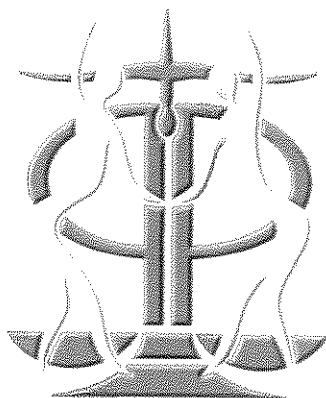


REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR ACT, 1994



PUBLIC PROTECTOR
SOUTH AFRICA

REPORT NO. 35 OF 2010/2011

"Two wrongs to right"

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF THE SUBMISSION OF INCORRECT PENSION EXIT DOCUMENTS TO THE GOVERNMENT PENSIONS ADMINISTRATION AGENCY BY THE EASTERN CAPE PROVINCIAL DEPARTMENT OF EDUCATION, AS WELL AS FAILURE BY THE NORTH WEST PROVINCIAL DEPARTMENT OF EDUCATION TO PROCESS AND SUBMIT THE PENSION EXIT DOCUMENTS OF MRS NOTHANDO CECILIA JADA, TIMEOUSLY.

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Executive Summary

- (i) The Public Protector received a complaint from Mrs N C Jada (the Complainant), an educator previously employed by both the Eastern Cape and North West Provincial Departments of Education on allegations relating to the incorrect calculation of her pension benefits whilst employed by the Eastern Cape Provincial Department of Education (ECPDE) and the undue delay in the payment of her pension benefits for the period that she was employed by the North West Provincial Department of Education (NWPDE).
- (ii) The Public Protector made the following findings:
- (a) No pension contributions were made by the Complainant for the period 21 January 1976 to 31 January 1984.
 - (b) The ECPDE submitted incorrect information as to the salary scales of the Complainant on her pension exit document to the Government Pensions Administration Agency (GPAA), previously the Government Employees Pension Fund (GEPF).
 - (c) The Complainant has not received any pensionable benefits for the period that she was employed at the NWPDE.
 - (d) The NWPDE failed to submit pension exit documents of the Complainant covering the period of employment with the NWPDE to the GPAA.
 - (e) The failure of NWPDE officials to submit the pension documents and/or timeously inquire about the progress made regarding the processing and paying of the pension benefits of the Complainant, if indeed her pension documents was submitted, constitutes maladministration.

- (f) The Complainant was treated unjustly and was prejudiced by the failure of the NWPDE to submit correct pension exit documents and to ensure that her pension benefits are paid timeously.
- (iii) The following remedial action is to be taken:
- (a) In terms of section 182(1) (c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act the following action is required to remedy the improper prejudice suffered by the Complainant:
- (b) The Director-General of the ECPDE must, as a matter of urgency, ensure that the correct salary scale information is submitted to the GPAA to enable the latter to recalculate the pensionable portion of the Complainant's pension on the correct scales and to effect payment of the difference in the amounts.
- (c) The ECPDE must pay interest on the amount representing the difference in pension benefits already paid to the Complainant, calculated from the date of resignation, up to the date on which the final pension payment on the correct scale are made, at the same rate as the rate prescribed (as at that time) by the Minister of Justice and Constitutional Development in terms of section 1(2) of the Prescribed Rate of Interest Act, 1975 (Interest Act).
- (d) The Director-General of the ECPDE must provide the Public Protector with a report on the reasons for the submission of the necessary pension exit documents only four (4) years after the resignation of the Complainant to the GPAA.
- (e) The ECPDE must apologise to the Complainant for providing the GPAA with incorrect information on which her pension benefits were calculated and paid.

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- (f) The Superintendent-General in the NWPDE together with the CEO of the GPAA must, as a matter of urgency, ensure that the pension benefits for the period, 3 years and 8 months, that the Complainant was employed with the NWPDE are processed and paid out to the Complainant.
 - (g) The NWPDE must pay interest on the amount representing the pension benefits payable to the Complainant, calculated from the date of resignation, up to the date on which the benefits are paid by the GPAA, at the same rate as the rate prescribed (as at that time) by the Minister of Justice and Constitutional Development in terms of section 1(2) of the Interest Act.
 - (h) The NWPDE must apologise to the Complainant for the failure to submit pension documents timeously, to make follow up enquiries on progress made with the GPAA, and for the delay in payment of the Complainant's benefits as a result thereof.

