
PUBLIC PROTECTOR SOUTH AFRICA

REPORT NO. 45 OF 2009/10

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF UNDUE DELAY IN THE REGISTRATION OF A FOREIGN QUALIFIED HEALTHCARE PROFESSIONAL
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Executive Summary

(i) Ms T Catt is a foreign qualified nurse who wishes to practice nursing in South Africa. In this regard, amongst other processes, she is required to have her nursing qualifications recognised by the South African Qualifications Authority, obtain a letter of endorsement from the Foreign Workforce Management Programme and register with the South African Nursing Council.

(ii) Ms Catt, together with her South African partner, Mr L Summers, moved to South Africa on 8 March 2008.

(iii) With the assistance of Mr M Waters (MP) for the Democratic Alliance, she lodged the following complaints with the Public Protector:

(a) She alleged that the Foreign Workforce Management Programme:

(aa) Unduly delayed in issuing her with a letter of endorsement towards registration as a nurse; and

(bb) Failed to be accessible through its telephone system for the purpose of providing progress reports regarding her application for a letter of endorsement.

(b) She alleged that the South African Nursing Council improperly dealt with her application for registration as a nurse; and that in this regard:

(aa) It had no clarity regarding the procedures to be followed for the registration of foreign qualified nurses;

(bb) It unduly delayed in processing her application for registration as a foreign qualified nurse;

(cc) It failed to make proper examination arrangements by failing to allocate her with an examination number; and
(dd) It took an unduly long time to process and provide her with her examination results.

(iv) As a result of the afore-going, it was alleged that foreign health care professionals face inordinately long and frustrating processes in order to obtain approval to practice in South Africa.

(v) The Public Protector’s intervention was sought in establishing whether any of the bodies breached their constitutional obligations regarding the registration process.

(vi) The following findings were made:

(a) Neither the FWMP or the SANC delayed in dealing with the application for a letter of endorsement and the application for registration, each application having been processed within two and a half months and two months respectively;

(b) The time of three months within which the SANC took to process the Complainant’s examination results is reasonable, taking into account the examination processes that had to be followed;

(c) The SANC delayed in providing the Complainant with written results regarding the examination, two weeks after they became available;

(d) The FWMP has limited the Complainant and the general public’s right of access to its services by operating an outdated telephone system;

(e) The Complainant’s allegation that the SANC failed to make proper examination arrangements by failing to provide her with an examination number cannot be sustained;

(f) There is no evidence of maladministration regarding the SANC registration process and the allegation that it operates without order or efficiency cannot be sustained; and
(g) In the following identified areas:

(aa) The SANC has failed to express itself clearly by repetition of the term “Application for registration”, in section C of the SANC policy guidelines, thereby causing confusion by giving the impression that procedures are being duplicated; and

(bb) The SANC has failed to provide explanations on the body of the SANC policy guidelines for requiring re-submission of the verification of qualification and letter of good standing form and the letter of endorsement, thereby creating the potential for further confusion.

(vii) The Public Protector made the following recommendations:

(a) The FWMP should abide by its undertaking to install a new telephone system when it moves into new premises, by April 2010. The telephone system should be designed to function with optimal efficiency in a call centre environment, and take into account the increasing needs of the FWMP regarding its broadening customer base and workload;

(b) The SANC should expedite the publishing of examination results to candidates in writing as soon as they become available, but by no later than five days thereafter;

(c) The SANC should use more concise descriptions to distinguish between the names of the processes relating to the “Application for registration” so as to clear the incorrect impression that processes are being duplicated; and

(d) The SANC should provide explanations on the body of the SANC policy guidelines when dealing with areas likely to cause interpretational problems, including circumstances where re-submission of verification of
qualification and letter of good standing forms and letters of endorsement are required.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF UNDUE DELAY IN THE REGISTRATION OF A FOREIGN QUALIFIED HEALTHCARE PROFESSIONAL

1. INTRODUCTION

1.1 This report is submitted to Ms T Catt, the Minister of Health, the Chairperson of the South African Nursing Council, the Registrar of the South African Nursing Council and the Programme Director of the Foreign Workforce Management Programme in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (Public Protector Act).

1.2 It relates to an investigation into allegations of undue delay in the registration of a foreign qualified healthcare professional.

2. THE COMPLAINTS

2.1 Ms T Catt (the Complainant) is a foreign qualified nurse who wishes to practice nursing in South Africa. Before coming to South Africa, she lived in the United Kingdom with Mr L Summers, a South African citizen.

2.2 In order to practice in South Africa, amongst other processes, she is required to have her nursing qualification recognised by the South African Qualifications Authority (SAQA), obtain a letter of endorsement from the Foreign Workforce Management Programme (FWMP) and register with the South African Nursing Council (SANC).

2.3 Concomitant to this, on 27 November 2007 and whilst still in the United Kingdom, she addressed an enquiry to the Registrar of the SANC seeking information pertaining to the registration process. On 13 December 2007, the SANC e-mailed her copies of a document titled: Policy Guidelines regarding registration/enrolment of nurses and/or qualifications from foreign countries with the South African Nursing Council (SANC policy guidelines).
2.4 The couple moved to South Africa on 8 March 2008.

