



REPUBLIEK VAN SUID-AFRIKA

STAATSKOERANT

GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

As 'n Nuusblad by die Poskantoor Geregistreer

Registered at the Post Office as a Newspaper

VOL. 353

KAAPSTAD, 25 NOVEMBER 1994

CAPE TOWN, 25 NOVEMBER 1994

No. 16107

KANTOOR VAN DIE PRESIDENT

No. 2012.

25 November 1994

Hierby word bekend gemaak dat die President sy goedkeuring gegee het aan die onderstaande Wet, wat hierby ter algemene inligting gepubliseer word:

No. 23 van 1994: Wet op die Openbare Beskermer, 1994.

OFFICE OF THE PRESIDENT

No. 2012.

25 November 1994

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

No. 23 of 1994: Public Protector Act, 1994.

WET

Om voorsiening te maak vir aangeleenthede bykomstig tot die amp van Openbare Beskermer soos beoog in die Grondwet van die Republiek van Suid-Afrika, 1993; en voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

*(Engelse teks deur die President geteken.)
(Goedgekeur op 16 November 1994.)*

AANHEF

AANGESIEN artikels 110 tot 114 van die Grondwet van die Republiek van Suid-Afrika, 1993 (Wet No. 200 van 1993), voorsiening maak vir die instelling van die amp van Openbare Beskermer ten einde aangeleenthede te ondersoek en die publiek te beskerm teen aangeleenthede soos wanadministrasie in verband met regeringsaangeleenthede, onbehoorlike optrede deur 'n persoon wat 'n openbare werksaamheid verrig, onbehoorlike handeling ten opsigte van openbare fondse, onbehoorlike of onregmatige verryking van 'n persoon wat 'n openbare werksaamheid verrig en 'n handeling of late deur 'n persoon wat 'n openbare werksaamheid verrig wat onbehoorlike benadeling vir 'n ander persoon tot gevolg het;

EN AANGESIEN die Grondwet verdere wetgewing in die vooruitsig stel ten einde voorsiening te maak vir sekere bykomende aangeleenthede betreffende die amp van die Openbare Beskermer, met inbegrip van die besoldiging en diensvoorwaardes, immuniteite en voorregte, bevoegdhede en werksaamhede en personeel van die Openbare Beskermer;

WORD DAAR DERHALWE BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Woordomskrywing

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—
 - (i) “Adjunk Openbare Beskermer” enige persoon wat ingevolge artikel 3(2) aangestel is; (ii)
 - (ii) “gesamentlike komitee” ’n komitee bedoel in artikel 110(2)(a) van die Grondwet; (iv)
 - (iii) “komitee” ’n komitee ingestel kragtens artikel 2(1); (i)
 - (iv) “lid van die kantoor van die Openbare Beskermer” ook die Openbare Beskermer, ’n Adjunk Openbare Beskermer, ’n lid van die personeel van die Openbare Beskermer en ’n persoon beoog in artikels 3(12) en 7(3)(b); (v)
 - (v) “nuwe Grondwet” die nuwe Grondwet beoog in Hoofstuk 5 van die Grondwet; (vi)
 - (vi) “ondersoek” ’n ondersoek beoog in artikel 7; (iii)
 - (vii) “Openbare Beskermer” ’n persoon wat ingevolge artikel 110(2) van die Grondwet as sodanig aangestel is; (viii)
 - (viii) “Provinsiale Openbare Beskermer” ’n persoon wat as sodanig ingevolge ’n wet beoog in artikel 114(1) van die Grondwet aangestel is; (vii)
 - (ix) “Staatsdienskommissie” die Kommissie ingestel by artikel 209(1) van die Grondwet. (ix)

ACT

To provide for matters incidental to the office of the Public Protector as contemplated in the Constitution of the Republic of South Africa, 1993; and to provide for matters connected therewith.

*(English text signed by the President.)
(Assented to 16 November 1994.)*

PREAMBLE

WHEREAS sections 110 to 114 of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), provide for the establishment of the office of Public Protector in order to investigate matters and to protect the public against matters such as maladministration in connection with the affairs of government, improper conduct by a person performing a public function, improper acts with respect to public money, improper or unlawful enrichment of a person performing a public function and an act or omission by a person performing a public function resulting in improper prejudice to another person;

AND WHEREAS the Constitution envisages further legislation to provide for certain ancillary matters pertaining to the office of Public Protector, including the remuneration and conditions of employment, immunities and privileges, powers and functions and staff of the Public Protector;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context otherwise indicates—
- 5 (i) “committee” means a committee established under section 2(1); (iii)
 - (ii) “Deputy Public Protector” means any person appointed in terms of section 3(2); (i)
 - (iii) “investigation” means an investigation referred to in section 7; (vi)
 - 10 (iv) “joint committee” means a committee referred to in section 110(2)(a) of the Constitution; (ii)
 - (v) “member of the office of the Public Protector” includes the Public Protector, a Deputy Public Protector, a member of the staff of the Public Protector and any person contemplated in sections 3(12) and 7(3)(b); (iv)
 - 15 (vi) “new Constitution” means the new Constitution contemplated in Chapter 5 of the Constitution; (v)
 - (vii) “Provincial Public Protector” means any person appointed as such in terms of a law contemplated in section 114(1) of the Constitution; (viii)
 - (viii) “Public Protector” means any person appointed as such in terms of section 110(2) of the Constitution; (vii)
 - 20 (ix) “Public Service Commission” means the Commission established by section 209(1) of the Constitution. (ix)

Aanstelling van komitee, vergoeding, ampsontruimings en ander bedinge en voorwaardes van diens van Openbare Beskermer

2. (1) Die Parlement moet, in ooreenstemming met die reëls en orders van die Parlement, 'n komitee aanstel om aangeleenthede wat ingevolge hierdie Wet daarna verwys word, te oorweeg.

