC PROTECTOR BILL, 1994

BILL [B4-94 (EC)]

To establish the office of Provincial Public Protector; to provide for the appointment of a person to that office; to determine the powers and functions of the Provincial Public Protector; and to provide for matters connected therewith.

BE IT ENACTED by the Provincial legislature of the Province of the Eastern Cape, as follows:

Definitions

1. In this Act, unless the context indicates otherwise—

“**investigation**” means an investigation contemplated in section 112 (1) (a) of the Constitution;

“**public money**” means—

- (a) State moneys as defined in section 1 (1) of the Provincial Exchequer Act, 1994, received or held by an accounting officer for or on account of the Province;
- (b) revenue accruing to any statutory body as defined in section 1 (1) of the Provincial Exchequer Act, 1994, or deemed to be a statutory body in terms of section 5 (3) of the Auditor-General Act, 1989 (Act No. 52 of 1980), which was established or constituted by or under a law of the Province; and
- (c) all other moneys whatever received or held for, or on account of, a statutory body referred to in paragraph (b);

“**Public Protector**” means the Public Protector for the Republic contemplated in section 110 of the Constitution;

“**State property**” means any property of the Province;

“**the Constitution**” means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);

“**the Province**” means the Province of the Eastern Cape.

Establishment and appointment

2. (1) There shall be a Provincial Public Protector for the Province.

(2) The Provincial Public Protector shall be appointed by the Premier in consultation with the Public Protector: Provided the appointment shall be confirmed by resolution of a majority of at least two-thirds of all the members of the Provincial legislature.

(3) The Provincial Public Protector shall be a South African citizen who is a fit and proper person to hold such office, and who—

- (a) is a Judge of the Supreme Court of South Africa; or
- (b) is qualified to be admitted as an advocate and has, for a cumulative period of at least 10 years after having so qualified—
 - (i) practised as an advocate or an attorney; or
 - (ii) lectured in law at a university; or
- (c) has specialised knowledge of or experience for a period of at least 10 years in the administration of justice, public administration or public finance.

(4) Unless the new constitutional text as defined in section 233 of the Constitution provides otherwise, the Provincial Public Protector shall hold office for a period of seven years.

(5) The remuneration and other terms and conditions of employment of the Provincial Public Protector shall be determined by the Premier in consultation with the Executive Council, and such remuneration shall not be reduced, nor shall such terms and conditions be adversely altered, during his or her term of office.

(6) The Provincial Public Protector shall not perform remunerative work outside, or have any involvement which may give rise to a conflict of interest with, his or her official duties.

(7) The Provincial Public Protector may be removed from office by the Premier solely on the grounds of misbehaviour, incapacity or incompetence determined to be such by all the members of the Provincial legislature, sitting in committee, and upon receipt of an address from the Provincial legislature requesting such removal.

(8) A Provincial Public Protector who is the subject of an investigation by a committee in terms of subsection (7), may be suspended by the Premier pending a decision in such investigation.

Independence and impartiality

3. (1) The Provincial Public Protector shall be independent and impartial and shall exercise and perform his or her powers and functions subject only to the Constitution and the law.

(2) The Provincial Public Protector and the persons appointed in terms of section 10 shall have the immunities and privileges granted to them under this Act for the purpose of ensuring the independent and impartial exercise and performance of their powers and functions.

(3) No organ of state and no member or employee of an organ of state nor any other person shall interfere with the Provincial Public Protector or a person appointed under section 10 in the exercise and performance of his or her powers and functions, and any person who wilfully so interferes shall be guilty of an offence.

(4) All organs of state shall accord such assistance as may be reasonably required for the protection of the independence, impartiality, dignity and effectiveness of the Provincial Public Protector in the exercise and performance of his or her powers and functions.

Powers and functions

4. (1) The Provincial Public Protector shall be competent—

- (a) to investigate, on his or her own initiative or on receipt of a complaint, any alleged—
 - (i) maladministration in connection with the affairs of government at provincial level;
 - (ii) abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function;
 - (iii) improper or dishonest act, or omission or corruption, with respect to public money or State property;

- (iv) improper or unlawful enrichment, or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or omission in the public administration or in connection with the affairs of government at provincial level or of a person performing a public function; or
 - (v) act or omission by a person in the employ of government at provincial level, or a person performing a public function, which results in unlawful or improper prejudice to any other person;
- (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) advising, where necessary, any complainant regarding appropriate remedies; or
 - (iii) any other means that may be expedient in the circumstances; or
- (c) at any time prior to, during or after, an investigation—
 - (i) if he or she is of the opinion that the facts disclose the commission of an offence by any person, to bring the matter to the notice of the prosecuting authority concerned; or
 - (ii) if he or she deems it advisable, to refer any matter which has a bearing on an investigation, to a public body or authority affected thereby or to make an appropriate recommendation regarding the redress of the prejudice resulting therefrom or make any other recommendation he or she deems expedient to the affected public body or authority; and
- (d) to take such steps as may be necessary to publicize the provisions of this Act and of the Constitution.

