

Limpopo, South Africa

Provincial Public Protector Act, 1995

Act 3 of 1995

Legislation as at 2 June 1995

FRBR URI: /akn/za-lp/act/1995/3/eng@1995-06-02

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PDF created on 19 April 2024 at 10:10.

Collection last checked for updates: 5 April 2024.

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Limpopo South Africa

Provincial Public Protector Act, 1995

Act 3 of 1995

Published in Limpopo Provincial Gazette 56 on 2 June 1995

Assented to on 31 May 1995

Commenced on 1 September 1995 by Provincial Public Protector Act, 1995: Commencement

[This is the version of this document from 2 June 1995 and includes any amendments published up to 5 April 2024.]

(English text signed by the Premier)

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.

BE IT ENACTED by the Provincial Legislature of Northern Transvaal as follows:—

1. Definitions

In this Act, unless the context otherwise indicates—

“**investigation**” means an investigation contemplated in section 6(1);

“**Premier**” means the premier of the Province, acting in accordance with the Constitution;

“**Provincial Public Protector**” means the Provincial Public Protector contemplated in section 2(1) of this Act;

“**public money**” means—

- (a) State money as defined in section 1(1) of the Northern Transvaal 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 said Act 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 law of the Province or to be assigned in terms of section 235 of the Constitution; 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 disposal of which is not governed by any other Law;

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

2. Establishment and appointment

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

- (2) The Provincial Public Protector shall be appointed as provided for in section 114(3) of the Constitution.
- (3) The qualifications for the appointment of the Provincial Public Protector shall be similar to those of the office of the Public Protector and to that effect the provisions of section 110(4) of the Constitution shall apply mutatis mutandis.

3. Conditions of service

- (a) The Provincial Public Protector shall hold office for a period of seven years.
- (b) The remuneration and other terms and conditions of employment of the Provincial Public Protector shall be determined by the Premier, and such shall not be reduced, nor shall terms and conditions be adversely altered, during his or her term of office: Provided his or her salary shall not be more than that of the Public Protector.
- (c) The Provincial Public Protector shall not perform remunerative work outside his or her official duties.

4. Resignation and removal from office

- (a) The Premier may allow the Provincial Public Protector to vacate his or her office—
 - (i) on account of continued ill-health; or
 - (ii) at his or her request: Provided that such a request shall be addressed to the Provincial legislature, at least three calendar months prior to the date on which he or she wishes to vacate such office, unless the Provincial legislature may allow a shorter period.
- (b) The Provincial Public Protector may be removed from office by the Premier, but only on the grounds of misbehaviour, incapacity or incompetence, determined by a Committee of the whole House of the Provincial Legislature, and upon receipt of an address from the Provincial Legislature requesting such removal: Provided the audi alteram partem principle shall be applied.
- (c) A Provincial Public Protector who is the subject of an investigation by a committee in terms of [section 4\(b\)](#), may be suspended by the Premier pending a decision in such investigation.
- (d) Whenever the Provincial Public Protector is, for any reason, unable to perform the functions of his or her office, or while the appointment of a person to that office is pending, the most senior member in the said office available, shall perform such functions.

5. Independence and impartiality

- (1) The Provincial Public Protector shall be independent and impartial and shall exercise and perform his or her powers and functions subject to this Act and sections 5 to 12 of the Public Protector Act, 1994.
- (2) A member of the office of the Provincial Public Protector shall—
 - (i) serve impartially and independently and perform his or her functions in good faith and without fear, favour, bias or prejudice;
 - (ii) serve in a full-time capacity to the exclusion of any other duty or obligation arising or the holding of any employment or occupation or the holding of other office: Provided that a person contemplated in section 7(3) (b) of the Public Protector Act, 1994, shall be exempted from the provisions of this section.
- (3) No person, other than a person contemplated in section 7(3) of Public Protector Act, 1994, shall conduct an investigation contemplated in section 7 of the said Act, or render assistance with regard thereto in respect of a matter in which he or she has any pecuniary interest or any other interest

which might preclude him or her from performing his or her functions in a fair, unbiased and proper manner.

- (4) If any person fails to disclose an interest contemplated in subsection (3) and conducts or renders assistance with regard to an investigation contemplated in section 7 of the Public Protector Act, 1994, while having an interest in the matter investigated, the Provincial Public Protector may take steps as he or she deems necessary to ensure a fair, unbiased and proper investigation.
- (5) The Provincial Public Protector and the persons appointed in terms of [section 7](#) shall have the immunities and privileges assigned to them by or under this Act to ensure the independent and impartial exercise and performance of their powers and functions.
- (6) No member or employee of an organ of government and no other person shall interfere with the Provincial Public Protector or a person appointed under [section 7](#) in the exercise and performance of his or her powers and functions.
- (7) Any person who wilfully contravenes this subsection shall be guilty of an offence.

6. Powers and functions

- (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 any level within the Province, otherwise subject to his or her jurisdiction;
 - (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 any level within the Province, but subject to his or her jurisdiction or of a person performing a public function; or
 - (v) act or omission by a person in the employ of the provincial government, 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 relevant authority charged with prosecution; or
 - (ii) if he or she deems it advisable, to refer any matter which has a bearing on an investigation, to the appropriate public body or authority affected by it or to make an appropriate recommendation regarding the redress of the prejudice resulting therefrom or make any other appropriate recommendation he or she deems expedient to the affected public body or authority.

- (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.

7. Prohibition of improper influencing

- (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, and may upon conviction be liable to a fine not exceeding R20 000 or imprisonment not exceeding 12 months or to both such fine and such imprisonment.

8. Staff and expenditure

- (1) The Provincial Public Protector shall, subject to the laws governing the Public Service after consultation with the Member of the Executive Council responsible for Financial Affairs in the Province and the Public Service Commission appoint or be assisted by—
 - (a) a suitably qualified and experienced person or seconded to the service of his office in terms of any law regulating such secondment in the performance of all financial, administrative and clerical functions pertaining to his office; and
 - (b) such staff, seconded or appointed as provided for in paragraph (a), as may be necessary to enable the Provincial Public Protector to perform his or her functions.
- (2) Expenditure incidental to the exercise of the powers and functions of the Provincial Public Protector in terms of this Act or under any other law shall be defrayed from funds appropriated by the Provincial Legislature.

9. Delegation of powers and functions

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 [section 8](#).

10. Consultation with the Public Protector

The Provincial Public Protector shall exercise and perform his or her powers and functions as provided for in section 114(4) of the Constitution.

11. Regulations

- (1) The Premier may in consultation with the Provincial Public Protector, by notice in the Provincial Gazette, make regulations on any matter which he or she may regard necessary for the achievement of the objects of this Act.
- (2) Regulations made under subsection (1) may, for a contravention thereof, prescribe penalties of a fine or imprisonment for a period not exceeding six months.

12. Application of law

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

13. Short title

This Act shall be called the Provincial Public Protector Act, 1995, and shall come into operation on a date fixed by the Premier by proclamation in the Provincial Gazette.