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF THE SUBMISSION OF INCORRECT PENSION EXIT DOCUMENTS TO THE GOVERNMENT PENSIONS ADMINISTRATION AGENCY BY THE EASTERN CAPE PROVINCIAL DEPARTMENT OF EDUCATION, AS WELL AS FAILURE BY THE NORTH WEST PROVINCIAL DEPARTMENT OF EDUCATION TO PROCESS AND SUBMIT THE PENSION EXIT DOCUMENTS OF MRS NOTHANDO CECILIA JADA, TIMEOUSLY.

1. INTRODUCTION

1.1 This report is submitted in terms of section 8(1) of the Public Protector Act, 1994 (Public Protector Act) and section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution) to the Member of the Executive Council (MEC) responsible for Education in the Eastern Cape and North West Provinces, the Director-General for Education in the Eastern Cape Province, the Superintendent General of Education in the North West Province and the Chief Executive Officer of the Government Pensions Administration Agency (GPAA), previously the Government Employees Pension Fund (GEPF).

1.2 A copy of the report is provided to Mrs N C Jada (the Complainant) in terms of section 8(3) of the Public Protector Act.

1.3 The matter was reported to the Public Protector in the Eastern Cape in September 2006 and thereafter transferred to the North West Provincial office for further investigation in November 2006. It is in the interest of justice and good governance necessary to submit this report on the outcome of the investigation.

2. THE COMPLAINT

2.1 The Complainant alleged that she was employed by the Eastern Cape Provincial Department of Education (ECPDE) from 21 January 1976 until 30 April 1996 when she resigned to take up a position with the North West Provincial Department of Education (NWPDE). She joined the NWPDE on 1

May 1996 and she terminated her services by resignation on 31 January 2000.

2.2 Although the ECPDE had prepared and submitted a 'Withdrawal from Fund' (Form Z102E) to the GPAA, the amount she received (R25126, 44 after a deduction of an amount of R8286.47 towards a departmental debt was made), was not calculated correctly for the period of service she rendered because:

2.2.1 The GPAA calculated her pensionable service only as from 1 February 1984 to 31 May 1996, whereas it should have been from 21 January 1976 until 30 April 1996;

2.2.2 Her pensionable benefits on resignation were calculated on incorrect salary scales submitted to the GPAA by the ECPDE; and

2.2.3 She has not received any pensionable benefits for the period that she was employed at the NWPDE.

3. JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector is one of the constitutional institutions established in terms of Chapter 9 of the Constitution to strengthen constitutional democracy.

3.2 In terms of section 182(1) of the Constitution the Public Protector has the power to investigate any conduct in state affairs or in the public administration in any sphere of government that is alleged or suspected to be improper or to result in an impropriety or prejudice.

3.3 For the purpose of the powers, functions and mandate of the Public Protector, improper conduct would include allegations of maladministration, abuse or unjustifiable exercise of power, improper or unlawful enrichment when

performing public functions, improper or dishonest acts in respect of public funds, improper prejudice and undue delay.

- 3.4 The Public Protector therefore has the jurisdiction to investigate the Complainant's matter.

4. THE INVESTIGATION

The investigation was conducted in terms of sections 6 and 7 of the Public Protector Act, and comprised of the following:

4.1 Key sources of information

- 4.1.1 Perusal of correspondence and copies of documents received from both the ECPDE and NWPDE and correspondence received from the GPAA.

- 4.1.2 Written enquiries with the Director: Human Resources: NWPDE.

- 4.1.3 A meeting with the Officials of the NWPDE and perusal of the Complainant's personnel file at the said Department.

4.2 Summary of the investigation process and evidence

4.2.1 Calculation of pension benefits whilst employed at the Eastern Cape Provincial Department of Education

- 4.2.1.1 A "Record of Service"¹ obtained from the ECPDE indicates that the Complainant joined the Government Employees Pension Fund on 1 February 1984 although the period of her service is recorded since 21 January 1976.

¹ Form X.48 dated 28/05/1996 issued by the Director General for ECPDE



The GPAA confirmed these dates on which pensionable service was calculated in a letter to the Public Protector².