(2) Nothing in subsection (1) shall be construed as empowering the Provincial Public Protector to investigate the performance of judicial functions by any court of law.

(3) (a) The Provincial Public Protector shall conduct an investigation under subsection (1) with due regard to the circumstances of each case, and shall for the purposes of such investigation, but subject to the provisions of the Constitution and the law of privilege, be competent to—

- (i) direct any person to submit an affidavit to him or her and to give evidence or to produce any document in his or her possession or under his or her control which, in the opinion of the Provincial Public Protector, has a bearing on the matter being inquired into, and may examine such person for that purpose; and
- (ii) enter, or authorise another person to enter, any building or premises and there to make such investigation or inquiry as he or she may deem necessary, and seize anything on those premises which in his or her opinion has a bearing on the purpose of the investigation.

(b) A direction referred to in paragraph (a) (i) shall be by way of a subpoena containing particulars of the matter in connection with which the person subpoenaed is required to appear before the Provincial Public Protector and signed by the Provincial Public Protector and serve on the person subpoenaed either by a registered letter sent through the post or by delivery by a person authorized thereto by the Provincial Public Protector.

(c) When the Provincial Public Protector considers it necessary to do so, he or she may require any person appearing as a witness before him by virtue of subsections (1) and (2) to give evidence under oath or after having made an affirmation, and such person shall enjoy the same privilege as a witness testifying in criminal proceedings before a division of the Supreme Court of South Africa.

(d) The Public Protector may himself administer such oath or accept such affirmation.

(c) Any person appearing before the Public Protector by virtue of subsections (1) and (2) may be assisted at such investigation by an advocate of the Supreme Court of South Africa or any person duly admitted to practice as an attorney in any part of the Republic, and shall be entitled to peruse such documents referred to in section 5 (2) as in the opinion of the Public Protector are necessary to enable such person to refresh his or her memory.

(f) If it appears to the Provincial Public Protector during the course of an investigation that any person is being implicated in the matter being inquired into, the Provincial Public Protector shall afford such person an opportunity to be heard in connection therewith by way of giving evidence, and such person or his or her legal representative shall be entitled, through the Provincial Public Protector, to question other witnesses who have appeared before the Provincial Public Protector in terms of this section and given evidence which may be of importance to the person so implicated.

(g) Any person who refuses or fails to comply with a direction under subsection (1) or who refuses to answer any question put to him or her under that subsection or gives to such question an answer which to his or her knowledge is false, shall be guilty of an offence.

(4) The Provincial Public Protector or any member of his or her staff shall be competent, but not compellable, to answer questions in any proceedings in or before a court of law or any body or institution established by or under any law, in connection with any information which in the course of his or her investigation has come to his or her knowledge.

(5) Recourse to, or the exercise and performance of any powers and functions of, the Provincial Public Protector shall not oust the jurisdiction of a court of law to hear any matter or cause whatsoever.

(6) The Provincial Public Protector shall at least once every year report in writing on his or her activities to the Provincial legislature.

Complaints

5. (1) If any person has reasonable grounds to suspect that an incident which may in terms of section 4 (1) (a) be investigated by the Provincial Public Protector, has occurred or is about to occur, he or she may lay the matter in question before the Provincial Public Protector in accordance with the provisions of subsection (2) whereafter the Provincial Public Protector may take such steps in respect thereof as he or she is permitted to take in terms of the provisions of this Act.

(2) Any person wishing to lay a matter referred to in subsection (1) before the Provincial Public Protector shall—

(a) do so by means of an affidavit specifying—

- (i) the nature of the suspicion;
- (ii) the grounds on which the suspicion is based; and
- (iii) all other relevant information known to the deponent; or

- (b) do so by such means as the Provincial Public Protector may determine with a view to making his or her office accessible to every person wishing to lay a matter before him or her.

Procedure at, and nature of, proceedings

6. (1) The procedure to be followed in conducting an investigation shall be determined by the Provincial Public Protector at his or her discretion with due regard to the circumstances of each case, and the Provincial Public Protector may in his or her discretion direct that any category of persons or all persons whose presence is, in his or her opinion, not necessary or desirable, shall not be present at the proceedings during an investigation or any part thereof.

(2) Notwithstanding anything to the contrary contained in any law, but subject to the provisions of section 4 (4), no person shall without the permission of the Provincial Public Protector disclose to any other person the contents of any document in the possession of the Provincial Public Protector or of a member of his staff, or the record of any evidence given before the Provincial Public Protector during an investigation.

(3) Any person who contravenes subsection (2) shall be guilty of an offence.

Compensation regarding expenses

7. The Provincial Public Protector may, if he or she deems it advisable, with the concurrence of the member of the Executive Council responsible for financial matters in the Province or any person authorized by the said member, order that the expenses or a portion of the expenses incurred by any person in the course of, or in connection with, an investigation by the Provincial Public Protector be paid to that person from moneys appropriated by the Provincial legislature.