2.5 With the assistance of Mr M Waters (MP) of the Democratic Alliance, the Complainant lodged the following complaints with the Public Protector on 4 March 2009:

2.5.1 She alleged that the FWMP:

2.5.1.1 Unduly delayed in issuing her with a letter of endorsement towards registration as a nurse; and

2.5.1.2 Failed to be accessible through its telephone system for the purpose of providing progress reports regarding her application for a letter of endorsement.

2.5.2 She alleged that the SANC improperly dealt with her application for registration as a nurse; and that in this regard:

2.5.2.1 It had no clarity regarding the procedures to be followed for the registration of foreign qualified nurses. In this regard, it was alleged that the SANC never made it clear to the Complainant what was required in respect of her application for registration. According to her, she only became aware of some of the requirements accidently;

2.5.2.2 It unduly delayed in processing her application for registration as a foreign qualified nurse;

2.5.2.3 It failed to make proper examination arrangements by failing to allocate her with an examination number, thereby disrupting her examination sitting and causing her untold stress; and

2.5.2.4 It took an unduly long time to process and provide her with her examination results.
2.6 As a result of the afore-going, it was alleged that foreign health care professionals faced inordinately long and frustrating processes in order to obtain approval to practice in South Africa.

2.7 The Public Protector’s intervention was sought in establishing whether any of the bodies breached their constitutional obligations regarding the registration process.

3. **POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINTS**

3.1 The Office of the Public Protector was established to enhance constitutional democracy in terms of Chapter 9 of the Constitution. In terms of section 182(1) of the Constitution and section 6(4) of the Public Protector Act, the Public Protector is empowered to investigate allegations of improper conduct in state affairs or the public administration in any sphere of government, to report on that conduct and to take appropriate remedial action.

3.2 Improper conduct includes allegations of mal-administration, the abuse or unjustifiable exercise of power, improper prejudice or complaints of undue delay.

3.3 Appropriate remedial action includes resolving disputes or rectifying acts or omissions by mediation, conciliation, negotiation and making recommendations.

4. **LEGAL STATUS AND REGULATORY FRAMEWORK OF THE FWMP**

4.1 The FWMP was established as a programme and sub-directorate within the Department of Health (the Department) to regulate the recruitment, employment, migration and support towards residency status of foreign health professionals in South Africa.

4.2 It operates within the policy framework Recruitment and Employment of Foreign Health Professionals in the Republic of South Africa (FWMP recruitment policy).
4.3 The FWMP, operating as a sub-directorate within the confines of an organ of state\footnote{Section 239 of the Constitution defines an organ of state as:}
state, is subject to the investigative jurisdiction of the Public Protector.

5. **LEGAL STATUS AND REGULATORY FRAMEWORK OF THE SANC**

5.1 The SANC operates within the regulatory framework of the Nursing Act, 2005 (Nursing Act).

5.2 In terms of section 2 of the Nursing Act, the SANC is a juristic person whose objectives, amongst others, are to:

5.2.1 Promote the provision of nursing services to the inhabitants of South Africa that comply with universal norms and values;

5.2.2 Perform its functions in the best interests of the public and in accordance with national health policy as determined by the Minister of Health; and

5.2.3 Establish, improve and control conditions, standards and quality of nursing education and training within the ambit of the Nursing Act and other applicable legislation.

5.3 The Minister of Health has oversight functions over the SANC in that he/she:

5.3.1 Appoints more than half of its members;

5.3.2 May dissolve the SANC if it fails to comply with any of the provisions of the Nursing Act;

5.3.3 May appoint one or more persons to investigate the affairs of the SANC where there is reasonable suspicion that the latter is failing to comply with the Nursing Act or any code;

\footnote{Section 239 of the Constitution defines an organ of state as:
- Any department of state or administration in the national, provincial or local sphere of government; or
- Any other functionary or institution –
- (i) Exercising a power or performing a function in terms of the Constitution or Provincial Constitution; or
- (ii) exercising a public power or performing a public function in terms of any legislation, but does include a court or judicial officer.}
5.3.4 Is responsible for appointing the Chairperson of the SANC, who in turn, must give advice on issues relating to the SANC;

5.3.5 Is empowered to appoint and dismiss the Registrar, who is the accounting officer of the SANC; and

5.3.6 Must be provided with an Annual Report within six months of the end of the financial year, a five-year strategic plan and a bi-annual report on the status of nursing and matters of public importance.

5.4 The SANC is therefore an organ of state and subject to the investigative jurisdiction of the Public Protector.

6. THE INVESTIGATION

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

6.1.1 Written and telephone communications with the Complainant, Mr Summers, the FWMP and the SANC;

6.1.2 An assessment of documents and information supplied by the Complainant, Mr Summers, the FWMP and the SANC; and

6.1.3 An evaluation of the legal framework regulating the recruitment and registration of foreign qualified healthcare professionals, with particular reference to nurses.

6.2 Evaluation of the legal framework took into consideration the following relevant legislation and policies:

6.2.1 The Constitution

6.2.1.1 Section 195 of the Constitution requires the public administration to be governed by democratic values and principles including:
(a) Responsiveness to people’s needs;

(b) The fostering of transparency; and

(c) Accountability.