4.2.1.2 The Record of Service also indicates that the Complainant was, five months prior to her resignation, earning a salary on a scale of between R71 535.00 and R95 391.00, and that her annual salary, as at 31 December 1995, was R85 059.00. In this regard the last five (5) entries on the Record of Service denotes the salary earned by the Complainant over a two (2) year period, as from 1 January 1994 to 31 December 1995, as follows:

| Date | Rank and Department | Salary | Scale | Incremental date | Allowances (also nature thereof) |
|----------|---------------------|--------|-------------|------------------|----------------------------------|
| 1.1.94 | Principal | 73590 | 64503-86010 | 1 | Promoted |
| 1.4.94 | Principal | 77715 | 68118-90831 | 1 | Salary adjustment |
| 1.1.95 | Principal | 80059 | 68118-90831 | 1 | Increment |
| 1.7.95 | Principal | 85059 | 71535-95391 | 1 | Salary adjustment |
| 31.12.95 | Principal | 85059 | 71535-95391 | 1 | (no entry) |

4.2.1.3 The Form Z102E³ submitted to the GPAA by the ECPDE for the Complainant (salary number 5134318) indicates the following:

a. "Item 4 (d): Commencing date of period covered by contributions:

1984-02-01⁴

b. Item 4 (e): Date on which service terminated: **1996-05-31⁵**

c. Item 9 (a): Reason for termination of service: **Resigned**

d. Item 9(b): Pension benefits payable in terms of fund regulations: **14.4.1 GEPF 01-05-97.**

² Letter from National Treasury (GPAA) to the Public Protector dated 12 October 2007 where it is stated that benefits were calculated from 1 February 1984 to 31 May 1996.

³ Date stamped 3 November 2000

⁴ Correlates with information mentioned in paragraph 6.1. *supra*

⁵ See paragraph 4.3.2.3

- e. Item 19: Particulars of pensionable emoluments during last three years (or whole period if shorter). Where non-reckonable periods fall within the last three years, the salary must be shown to cover a period of three whole years of pensionable service:

| <i>From</i> | <i>To</i> | <i>Annual salary</i> |
|-------------|------------|----------------------|
| 1991-06-01 | 1992-06-30 | 33078 |
| 1992-07-01 | 1993-06-30 | 41163 |
| 1993-07-01 | 1994-06-30 | 45240 |
| 1994-07-01 | 1995-06-30 | 47016 |
| 1995-07-01 | 1996-05-31 | 50994 |

- f. Item 22: Particulars of debts to State/employer (see item 13):

“R8286,47 – Salary overpayment”.”

4.2.2 Employment at the North West Provincial Department of Education

- 4.2.2.1 In addressing the issue of alleged undue delay in the pension payout of the Complainant by the NWPDE the Superintendent General responded to the Public Protector as follows⁶:

“I confirm receipt of your letter regarding the afore-going matter and the content is noted. I need to hasten to express my sincere apologies to Mrs Jada for the prolonged delay in effecting the pension payout. I have now requested HR Directorate t (sic) give this matter priority and assist her as soon as possible. I have also directed that the Directorate, in the course of attempting to rectify the problem, must communicate directly with her to appraise her about progress being registered in this regard.”

- 4.2.2.2 Pursuant to correspondence from the Public Protector dated 2 May 2007 and 3 October 2007, the NWPDE responded⁷ that the Complainant’s pension fund benefits were duly processed and paid out by the GPAA. To substantiate the

⁶ Unreferenced letter dated 8 March 2007.

⁷ A letter from the NWPDE to the Public Protector dated 22 May 2007.

contention, the NWPDE attached a copy of a letter from the GPAA addressed to the Complainant dated 5 March 2001⁸.

4.2.2.3 The GPAA informed the Public Protector that no records relating to the period the Complainant was employed with the NWPDE, are available.

4.2.2.4 In following up the matter with the NWPDE, copies of the following documentation were supplied to the Public Protector:

(a) A cover letter from the NWPDE under reference 90067185 date stamped 29 May 2000, addressed to The Director, Department of Finance, Pretoria, indicating that the following documents were attached and allegedly submitted:

- (i) Z102 and Z125;
- (ii) ID copy;
- (iii) Payslip;
- (iv) Application form; and
- (v) ACB Certificate.