(2) Die besoldiging en ander bedinge en voorwaardes van diens van die Openbare Beskermer word, behoudens artikel 110(6) van die Grondwet, van tyd tot tyd deur die Parlement op advies van die komitee bepaal: Met dien verstande dat so 'n besoldiging nie minder as die salaris van 'n regter van die Hooggeregshof van die Republiek van Suid-Afrika mag wees nie.

(3) Die Parlement of, as die Parlement nie in sitting is nie, die gesamentlike komitee kan 'n Openbare Beskermer toelaat om sy of haar amp neer te lê—

(a) weens voortdurende swak gesondheid; of

(b) op sy of haar versoek: Met dien verstande dat so 'n versoek aan die Parlement of die gesamentlike komitee, na gelang van die geval, gerig moet word minstens drie kalendermaande voor die datum waarop hy of sy daardie amp wil neerlê, tensy die Parlement of die gesamentlike komitee, na gelang van die geval, in 'n bepaalde geval 'n korter termyn toelaat.

(4) Indien die gesamentlike komitee 'n Openbare Beskermer toelaat om sy of haar amp neer te lê ingevolge subartikel (3), moet die voorsitter van die gesamentlike komitee die ampsontruiming by boodskap aan die Parlement mededeel.

(5) Die Openbare Beskermer kan, te eniger tyd, die komitee nader in verband met enige aangeleentheid ten opsigte waarvan die Parlement funksies het wat met die kantoor van die Openbare Beskermer verband hou.

Adjunk Openbare Beskermer en personeel van Openbare Beskermer

3. (1) By die verrigting van sy of haar werksaamhede kragtens hierdie Wet en die Grondwet word die Openbare Beskermer, onder sy of haar toesig en beheer, bygestaan deur—

(a) een of meer Adjunk Openbare Beskermers;

(b) 'n behoorlik gekwalifiseerde en ervare persoon as Hoof Administratiewe Beampte, deur die Openbare Beskermer aangestel of afgestaan ingevolge subartikel (12), ten einde die Openbare Beskermer by die verrigting van alle finansiële, administratiewe en klerklike werksaamhede van die kantoor van die Openbare Beskermer by te staan; en

(c) personeel, deur die Openbare Beskermer aangestel of afgestaan ingevolge subartikel (12), wat noodsaaklik is om die Openbare Beskermer in staat te stel om sy of haar werksaamhede te verrig.

(2)(a) Die President moet, behoudens die bepalings van paragraaf (b), een of meer persone, wat kwalifiseer om as 'n Openbare Beskermer ingevolge die Grondwet aangestel te word, as Adjunk Openbare Beskermers aanstel.

(b) 'n Aanstelling ingevolge paragraaf (a) geskied slegs uit persone wat—

(i) benoem is deur die gesamentlike komitee na oorleg met die Openbare Beskermer; en

(ii) goedgekeur is deur die Nasionale Vergadering en die Senaat by 'n besluit aangeneem deur minstens 75 persent van die lede wat by 'n gesamentlike vergadering teenwoordig is en stem.

(c) Indien 'n benoeming nie soos beoog in paragraaf (b)(ii) goedgekeur word nie, moet die gesamentlike komitee 'n ander persoon ooreenkomstig paragraaf (b)(i) benoem.

(d) Indien die Openbare Beskermer nog nie aangestel is nie of indien die amp van Openbare Beskermer vakant is of indien oorlegpleging met die Openbare Beskermer nie, weens sy of haar onvermoë, kan geskied in die stadium wanneer dit nodig is om 'n persoon ingevolge paragraaf (b)(i) te benoem nie, kan die gesamentlike komitee persone benoem sonder die oorlegpleging beoog in bedoelde paragraaf (b)(i).

(e) Tensy die nuwe Grondwet anders bepaal, beklee 'n Adjunk Openbare Beskermer die amp vir 'n tydperk van sewe jaar.

(f) Die bepalings van artikel 2(3) en (4) is *mutatis mutandis* van toepassing ten opsigte van 'n Adjunk Openbare Beskermer.

(3) 'n Adjunk Openbare Beskermer het die bevoegdhede wat die Openbare Beskermer aan hom of haar delegeer.

Appointment of committee, remuneration, vacancies in office and other terms and conditions of employment of Public Protector

2. (1) Parliament shall, in accordance with the rules and orders of Parliament, appoint a committee for the purpose of considering matters referred to it in terms of this Act.

(2) The remuneration and other terms and conditions of employment of the Public Protector shall, subject to section 110(6) of the Constitution, from time to time be determined by Parliament upon the advice of the committee: Provided that such remuneration shall not be less than that of a judge of the Supreme Court of South Africa.

(3) Parliament or, if Parliament is not in session, the joint committee may allow a Public Protector to vacate his or her office—

- (a) on account of continued ill-health; or
- (b) at his or her request: Provided that such request shall be addressed to Parliament or the joint committee, as the case may be, at least three calendar months prior to the date on which he or she wishes to vacate such office, unless Parliament or the joint committee, as the case may be, allows a shorter period in a specific case.

(4) If the joint committee allows a Public Protector to vacate his or her office in terms of subsection (3), the chairperson of the joint committee shall communicate the vacation of office by message to Parliament.

(5) The Public Protector may, at any time, approach the committee with regard to any matter in respect of which Parliament has functions pertaining to the office of the Public Protector.