6.2.2 The White Paper on Transforming Public Service Delivery, 1997

6.2.2.1 The purpose of the White Paper on Transforming Public Service Delivery, 1997 (White Paper) is to provide a policy framework and practical implementation strategy for the transformation of public service delivery, by putting pressure on systems, procedures, attitudes and behaviour within the public service and re-orientating them in the customer’s favour. In this regard, national and provincial departments are called upon to make service delivery a priority, in line with the principles of Batho Pele.

6.2.2.2 The issue of service delivery and the related principle of Batho Pele are not independent, isolated, ideological concepts, but linked inextricably to the basic values and principles governing public service, as contained in section 195 of the Constitution.

6.2.2.3 The following principles of Batho Pele are relevant to the investigation:

(a) The concepts of service standards (where citizens should be informed of the level and quality of public services they will receive);

(b) Access (where citizens are required to be given equal access to the services to which they are entitled);

(c) Information (where citizens are required to be given full and accurate information about the public services that they are entitled to); and

(d) Openness and transparency.

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6.2.3 FWMP recruitment policy

6.2.3.1 Part 4 of the FWMP recruitment policy provides for the following general principles:

(a) No foreign health worker should depart to South Africa to practice his/her profession or to seek employment without a formal FWMP letter of endorsement;

(b) Registration with a statutory Health Professional Council in South Africa is a prerequisite for employment as a health professional in this country; and

(c) Health Professional Councils may not accept applications for examination or registration prior to obtaining documentary evidence that an application is supported by the Department.

6.2.3.2 In addition to the FWMP recruitment policy, guidelines have been issued (FWMP guidelines), giving information on how applications for endorsement are dealt with.

6.2.4 The Nursing Act

6.2.4.1 Section 31(1) of the Nursing Act provides that registration in respect of the categories professional nurse, midwife, staff nurse, auxiliary nurse or auxiliary midwife is a prerequisite before practising in the respective professions.

6.2.4.2 Section 31(5) of the Nursing Act provides for a list of documents that have to be submitted together with an application for registration, to include proof of identity, a certificate of good character and standing, proof of qualifications and such further documents and information as may be required by the SANC.

6.2.5 SANC policy guidelines

6.2.5.1 The SANC policy guidelines provide guidance on the requirements and process of registration with the SANC to applicants from foreign countries.
6.2.5.2 The SANC policy guidelines are divided into seven sections. Section A provides for general information, containing, amongst others, a recommendation that the document should be read in conjunction with the FWMP recruitment policy.

6.2.5.3 The SANC has also issued guidelines regarding the application for registration/enrolment for persons holding foreign qualifications (SANC registration guidelines).

7. RESPONSE BY THE FWMP

7.1 Allegation of undue delay in issuing a letter of endorsement

7.1.1 The FWMP denied that it delayed in issuing the Complainant with a letter of endorsement. Ms I Human, a Chief Administration Clerk at the FWMP explained that its office signed a waybill acknowledging receipt of the Complainant’s application on 31 March 2008 (even though, on the face of the documents, they appear to have been dated January 2008 and February 2008). The FWMP acknowledged receiving a second application from the Complainant on 12 May 2008.

7.1.2 Ms Human indicated that on 23 May 2008, the official handling the Complainant’s application made an entry on the file that the latter should be issued with a letter authorising the writing of the SANC examination.

7.1.3 Ms Human stated that the endorsement letter was issued on 12 June 2008 and sent to the Complainant on 13 June 2008.

7.2 Allegation of inability to gain telephonic access to the FWMP

7.2.1 On 5 May 2008, an official of the FWMP commented as follows to Mr Summers regarding the allegation that the Complainant was unable to gain telephone access its office:

"I am sorry that you haven’t been able to get through. The phone lines are always busy!..."
7.2.2 On 7 May 2009, Ms Human stated as follows regarding the Complainant’s allegation:

"It is a common complaint from all stakeholders that it is a struggle to make contact with our call centre agents. The reason for this is that we only have two people managing the 6 incoming lines. They do not have proper equipment to operate a call centre. They only use ordinary telephones to try and manage as many calls as possible. Despite numerous attempts from our side to obtain a proper system for them to work with, the answer remains the same. We are moving offices in the near future (June/July) and they do not want to install new systems at this stage as the entire Department will be receiving a new system in the new building. ....

You should also keep in mind that we receive around 300-400 new applications every week. This excludes applications from applicants who are already in the system. It is not only applicants who try to make telephonic follow-ups, but we also receive calls from Hospitals, Embassies, Councils, etc. ....

..."

8. RESPONSE BY THE SANC

8.1 Allegation that the SANC has no clarity regarding procedures to be followed for the registration of foreign qualified nurses

8.1.1 Ms S Mchunu, the acting Registrar and Chief Executive Officer of the SANC provided the Public Protector with SANC policy guidelines and SANC registration guidelines describing the procedures to be followed regarding the registration of foreign qualified nurses. From this point, the two documents will be referenced together as the SANC policy guidelines.