(b) The Form Z102E⁹ in respect of N C Jada (salary number 90067185, **no pension number** is indicated on the form) by the NWPDE indicates the following:

*Item 4 (d): Commencing date of period covered by contributions: 1996-05-01*¹⁰

Item 4 (e): Date on which service terminated: 2000-01-31

Item 9 (a): Reason for termination of service: Resignation

Item 9(b): Pension benefits payable in terms of fund regulations: 14.4.1

⁸ "Payment of resignation benefit: Pension number 97290982" Noticeably this letter was for the payment of her pension benefits whilst employed at the ECPDE

⁹ Date stamped 29 May 2000.

¹⁰ There is an overlap of one (1) month of service with the ECPDE and NWPDE.

Item 19: Particulars of pensionable emoluments during last three years (or whole period if shorter). Where non-reckonable periods fall within the last three years, the salary must be shown to cover a period of three whole years of pensionable service:

| From | To | Annual salary |
|------------|------------|---------------|
| 1996-05-01 | 1996-06-30 | 88503 |
| 1996-07-01 | 1997-06-30 | 98463 |
| 1997-07-01 | 1998-06-30 | 106377 |
| 1998-07-01 | 1999-06-30 | 111654 |
| 1999-07-01 | 2000-01-31 | 117984 |

Item 22: Particulars of debts to State/employer (see item 13):

"R19189,05 – Deduct this amount from her pension as Salary Overpayment".

4.3 Evaluation of the evidence

4.3.1 Legislation and interest payable

- 4.3.1.1 The Complainant resigned from the ECPDE on 31 May 1996, and joined the NWPDE where she resigned on 31 January 2000. She therefore, in both instances, exited the GPAA in terms of the provisions of the previous section 26 of the Government Employees Pension Law, 1996 (GEP Law).
- 4.3.1.2 This provision in section 26, limited the liability of the GPAA to pay interest, as the period in which payment of benefits shall commence is 60 days after the date that the GPAA received the correct documentation. The documentation submitted by the ECPDE is date stamped 3 November 2000, which is 4 years and 3 months after the date of resignation.
- 4.3.1.3 There is no indication that the GPAA received and processed any pension documents from the NWPDE for the period, 1 May 1996 to 31 January 2000 (3 years and 8 months) when the Complainant was employed in the North West Province.

- 4.3.1.4 In this instance, both the ECPDE and NWPDE should be liable for the *ex-gratis* payment of interest, based on the improper and undue delay in the submission of the pension documents to the GPAA.
- 4.3.2 Calculation of pension benefits whilst employed with the Eastern Cape Provincial Department of Education**
- 4.3.2.1 The Record of Service indicates that the Complainant's admission to the Fund was recorded as from 1 February 1984. The period 21 January 1976 to 31 January 1984 was therefore not covered as pensionable service with the GPAA, which was rightfully taken into consideration in the calculation of benefits by the GPAA.
- 4.3.2.2 Noticeably there is no correlation between the figures of the salary scales on the Record of Service and the information recorded under item 19 on the Z102E form that was submitted to the GPAA by the ECPDE. The contention raised by the Complainant that her benefits were incorrectly calculated on the salary scales indicated on the Z102E, whereas it should have been calculated on her *final salary*¹¹ earned at the time of resignation, is justified.
- 4.3.2.3 Whereas the ECPDE indicated on the Z102E submitted to the GPAA that the Complainant terminated her services on 31 May 1996, the Complainant avers that she had actually assumed duty on 1 May 1996 at the NWPDE.
- 4.3.2.4 The necessary Z102E was only submitted on 3 November 2000 to the GPAA, which is more than four (4) years after the Complainant terminated her services with the ECPDE.

¹¹ *Final salary* is defined in the rules of the GPAA to be the average salary earned over the last 24 months of pensionable service and the formula to calculate resignation benefits are: $7,5\% \times \text{final salary} \times \text{years of pensionable service}$. (the latter benefit will increase by certain percentages according to years of service).