Contempt of Provincial Public Protector

8. (1) No person shall in connection with an investigation do anything which, if done in connection with proceedings in a court of law, would have constituted contempt of court: Provided that the provisions of this paragraph shall not prohibit discussion in Parliament or the Provincial legislature of any matter being investigated by the Provincial Public Protector.

(2) Any person who contravenes a provision of subsection (1) shall be guilty of an offence.

(3) If any person contravenes the provisions of subsection (1) in the course of an investigation, the Provincial Public Protector may summarily impose upon such person a penalty prescribed in section 13.

Prohibition of improper influencing

9. (1) No person shall do anything calculated improperly to influence the Provincial Public Protector or a member of this staff with regard to an investigation.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

Staff and expenditure

10. (1) The Provincial Public Protector may appoint, on such terms and conditions of service as he or she may determine, after consultation with the member of the Executive Council responsible for financial matters in the Province and the Provincial Service Commission, such persons as may be necessary for the discharge of the work of the office of the Provincial Public Protector.

(2) The Provincial Public Protector may on such conditions as he or she may determine delegate any of his or her powers or functions to persons referred to in subsection (1).

(3) Expenditure incidental to the exercise and performance the powers and functions of the Provincial Public Protector in terms of this Act or under any other law shall be defrayed from money appropriated by the Provincial legislature.

Consultation with Public Protector

11. Nothing in this Act shall in any way derogate from the powers and functions of the Public Protector, and the Provincial Public Protector shall exercise and perform his or her powers and functions in consultation with the Public Protector, who shall have concurrent jurisdiction in the Province in accordance with the provisions of section 114 (4) of the Constitution.

Regulations

12. (1) The Premier may make regulations which he or she may regard as necessary for the better achievement of the objects of this Act.

(2) Regulations made under subsection (1) may, for a contravention thereof, prescribe penalties not exceeding a fine of R2 000 or imprisonment for a period of six months.

Penalties

13. Any person convicted of an offence in terms of this Act shall be liable to a fine not exceeding R4 000 or imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Application of law

14. The provisions of this Act shall not derogate from any other law regulating an investigation or inquiry for any other purpose.

Repeal of law

15. Decree No. 4 (Ombudsman) of 1988 of the former Republic of Transkei is hereby repealed.

Short title

16. This Act shall be called the **Provincial Public Protector Act, 1994 (E.C.)**.

PROVINCIAL SERVICE COMMISSION FOR THE PROVINCE OF THE EASTERN CAPE BILL, 1994

BILL [B5-94 (EC)]

To provide for the establishment of a Provincial Service Commission; the powers and functions of the Commission; the appointment and conditions of service of members of the Commission; the appointment and duties of the staff of the Commission; and other matters connected therewith.

- (b) do so by such means as the Provincial Public Protector may determine with a view to making his or her office accessible to every person wishing to lay a matter before him or her.

Procedure at, and nature of, proceedings

6. (1) The procedure to be followed in conducting an investigation shall be determined by the Provincial Public Protector at his or her discretion with due regard to the circumstances of each case, and the Provincial Public Protector may in his or her discretion direct that any category of persons or all persons whose presence is, in his or her opinion, not necessary or desirable, shall not be present at the proceedings during an investigation or any part thereof.

(2) Notwithstanding anything to the contrary contained in any law, but subject to the provisions of section 4 (4), no person shall without the permission of the Provincial Public Protector disclose to any other person the contents of any document in the possession of the Provincial Public Protector or of a member of his staff, or the record of any evidence given before the Provincial Public Protector during an investigation.

(3) Any person who contravenes subsection (2) shall be guilty of an offence.

Compensation regarding expenses

7. The Provincial Public Protector may, if he or she deems it advisable, with the concurrence of the member of the Executive Council responsible for financial matters in the Province or any person authorized by the said member, order that the expenses or a portion of the expenses incurred by any person in the course of, or in connection with, an investigation by the Provincial Public Protector be paid to that person from moneys appropriated by the Provincial legislature.

Contempt of Provincial Public Protector

8. (1) No person shall in connection with an investigation do anything which, if done in connection with proceedings in a court of law, would have constituted contempt of court: Provided that the provisions of this paragraph shall not prohibit discussion in Parliament or the Provincial legislature of any matter being investigated by the Provincial Public Protector.

(2) Any person who contravenes a provision of subsection (1) shall be guilty of an offence.

(3) If any person contravenes the provisions of subsection (1) in the course of an investigation, the Provincial Public Protector may summarily impose upon such person a penalty prescribed in section 13.

Prohibition of improper influencing

9. (1) No person shall do anything calculated improperly to influence the Provincial Public Protector or a member of this staff with regard to an investigation.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

Staff and expenditure

10. (1) The Provincial Public Protector may appoint, on such terms and conditions of service as he or she may determine, after consultation with the member of the Executive Council responsible for financial matters in the Province and the Provincial Service Commission, such persons as may be necessary for the discharge of the work of the office of the Provincial Public Protector.

