

PUBLIC PROTECTOR ACT 23 OF 1994

[ASSENTED TO 16 NOVEMBER 1994] [DATE OF COMMENCEMENT: 25
NOVEMBER 1994]

(English text signed by the President)

as amended by

Public Service Laws Amendment Act 47 of 1997

Public Protector Amendment Act 113 of 1998

Promotion of Access to Information Act 2 of 2000

Public Protector Amendment Act 22 of 2003

ACT

To provide for matters incidental to the office of the Public Protector as contemplated in the Constitution of the Republic of South Africa, 1996; and to provide for matters connected therewith.

[Long title substituted by s. 1 of Act 113 of 1998.]

Preamble

WHEREAS sections 181 to 183 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), provide for the establishment of the office of Public Protector and that the Public Protector has the power, as regulated by national legislation, 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 have resulted in any impropriety or prejudice, to report on that conduct and to take appropriate remedial action, in order to strengthen and support constitutional democracy in the Republic;

AND WHEREAS sections 193 and 194 of the Constitution provide for a mechanism for the appointment and removal of the Public Protector;

AND WHEREAS the Constitution envisages further legislation to provide for certain ancillary matters pertaining to the office of Public Protector;

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

[Preamble substituted by s. 2 of Act 113 of 1998.]

[a23y1994s1]1Definitions

In this Act, unless the context otherwise indicates-

'committee' means a committee referred to in section 2 (1);

[Definition of 'committee' substituted by s. 1 (a) of Act 22 of 2003.]

'Constitution' means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

[Definition of 'Constitution' inserted by s. 3 (a) of Act 113 of 1998.]

'Deputy Public Protector' means any person appointed as such in terms of section 2A (1);

[Definition of 'Deputy Public Protector' substituted by s. 1 (b) of Act 22 of 2003.]

'investigation' means an investigation referred to in section 7, including any preliminary investigation related thereto;

[Definition of 'investigation' substituted by s. 3 (b) of Act 113 of 1998.]

'joint committee'

[Definition of 'joint committee' deleted by s. 3 (c) of Act 113 of 1998.]

'member of the office of the Public Protector' includes the Public Protector, the Deputy Public Protector, a member of the staff of the Public Protector and any person contemplated in sections 3 (12) and 7 (3) (b);

[Definition of 'member of the office of the Public Protector' substituted by s. 1 (c) of Act 22 of 2003.]

'Minister' means the Cabinet member responsible for the administration of justice;

[Definition of 'Minister' inserted by s. 3 (d) of Act 113 of 1998 and substituted by s. 1 (d) of Act 22 of 2003.]

'new Constitution'

[Definition of 'new Constitution' deleted by s. 3 (e) of Act 113 of 1998.]

'Provincial Public Protector'

[Definition of 'Provincial Public Protector' deleted by s. 3 (f) of Act 113 of 1998.]

'Public Protector' means any person appointed as such in terms of section 1A.

[Definition of 'Public Protector' substituted by s. 3 (g) of Act 113 of 1998.]

'Public Service Commission'

[Definition of 'Public Service Commission' deleted by s. 35 (1) of Act 47 of 1997.]

[a23y1994s1A]1A Establishment and appointment

(1) There shall be a Public Protector for the Republic.

(2) The President shall, whenever it becomes necessary, appoint a Public Protector in accordance with the provisions of section 193 of the Constitution.

(3) The Public Protector shall be a South African citizen who is a fit and proper person to hold such office, and who-

(a) is a Judge of a High Court; or

(b) is admitted as an advocate or an attorney and has, for a cumulative period of at least 10 years after having been so admitted, practised as an advocate or an attorney; or

(c) is qualified to be admitted as an advocate or an attorney and has, for a cumulative period of at least 10 years after having so qualified, lectured in law at a university; or

(d) has specialised knowledge of or experience, for a cumulative period of at least 10 years, in the administration of justice, public administration or public finance; or

(e) has, for a cumulative period of at least 10 years, been a member of Parliament; or

(f) has acquired any combination of experience mentioned in paragraphs (b) to (e), for a cumulative period of at least 10 years.