25 Deputy Public Protector and staff of Public Protector

3. (1) The Public Protector shall, subject to his or her directions and control, in the performance of his or her functions under this Act and the Constitution, be assisted by—

- (a) one or more Deputy Public Protectors;
- (b) a suitably qualified and experienced person as Chief Administrative Officer, appointed by the Public Protector or seconded in terms of subsection (12), for the purpose of assisting the Public Protector in the performance of all financial, administrative and clerical functions pertaining to the office of the Public Protector; and
- (c) such staff, seconded in terms of subsection (12) or appointed by the Public Protector, as may be necessary to enable the Public Protector to perform his or her functions.

(2)(a) The President shall, subject to the provisions of paragraph (b), appoint one or more persons, qualified to be appointed as a Public Protector in terms of the Constitution, as Deputy Public Protectors.

(b) An appointment in terms of paragraph (a) shall only be made from persons—

- (i) nominated by the joint committee after consultation with the Public Protector; and
- (ii) approved by the National Assembly and the Senate by a resolution adopted by at least 75 per cent of the members present and voting at a joint meeting.

(c) If any nomination is not approved as contemplated in paragraph (b)(ii), the joint committee shall nominate another person in accordance with paragraph (b)(i).

(d) If the Public Protector has not yet been appointed or if the office of Public Protector is vacant or if, on account of his or her incapacity, the Public Protector cannot be consulted at the time when it is necessary to nominate a person in terms of paragraph (b)(i), the joint committee may nominate persons without undertaking the consultation contemplated in the said paragraph (b)(i).

(e) Unless the new Constitution provides otherwise, a Deputy Public Protector shall hold office for a period of seven years.

(f) The provisions of section 2(3) and (4) shall apply *mutatis mutandis* in respect of a Deputy Public Protector.

(3) A Deputy Public Protector shall have such powers as the Public Protector may delegate to him or her.

(4) Wanneer die Openbare Beskermer om enige rede nie in staat is om sy of haar ampspligte te vervul nie of terwyl die aanstelling van iemand in die amp van Openbare Beskermer hangende is, moet die mees senior beskikbare Adjunk Openbare Beskermer die ampspligte van die Openbare Beskermer vervul.

(5) Wanneer daar 'n vakature in die amp van Adjunk Openbare Beskermer ontstaan, kan die President, behoudens die bepalings van hierdie artikel, iemand anders in daardie amp aanstel.

(6) Die President kan, op grond van wangedrag, onvermoë of onbekwaamheid, wat deur die gesamentlike komitee na oorleg met die Openbare Beskermer bepaal is, en by ontvangs van 'n versoekskrif van sowel die Nasionale Vergadering as die Senaat waarin die ontheffing van 'n Adjunk Openbare Beskermer versoek word, sodanige Adjunk Openbare Beskermer van sy of haar amp onthef.

(7) Die President kan, in oorleg met die Openbare Beskermer, 'n Adjunk Openbare Beskermer skors hangende 'n beslissing ingevolge subartikel (6).

(8) Die besoldiging en ander bedinge en diensvoorwaardes van 'n Adjunk Openbare Beskermer word van tyd tot tyd deur die Parlement op advies van die komitee bepaal.

(9) Die persone deur die Openbare Beskermer aangestel ingevolge subartikel 1(b) of (c) ontvang die besoldiging, toelaes en ander diensvoordele en word aangestel op die bedinge en voorwaardes en vir die tydperke wat die Openbare Beskermer bepaal.

(10) By die uitoefening van sy of haar bevoegdhede ingevolge subartikels (1) en (9) moet die Openbare Beskermer die Minister van Finansies en die Staatsdienskommissie raadpleeg.

(11)(a) 'n Dokument wat die besoldiging, toelaes en ander diensvoorwaardes uiteensit wat deur die Openbare Beskermer ingevolge subartikel (9) bepaal word, moet in die Parlement ter Tafel gelê word binne 14 dae nadat dit bepaal is.

(b) Indien die Parlement enige bepaling afkeur, verval so 'n bepaling vir sover dit aldus afgekeur word.

(c) Indien 'n bepaling verval soos beoog in paragraaf (b)—

(i) word enigiets wat ingevolge so 'n bepaling gedoen is tot en met die datum waarop so 'n bepaling verval het geag geldiglik gedoen te wees; en

(ii) verval enige reg, voorreg, verpligting of aanspreeklikheid verkry, opgeloopt of aangegaan tot op genoemde datum kragtens en uit hoofde van so 'n bepaling, op daardie datum.

(12) Die Openbare Beskermer kan, in die verrigting van die werksaamhede beoog in subartikel (1)(b), op sy of haar versoek en na oorleg met die Staatsdienskommissie, bygestaan word deur beamptes in die Staatsdiens wat aan die diens van die Openbare Beskermer afgestaan word ingevolge enige wet wat die afstaan van beamptes in die Staatsdiens reguleer.

(13) 'n Lid van die kantoor van die Openbare Beskermer moet—

(a) onpartydig en onafhanklik dien en sy of haar werksaamhede in goeie trou en sonder vrees, guns, partydigheid of vooroordeel verrig;

(b) in 'n heeltydse hoedanigheid dien met die uitsluiting van enige ander plig of verpligting voortspruitend uit enige ander diens of beroep of die bekleding van enige ander amp: Met dien verstande dat die komitee 'n Adjunk Openbare Beskermer kan vrystel en 'n persoon beoog in artikel 7(3)(b) vrygestel is van die bepalings van hierdie paragraaf.

(14) Geen persoon, behalwe 'n persoon beoog in artikel 7(3), onderneem 'n ondersoek beoog in artikel 7 of verleen hulp daartoe nie, ten opsigte van 'n aangeleentheid waarin hy of sy 'n finansiële belang of enige ander belang het wat hom of haar kan verhinder om sy of haar werksaamhede op 'n billike, onpartydige en behoorlike wyse te verrig nie.