(2) The Provincial Public Protector may on such conditions as he or she may determine delegate any of his or her powers or functions to persons referred to in subsection (1).

(3) Expenditure incidental to the exercise and performance the powers and functions of the Provincial Public Protector in terms of this Act or under any other law shall be defrayed from money appropriated by the Provincial legislature.

Consultation with Public Protector

11. Nothing in this Act shall in any way derogate from the powers and functions of the Public Protector, and the Provincial Public Protector shall exercise and perform his or her powers and functions in consultation with the Public Protector, who shall have concurrent jurisdiction in the Province in accordance with the provisions of section 114 (4) of the Constitution.

Regulations

12. (1) The Premier may make regulations which he or she may regard as necessary for the better achievement of the objects of this Act.

(2) Regulations made under subsection (1) may, for a contravention thereof, prescribe penalties not exceeding a fine of R2 000 or imprisonment for a period of six months.

Penalties

13. Any person convicted of an offence in terms of this Act shall be liable to a fine not exceeding R4 000 or imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Application of law

14. The provisions of this Act shall not derogate from any other law regulating an investigation or inquiry for any other purpose.

Repeal of law

15. Decree No. 4 (Ombudsman) of 1988 of the former Republic of Transkei is hereby repealed.

Short title

16. This Act shall be called the **Provincial Public Protector Act, 1994 (E.C.)**.

PROVINCIAL SERVICE COMMISSION FOR THE PROVINCE OF THE EASTERN CAPE BILL, 1994

BILL [B5-94 (EC)]

To provide for the establishment of a Provincial Service Commission; the powers and functions of the Commission; the appointment and conditions of service of members of the Commission; the appointment and duties of the staff of the Commission; and other matters connected therewith.

BE IT ENACTED by the Provincial legislature of the Province of the Eastern Cape, as follows:

CHAPTER 1

PRELIMINARY PROVISIONS

Definitions

1. In this Act, unless the context indicates otherwise—

"calendar month" means a period extending from a day in one month to the day preceding the day corresponding numerically to that day in the following month, both days inclusive;

"Commission" means the Provincial Service Commission for the Province of the Eastern Cape established by section 2 (1) and, in relation to any power or function conferred upon, assigned to, or imposed upon, the Commission by or in terms of the Constitution or this Act or the Public Service Act or the Public Service Commission Act or any other law, includes any member or members of the Commission or any officer or officers to whom the exercise of such power or the performance of such function has been delegated by the Commission in terms of section 5 (2).

"Constitution" means the Constitution of the Republic of South Africa, 1993;

"employee" means a person referred to in section 8 (1) (c) of the Public Service Act;

"fixed establishment" means the fixed establishment as defined in section 1 (1) of the Public Service Act;

"head of department" means the person who is the incumbent of the post designated "Director-General: Provincial Administration: Eastern Cape" in the second column of the First Schedule to the Public Service Act;

"member of the Executive Council" means the Premier or a member of the Executive Council of the Province of the Eastern Cape appointed by the Premier in terms of section 149 of the Constitution;

"month" means a period extending from the first to the last day, both days inclusive, of any one of the 12 months of the year;

"officer" means a person who has been appointed permanently, notwithstanding that such appointment may be on probation, to a post referred to in section 8 (1) (a) of the Public Service Act, and includes a person referred to in section 8 (1) (b) or 8 (3) (c) of that Act;

"Premier" means the Premier of the Province of the Eastern Cape;

"Province" means the Province of the Eastern Cape as defined in section 124 of the Constitution;

"Provincial Administration" means the administration of the Province of the Eastern Cape encompassing all departments and offices of the said Province;

"Provincial legislature" means the legislature of the Province of the Eastern Cape established by section 125 (1) of the Constitution;

"Public Service Act" means the Public Service Act, 1994;

"public service" means the public service established by section 212 (1) of the Constitution;

"Public Service Commission" means the Public Service Commission established by section 209 (1) of the Constitution.

CHAPTER II

PROVINCIAL SERVICE COMMISSION AND STAFF

Establishment, constitution and powers and functions of the Commission

2. (1) (a) There shall be a Provincial Service Commission for the Province, which shall exercise the powers and functions referred to in section 213 of the Constitution, this Act or any other law, and which shall in respect of the exercise and performance of its powers and functions be accountable to the Provincial legislature.

(b) The Commission shall exercise its powers and perform its functions fairly, impartially and independently.

(c) A member of the Commission shall not hold office in any political party or political organisation and shall be non-partisan in the performance of his or her functions.

(2) The Commission shall consist of not fewer than three, and not more than five members appointed from time to time by the Premier by proclamation in the *Provincial Gazette*.