- 4.3.2.5 The Complainant did not, as a result of the undue delay and improper calculation of her salary scales by the ECPDE, enjoy and/or benefited from the correct pension benefits of her employment since the time of her resignation. The Complainant is therefore entitled to the interest at the same rate as the rate prescribed (as at that time) by the Minister of Justice and Constitutional Development in terms of section 1(2) of the Interest Act, on the difference between the amount of benefits already paid and the amount of benefits calculated on the correct salary scale for the period until the balance of the benefits is paid by the GPAA.
- 4.3.4 Employment at the North West Provincial Department of Education**
- 4.3.4.1 From the contentions raised by the Complainant and copies of salary advices received whilst employed in the NWPDE, it is clear that deductions were made under "*item 0002 GEPF*"¹² for pension contributions. Noticeably the pension number indicated on her payslips by the NWPDE are 97290982, which is the same pension number that appears on the Z102E form submitted by the ECPDE and on the letter that the Complainant received from National Treasury mentioned in paragraph 4.2.2.2 above.
- 4.3.4.2 Although a Z102E form was allegedly submitted by the NWPDE to the GPAA, there is no indication that the GPAA ever received and/or processed any payment in respect of the documents submitted. Further, no pension number is indicated on the Z102E form.
- 4.3.4.3 Despite alleged enquiries made by the Complainant with the NWPDE officials, enquiries by the Public Protector, and the response received from the Superintendent General of Education in the North West Province, there is no indication that the matter was ever resolved or followed up further by the NWPDE with the GPAA.

¹²

Code on salary advice.

- 4.3.4.4 As at the end of September 2008, the Complainant confirmed that she has not received any pension payment for services rendered whilst employed at the NWPDE.
- 4.3.4.5 The Complainant is prejudiced by the delay on the part of the NWPDE and has suffered pecuniary loss on her pension benefits since her resignation from the service. The Complainant is therefore entitled to the interest calculated at the same rate as the rate prescribed (as at that time) by the Minister of Justice and Constitutional Development in terms of section 1(2) of the Interest Act on the amount of benefits payable from the date of resignation up to the date on which the benefits are paid.
- 4.3.4.6 There is no indication that the Complainant requested the GPAA in writing in terms of Rule 10.2(d) and within a period of 12 months to recognise her previous services and to extend her previous pensionable service to include the period that she was employed in the NWPDE.

5. REGULATORY FRAMEWORK

5.1 THE GOVERNMENT EMPLOYEES PENSION LAW, 1996

- 5.1.1 The period within which payment of benefits shall commence is set out in section 26 of the GEP Law:
- 5.1.2 In terms of subsection (1)¹³, a benefit payable in terms of the GEP Law shall be paid to the member, pensioner or beneficiary entitled to such benefit within a period of 60 days from the benefit becoming payable to the member, pensioner or beneficiary, which 60 days shall be calculated from the day following the date on which the benefit becomes payable, provided that a benefit shall become payable to a member, pensioner or beneficiary on the

¹³

Sub-s. (1) Substituted by s. 6 (a) of Act 21 of 2004.

last day of service at the employer of that member or pensioner or the death of that pensioner.

- 5.1.3 Subsection (2)¹⁴ states that interest shall be paid by the Fund to the member, pensioner or beneficiary on any part of the amount of the benefit not paid within a period of 60 days referred to in subsection (1) from the date on which the benefit became payable, at the rate prescribed, which interest shall be calculated from the day following the date on which the benefit became payable.
- 5.1.4 These provisions are only applicable to employees that exited the GPAA, on or after 11 November 2004.
- 5.2 The provisions of the GEP Law prior to the amendment stated as follows:
- 5.2.1 Section 26(1): *"Notwithstanding anything to the contrary in any law contained, a benefit payable in terms of this Law shall be paid to the member, pensioner or beneficiary entitled to such benefit within a period of 60 days after the date on which the Board receives a duly completed statement in the prescribed form or, if the Board receives such statement before the date on which a benefit is payable to the member or pensioner concerned in terms of this Law, within a period of 60 days after the date on which such benefit is so payable."* (Own emphasis)
- 5.2.2 Section 26(2): *"If a benefit is not paid within the period referred to in subsection (1), interest shall be paid by the Fund to the member, pensioner or beneficiary on any part of the amount of the benefit not paid within the period of 60 days referred to in subsection (1), at the rate prescribed."* (own emphasis)

¹⁴

Sub-s. (2) substituted by s. 6 (b) of Act 21 of 2004.