(15) Indien iemand versuim om 'n belang bedoel in subartikel (14) te openbaar en 'n ondersoek beoog in artikel 7 onderneem of ten opsigte daarvan hulp verleen, terwyl hy of sy 'n belang het in die aangeleentheid wat ondersoek word, kan die Openbare Beskermer die stappe doen wat hy of sy nodig ag om 'n billike, onpartydige en behoorlike ondersoek te verseker.

Finansies en rekenpligtigheid

4. (1) Die Hoof Administratiewe Beampte bedoel in artikel 3(1)(b)—

(a) behoudens die Skatkiswet, 1975 (Wet No. 66 van 1975)—

(4) Whenever the Public Protector is, for any reason, unable to perform the functions of his or her office, or while the appointment of a person to the office of Public Protector is pending, the most senior Deputy Public Protector available shall perform such functions.

5 (5) If a vacancy occurs in the office of Deputy Public Protector the President may, subject to the provisions of this section, appoint another person to that office.

(6) The President may, on the grounds of misbehaviour, incapacity or incompetence, determined by the joint committee after consultation with the Public Protector, and upon receipt of an address from both the National
10 Assembly and the Senate requesting the removal of a Deputy Public Protector, remove such Deputy Public Protector from office.

(7) The President may, in consultation with the Public Protector, suspend a Deputy Public Protector pending a decision in terms of subsection (6).

(8) The remuneration and other terms and conditions of employment of a
15 Deputy Public Protector shall from time to time be determined by Parliament upon the advice of the committee.

(9) The persons appointed by the Public Protector in terms of subsection (1)(b) or (c) shall receive such remuneration, allowances and other employment
20 benefits and shall be appointed on such terms and conditions and for such periods, as the Public Protector may determine.

(10) In exercising his or her powers in terms of subsections (1) and (9), the Public Protector shall consult with the Minister of Finance and the Public Service Commission.

(11)(a) A document setting out the remuneration, allowances and other
25 conditions of employment determined by the Public Protector in terms of subsection (9), shall be Tabled in Parliament within 14 days after such determination.

(b) If Parliament disapproves of any determination such determination shall cease to be of force to the extent to which it is so disapproved.

30 (c) If a determination ceases to be of force as contemplated in paragraph (b)—

(i) anything done in terms of such determination up to the date on which such determination ceases to be of force shall be deemed to have been done validly; and

35 (ii) any right, privilege, obligation or liability acquired, accrued or incurred up to the said date under and by virtue of such determination, shall lapse upon the said date.

(12) The Public Protector may, in the performance of the functions contemplated in subsection (1)(b), at his or her request after consultation with the Public Service Commission, be assisted by officers in the Public Service
40 seconded to the service of the Public Protector in terms of any law regulating such secondment.

(13) A member of the office of the Public Protector shall—

(a) serve impartially and independently and perform his or her functions in good faith and without fear, favour, bias or prejudice;

45 (b) serve in a full-time capacity to the exclusion of any other duty or obligation arising out of any other employment or occupation or the holding of any other office: Provided that the committee may exempt a Deputy Public Protector and a person contemplated in section 7(3)(b) shall be exempted from the provisions of this paragraph.

50 (14) No person, other than a person contemplated in section 7(3), shall conduct an investigation contemplated in section 7 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.

55 (15) If any person fails to disclose an interest contemplated in subsection (14) and conducts or renders assistance with regard to an investigation contemplated in section 7, while having an interest in the matter being investigated, the Public Protector may take such steps as he or she deems necessary to ensure a fair, unbiased and proper investigation.

60 Finances and accountability

4. (1) The Chief Administrative Officer referred to in section 3(1)(b)—

(a) shall, subject to the Exchequer Act, 1975 (Act No. 66 of 1975)—

- (i) word belas met die verantwoordings van geld ontvang of uitbetaal vir of ten behoewe van die kantoor van die Openbare Beskermer;
 - (ii) moet die nodige rekeningkundige en ander verwante aantekeninge laat hou; en
 - (b) kan die bevoegdhede uitoefen en moet die pligte uitvoer wat die Openbare Beskermer van tyd tot tyd aan hom of haar verleen of oplê, en is vir daardie doeleindes aan die Openbare Beskermer verantwoordbaar.
- (2) Die aantekeninge bedoel in subartikel (1)(a)(ii) word deur die Ouditeur-generaal geouditeer.

Aanspreeklikheid van Openbare Beskermer

5. (1) Die kantoor van die Openbare Beskermer is 'n regspersoon.
- (2) Die Wet op Staatsaanspreeklikheid, 1957 (Wet No. 20 van 1957), is *mutatis mutandis* ten opsigte van die kantoor van die Openbare Beskermer van toepassing, en by sodanige toepassing word 'n verwysing in daardie Wet na "die Minister van die betrokke departement" uitgê as 'n verwysing na die Openbare Beskermer in sy of haar amptelike hoedanigheid.
- (3) Nóg 'n lid van die kantoor van die Openbare Beskermer nóg die kantoor van die Openbare Beskermer is aanspreeklik ten opsigte van iets weerspieël in 'n verslag, bevinding, standpunt of aanbeveling te goeder trou ingevolge hierdie Wet of die Grondwet aan die Parlement voorgelê of bekend gemaak.