(3) A person shall be qualified to be appointed to the Commission if he or she —

(a) is a South African citizen; and

(b) is a person who has a sufficient knowledge of or experience in the administration, management or rendering of public services.

(4) The Premier shall designate a member as the chairperson of the commission and during the absence of the chairperson for any reason, the member who has the longest service as a member or, if two members have the same length of service as members, the member designated by the Premier, shall act as chairperson of the Commission.

(5) Subject to the provisions of subsection (6), and of section 3 (3) and section 4 (1) (2) and (4), a member of the Commission shall, at his or her first appointment as such member, hold office for a period of five years, but shall on the expiry of his or her period of office, with his or her consent, be eligible for reappointment for a further period not exceeding, or for further periods not exceeding in the aggregate, five years, as the Premier may determine.

(6) The Premier may, if he or she deems it in the public interest, with the consent of a member of the Commission, retain such member in his or her office beyond the date at which he or she shall, in accordance with subsection (5) vacate his or her office, for a period or periods which shall not exceed in the aggregate two years, as the Premier may deem fit.

Conditions of service of members

3. (1) The remuneration and other conditions of service of the chairperson and other members of the Commission shall be determined by the Premier: Provided that —

(a) the remuneration and other conditions of service of the chairperson and other members of the Commission shall not be altered to his or her detriment during his or her term of office; and

(b) the other conditions of service referred to in this section shall not be less favourable than those of the head of department of the Provincial Administration.

(2) A member of the Commission shall not without the consent of the Premier perform or engage himself or herself to perform any remunerative work outside the duties of his or her office.

- (3) If an officer or employee is appointed to the Commission—
- (a) the period of his or her service as such member shall be reckoned as part of and continuous with his or her employment in the public service for the purposes of leave and pension and any other condition of service, and the provisions of any pension law applicable to him or her as such officer or employee or, after his or her death, to his or her dependants, and which are not in conflict with the provisions of this Act, shall *mutatis mutandis* continue to apply; and
 - (b) such member shall retain the same right to vacate his or her office and to retire as he or she would have had on the attainment of an age prescribed by the Public Service Act or any other law or on any later date on which he or she desires to do so, had he or she remained in the public service.

Discharge of, and vacation of office by, members

4. (1) (a) The Premier may remove a member of the Commission from office—
- (i) on account of continued ill-health; or
 - (ii) on account of misconduct; or
 - (iii) on account of unfitness for his or her duties or incapacity to carry them out efficiently; or
 - (iv) if, for reasons other than his or her own unfitness or incapacity, his or her removal from office will promote efficiency.
- (b) The Premier may require a member of the Commission to absent himself or herself temporarily from his or her duties in order to afford the Premier the opportunity to consider the possible removal of such member from office in terms of paragraph (a).
- (c) The removal of a member of the Commission from office in terms of this subsection, and the particulars of the removal, and the reasons therefor, shall be submitted by the Premier to the Provincial Legislature within 14 days after such removal or, if the Provincial legislature is not then in session, within 14 days after the commencement of its next ensuing session.
- (2) (a) The Premier may allow a member of the Commission at his or her request to vacate his or her office—
- (i) on account of continued ill-health; or
 - (ii) for any other reason which the Premier may deem sufficient.
- (b) If a member referred to in section 3 (3)—
- (i) is allowed to vacate his or her office in terms of paragraph (a) (i), it shall be deemed that his or her services have been terminated on the grounds of ill-health and he or she shall be entitled to such pension as he or she would have been entitled to under the pension law applicable to him or her if his or her services had been terminated on the grounds of ill-health;
 - (ii) is allowed to vacate his or her office in terms of paragraph (a) (ii) during his or her first period of office, he or she shall be deemed to have been removed from his or her office in terms of subsection (1) (a) (iv) or to have been retired in terms of section 16 (4) of the Public Service Act, as the Premier may direct, and he or she shall be entitled to such pension as he or she would, under the pension law applicable to him or her, have been entitled to if he or she had been removed from his or her office or had been so retired; or

- (iii) is allowed to vacate his or her office in terms of paragraph (a) (ii) during his or her subsequent period or periods of office, he or she shall be deemed to have been removed from his or her office in terms of subsection (1) (a) (i) and he or she shall be entitled to such pension as contemplated in paragraph (b) (i).
- (3) A member of the Commission who—
 - (a) immediately prior to his or her appointment as such was an officer in the public service;
 - (b) at the expiry of his or her period of office as a member of the Commission is not reappointed thereto; and
 - (c) at that expiry date has not reached the age at which he or she would in terms of the Public Service Act have had the right to retire and would have been compelled to retire if he or she had not been appointed as a member of the Commission,

shall have the right to retire, or may be required by the Premier to retire, and if he or she so retires or is so required to retire, he or she shall be entitled to such pension as he or she would under the pension law applicable to him or her have been entitled to, if he or she had been compelled to retire from the public service owing to the abolition of his or her post.