8.1.2 Section B of the SANC policy guidelines makes provision for the following pre-application requirements.³

8.1.2.1 Department of Home Affairs: Application for a permit specific to a particular applicant’s case.

³ A fourth pre-application requirement relates to the provision of a certificate verifying basic communication in English where the nursing training was not acquired in English. This is not applicable to the Complainant, therefore no further reference will be made to this requirement in the report.
8.1.2.2 FWMP: An initial letter of endorsement for an applicant to work in the health sector (the contact details of the FWMP are provided for obtaining the letter of endorsement).

8.1.2.3 SAQA: An evaluation certificate of an applicant’s foreign qualification and transcript (the contact details of the SAQA are provided).

8.1.3 The section C process is divided into five phases. Phase 1 relates to the application for registration/enrolment with the SANC\(^4\) and involves the following three steps:

8.1.3.1 Step 1:

(a) Documents to be submitted:

(i) Letter of intent indicating the capacity in which an applicant requests to be registered;

(ii) Application form on an SANC FR 1 form;

(iii) Certified copies of an applicant’s official identity document or passport, qualification certificate and registration certificate with a Nursing Regulatory Body;

(iv) \textit{Curriculum vitae};

(v) Valid license to practice (proof of status of registration with an authorised regulatory body in the country of origin);

(vi) Initial endorsement letter from the Department;

(vii) Evaluation certificate from the SAQA; and

\(^{4}\) On the SANC FR 1 form.
(viii) Proof of payment of a non-refundable application fee (payment details are provided in respect of payment into a bank account or by way of cash, cheque, postal or money order).

8.1.3.2 Step 2:\textsuperscript{5}

(a) The submission of an SANC verification of qualification and statement of good conduct form (SANC FR 2) to the regulatory body in the applicant’s country of origin takes place, for the verification of qualification, registration status and the obtaining of a certificate of good conduct;

(b) The form should be completed in English and stamped and signed by the authorised verification officer; and

(c) The original completed form should be returned by the relevant authority directly to the SANC in a sealed envelope that is signed and stamped by an approved signatory.

8.1.3.3 Step 3:

(a) The submission of an application for a transcript of training form to the training institution (university/college/nursing school) where the qualification was obtained, takes place. The form is obtainable from the SANC;

(b) The form should be completed in English and stamped and signed by the head of the institution or duly designated person; and

(c) The original completed form should be returned by the relevant educational institution directly to the SANC in a sealed envelope that is signed and stamped by an approved signatory.

8.1.4 Phase 2 concerns the evaluation of application, where:

\textsuperscript{5} Steps 2 and 3 should be done simultaneously in order to expedite the application.
8.1.4.1 The SANC will, on receipt of the application form, together with all the required documents, evaluate the application to determine whether the applicant meets the minimum requirements for registration/enrolment.

8.1.4.2 The applicant will be informed in writing of the outcome of the evaluation either that:

(a) The minimum educational requirements were met, and that the applicant is eligible to write an admission examination; or

(b) The minimum educational requirements were not met and that the applicant is not eligible to write an admission examination.

8.1.5 Phase 3 relates to the preparation and registration for the admission examination, where:

8.1.5.1 An examination pack is sent to the applicant, consisting of:

(a) An application form for admission to the examination;

(b) A brochure setting out the required learning material;

(c) Information on approved SANC examination centres and an examination schedule; and

(d) An indication of the examination fee.

8.1.6 Phase 4 concerns the application for registration and in this regard:

8.1.6.1 An applicant may only apply for registration on successful completion of the admission examination.

8.1.6.2 The application form should be accompanied by:

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6 On the SANC FR 4 form.
(a) A second letter of endorsement from the FWMP (providing the name of the institution where the applicant will be employed);

(b) A registration fee payable to the SANC (proof of payment is required);

(c) A verification of qualification and certificate of good conduct form, to be re-submitted if the previous one has expired.

8.1.7 Phase 5 refers to the registration certificate, where the following are applicable:

8.1.7.1 The registration certificate issued by the SANC will indicate the duration of the registration and the conditions for practice (referred to as a certificate of limited registration);

8.1.7.2 The registration certificate is only valid where the person pays the annual licensing fee for each calendar year; and

8.1.7.3 The registration certificate is only valid for the period of practice stipulated on the registration certificate.

8.2 Allegation that the SANC unduly delayed in processing the application for registration

8.2.1 Ms Mchunu explained that the SANC registration process is handled by more than one section at a time. She explained, for example, that the payment of prescribed fees, the receipt and opening of files and the actual processing of the applications are handled by the sections: Finance, Records and Registration respectively.

8.2.2 According to Ms Mchunu, the first application (dated 18 June 2008) was received from the Complainant by the respective sections on 20 June 2008, 23 June 2008 and 2 July 2008.