Rapportering van aangeleenthede by en addisionele bevoegdhede van Openbare Beskermer

6. (1) Enige aangeleentheid ten opsigte waarvan die Openbare Beskermer regsbevoegdheid het, kan gerapporteer word deur enige persoon—
- (a) by wyse van 'n mondelinge of skriftelike verklaring onder eed of na die doen van 'n bevestiging, waarin vermeld word—
 - (i) die aard van die betrokke aangeleentheid;
 - (ii) die gronde waarop hy of sy meen dat 'n ondersoek nodig is;
 - (iii) alle ander ter sake dienende inligting wat aan hom of haar bekend is; of
 - (b) op die ander wyse wat die Openbare Beskermer toelaat, ten einde sy of haar kantoor toeganklik vir alle persone te maak.
- (2) 'n Lid van die kantoor van die Openbare Beskermer verleen die nodige bystand kosteloos ten einde enige persoon in staat te stel om aan subartikel (1) te voldoen.
- (3) Die Openbare Beskermer kan weier om 'n aangeleentheid wat by hom of haar gerapporteer is te ondersoek, indien die persoon wat oënskynlik in die aangeleentheid benadeel is—
- (a) 'n beampte of werknemer in diens van die Staat is of 'n persoon is waarop die bepalings van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), van toepassing is en nog nie, in verband met die aangeleentheid, alle redelike stappe gedoen het om die regsmiddele aan hom of haar verleen deur bedoelde Staatsdienswet, 1994 uit te put nie;
 - (b) deur 'n handeling of versuim bedoel in subartikel (4)(d) of artikel 112(1)(a)(v) van die Grondwet benadeel is en nie alle redelike stappe gedoen het om sy of haar regsmiddele in verband met die aangeleentheid uit te put nie.
- (4) Benewens die bevoegdhede en werksaamhede deur artikel 112 van die Grondwet aan die Openbare Beskermer toegewys, is hy of sy bevoeg om op eie inisiatief of by ontvangs van 'n klagte, ondersoek te doen na enige beweerde—
- (a) wanadministrasie in verband met aangeleenthede van enige instansie waarin die Staat die beheerende of meerderheidsaandeelhouer is of van enige openbare entiteit soos omskryf in artikel 1 van die Wet op Verslagdoening deur Openbare Entiteite, 1992 (Wet No. 93 van 1992);
 - (b) misbruik of ongeregtverdigde uitoefening van mag of onbillike, wispelturige, onbeleeft of ander onbehoorlike optrede of onverskoonbare vertraging deur 'n persoon wat 'n werksaamheid verrig wat verband hou met sy of haar werksaamhede by 'n instansie of entiteit beoog in paragraaf (a);
 - (c) onbehoorlike of onregmatige verryking, of ontvangs van enige onbehoorlike voordeel, of belofte van sodanige verryking of voordeel, deur

- (i) be charged with the responsibility of accounting for money received or paid out for or on account of the office of the Public Protector;
- (ii) cause the necessary accounting and other related records to be kept; and
- (b) may exercise such powers and shall perform such duties as the Public Protector may from time to time confer upon or assign to him or her, and shall in respect thereof be accountable to the Public Protector.
- (2) The records referred to in subsection (1)(a)(ii) shall be audited by the Auditor-General.

Liability of Public Protector

5. (1) The office of the Public Protector shall be a juristic person.
- (2) The State Liability Act, 1957 (Act No. 20 of 1957), shall apply *mutatis mutandis* in respect of the office of the Public Protector, and in such application a reference in that Act to "the Minister of the department concerned" shall be construed as a reference to the Public Protector in his or her official capacity.
- (3) Neither a member of the office of the Public Protector nor the office of the Public Protector shall be liable in respect of anything reflected in any report, finding, point of view or recommendation made or expressed in good faith and submitted to Parliament or made known in terms of this Act or the Constitution.

Reporting matters to and additional powers of Public Protector

6. (1) Any matter in respect of which the Public Protector has jurisdiction may be reported to the Public Protector by any person—
- (a) by means of a written or oral declaration under oath or after having made an affirmation, specifying—
- (i) the nature of the matter in question;
- (ii) the grounds on which he or she feels that an investigation is necessary;
- (iii) all other relevant information known to him or her; or
- (b) by such other means as the Public Protector may allow with a view to making his or her office accessible to all persons.
- (2) A member of the office of the Public Protector shall render the necessary assistance, free of charge, to enable any person to comply with subsection (1).
- (3) The Public Protector may refuse to investigate a matter reported to him or her, if the person ostensibly prejudiced in the matter is—
- (a) an officer or employee in the service of the State or is a person to whom the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994), are applicable and has, in connection with such matter, not taken all reasonable steps to exhaust the remedies conferred upon him or her in terms of the said Public Service Act, 1994; or
- (b) prejudiced by an act or omission referred to in subsection (4)(d) or section 112(1)(a)(v) of the Constitution and has not taken all reasonable steps to exhaust his or her legal remedies in connection with such matter.
- (4) In addition to the powers and functions assigned to the Public Protector by section 112 of the Constitution, he or she shall be competent to investigate, on his or her own initiative or on receipt of a complaint, any alleged—
- (a) maladministration in connection with the affairs of any institution in which the State is the majority or controlling shareholder or of any public entity as defined in section 1 of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992);
- (b) abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a function connected with his or her employment by an institution or entity contemplated in paragraph (a);
- (c) improper or unlawful enrichment or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a

'n persoon as gevolg van 'n handeling of late in verband met die sake van 'n instansie of entiteit beoog in paragraaf (a); of

- (d) handeling of late deur 'n persoon in diens van 'n instansie of entiteit beoog in paragraaf (a), wat onregmatige of onbehoorlike benadeling vir enige ander persoon tot gevolg het.

(5) Die Openbare Beskermer is bevoeg om, op eie inisiatief of by ontvangs van 'n klagte, ondersoek te doen na 'n beweerde poging om enigiets te doen wat hy of sy kragtens artikel 112 van die Grondwet of subartikel (4) kan ondersoek.