[Sub-s. (3) substituted by s. 2 of Act 22 of 2003.]

(4) The Public Protector shall not perform remunerative work outside his or her official duties.

[Section 1A inserted by s. 4 of Act 113 of 1998.]

[a23y1994s2]2Remuneration, vacancies in office and other terms and conditions of employment of Public Protector

(1) The National Assembly shall refer to a committee of the National Assembly the-

(a) nomination of a person in terms of section 193 (5) (a) of the Constitution to be appointed as Public Protector;

(b) nomination of a person in terms of section 2A (3) to be appointed as Deputy Public Protector;

(c) consideration in terms of section 194 (1) (b) and (3) (a) of the Constitution of the removal from office of the Public Protector;

(d) consideration in terms of section 2A (9) (b) and (11) (a) (ii) of the removal from office of the Deputy Public Protector; and

(e) consideration of any other matter that can be referred to such a committee in terms of the Constitution or this Act.

[Sub-s. (1) substituted by s. 5 (a) of Act 113 of 1998 and by s. 3 (b) of Act 22 of 2003.]

(2) The remuneration and other terms and conditions of employment of the Public Protector shall from time to time be determined by the National Assembly upon the advice of the committee: Provided that such remuneration-

(a) shall not be less than that of a judge of a High Court; and

(b) shall not be reduced, nor shall the terms and conditions of employment be adversely altered, during his or her term of office.

[Sub-s. (2) substituted by s. 5 (b) of Act 113 of 1998.]

(3) The National Assembly or, if Parliament is not in session, the 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 the National Assembly or the 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 the National Assembly or the committee, as the case may be, allows a shorter period in a specific case.

[Sub-s. (3) substituted by s. 5 (c) of Act 113 of 1998.]

(4) If the committee allows a Public Protector to vacate his or her office in terms of subsection (3), the chairperson of the committee shall communicate that fact by message to the National Assembly: Provided that any decision taken by the committee in terms of this subsection must be ratified by the National Assembly.

[Sub-s. (4) substituted by s. 5 (d) of Act 113 of 1998.]

(5) The Public Protector may, at any time, approach the committee with regard to any matter pertaining to the office of the Public Protector.

[Sub-s. (5) substituted by s. 5 (e) of Act 113 of 1998.]

[S. 2 amended by s. 3 (a) of Act 22 of 2003.]

[a23y1994s2A]2A Appointment, remuneration and other terms and conditions of employment, vacancies in office and removal from office of Deputy Public Protector

(1) The President, on the recommendation of the National Assembly, shall appoint a person as Deputy Public Protector for such period as the President may determine at the time of such appointment, but not exceeding seven years.

(2) The Deputy Public Protector may at the end of his or her term of office be reappointed in terms of subsection (1) for one additional term.

(3) The National Assembly shall recommend a person-

(a) nominated by the committee; and

(b) approved by the National Assembly by a resolution adopted with a supporting vote of a majority of the members of the National Assembly.

(4) The Deputy Public Protector shall be a South African citizen who is a fit and proper person to hold such office, and who-

(a) is admitted as an advocate or an attorney and has, for a cumulative period of at least 10 years after having been so admitted, practised as an advocate or an attorney; or

(b) is qualified to be admitted as an advocate or an attorney and has, for a cumulative period of at least 10 years after having so qualified, lectured in law at a university; or

(c) has specialised knowledge of or experience, for a cumulative period of at least 10 years, in the administration of justice, public administration or public finance; or

(d) has, for a cumulative period of at least 10 years, been a member of Parliament; or

(e) has acquired any combination of experience mentioned in paragraphs (a) to (d), for a cumulative period of at least 10 years.

(5) The remuneration and other terms and conditions of employment of the Deputy Public Protector shall from time to time be determined by the National Assembly upon the advice of the committee.

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

(7) 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 Deputy Public Protector shall perform such functions.