8.2.3 The following documents were said to have been attached:
8.2.3.1 A letter of endorsement dated 12 June 2008;

8.2.3.2 A SAQA evaluation certificate;

8.2.3.3 A letter of intent;

8.2.3.4 The Complainant’s *curriculum vitae*;

8.2.3.5 A qualification certificate (Bachelor of Nursing); and

8.2.3.6 Proof of payment dated 18 June 2008.

8.2.4 Ms Mchunu stated that the Complainant was advised to submit the following outstanding documents on 24 July 2008 after the initial documents were processed:

8.2.4.1 A transcript from the educational institution where the training took place;

8.2.4.2 A verification of qualification and statement of good conduct;

8.2.4.3 A certified copy of passport; and

8.2.4.4 A completed SANC FR 1 application form.

8.2.5 It was indicated that on 9 September 2008, the SANC only received the SANC FR 1 application form and a certified copy of the Complainant’s passport. On 15 September 2008, the SANC appear to have received the completed verification of qualification and statement of good conduct form from the Nursing and Midwifery Council, London⁷.

8.2.6 As a result of incomplete submission, the SANC sent a reminder to the Complainant on 15 September 2008. The completed transcript form was received

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⁷ Ms Mchunu maintained that the verification of qualification and statement of good conduct form, together with the transcript form, were received between 10 October 2008 and 13 October 2008 (copies of the forms were attached as “Annexure 9”). However, this does not appear to be correct, as both annexures are date stamped 12 September 2008.
from the AUT University, Auckland, New Zealand on 22 September 2008\(^6\).

8.2.7 Ms Mchunu indicated that after the evaluation was done, the SANC sent a letter to the Complainant on 22 October 2008 authorising her to write the examination. Included with the letter were the documents referred to in paragraph 8.1.5.1 above. The last available examination date on the SANC 2008 examination schedule was 28 November 2008. The closing date for submission of the application form and proof of payment for this sitting was 24 October 2008\(^6\).

8.2.8 The Complainant sat for the examination on 28 November 2008 at the Groote Schuur Hospital.

8.3 Allegation that the SANC failed to make proper examination arrangements by failing to allocate the Complainant with an examination number

8.3.1 Ms Mchunu denied that the SANC failed to make proper examination arrangements for the Complainant by only providing her with an examination number on the day of the sitting. It was explained that on 12 November 2008, a letter bearing the Complainant’s examination number: 7791, was faxed to her partner.

8.3.2 According to Ms Mchunu, neither the Complainant nor the Invigilator reported that anything was amiss at the examination when they signed the attendance register.

8.3.3 It was explained rather, that there was non-allocation of a student number to another student, bearing the reference number: 13682356. The SANC indicated that the student was granted permission to write the examination on that day.

8.3.4 The Complainant was provided with her examination results in writing on 3 March 2009. She was unsuccessful, having achieved an aggregate of 44%. Her

\(^6\) Ibid.

\(^6\) Again, the SANC has made an incorrect referral, by indicating that the closing date for the November 2008 was 7 August 2008. The closing date was actually 24 October 2008. Referral to the date 7 August 2008 applies to categories of nurses seeking to qualify in South Africa, not foreign qualified nurses.
application for a re-mark produced the same result.

8.4 Allegation that the SANC took an unduly long time to process and provide the Complainant with her examination results

8.4.1 Ms Mchunu indicated that scheduled examinations are written in more than 300 cities in the country.

8.4.2 She explained that the process from the examination date to the date of publication takes approximately three months, as scripts are returned to the SANC after the examination and dispatched to various markers (only one of whom is appointed full-time with the SANC).

8.4.3 It was indicated that on return from the various markers, a moderation process is carried out by appointed committees who sit at the SANC’s office.

9. OBSERVATION AND FINDINGS

9.1 Allegation of undue delay by the FWMP and the SANC in processing the respective applications.

9.1.1 The following timeline is applicable regarding the processing of the letter of endorsement by the FWMP:

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>27 November 2007</td>
<td>(The Complainant requests information and application forms from SANC by e-mail whilst still in the U.K.)</td>
</tr>
<tr>
<td>13 December 2007</td>
<td>(The SANC e-mails the SANC policy guidelines to the Complainant.)</td>
</tr>
<tr>
<td>8 March 2008</td>
<td>(The Complainant and Mr Summers move to South Africa.)</td>
</tr>
<tr>
<td>31 March 2008</td>
<td></td>
</tr>
</tbody>
</table>
(The FWMP signs a waybill acknowledging receipt of the Complainant's application for a letter of endorsement.)

1 April 2008
(The programme manager of the FWMP, Mr S A Smith, is no longer employed at the Department. His details are reflected on FWMP documentation as a contact person.)

30 April 2008
(Mr Summers sends an e-mail to the FWMP (Mr Smith) requesting progress on the application. When he receives no response, he sends a second e-mail to various officials at the FWMP, complaining also of a lack of response by the FWMP to telephone calls.)

5 May 2008
(An official of the FWMP responds to Mr Summers, indicating that she has no record of the Complainant's application. The Complainant is requested to resend it.)

12 May 2008
(The FWMP receives the Complainant's second application [having indicated that it had no record of receipt of the first application].)

23 May 2008
(An instruction is placed on the FWMP file that a letter of endorsement should be issued.)

12 June 2008
(The endorsement letter is issued.)

13 June 2008
(The endorsement letter is sent to the Complainant.)

9.1.2 Unless the Complainant is able to provide the Public Protector with proof of delivery of her application for a letter of endorsement at a date prior to 31 March 2008, no other conclusion can be drawn but that the FWMP received the application for the first time on this date.
9.1.3 This being the case, the time that elapsed between receipt of the application by the FWMP and the date of issuing of the letter of endorsement is two and a half months.