6. CONCLUSION

- 6.1 The investigation revealed that the Complainant was admitted to the Fund on 1 February 1984 and that no pension contributions were made by her prior to 1984, hence the period 21 January 1876 to 31 January 1984 could not be considered as pensionable service by the GPAA. However it was established that the Complainant's pension benefits were not calculated on her final scale at the time of her resignation.
- 6.2 With regard to the pension benefits payable for services rendered for the NWPDE, it was discovered that though the Department alleges that the pension documents of the Complainant have been submitted to the GPAA, the latter had received no documentation, hence the Complainant's pension benefits were not processed and paid accordingly.

7. FINDINGS

- 7.1 The Public Protector found that:
- 7.1.1 No pension contributions were made by the Complainant for the period 21 January 1976 to 31 January 1984.
- 7.1.2 The ECPDE submitted incorrect information as to the salary scales of the Complainant on her pension exit documents to the GPAA.
- 7.1.3 The Complainant has not received any pensionable benefits for the period that she was employed at the NWPDE.
- 7.1.4 The NWPDE failed to submit pension exit documents of the Complainant covering the period of employment with the NWPDE, to the GPAA.
- 7.1.5 The failure of NWPDE officials to submit the pension documents and/or timeously inquire about the progress made regarding the processing and

paying of the pension benefits of the Complainant, if indeed her pension documents was submitted, constitutes maladministration.

- 7.1.6 The Complainant was treated unjustly and was prejudiced by the failure of the NWPDE to submit correct pension exit documents and to ensure that her pension benefits are paid timeously.

8. REMEDIAL ACTION

- 8.1 In terms of section 182(1) (c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act the following action is required to remedy the improper prejudice suffered by the Complainant:

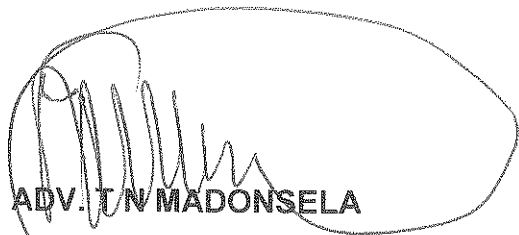
- 8.1.1 The Director-General of the ECPDE must, as a matter of urgency, ensure that the correct salary scale information is submitted to the GPAA to enable the latter to recalculate the pensionable portion of the Complainant's pension on the correct scales and to effect payment of the difference in the amounts.
- 8.1.2 The ECPDE must pay interest on the amount representing the difference in pension benefits already paid to the Complainant, calculated from a date of resignation, up to the date on which the final pension payment on the correct scale are made, at the same rate as the rate prescribed (as at that time) by the Minister of Justice and Constitutional Development in terms of section 1(2) of the Interest Act.
- 8.1.3 The Director-General of the ECPDE must provide the Public Protector with a report on the reasons for the submission of the necessary pension exit documents only four (4) years after the resignation of the Complainant to the GPAA.
- 8.1.4 The ECPDE must apologise to the Complainant for providing the GPAA with incorrect information on which her pension benefits were calculated and paid.

-
- 8.1.5 The Superintendent-General in the NWPDE together with the CEO of the GPAA must, as a matter of urgency, ensure that the pension benefits for the period, 3 years and 8 months, that the Complainant was employed with the NWPDE are processed and paid out to the Complainant.
- 8.1.6 The NWPDE must pay interest on the amount representing the pension benefits payable to the Complainant, calculated from a date of resignation, up to the date on which the benefits are paid by the GPAA, at the same rate as the rate prescribed (as at that time) by the Minister of Justice and Constitutional Development in terms of section 1(2) of the Interest Act.
- 8.1.7 The NWPDE must apologise to the Complainant for the failure to submit pension documents timeously, to make follow up enquiries on progress made with the GPAA, and for the delay in payment of the Complainant's benefits as a result thereof.

9. MONITORING

- 9.1 The Heads of Department for both the ECPDE and NWPDE are required to:-
- 9.1.1 Acknowledge receipt and indicate whether or not the report is accepted within 10 days of the receipt of the report; and

- 9.1.2 Provide the Public Protector with action plan for the implementation of the report within 30 days of the date of report.



ADV. T N MADONSELA

PUBLIC PROTECTOR OF

THE REPUBLIC OF SOUTH AFRICA

DATE: 25/03/2011

Assisted by: Mr D T Mothoagae, Investigator, Mafikeng

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