(8) The provisions of section 2 (3) and (4) shall apply with the necessary changes in respect of the vacation of office of the Deputy Public Protector.

(9) The Deputy Public Protector may be removed from office only on-

(a) the ground of misconduct, incapacity or incompetence;

(b) a finding to that effect by the committee; and

(c) the adoption by the National Assembly of a resolution calling for his or her removal from office.

(10) A resolution of the National Assembly concerning the removal from office of the Deputy Public Protector must be adopted with a supporting vote of a majority of the members of the National Assembly.

(11) (a) The President may suspend the Deputy Public Protector from office at any time after any complaint relating to the grounds referred to in subsection (9) against him or her has been received by the National Assembly, if the President deems the complaint against

the Deputy Public Protector to be of such a serious nature as to make it inappropriate for him or her to perform his or her functions while the complaint is being investigated.

(b) The President may suspend the Deputy Public Protector in terms of paragraph (a) on such terms and conditions as the President may determine, including the suspension of the payment of his or her remuneration or the suspension of any other term or condition of his or her employment.

(12) The President shall remove the Deputy Public Protector from office upon adoption by the National Assembly of the resolution calling for his or her removal.

(13) If a vacancy occurs in the office of the Deputy Public Protector the President shall, subject to this section, as soon as possible, appoint another person to that office.

[S. 2A inserted by s. 4 of Act 22 of 2003.]

[a23y1994s3]3Staff of Public Protector

(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) the Deputy Public Protector;

[Para. (a) substituted by s. 5 (b) of Act 22 of 2003.]

(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)

[Sub-s. (2) substituted by s. 6 (a) of Act 113 of 1998 and deleted by s. 5 (c) of Act 22 of 2003.]

(3) A person referred to in subsection (1) (c) shall have such powers as the Public Protector may delegate to him or her.

[Sub-s. (3) substituted by s. 6 (b) of Act 113 of 1998 and by s. 5 (d) of Act 22 of 2003.]

(4)

[Sub-s. (4) deleted by s. 5 (e) of Act 22 of 2003.]

(5)

[Sub-s. (5) substituted by s. 6 (c) of Act 113 of 1998 and deleted by s. 5 (e) of Act 22 of 2003.]

(6) and (7)

[Sub-s. (6) and (7) deleted by s. 6 (d) of Act 113 of 1998.]

(8)

[Sub-s. (8) substituted by s. 6 (e) of Act 113 of 1998 and deleted by s. 5 (e) of Act 22 of 2003.]

(9) The persons appointed by the Public Protector in terms of subsection (1) (b) or (c) shall receive such remuneration, allowances and other employment 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.

[Sub-s. (10) substituted by s. 35 (1) of Act 47 of 1997 and by s. 6 (f) of Act 113 of 1998.]

(11) (a) A document setting out the remuneration, allowances and other conditions of employment determined by the Public Protector in terms of this section, shall be tabled in the National Assembly within 14 days after such determination.

[Para. (a) substituted by s. 6 (g) of Act 113 of 1998 and by s. 5 (f) of Act 22 of 2003.]

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

[Para. (b) substituted by s. 6 (g) of Act 113 of 1998.]

(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

(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, be assisted by officers in the Public Service seconded to the service of the Public Protector in terms of any law regulating such secondment.

[Sub-s. (12) substituted by s. 35 (1) of Act 47 of 1997 and by s. 6 (h) of Act 113 of 1998.]

(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;

(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 the Deputy Public Protector and a person contemplated in section 7 (3) (b) shall be exempted from the provisions of this paragraph.
[Para. (b) substituted by s. 5 (g) of Act 22 of 2003.]

(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.

(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.

[S. 3 amended by s. 5 (a) of Act 22 of 2003.]

[a23y1994s4]4Finances and accountability

(1) The Chief Administrative Officer referred to in section 3 (1) (b)-

(a) shall, subject to the Public Finance Management Act, 1999 (Act 1 of 1999)-

(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

[Para. (a) amended by s. 6 of Act 22 of 2003.]

(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.