9.1.4 The following timeline is applicable regarding the processing of the application for registration by the SANC (until notice of the examination):

<table>
<thead>
<tr>
<th>Date</th>
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<tbody>
<tr>
<td>27 November 2007</td>
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<td>8 March 2008</td>
<td>(The Complainant and Mr Summers move to South Africa.)</td>
</tr>
<tr>
<td>31 March 2008 to 13 June 2008</td>
<td>(The date of receipt of the endorsement application and the issuing of the letter of endorsement by the FWMP.)</td>
</tr>
<tr>
<td>20 June 2008</td>
<td>(The records section of the SANC receives the Complainant's application for registration dated 18 June 2008, together with the letter of endorsement and other documents.)</td>
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<tr>
<td>2 July 2008</td>
<td>(The registration section of the SANC receives the application for the purposes of processing.)</td>
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<tr>
<td>24 July 2008</td>
<td>(The SANC requests the Complainant to submit additional documents.)</td>
</tr>
<tr>
<td>9 September 2008</td>
<td>(The SANC receives the SANC FR 1 application form and a certified copy of the Complainant's passport. Two further documents are outstanding.)</td>
</tr>
<tr>
<td>15 September 2008</td>
<td></td>
</tr>
</tbody>
</table>
(The SANC receives a further document from the Nursing and Midwifery Council, London. It sends a reminder to the Complainant for submission of outstanding documents.)

22 September 2008
(The SANC receives the final outstanding document.)

22 October 2008
(The SANC grants the Complainant authority to write the examination. She is provided with an examination pack.)

24 October 2008
(The Complainant elects to write the examination on 28 November 2008 [with a closing date of 24 October 2008]. She submits the application on the closing date.)

12 November 2008
(The SANC provides Mr Summers with the Complainant’s examination number.)

9.1.5 The time that elapsed between the date of receipt of the application by the SANC and the date authority was granted to write the examination is four months. Excluding the time that the SANC spent waiting for the furnishing of outstanding information; this amounts to a two-month period within which the application for registration was processed.

9.1.6 It is indicated as follows in the FWMP guidelines:

"The FWMP deals with a large number of applications. Please allow 4-6 weeks for the processing of your application. ...All required documents should be submitted with this form, to ensure speedy processing of your application. ...".

9.1.7 The SANC indicated as follows in a letter dated 1 April 2009:

"The process of registration of foreign nurses is a long one as it involves many parties, including the following:

- Department of Home Affairs (permits)"
Department of Health. The Department issues a support letter...

South African Qualifications Authority evaluates foreign qualifications, ...

South African Nursing Council does the following:
- Issues guidelines on how to apply, on request, ...
- Receives formal applications
- Issues verification forms to be completed by the regulatory body (Council) in the country council. ...
- Issues transcript forms to be completed by the education and training institution in the country of origin. ...

The return of these documents usually takes weeks to months during which time the Council cannot process/evaluate anything.

9.1.8 The Public Protector is of the view that there was no delay by either institution in dealing the respective applications (taking into account that the FWMP took two and a half months to process the Complainant’s application for a letter of endorsement and the SANC, two months to process her application for registration). This excludes the time spent waiting for outstanding documents, over which the SANC had no control.

9.1.9 Organs of state bound by the constitutional values of accountability, transparency and responsiveness to peoples’ needs are obliged to make service delivery a priority, in line with the principles of Batho Pele. With this in mind, institutions are required to formulate and implement instruments of service delivery setting out the level and quality of services against which their performance can be measured.

9.1.10 The Public Protector holds the view that a general service period of three months within which to process applications (depending on issues of complexity, the difficulty of an obtaining documents and information and other possible constraints) is reasonable. Both institutions finalised processing of the respective applications under three months.

9.2 Allegation of undue delay by the SANC in processing and providing the Complainant with her examination results
9.2.1 The following timeline is applicable regarding the examination:

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>28 November 2008</td>
<td>(The Complainant writes the examination.)</td>
</tr>
<tr>
<td>12 January 2009</td>
<td>(The Complainant makes telephonic enquiries, but the results are not available.)</td>
</tr>
<tr>
<td>17 February 2009</td>
<td>(Mr Summers is provided with the results telephonically.)</td>
</tr>
<tr>
<td>3 March 2009</td>
<td>(The Complainant is provided with her results in writing.)</td>
</tr>
</tbody>
</table>

9.2.2 The time that elapsed between the date of the examination and the date that the results were provided to the Complainant in writing is three months.

9.2.3 The ensuing examination process must be taken into account, to include:

9.2.3.1 Return of examination scripts to the SANC by Invigilators;

9.2.3.2 Dispatch of the scripts to various markers (all except one of whom are appointed on a part-time basis); and

9.2.3.3 Final moderation of the results at the offices of the SANC.

9.2.4 In addition to the above, and bearing in mind that processing of the examination results took place over the Christmas holidays, the view is held that the time of three months within which the results were processed, is reasonable.

