REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF UNDUE DELAY, MALADMINISTRATION AND IMPROPER CONDUCT BY THE SOUTH AFRICAN NATIONAL DEFENCE FORCE, THE SOUTH AFRICAN POLICE SERVICE AND THE COMPENSATION FUND WITH REGARD TO AN INVESTIGATION INTO THE DEATH OF THE LATE LIEUTENANT D PIETERSEN AND THE REPORTING, PROCESSING AND PAYMENT OF COMPENSATION FUND BENEFITS
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Executive Summary

(i) This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, (the Constitution) and published in terms section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

(ii) The report communicates my findings and appropriate remedial action that I am taking in terms of section 182(1)(c) of the Constitution, on an investigation into allegations of undue delay, maladministration and improper conduct by the South African National Defence Force (the SANDF), the Compensation Fund (the CF) and the South African Police Services (the SAPS), made by Ms P Pietersen (the Complainant) with regard to an investigation into the death of her son, Lieutenant Daniel Pietersen (the deceased) and the reporting, processing and payment of her compensation benefits.

(iii) The Complainant alleges that the deceased was a member of the SANDF, when he during training on 3 February 1998 collapsed whilst participating in an exercise marathon. He was transported to a hospital in George, where he died on 4 February 1998 whilst still in a coma, as a result of heatstroke. The SAPS in Oudtshoorn investigated the death of her son and promised to keep her informed of the progress, but allegedly failed to do so. The SANDF held a Military Board of Inquiry into the death of her son, but never informed her of the outcome of the Board. The SANDF also failed to timeously report her claim for
payment of compensation benefits to the Compensation Fund (the CF). The CF also failed to attend to the claim and unduly delayed processing of the claim and payment of benefits to her.

(iv) On analysis of the complaint, the following issue was identified to inform and focus on during the investigation

(a) Issue 1: Whether there was any undue delay by the SAPS to investigate the death of the deceased and failure to keep the Complainant informed of progress in the inquest investigation;

(b) Issue 2: Whether the SANDF unduly delayed the finalisation of a Military Board of Enquiry into the death of the deceased and failed to communicate the findings of the Board to the Complainant;

(c) Issue 3: Whether the SANDF failed to timeously report the claim to the CF and to submit comprehensive documents to the CF for the processing and payment of compensation benefits to the Complainant;

(d) Issue 4: Whether the Compensation Fund unduly delayed to process the claim for payment of compensation benefits; and

(e) Issue 5: Whether the Complainant was improperly prejudiced by the conduct of the SANDF, the SAPS and the CF, as envisaged by section 6(4)(a)(v) of the Public Protector Act.
(v) The investigation process was conducted in terms of section 182(1) of the Constitution and section 6 and 7 of the Public Protector Act. It included meetings, telephonic consultations and correspondence with the Complainant and her brother, correspondence with relevant officials of the SANDF, the SAPS and CF, as well as an inspection of all relevant documents obtained during the investigation and analysis and application of all relevant laws and related prescripts.

(vi) Key laws imposing administrative standards that should have been upheld, were taken into account to help the me to determine whether there had been undue delay, maladministration and/or improper by the SAPS, the SANDF and the CF, and if this caused prejudice to the Complainant:

a. Section 6 (4) of the Public Protector Act

b. Section 195 and 237 of the Constitution;

c. The SAPS Standing orders 321 (Case Dockets);

d. The Inquest Act 58 of 1959;

e. The Defence Act, 44 of 1957; and

f. The Compensation for Occupational Injuries and Diseases Act, 1993 (COIDA)
(vii) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:

(a) **Issue 1: Whether there was any undue delay by the SAPS to investigate the death of the deceased and failure to keep the Complainant informed of progress in the inquest investigation.**

(aa) In the absence of substantive evidence I cannot make a negative determination on the time spent by the SAPS to complete the inquest investigation and to submit the inquest docket to the Senior Public Prosecutor for a decision on criminal prosecution.

(bb) Although the Standing Orders of the SAPS does not obligate the SAPS to keep the Complainant (as next of kin of the deceased) informed of progress in the inquest investigation, it was reasonably expected of the SAPS to inform the Complainant of progress. The failure of the SAPS therefore constitutes improper conduct in terms of section 182(1)(a) of the Constitution.

(cc) The failure of the SAPS therefore violated sections 195 and 237 of the Constitution and its conduct constitutes improper conduct in terms of section 182(1)(a) of the Constitution.

(b) **Issue 2: Whether the SANDF unduly delayed the finalisation of a Military Board of Enquiry into the death of the deceased and failed to communicate the findings of the Board to the Complainant.**
(aa) The allegation that the SANDF unduly delayed the finalisation of a Military Board of Enquiry into the death of the deceased is found to be unsubstantiated.

(bb) The allegation that the SANDF failed to communicate the findings of the Board of Inquiry to the Complainant is substantiated. The conduct of the SANDF therefore constitutes improper conduct in terms of section 182(1)(a) of the Constitution.