[a23y1994s5]5Liability of Public Protector

(1) The office of the Public Protector shall be a juristic person.

(2) The State Liability Act, 1957 (Act 20 of 1957), shall apply with the necessary changes 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.

[Sub-s. (2) substituted by s. 7 of Act 113 of 1998.]

(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.

[a23y1994s6]6Reporting matters to and additional powers of Public Protector

(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 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 conduct referred to in subsections (4) and (5) and has not taken all reasonable steps to exhaust his or her legal remedies in connection with such matter.

[Para. (b) substituted by s. 8 (a) of Act 113 of 1998.]

(4) The Public Protector shall, be competent-

(a) to investigate, on his or her own initiative or on receipt of a complaint, any alleged-

(i) maladministration in connection with the affairs of government at any level;

(ii) abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function;

(iii) improper or dishonest act, or omission or offences referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, with respect to public money;

[Sub-para. (iii) substituted by s. 36 (1) of Act 12 of 2004.]

(iv) improper or unlawful enrichment, or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or omission in the public administration or in connection with the affairs of government at any level or of a person performing a public function; or

(v) act or omission by a person in the employ of government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any other person;

(b) to endeavour, in his or her sole discretion, to resolve any dispute or rectify any act or omission by-

(i) mediation, conciliation or negotiation;

(ii) advising, where necessary, any complainant regarding appropriate remedies; or

(iii) any other means that may be expedient in the circumstances;

(c) at a time prior to, during or after an investigation-

(i) if he or she is of the opinion that the facts disclose the commission of an offence by any person, to bring the matter to the notice of the relevant authority charged with prosecutions; or

(ii) if he or she deems it advisable, to refer any matter which has a bearing on an investigation, to the appropriate public body or authority affected by it or to make an appropriate recommendation regarding the redress of the prejudice resulting therefrom or make any other appropriate recommendation he or she deems expedient to the affected public body or authority; and

[Sub-para. (ii) amended s. 91 (a) of Act 2 of 2000.]

(d) on his or her own initiative, on receipt of a complaint or on request relating to the operation or administration of the Promotion of Access to Information Act, 2000, endeavour, in his or her sole discretion, to resolve any dispute by-

(i) mediation, conciliation or negotiation;

(ii) advising, where necessary, any complainant regarding appropriate remedies; or

(iii) any other means that may be expedient in the circumstances.

[Para. (d) added by s. 91 (b) of Act 2 of 2000.]

[Sub-s. (4) substituted by s. 8 (b) of Act 113 of 1998.]

(5) In addition to the powers referred to in subsection (4), the Public Protector shall on his or her own initiative or on receipt of a complaint be competent to investigate 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 Public Finance Management Act, 1999 (Act 1 of 1999);

[Para. (a) substituted by s. 7 of Act 22 of 2003.]

(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 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.

[Sub-s. (5) substituted by s. 8 (b) of Act 113 of 1998.]

(6) Nothing in subsections (4) and (5) shall be construed as empowering the Public Protector to investigate the performance of judicial functions by any court of law.

[Sub-s. (6) added by s. 8 (b) of Act 113 of 1998.]

(7) 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 subsections (4) or (5).

[Sub-s. (7) added by 8 (b) of Act 113 of 1998.]

(8) The Public Protector or any member of his or her staff shall be competent but not compellable to answer questions in any proceedings in or before a court of law or any body or institution established by or under any law, in connection with any information relating to the investigation which in the course of his or her investigation has come to his or her knowledge.

[Sub-s. (8) added by s. 8 (b) of Act 113 of 1998.]

(9) Except where the Public Protector in special circumstances, within his or her discretion, so permits, a complaint or matter referred to the Public Protector shall not be entertained unless it is reported to the Public Protector within two years from the occurrence of the incident or matter concerned.

[Sub-s. (9) added by s. 8 (b) of Act 113 of 1998.]