(4) If a member of the Commission who immediately prior to his or her appointment as such was an officer or employee in the public service, is appointed under an Act of Parliament or a provincial law, and with his or her consent, to an office to which the provisions of this Act or the Public Service Act do not apply, he or she shall as from the date on which he or she is so appointed, cease to be a member of the Commission, and if at that date he or she has not reached the age at which he or she would in terms of the Public Service Act have had the right to retire, he or she shall, subject to the provisions of section 4 (3) of the Auditor-General Act, 1989 (Act No. 52 of 1989), in the case of the appointment of a member as Auditor-General, be deemed to have retired on that date and he or she shall, subject to the said provisions, be entitled to such pension as he or she would have been entitled to under the pension law applicable to him or her had he or she been compelled to retire from the public service owing to the abolition of his or her post.

Exercising and delegation of powers and functions of the Commission

5. (1) (a) A recommendation or direction in respect of any matter made or given by at least two members, if the Commission consists of three members, and three members, if the Commission consists of more than three members, shall, subject to the provisions of subsection (2), be deemed for the purposes of this Act or any other law to be a recommendation or direction of the Commission.

(b) The Commission shall decide on any matter by written consent of every member who is present to perform his or her duties, or by a majority of votes cast by the members present at a meeting of the Commission.

(c) In the event of an equality of votes on any matter considered by the Commission at a meeting thereof, the chairperson shall have a casting vote in addition to his or her deliberative vote.

(2) (a) The Commission may, subject to the conditions determined by it, delegate any power conferred upon it or any function entrusted to it under this Act or the Public Service Act or any other law, except the powers conferred upon it by this subsection or by section 9 (1) of this Act to—

- (i) one or more of its members; or
- (ii) an officer or officers.

(b) The Premier may, notwithstanding the provisions of paragraph (a), on the recommendation of the Commission and by proclamation in the *Provincial Gazette* exclude any power referred to in that paragraph from the restrictive operation of that paragraph, but a power which has been thus excluded may be delegated only to a member or members of the Commission.

(3) The Commission may designate one or more of its members or an officer or officers to conduct an inquiry into any matter in respect of which in terms of this Act or the Public Service Act or any other law, it may make a recommendation or give a direction.

(4) Any delegation or designation made by the Commission in terms of subsection (2) or (3), may at any time be amended or revoked by the Commission.

Additional powers and functions of the Commission

6. (1) When a matter referred to in section 213 (1) (b) of the Constitution has been referred to the Commission for advice in terms of that section, the Commission, or the officer or officers designated by the Commission for this purpose, shall have the power to inspect all such official documents and records and to obtain all such information from the officer or employee concerned, or from the executive head of the institution or body concerned, as in its opinion may be necessary to inspect or to obtain in order to advise the Premier or the relevant member of the Executive Council.

(2) The Commission shall, with the approval of the Premier, exercise such other powers and perform such other functions of the Public Service Commission as may be assigned to it by the President by proclamation in the *Gazette*, pursuant to a recommendation of the Public Service Commission.

Commission's powers of inquiry

7. (1) The Commission may—

(a) summon any person who, in the opinion of the majority of the members of the Commission, may be in possession of material information concerning the subject of any inquiry held by it in terms of section 5 (3), or who such majority suspects or believes has in his or her possession or custody, or under his or her control, any book, document or object which has any bearing upon the subject of the inquiry, to appear before it at the time and place specified in the summons, to be interrogated or to produce that book, document or object, and the commission may keep any book, document or object thus produced, for the duration of the inquiry;

(b) call, and administer an oath to, or accept an affirmation from, any person present at the inquiry who was or might have been summoned in terms of paragraph (a), and may interrogate him or her and require him or her to produce any book, document or object in his or her possession or custody or under his or her control which the Commission suspects or believes to have a bearing upon the subject of the inquiry.

(2) Summons of a person to appear before the Commission or to produce a book, document or object, shall be in the form prescribed by the Commission, shall be signed by the chairperson of the Commission or a person designated under section 5 (3), and shall be served in the manner determined by the Commission from time to time.

(3) (a) If any person, having been summoned under subsection (1) (a), fails, without sufficient cause, to attend at the time and place specified in the summons, or to remain in attendance until excused by the Commission from further attendance, or if any person called in terms of subsection (1) (b), refuses to take the oath or make the affirmation as a witness, or fails without sufficient cause to answer fully and satisfactorily to the best of his or her knowledge all questions lawfully put to him or her, or to produce any book, document or object in his or her possession or custody or under his or her control which he or she has been required to produce, he or she shall, subject to the provisions of paragraph (b), be guilty of an offence and liable on conviction to a fine not exceeding R600.

(b) In connection with the interrogation of any such person or the production of such book, document or object before the Commission, the law relating to privilege, as applicable to a witness summoned to give evidence or to produce any book, document or object before a court of law, shall apply.