9.2.5 However, the Public Protector has difficulty understanding why the Complainant was only provided with her examination results in writing on 3 March 2009, when they appear to have been available on 17 February 2009 (the date when the results were provided to Mr Summers verbally).
9.2.6 It is noted that the SANC has not tendered any explanation for the two-week delay in providing the results.

9.3 Allegation of inability to gain telephonic access to the FWMP

9.3.1 The Investigator dealing with the investigation can attest to the FWMP’s statement that:

"It is a common complaint from all stakeholders that it is a struggle to make contact with our call centre agents. ....".

9.3.2 In this regard, the Investigator also experienced difficulties when contacting the FWMP on several occasions.

9.3.3 However, it was noted that as soon as contact was made, and as soon as e-mail communications were forwarded, responses were forthcoming within short periods of time.

9.3.4 The FWMP is aware of problems relating to telephonic access, due mainly to the use of an outdated system. The Department intends addressing the problem once it has moved into new premises, scheduled to take place between December 2009 and April 2010 (originally scheduled for July 2009).

9.3.5 The FWMP indicated that it is also inundated with work, receiving up to 400 new applications every week. This, it was explained, created an additional burden, as the rate of telephone enquiries increased.

9.3.6 According to the FWMP, the telephone lines are never without someone attending to them. Ms Human maintained that an official is not allowed to leave a telephone to ring unattended for a long period of time.

9.3.7 The right to access public services serves as one of the guiding principles of Batho Pele. In consonance with the values of accountability and responsiveness to people’s needs, the FWMP has recognised its obligation and does intend addressing the problem.
9.4 Allegation that the SANC failed to make proper examination arrangements by failing to allocate the Complainant with an examination number

9.4.1 The SANC maintained that on 12 November 2008, a letter was posted to the Groote Schuur Hospital (where the examination was written), providing the latter with the Complainant’s examination number: 7791. The letter states as follows:

“Please hand the accompanying examination time-tables to the following candidates for the above examination to be held in November 2008.

<table>
<thead>
<tr>
<th>CAND. NR.</th>
<th>NAME</th>
</tr>
</thead>
<tbody>
<tr>
<td>7791</td>
<td>CATT, TARA</td>
</tr>
</tbody>
</table>

(Own emphasis)

9.4.2 What seems to be the Complainant’s signature appears next to her name and examination number, giving the impression that she acknowledged receipt of the information. As the signature is undated however, no conclusion can be drawn as to when it was appended.

9.4.3 In addition, the SANC indicated that the letter was also sent to Mr Summers by facsimile.

9.4.4 Nothing on the face of the SANC’s response points to the Complainant not having received notification of her examination number prior to the sitting.

9.4.5 On the day of the examination, the Invigilator made the following comment on an attendance register regarding an applicant bearing the reference number: 13682356\(^\text{10}\): “No student number allocated”. In this regard, the following note was made in another set of handwriting (presumably that of the applicant in question): “Permission given by the SA Nursing Council. – 28/11/08.”

9.4.6 Surely if the same set of circumstances had applied to the Complainant, a similar comment and note would have been appended on the attendance register against her signature.

\(^{10}\) The name of the applicant is available, and is not that of the Complainant.
9.4.7 Taking into account the SANC’s explanation, the Public Protector is unable to sustain the Complainant’s allegation that it failed to make proper examination arrangements by failing to provide her with an examination number.

9.5 Allegation that the SANC has no clarity regarding the procedures to be followed for the registration of foreign qualified nurses.

9.5.1 According to the Complainant, it was never made clear to her what was required regarding her application for registration, some of the processes allegedly only coming to her attention accidentally.

9.5.2 On 27 November 2007, the Complainant e-mailed the SANC whilst still in the United Kingdom, requesting information pertaining to registration.

9.5.3 On 13 December 2007, the SANC e-mailed the SANC policy guidelines to the Complainant (the relevant parts of the guidelines have been referred to in paragraph 9 above).

9.5.4 The SANC policy guidelines are divided into sections A to F. Section A, part 7 provides for a list of 11 basic requirements. Section B provides for a pre-application process. Section C provides for the following:

9.5.4.1 An application for registration process;

9.5.4.2 An evaluation process;

9.5.4.3 An examination process;

9.5.4.4 An application for registration process; and

9.5.4.5 Issuing of the registration certificate.

9.5.5 Sections D to F are not applicable to the Complainant as they refer to foreign nurses who wish to conduct nursing studies.
9.5.6 The list of 11 requirements is again listed in the applicable portions of the SANC policy guidelines under each respective heading, for example, under the application for registration process, the evaluation process, the examination process, etc.

9.5.7 Regarding the pre-application requirements, the contact details for the FWMP and the SAQA are listed for the purposes of obtaining the relevant pre-application documents. On page three of the SANC policy guidelines, a recommendation is made that the document should be read in conjunction with the FWMP recruitment policy. Details are provided for payment of the prescribed fees, to include bank details and payment directions regarding cheque, money and postal orders.

9.5.8 The Public Protector is able to draw no other conclusion but that the Complainant did receive the SANC policy guidelines that were e-mailed to her on 13 December 2007. Based on reasonableness, it can be accepted that if she did not understand the overall content of the document, she would have requested further guidance from the SANC. That she submitted applications to both the FWMP and the SAQA without further assistance from the SANC supports the contention that she must have had a general understanding of what was required of her.