[a23y1994s7]7Investigation by Public Protector

(1) (a) The Public Protector shall have the power, on his or her own initiative or on receipt of a complaint or an allegation or on the ground of information that has come to his or her knowledge and which points to conduct such as referred to in section 6 (4) or (5) of this Act, to conduct a preliminary investigation for the purpose of determining the merits of the complaint, allegation or information and the manner in which the matter concerned should be dealt with.

(b) (i) The format and the procedure to be followed in conducting any investigation shall be determined by the Public Protector with due regard to the circumstances of each case.

(ii) The Public Protector may direct that any category of persons or all persons whose presence is not desirable, shall not be present at any proceedings pertaining to any investigation or part thereof.

[Sub-s. (1) substituted by s. 9 (a) of Act 113 of 1998.]

(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, the Deputy Public Protector or a person contemplated in subsection (3) (b) during an investigation, unless the Public Protector determines otherwise.

[Sub-s. (2) substituted by s. 8 (a) of Act 22 of 2003.]

(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) (i) 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 delegate to him or her.

(ii) The provisions of section 9 and of the regulations and instructions issued by the Treasury under section 76 of the Public Finance Management Act, 1999 (Act 1 of 1999), in respect of Commissions of Inquiry, shall apply with the necessary changes in respect of that person.

[Sub-para. (ii) substituted by s. 8 (b) of Act 22 of 2003.]

[Para. (b) substituted by s. 9 (b) of Act 113 of 1998.]

(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 or any person authorised by him or her in writing may administer an oath to or accept an affirmation from any such person.

[Sub-s. (7) substituted by s. 9 (c) of Act 113 of 1998.]

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

(9) (a) If it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter being investigated and that such implication may be to the detriment of that person or that an adverse finding pertaining to that person may

result, the Public Protector shall afford such person an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances.

(b) (i) If such implication forms part of the evidence submitted to the Public Protector during an appearance in terms of the provisions of subsection (4), such person shall be afforded an opportunity to be heard in connection therewith by way of giving evidence.

(ii) 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.

[Sub-s. (9) substituted by s. 9 (d) of Act 113 of 1998.]

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

(11) The Public Protector may make rules in respect of any matter referred to in this section which has a bearing on an investigation or in respect of any matter incidental thereto, provided that such rules must be published in the Government Gazette and tabled in the National Assembly.

[Sub-s. (11) added by s. 9 (e) of Act 113 of 1998.]

[a23y1994s7A]7A Entering upon premises by the Public Protector

(1) The Public Protector shall be competent to enter, or authorise another person to enter, any building or premises and there to make such investigation or inquiry as he or she may deem necessary, and to seize anything on those premises which in his or her opinion has a bearing on the investigation.

(2) The premises referred to in subsection (1) may only be entered by virtue of a warrant issued by a magistrate or a judge of the area of jurisdiction within which the premises is situated: Provided that such a warrant may be issued by a judge in respect of premises situated in another area of jurisdiction, if he or she deems it justified.

(3) A warrant contemplated in subsection (2) may only be issued if it appears to the magistrate, or a judge from information on oath or affirmation, stating-

- (a) the nature of the investigation or inquiry;
- (b) the suspicion which gave rise to the investigation or inquiry; and
- (c) the need, in regard to the investigation, for a search and seizure in

terms of this section,

that there are reasonable grounds for believing that anything referred to in subsection (1) is on or in such premises or suspected to be on or in such premises.

(4) A warrant issued in terms of this section may be issued on any day and shall be of force until-

- (a) it has been executed;
 - (b) it is cancelled by the person who issued it or, if such person is not available, by any person with like authority; or
 - (c) the expiry of three months from the day of its issue,
- whichever may occur first.

(5) (a) Any person who acts on authority of a warrant issued in terms of this section may use such force as may be reasonably necessary to overcome any resistance against the entry and search of the premises, including the breaking of any door or window of such premises: Provided that such person shall first audibly demand admission to the premises and state the purpose for which he or she seeks to enter such premises.

(b) The proviso to paragraph (a) shall not apply where the person concerned is on reasonable grounds of the opinion that any object, book or document which is the subject of the search may be destroyed, tampered with or disposed of if the provisions of the said proviso are first complied with.