Ondersoek deur Openbare Beskermer

7. (1) Die prosedure wat gevolg moet word by die hou van 'n ondersoek, word deur die Openbare Beskermer bepaal met behoorlike inagneming van die omstandighede van elke geval, en die Openbare Beskermer kan gelas dat 'n kategorie persone of alle persone wie se teenwoordigheid nie wenslik is nie, nie by die verrigtinge tydens die ondersoek of enige deel daarvan teenwoordig mag wees nie.

(2) Ondanks andersluidende wetsbepalings mag niemand die inhoud van enige stuk in besit van 'n lid van die kantoor van die Openbare Beskermer of die notule van enige getuienis wat tydens 'n ondersoek voor die Openbare Beskermer, 'n Adjunk Openbare Beskermer of 'n persoon beoog in artikel 7(3)(b) afgelê is, aan enige ander persoon openbaar maak nie, tensy die Openbare Beskermer anders bepaal.

(3) (a) Die Openbare Beskermer kan, te eniger tyd voor of tydens die hou van 'n ondersoek—

- (i) iemand op enige regeringsvlak, behoudens 'n wet wat die bedinge en voorwaardes van diens van so 'n persoon reël;
- (ii) iemand wat 'n openbare werksaamheid verrig, behoudens 'n wet wat die bedinge en voorwaardes van die aanstelling van so 'n persoon reël; of
- (iii) iemand wat andersins aan die regsbevoegdheid van die Openbare Beskermer onderhewig is,

versoek om hom of haar, onder sy of haar toesig en beheer, by te staan by die verrigting van sy of haar werksaamhede met betrekking tot 'n besondere ondersoek of ondersoeke in die algemeen.

(b) Die Openbare Beskermer kan enige persoon benoem om namens hom of haar 'n ondersoek, of 'n gedeelte daarvan, te onderneem en aan hom of haar verslag te doen en vir daardie doel het so 'n persoon die bevoegdhede wat die Openbare Beskermer aan hom of haar verleen en is die bepalinge van artikel 9 en die bepalinge van die instruksies wat die Tesourie kragtens artikel 39 van die Skatkiswet, 1975 (Wet No. 66 van 1975), ten aansien van Kommissies van Onderzoek uitgereik het, *mutatis mutandis* ten opsigte van daardie persoon van toepassing.

(4)(a) Vir die doeleindes van die instel van 'n ondersoek kan die Openbare Beskermer enige persoon gelas om 'n beëdigde of bevestigde verklaring voor te lê of om voor hom of haar te verskyn om getuienis af te lê of 'n stuk wat in sy of haar besit of onder sy of haar beheer is, wat betrekking het op die aangeleentheid wat ondersoek word, oor te lê, en so 'n persoon ondervra.

(b) Die Openbare Beskermer of enige persoon deur hom of haar behoorlik daartoe gemagtig, kan enige persoon wat hy of sy redelikerwys vermoed oor inligting beskik wat verband hou met 'n aangeleentheid wat ondersoek of ondersoek staan te word, versoek om 'n verduideliking te verskaf.

(5) 'n Lasgewing bedoel in subartikel (4)(a) geskied by wyse van 'n dagvaarding bevattende besonderhede van die aangeleentheid in verband waarmee die gedagvaarde vereis word om voor die Openbare Beskermer te verskyn en wat deur die Openbare Beskermer onderteken is en aan die gedagvaarde bestel word óf per aangetekende brief deur die pos versend óf deur aflewering deur iemand wat deur die Openbare Beskermer daartoe gemagtig is.

(6) Die Openbare Beskermer kan van 'n persoon wat kragtens subartikel (4) voor hom of haar as getuie verskyn, vereis om getuienis onder eed of na die doen van 'n bevestiging af te lê.

(7) Die Openbare Beskermer kan so 'n persoon 'n eed oplê of van hom of haar 'n bevestiging aanneem.

(8) 'n Persoon wat uit hoofde van die bepalinge van subartikel (4) voor die Openbare Beskermer verskyn, kan by so 'n ondervraging bygestaan word deur 'n advokaat of 'n prokureur en is geregtig op insae in sodanige van die stukke of

result of an act or omission in connection with the affairs of an institution or entity contemplated in paragraph (a); or

(d) act or omission by a person in the employ of an institution or entity contemplated in paragraph (a), which results in unlawful or improper prejudice to any other person.

(5) The Public Protector shall be competent to investigate, on his or her own initiative or on receipt of a complaint, any alleged attempt to do anything which he or she may investigate under section 112 of the Constitution or subsection (4).

Investigation by Public Protector

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

(2) Notwithstanding anything to the contrary contained in any law no person shall disclose to any other person the contents of any document in the possession of a member of the office of the Public Protector or the record of any evidence given before the Public Protector, a Deputy Public Protector or a person contemplated in subsection (3)(b) during an investigation, unless the Public Protector determines otherwise.

(3)(a) The Public Protector may, at any time prior to or during an investigation, request any person—

(i) at any level of government, subject to any law governing the terms and conditions of employment of such person;

(ii) performing a public function, subject to any law governing the terms and conditions of the appointment of such person; or

(iii) otherwise subject to the jurisdiction of the Public Protector, to assist him or her, under his or her supervision and control, in the performance of his or her functions with regard to a particular investigation or investigations in general.

(b) The Public Protector may designate any person to conduct an investigation or any part thereof on his or her behalf and to report to him or her and for that purpose such a person shall have such powers as the Public Protector may assign to him or her, and the provisions of section 9 and the instructions issued by the Treasury under section 39 of the Exchequer Act, 1975 (Act No. 66 of 1975), in respect of Commissions of Inquiry, shall apply *mutatis mutandis* in respect of that person.