9.5.9 With regard to the SANC process following the pre-application phase, however, the following is submitted:

9.5.9.1 Several processes are referred to and various documents are required, creating the potential for confusion.

9.5.9.2 Of the entire document, the following two areas may serve to promote uncertainty as to what may be required regarding the application for registration:

(a) Section C of the SANC policy guideline provides for two “Application for registration” processes, giving the impression that procedures are being duplicated. Once the section is read closely however, a realisation dawns that the first “Application for registration” process refers to the submission by an applicant of a letter of intent, together with
accompanying documents, including the SANC FR 1 application. The second "Application for registration" process relates to the actual registration, after the examination has been passed, on the SANC FR 4 form. The view is held that the SANC can clear this misnomer by using more concise descriptions to distinguish between the two processes.

(b) The following allegation was made on behalf of the Complainant regarding the furnishing of information:

"There does not appear to have been any effort to create order and efficiency in the process; one document, for example, must be submitted before writing the exam, and then the same document must again be submitted after the exam, for no apparent reason".

(i) In this regard, the SANC requires submission of the letter of endorsement, and in some cases, the verification of qualification and letter of good standing form, twice.

(ii) The verification of qualification and letter of good standing form provides confirmation of an applicant's professional status and has to be completed by the regulatory authority in the country where registration was obtained. The SANC explained that information pertaining to the professional status of an applicant places it in a position to assess good standing and rules out applicants who have pending professional or criminal cases against them. It was indicated that some countries of origin only provide verifications for six months. In this regard, it was explained that where the verification expires whilst the application for registration is still pending, the SANC has to request applicants to re-submit this information for a second time.

9.5.10 But for the above two examples, the Public Protector was unable to find evidence to support the allegation that the SANC registration process operated without order or efficiency, and that certain documents were requested without reason.
9.5.11 Although the SANC policy guidelines is a lengthy document providing for a
detailed and possibly time-consuming process (based on the SANC’s interaction
with foreign regulatory bodies and training institutions) the view is held that overall,
it has managed to convey its requirements as plainly as possible.

9.5.12 In order to overcome interpretational problems regarding the two instances
mentioned, (and other areas likely to cause confusion), the view is held that the
SANC should provide explanations on the body of the SANC policy guidelines as
to:

9.5.12.1 The reason for requesting submission or re-submission of certain documents\(^\text{11}\); and

9.5.12.2 The purpose of the documents in relation to the application.

10. **KEY FINDINGS**

10.1 From the investigation it was found that:

10.1.1 Neither the FWMP nor the SANC delayed in dealing with the application for a
letter of endorsement and the application for registration, each application having
been processed within two and a half months and two months respectively;

10.1.2 The time of three months within which the SANC took to process the
Complainant’s examination results is reasonable, taking into account the
examination processes that had to be followed;

10.1.3 The SANC delayed in providing the Complainant with written results regarding the
examination, two weeks after they became available;

10.1.4 The FWMP has limited the Complainant and the general public’s right of access to
its services by operating an outdated telephone system;

\(^{11}\) This should not be necessary for obvious requirements like passports, permits, educational qualifications, etc.
10.1.5 The Complainant’s allegation that the SANC failed to make proper examination arrangements by failing to provide her with an examination number cannot be sustained;

10.1.6 There is no evidence of maladministration regarding the SANC registration process and the allegation that it operates without order or efficiency cannot be sustained; and

10.1.7 In the following identified areas:

10.1.7.1 The SANC has failed to express itself clearly by repetition of the term “Application for registration”, in section C of the SANC policy guidelines, thereby causing confusion by giving the impression that procedures are being duplicated; and

10.1.7.2 The SANC has failed to provide explanations on the body of the SANC policy guidelines for requiring re-submission of the verification of qualification and letter of good standing form and the letter of endorsement, thereby creating the potential for further confusion.

11. RECOMMENDATIONS

11.1 In terms of section 182(1)(c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, the Public Protector recommends the following:

11.1.1 The FWMP should abide by its undertaking to install a new telephone system when it moves into new premises, by April 2010. The telephone system should be designed to function with optimal efficiency in a call centre environment, and take into account the increasing needs of the FWMP regarding its broadening customer base and workload;

11.1.2 The SANC should expedite the publishing of examination results to candidates in writing as soon as they become available, but by no later than five days thereafter;
11.1.3 The SANC should use more concise descriptions to distinguish between the names of the processes relating to the “Application for registration”, so as to clear the incorrect impression that processes are being duplicated; and

11.1.4 The SANC should provide explanations on the body of the SANC policy guidelines when dealing with areas likely to cause interpretational problems, including circumstances where re-submission of verification of qualification and letter of good standing forms and letters of endorsement are required.

12. CONCLUSION

The Public Protector will monitor implementation of the recommendations on a quarterly basis.

ADV T N MADONSELA
PUBLIC PROTECTOR OF THE REPUBLIC OF SOUTH AFRICA

DATE

Assisted by:  Ms T A Häderli; Senior Investigator: Office of the Public Protector