



PROVINCE OF THE EASTERN CAPE
IPHONDO LEMPUMA KOLONI
PROVINSIE OOS-KAAP

Provincial Gazette Igazethi Yephondo Provinsiale Koerant

Selling price • Verkoopprys: **R1,50**
Other countries • Buitelands: **R1,95**

Vol. 1

BISHO/
KING WILLIAM'S TOWN, 14 SEPTEMBER 1994

No. 6
(Extraordinary)

PROVINCIAL NOTICE

OFFICE OF THE PREMIER
PROVINCE OF THE EASTERN CAPE

No. 4

14 September 1994

It is hereby notified that the Premier has assented to the following Act which is hereby published for general information:—

No. 4 of 1994(E.C.): Provincial Public Protector Act, 1994(Eastern Cape).

ACT

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.

(Signed and assented to by the Premier on 14 September 1994)

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—

“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 1989), 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 that 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 or an attorney 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) by reason of his or her training and experience has expertise in the administration of justice, in administration or 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 two thirds of the members of the Provincial Legislature, sitting in committee, and only following upon receipt by the Premier of an address from the Provincial Legislature adopted by a single majority requesting such removal.

(8) A Provincial Public Protector who is the subject of an investigation 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 reasonable 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 in the Province;
 - (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 in the Province or of a person performing a public function; or
 - (v) act or omission by a person in the employ of government in the Province, 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 served on the person subpoenaed either by a registered letter sent through the post or by delivery by a person authorised 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 or her 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 Provincial Division of the Supreme Court of South Africa.

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

(e) Any person appearing before the Public Protector 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 give 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 (3) 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) Resource 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 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 his 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 of 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.

(3) The Premier shall, not later than 14 days prior to the promulgation of the regulations contemplated in subsection (1), publish or advertise such regulations for comment in the public media having a wide circulation, or listenership, in the Province and in languages widely used in the Province.

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 affect any other law regulating an investigation or inquiry for any other purpose.

Short title

15. This Act shall be called the Provincial Public Protector Act, 1994 (Eastern Cape).