(c) Issue 3: Whether the SANDF failed to timeously report the claim to the CF and to submit comprehensive documents to the CF for the processing and payment of compensation benefits to the Complainant.

(aa) The allegation that the SANDF failed to report the claim to the CF within the prescribed seven (7) days is substantiated.

(bb) The allegation that the SANDF did not submit comprehensive documents in the period April 1999 to January 2005 to the CF for the processing and payment of compensation benefits, is substantiated.

(cc) This conduct is in contravention of sections 195(1)(g) and 237 of the Constitution.

(dd) The conduct of the SANDF also constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration
and undue delay as envisaged in section 6(4)(a)(i) & (ii) of the Public Protector Act.

(d) **Issue 4: Whether the Compensation Fund unduly delayed to process the claim for payment of compensation benefits.**

(aa) The allegation that the Compensation Fund unduly delayed to process the claim for payment of compensation benefits is substantiated.

(bb) The undue delay is a contravention of sections 195(1)(g) and 237 of the Constitution and also constitutes maladministration as well as the undue delay as envisaged in section 6(4)(i) & (ii) of the Public Protector Act.

(e) **Issue 5: Whether the Complainant was improperly prejudiced by the conduct of the SANDF, the SAPS and the CF, as envisaged by section 6(4)(a)(v) of the Public Protector Act.**

(aa) The allegations that the SANDF failed to inform the Complainant of the outcome of the Board of Inquiry and failed to timeously report the claim for payment of compensation benefits, are substantiated and caused the Complainant to suffer improper prejudice is as envisaged in section 6(4)(a)(v) of the Public Protector Act.

(bb) The allegations that the SAPS failed to inform the Complainant of progress in the investigation into the death of her son is substantiated and caused the Complainant to suffer improper prejudice is as envisaged in section 6(4)(a)(v) of the Public Protector Act.
(cc) The allegations that the CF unduly delayed to process and pay compensation benefits to the Complainant is substantiated and caused the Complainant to suffer improper prejudice as envisaged in section 6(4)(a)(v) of the Public Protector Act.

(viii) The appropriate remedial action that I take in terms of section 182(1)(c) of the Constitution, with a view of redressing the undue delay, maladministration and improper conduct are the following:

(a) The National Commissioner of the South African Police Service to:

(aa) Consider amending the Standing Orders to provide for informing the next of kin of progress made in an inquest investigation.

(bb) Issue a written apology within thirty (30) working days from the date of this report to the Complainant, apologising for the delay to keep her informed of progress in the inquest investigation.

(b) The Chief of the South African National Defence Force to:

(aa) Issue a written apology within thirty (30) working days from the date of this report to the Complainant, apologising for the failure to inform her of the outcome of the Board of Inquiry into the death of late Lieutenant Pietersen.

(c) The Compensation Fund Commissioner to:
(aa) Issue a written apology within thirty (30) working days from the date of this report to the Complainant, apologising for the delay to process and pay compensation benefits to her within a reasonable time;
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF UNDUE DELAY, MALADMINISTRATION AND IMPROPER CONDUCT BY THE SOUTH AFRICAN NATIONAL DEFENCE FORCE, THE SOUTH AFRICAN POLICE SERVICE AND THE COMPENSATION FUND WITH REGARD TO AN INVESTIGATION INTO THE DEATH OF THE LATE LIEUTENANT D PIETERSEN AND THE REPORTING, PROCESSING AND PAYMENT OF COMPENSATION FUND BENEFITS

1. INTRODUCTION

1.1 This is my report as the Public Protector, issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and published in terms of section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

1.2 This report is submitted in terms of section 8 of the Public Protector Act to the following people to note the outcome of this investigation:

1.2.1 The Head of the South African National Defence Force (the SANDF), General Solly Shokhe;

1.2.2 The National Commissioner of the South African Police Service (the SAPS), General Khehla John Sisolo; and

1.2.3 The Compensation Commissioner, Mr Vuyo Mafata (the Commissioner).
1.3 A copy of the report is also provided to the Complainant Ms P Pietersen, to inform her about the outcome of this investigation.

1.4 The report relates to an investigation into allegations of undue delay, maladministration and improper conduct by the South African National Defence Force (the SANDF), the South African Police Services (the SAPS and the Compensation Fund (the CF) with regard to an investigation into the death of the late lieutenant D Pietersen and the reporting, processing and payment of compensation fund benefits to the Complainant.

2. THE COMPLAINT

2.1 The Complainant lodged her complaint with the then Public Protector on 8 March 2006, eight (8) years after the death of her son.

2.2 In support of her complaint, the Complainant alleged that the deceased was a member of the SANDF and attached to the South African 9th Infantry Battalion in Oudtshoorn in the Western Cape.

2.3 On 3 February 1998 he participated in an exercise marathon and at about 13h00 he collapsed. He was transported to the Oudtshoorn Hospital at approximately 15h30.