(6) A warrant issued in terms of this section shall be executed by day unless the person who issues the warrant authorises the execution thereof by night at times which shall be reasonable in the circumstances.

(7) Any person executing a warrant in terms of this section shall immediately before commencing with the execution-

(a) identify himself or herself to the person in control of the premises, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent place on the premises; and

(b) supply such person at his or her request with particulars regarding his or her authority to execute such a warrant.

(8) If during the execution of a warrant or the conducting of a search in terms of this section, a person claims that any item found on or in the premises concerned contains privileged information and for that reason refuses the inspection or removal of such item, the person executing the warrant or conducting the search shall, if he or she is of the opinion that the item contains information which is relevant to the investigation or inquiry and that such information is necessary for the investigation or inquiry, request the registrar of the High Court which has jurisdiction or his or her delegate, to seize and remove that item for safe

custody until a court of law has made a ruling on the question whether the information concerned is privileged or not.

[S. 7A inserted by s. 10 of Act 113 of 1998.]

[a23y1994s8]8Publication of findings

(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) (a) The Public Protector shall report in writing on the activities of his or her office to the National Assembly at least once every year: Provided that any report shall also be tabled in the National Council of Provinces.

(b) The Public Protector shall, at any time, submit a report to the National Assembly on the findings of a particular investigation if-

- (i) he or she deems it necessary;
- (ii) he or she deems it in the public interest;
- (iii) it requires the urgent attention of, or an intervention by, the National Assembly;
- (iv) he or she is requested to do so by the Speaker of the National Assembly; or
- (v) he or she is requested to do so by the Chairperson of the National Council of Provinces.

[Sub-s. (2) substituted by s. 11 (a) of Act 113 of 1998.]

(2A) (a) Any report issued by the Public Protector shall be open to the public, unless the Public Protector is of the opinion that exceptional circumstances require that the report be kept confidential.

(b) If the Public Protector is of the opinion that exceptional circumstances require that a report be kept confidential, the committee must be furnished with the reasons therefor and, if the committee concurs, such report shall be dealt with as a confidential document in terms of the rules of Parliament.

(c) For the purposes of this section, 'exceptional circumstances' shall exist if the publication of the report concerned is likely-

- (i) to endanger the security of the citizens of the Republic;
- (ii) to prejudice any other investigation or pending investigation;
- (iii) disturb the public order or undermine the public peace or security of the Republic;

(iv) to be prejudicial to the interests of the Republic; or
(v) in the opinion of the Public Protector to have a bearing on the effective functioning of his or her office.

[Sub-s. (2A) inserted by s. 11 (b) of Act 113 of 1998.]

(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.

[a23y1994s9]9 Contempt of Public Protector

(1) No person shall-

(a) insult the Public Protector or the Deputy Public Protector;

[Para. (a) substituted by s. 9 of Act 22 of 2003.]

(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.

[a23y1994s10]10 Compensation for expenses

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.

[a23y1994s11]11 Offences and penalties

(1) Any person who contravenes the provisions of sections 3 (14), 7 (2) and 9 of this Act, or interferes with the functioning of the office of the Public Protector as contemplated in section 181 (4) of the Constitution, shall be guilty of an offence.

[Sub-s. (1) substituted by s. 12 (a) of Act 113 of 1998.]

(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 or request under section 7 (4) or refuses to answer any question put to him or her under that section 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.

[Sub-s. (3) substituted by s. 12 (b) of Act 113 of 1998.]

(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.

[a23y1994s12]12

[S. 12 repealed by s. 13 of Act 113 of 1998.]

[a23y1994s13]13 Application of Act

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.

[a23y1994s14]14 Repeal of laws

The Ombudsman Act, 1979 (Act 118 of 1979), the Advocate-General Amendment Act, 1983 (Act 55 of 1983), and the Advocate-General Amendment Act, 1991 (Act 104 of 1991), are hereby repealed.

[a23y1994s15]15 Short title

This Act shall be called the Public Protector Act, 1994