(4) Any person who, after having been sworn or after having made the affirmation as a witness, gives a false answer to any question lawfully put to him or her by the Commission, or makes a false statement on any matter, knowing that answer or statement to be false, shall be guilty of an offence and liable on conviction to the punishment which may be imposed for the crime of perjury.

(5) Any person who hinders or prevents any other person from obeying any summons issued under subsection (1) (a), or from giving any evidence or producing any book, document or object which he or she may be required to give or produce, shall be guilty of an offence and liable on conviction to a fine not exceeding R600.

(6) Any person who holds an inquiry pursuant to a delegation under section 5 (2) (a) (i) or holds an inquiry pursuant to a designation under section 5 (3) of this Act shall for the purposes of the inquiry have all the powers conferred upon the Commission by this section, and, in the application of the provisions of this section to any such an inquiry, every reference therein to the Commission shall be construed as including a reference to such person.

Staff of the Commission

8. (1) Subject to the provisions of this Act and of the Public Service Act, the Commission shall be assisted by as many other officers and employees as may from time to time be necessary to enable the Commission effectively to exercise its powers and to perform its functions.

(2) The officer put in charge of the officers and employees referred to in subsection (1) shall observe such directions and carry out such duties as may from time to time be given to, or imposed upon, him or her by the Commission.

CHAPTER III

GENERAL

Reports of the Commission

9. (1) The Commission shall as soon as possible after 31 December in each year frame a report on matters which have been dealt with by the Commission during the year ending on that day.

(2) The Commission may from time to time frame such special reports as may to the Commission seem desirable.

(3) Every report framed by the Commission pursuant to subsection (1) or (2), shall be submitted to the Premier who shall submit it to the Provincial legislature within seven days after he or she has received it if the Provincial legislature is then in session, or if the Provincial legislature is not then in session, within seven days after the commencement of its next ensuing session.

Limitation of legal proceedings

10. (1) No legal proceedings of whatever nature shall be brought against the State or the Province or any body or person in respect of anything done, or of any failure to do anything which should have been done, in terms of this Act, unless the legal proceedings are brought before the expiry of a period of 12 calendar months after the date upon which the claimant had knowledge, or after the date on which the claimant might reasonably have been expected to have knowledge, of the act or omission alleged, whichever is the earlier date.

(2) (a) No such legal proceedings shall be instituted before the expiry of at least one calendar month after written notice of the intention to bring such proceedings has been served on the defendant.

(b) Such notice shall contain full particulars of the alleged act or omission.

Short title

11. This Act shall be called the **Provincial Service Commission for the Province of the Eastern Cape Act, 1994. (E.C.)**

CONDITIONS FOR PUBLICATION

CLOSING TIMES FOR THE ACCEPTANCE OF NOTICES

1. The *Provincial Gazette* is published every week on Monday, and the closing time for the acceptance of notices which have to appear in the *Provincial Gazette* on any particular Monday, is **10:00 on the Friday two weeks before the Gazette is released**. Should any Monday coincide with a public holiday, the date of publication of the *Provincial Gazette* and the closing time of the acceptance of notices will be published in the *Provincial Gazette*, from time to time.
2. (1) Copy of notices received after closing time will be held over for publication in the next *Provincial Gazette*.
(2) Amendment or changes in copy of notices cannot be undertaken unless instructions are received **before 15:30 on Fridays one week before the Gazette is released**.

THE GOVERNMENT PRINTER INDEMNIFIED AGAINST LIABILITY

3. The Government Printer will assume no liability in respect of—
 - (1) any delay in the publication of a notice or publication of such notice on any date other than that stipulated by the advertiser;
 - (2) any editing, revision, omission, typographical errors resulting from faint or indistinct copy.

LIABILITY OF ADVERTISER

4. Advertisers will be held liable for any compensation and costs arising from any action which may be instituted against the Government Printer in consequence of the publication of any notice.

COPY

5. Copy of notices must be **TYPED** on one side of the paper only and may not constitute part of any covering letter or document.
6. *All proper names and surnames must be clearly legible, surnames being underlined or typed in capital letters. In the event of a name being incorrectly printed as a result of indistinct writing, the notice will be republished only upon payment of the cost of a new insertion.*

**PLEASE NOTE: ALL NOTICES MUST BE TYPED IN DOUBLE SPACING,
HANDWRITTEN NOTICES WILL NOT BE ACCEPTED**

7. *In the event of a notice being cancelled, a refund will be made only if no cost regarding the placing of the notice has been incurred by the Government Printing Works.*

PROOF OF PUBLICATION

8. Copies of the *Provincial Gazette* which may be required as proof of publication may be ordered from the **Acting Director-General, Province of the Eastern Cape, Private Bag X0016, BISHO**, at the ruling price. No liability is accepted for any failure to post such *Provincial Gazette(s)* or for any delay in dispatching it/them.

Important Notice

1. Please post your advertisements early.
2. Please send a covering letter with all advertisements you submit.
3. Please do not send duplicates of letters of advertisements.