(4)(a) For the purposes of conducting an investigation the Public Protector may direct any person to submit an affidavit or affirmed declaration or to appear before him or her to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on the matter being investigated, and may examine such person.

(b) The Public Protector or any person duly authorised thereto by him or her may request an explanation from any person whom he or she reasonably suspects of having information which has a bearing on a matter being or to be investigated.

(5) A direction referred to in subsection (4)(a) 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 Public Protector and shall be signed by the 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 Public Protector.

(6) The Public Protector may require any person appearing as a witness before him or her under subsection (4) to give evidence on oath or after having made an affirmation.

(7) The Public Protector may administer an oath to or accept an affirmation from any such person.

(8) Any person appearing before the Public Protector by virtue of the provisions of subsection (4) may be assisted at such examination by an advocate or an attorney and shall be entitled to peruse such of the documents or records

notules bedoel in subartikel (2) wat redelikerwys nodig is om sy of haar geheue te verfris.

(9) Indien dit in die loop van 'n ondersoek vir die Openbare Beskermer voorkom of iemand betrek word by die aangeleentheid wat ondersoek word, moet die Openbare Beskermer aan so 'n persoon die geleentheid bied om in verband daarmee by wyse van die aflê van getuienis aangehoor te word, en so 'n persoon of sy of haar regsvertegenwoordiger is daarop geregtig om deur die Openbare Beskermer in verband met die betrokke aangeleentheid vrae te stel aan ander getuies, deur die Openbare Beskermer bepaal, wat ingevolge hierdie artikel voor die Openbare Beskermer verskyn het.

(10) Die bepalings van hierdie artikel is van toepassing op 'n persoon bedoel in subartikel (9).

Bekendmaking van bevindings

8. (1) Die Openbare Beskermer kan, behoudens die bepalings van subartikel (3), op die wyse wat hy of sy goeddink, 'n bevinding, standpunt of aanbeveling met betrekking tot 'n aangeleentheid deur hom of haar ondersoek, aan enige persoon bekend maak.

(2) Die Openbare Beskermer moet halfjaarlikse verslae aan die Parlement voorlê oor die bevindings ten opsigte van ondersoeke van 'n ernstige aard, wat tydens die betrokke halfjaar onderneem is: Met dien verstande dat die Openbare Beskermer, te eniger tyd, 'n verslag aan die Parlement moet voorlê oor die bevindings van 'n spesifieke ondersoek indien —

- (a) hy of sy dit nodig ag;
- (b) hy of sy dit in die openbare belang ag;
- (c) dit dringend die aandag van, of 'n ingryping deur, die Parlement vereis;
- (d) hy of sy aldus versoek word deur die Speaker van die Nasionale Vergadering; of
- (e) hy of sy aldus versoek word deur die President van die Senaat.

(3) Die bevindings van 'n ondersoek deur die Openbare Beskermer moet, wanneer hy of sy dit goedvind maar so gou as moontlik, aan die klaer en aan enige persoon wat daardeur betrek word, beskikbaar gestel word.

Minagting van Openbare Beskermer

9. (1) Geen persoon mag—

- (a) die Openbare Beskermer of 'n Adjunk Openbare Beskermer beledig nie;
- (b) in verband met 'n ondersoek iets doen nie wat, indien bedoelde ondersoek verrigtinge in 'n geregshof was, minagting van die hof sou uitgemaak het.

(2) Niks vervat in hierdie Wet belet die bespreking in die Parlement van 'n aangeleentheid wat ingevolge hierdie Wet deur die Openbare Beskermer ondersoek word of ondersoek was nie.

Vergoeding ten aansien van uitgawes

10. Die Openbare Beskermer kan, met die spesifieke of algemene goedkeuring van die Minister van Finansies of iemand deur genoemde Minister daartoe gemagtig om aldus goed te keur, gelas dat die uitgawes of 'n gedeelte van die uitgawes wat deur iemand in die loop van of in verband met 'n ondersoek deur die Openbare Beskermer aangegaan is, uit Staatsfondse aan daardie persoon betaal word.

Misdrywe en strawwe

11. (1) Enige persoon wat die bepalings van artikels 3(14), 7(2) en 9 van hierdie Wet, of artikel 111(3) van die Grondwet, oortree, is aan 'n misdryf skuldig.

(2) Enige persoon wat versuim om 'n belang beoog in artikel 3(14) te openbaar, is aan 'n misdryf skuldig.

(3) Enige persoon wat sonder redelike oorsaak weier of versuim om aan 'n lasgewing kragtens artikel 112(3)(a) van die Grondwet of artikel 7(4)(a) van hierdie Wet te voldoen of weier om op 'n vraag aan hom of haar kragtens daardie paragrawe gestel, 'n antwoord te verstrek of wat op so 'n vraag 'n antwoord verstrek wat na sy of haar wete onjuis is, of weier om op versoek van die Openbare Beskermer ingevolge artikel 7(6) die eed af te lê of 'n bevestiging te doen, is aan 'n misdryf skuldig.

referred to in subsection (2) as are reasonably necessary to refresh his or her memory.

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

(10) The provisions of this section shall be applicable to any person referred to in subsection (9).

Publication of findings

8. (1) The Public Protector may, subject to the provisions of subsection (3), in the manner he or she deems fit, make known to any person any finding, point of view or recommendation in respect of a matter investigated by him or her.

(2) The Public Protector shall submit to Parliament half-yearly reports on the findings in respect of investigations of a serious nature, which were conducted during the half-year concerned: Provided that the Public Protector shall, at any time, submit a report to Parliament on the findings of a particular investigation if —

- (a) he or she deems it necessary;
- (b) he or she deems it in the public interest;
- (c) it requires the urgent attention of, or an intervention by Parliament;
- (d) he or she is requested to do so by the Speaker of the National Assembly; or
- (e) he or she is requested to do so by the President of the Senate.