**PROVINCIAL GAZETTE
PROVINCE OF THE EASTERN CAPE**

(Published every Monday)

All correspondence, notices, etc., must be addressed to the **Acting Director-General, Province of the Eastern Cape, Private Bag X0016, BISHO**, and if delivered by hand, must be handed in at the Office of the Acting Director-General, Province of the Eastern Cape, Legislative Buildings, BISHO. Free copies of the *Provincial Gazette* or cuttings of notices are not supplied.

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AS FROM 8 AUGUST 1994**

Provincial Gazettes of the Eastern Cape (including all Extraordinary Gazettes) are as follows:

- ▶ Yearly (post free) = R86,25.
- ▶ Other countries (post free) = R1,95 each.
- ▶ Price per single copy (post free) = R1,50 each.

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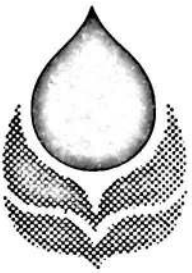
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Department of Environment Affairs



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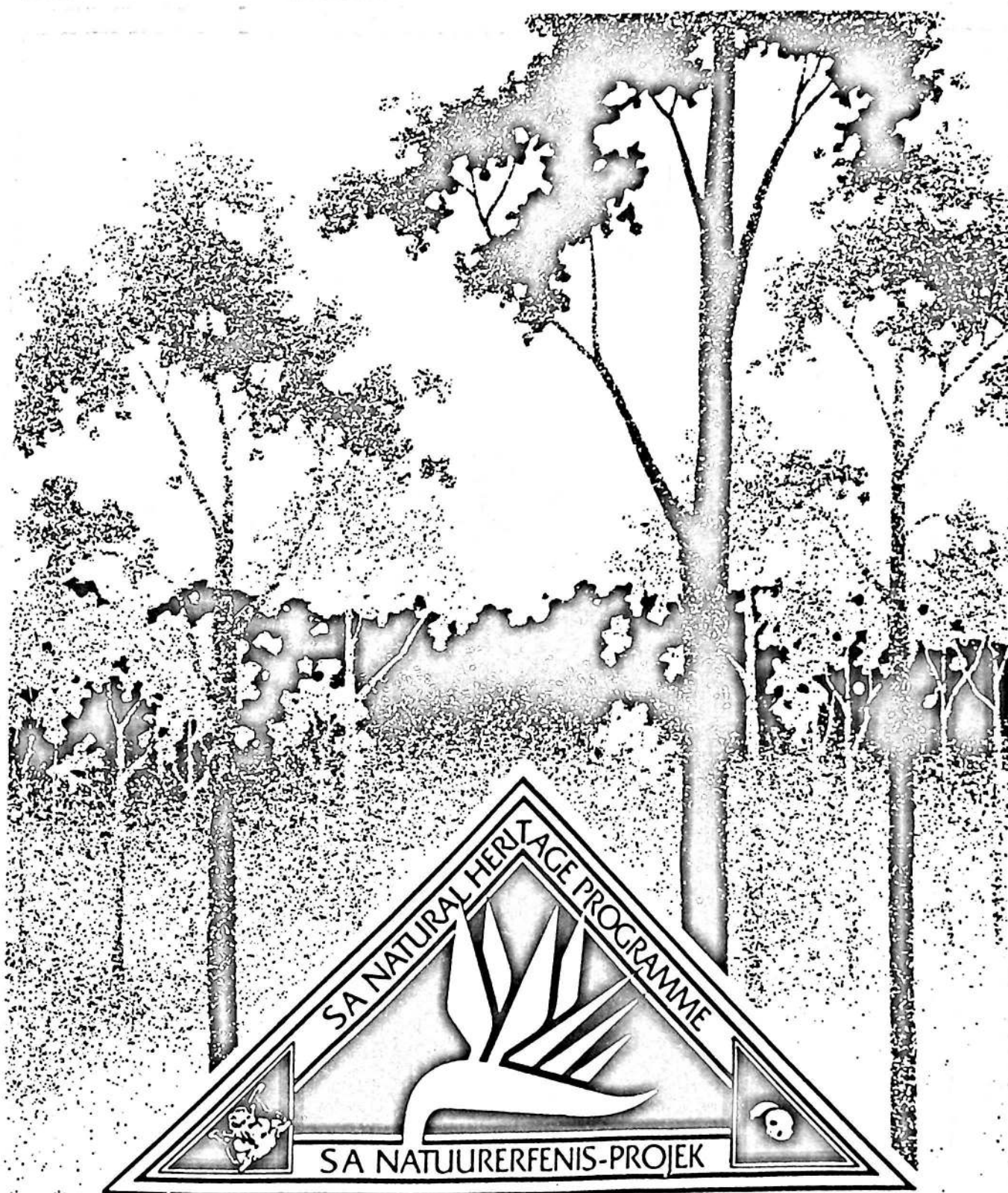
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Use it

Don't abuse  it

water is for everybody



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Department of Environment Affairs

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