(3) The findings of an investigation by the Public Protector shall, when he or she deems it fit but as soon as possible, be made available to the complainant and to any person implicated thereby.

30 Contempt of Public Protector

9. (1) No person shall—

- (a) insult the Public Protector or a Deputy Public Protector;
- (b) in connection with an investigation do anything which, if the said investigation had been proceedings in a court of law, would have constituted contempt of court.

(2) Nothing contained in this Act shall prohibit the discussion in Parliament of a matter being investigated or which has been investigated in terms of this Act by the Public Protector.

Compensation for expenses

10. The Public Protector may, with the specific or general approval of the Minister of Finance or any person authorised by the said Minister to so approve, 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 from State funds to that person.

45 Offences and penalties

11. (1) Any person who contravenes the provisions of sections 3(14), 7(2) and 9 of this Act, or section 111(3) of the Constitution, shall be guilty of an offence.

(2) Any person who fails to disclose an interest contemplated in section 3(14), shall be guilty of an offence.

(3) Any person who, without just cause, refuses or fails to comply with a direction under section 112(3)(a) of the Constitution or section 7(4)(a) of this Act or refuses to answer any question put to him or her under those paragraphs or gives to such question an answer which to his or her knowledge is false, or refuses to take the oath or to make an affirmation at the request of the Public Protector in terms of section 7(6), shall be guilty of an offence.

(4) Enige persoon wat skuldig bevind word aan 'n misdryf ingevolge hierdie Wet is strafbaar met 'n boete van hoogstens R40 000 of met gevangenisstraf vir 'n tydperk van hoogstens 12 maande of met daardie boete sowel as daardie gevangenisstraf.

Riglyne vir provinsiale openbare beskermers

5

12. (1) Die Openbare Beskermer moet, so gou moontlik na 'n provinsiale openbare beskermer aangestel is kragtens 'n wet beoog in artikel 114(1) van die Grondwet, en na oorleg met die provinsiale openbare beskermers, 'n kennisgewing in die *Staatskoerant* publiseer wat algemene riglyne neerlê waarvolgens 'n provinsiale openbare beskermer sy of haar bevoegdhede en werksaamhede moet 10 uitoefen en verrig soos beoog in artikel 114(4) van die Grondwet: Met dien verstande dat hierdie subartikel nie uitgelê word asof dit 'n provinsiale openbare beskermer verbied om buite sodanige riglyne in 'n bepaalde geval op te tree in oorleg met die Openbare Beskermer nie.

(2) Tensy anders bepaal in 'n wet van 'n provinsiale wetgewer soos beoog in artikel 114(1) van die Grondwet, is die bepalings van artikels 5 tot en met artikel 11 *mutatis mutandis* van toepassing op 'n provinsiale openbare beskermer met 15 betrekking tot die ondersoek van 'n aangeleentheid deur hom of haar: Met dien verstande dat 'n verwysing na "Openbare Beskermer" uitgelê word as 'n verwysing na 'n provinsiale openbare beskermer, 'n verwysing na "Parlement" 20 uitgelê word as 'n verwysing na 'n provinsiale wetgewer en 'n verwysing na "Minister van Finansies" uitgelê word as 'n verwysing na die lid van die Uitvoerende Raad verantwoordelik vir finansies.

Toepassing van Wet

13. Die bepalings van hierdie Wet raak nie enige ondersoek kragtens, of die 25 verrigting of uitoefening van enige plig of bevoegdheid opgelê of verleen by of kragtens, die een of ander wet nie.

Herroeping van wette

14. Die Wet op die Ombudsman, 1979 (Wet No. 118 van 1979), die Wysigingswet op die Advokaat-generaal, 1983 (Wet No. 55 van 1983), en die 30 Wysigingswet op die Advokaat-generaal, 1991 (Wet No. 104 van 1991), word hierby herroep.

Kort titel

15. Hierdie Wet heet die Wet op die Openbare Beskermer, 1994.

(4) Any person convicted of an offence in terms of this Act shall be liable to a fine not exceeding R40 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Guidelines for provincial public protectors

5 12. (1) The Public Protector shall as soon as possible after a provincial public protector has been appointed under a law contemplated in section 114(1) of the Constitution, and after consultation with the provincial public protectors, publish in the *Gazette* a notice setting out general guidelines in accordance with which a provincial public protector shall exercise and perform his or her powers
10 and functions as contemplated in section 114(4) of the Constitution: Provided that this subsection shall not be construed as prohibiting a provincial public protector from departing from such guidelines in a particular case in consultation with the Public Protector.

15 (2) Unless provided otherwise in a law of a provincial legislature contemplated in section 114(1) of the Constitution, the provisions of sections 5 up to and including section 11 shall *mutatis mutandis* apply to a provincial public protector in respect of an investigation into a matter by him or her: Provided that a reference to "Public Protector" shall be construed as a reference to a provincial public protector, a reference to "Parliament" shall be construed as a reference
20 to a provincial legislature and a reference to "Minister of Finance" shall be construed as a reference to the member of the Executive Council responsible for finance.

Application of Act

25 13. The provisions of this Act shall not affect any investigation under, or the performance or exercise of any duty or power imposed or conferred by or under, any law.

Repeal of laws

30 14. The Ombudsman Act, 1979 (Act No. 118 of 1979), the Advocate-General Amendment Act, 1983 (Act No. 55 of 1983), and the Advocate-General Amendment Act, 1991 (Act No. 104 of 1991), are hereby repealed.

Short title

15. This Act shall be called the Public Protector Act, 1994.