2.4 The Oudtshoorn Hospital was unable to give the deceased the necessary medical treatment and he was thereafter transferred to the
Lamprecht Clinic in George, where he died on 4 February 1998 whilst still in a coma, as a result of heatstroke.

2.5 Ms Pietersen was contacted by the SAPS in Oudtshoorn, who investigated the death of the deceased. The Investigating Officer also promised to keep her informed of progress of the inquest investigation, but he also allegedly did not contact her again.

2.6 Ms Pietersen stated that she is filled with bitterness towards the SANDF because of the insensitive treatment she was subjected to by them after the deceased’s death. She was inter alia not informed of the outcome of the Military Board of Inquiry.

2.7 The SANDF also failed to timeously report her claim for payment of compensation benefits to the CF. She was also allegedly not informed by the CF of the outcome of the claim.

2.8 The Complainant, inter alia, requested that the Public Protector assists her to obtain the following information:

2.8.1 The outcome of the Military Board of Inquiry, held by the SANDF and the outcome of the SAPS inquest investigation into the death of the deceased;

2.8.2 Confirmation of the SANDF’s responsibility towards her or the deceased’s dependents as a result of the deceased’s death whilst in the service of the SANDF; and
2.8.3 Confirmation of the finalisation of the compensation claim.

2.9 The complaint was initially investigated by the Western Cape Provincial Office of the Public Protector and the file was closed on 26 February 2008 without any findings.

2.10 On 28 February 2013 the family of the deceased met with the former Public Protector personally and made verbal submissions to her.

2.11 The former Public Protector reviewed the file and decided that the Western Cape Provincial Office of the Public Protector—should re-investigate the complaint.

2.12 The file was subsequently transferred to Head Office in May 2017 for review and conclusion of the report.

3. **POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

3.1 The Public Protector is an independent constitutional institution established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2 Section 182(1) of the Constitution provides that:

"The Public Protector has the power as regulated by national legislation –"
(a) 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 any impropriety or prejudice;
(b) to report on that conduct; and
(c) to take appropriate remedial action."

3.3 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by national legislation.

3.4 The Public Protector is further mandated by section 6(4)(a)(i) & (ii) of the Public Protector Act to investigate and redress maladministration, undue delay and related improprieties in the conduct of state affairs.

3.5 The Public Protector is also given the power to resolve disputes through conciliation, mediation, negotiation, advising the complainant regarding appropriate remedies or any other means that may be expedient under the circumstances.

3.6 In the *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others*¹ the Constitutional Court per Chief Justice Mogoeng stated the following when confirming the powers of the Public Protector:

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¹ CCT 143/15; CCT171/15 [2016] ZACC 11, 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC); 31 March 2016.
3.6.1 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles;\(^2\)

3.6.2 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced;\(^3\)

3.6.3 Taking appropriate remedial action is much more significant than making a mere endeavor to address complaints which was the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far — reaching the implications of her report and findings, she is constitutionally empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint;\(^4\)

3.6.4 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow;\(^5\)

\(^2\) Para [65].  
\(^3\) Para [67].  
\(^4\) Para [68].  
\(^5\) Para [69].
3.6.5 Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to;\textsuperscript{6}

3.6.6 The Public Protector’s power to take appropriate remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed—by the subject-matter of the investigation and the type of findings made;\textsuperscript{7}

3.6.7 Implicit in the words “take action” is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And “action” presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence;\textsuperscript{8}

3.6.8 She has the power to determine the appropriate remedy and prescribe the manner of its implementation;\textsuperscript{9}

\textsuperscript{6} Para [70].
\textsuperscript{7} Para [71].
\textsuperscript{8} Para [71(a)].
\textsuperscript{9} Para [71(d)].
3.6.9 "Appropriate" means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case.¹⁰

3.6.10 The remedial action taken by the Public Protector has a binding effect.¹¹ The Constitutional Court further held that: "When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot—be—ignored without any legal consequences."¹²

3.7 The SANDF, the SAPS and the CF are organs of state as contemplated in section 239 of the Constitution. Their conduct amounts to conduct in state affairs and the matter falls within the Public Protector’s mandate to investigate.

3.8 The Public Protector’s power and jurisdiction to investigate and take appropriate remedial action was not disputed by any of the parties.

39. The findings of the Magistrate in terms of section 16 of the Inquest Act 58 of 1959, was based on the evidence that was submitted to him by the Public Prosecutor, emanating from the inquest docket that was prepared by the SAPS. In terms of section 182(3) of the Constitution,

¹⁰ Para [71(e)].
¹¹ Para [76].
¹² Ibid para [73].
these findings cannot be investigated by the Public Protector, but has to be taken on review to a court of law.

3.10 The findings made by the Military Board of Inquiry on 5 February 1999 into the death of the Complainant's son amounts to an administrative action as defined in section 1 of the Promotion of Administrative Justice Act 3 of 2000 (the PAJA) and cannot be reviewed by the Public Protector

4. THE INVESTIGATION

4.1. Methodology

4.1.1. The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

4.1.2. The Public Protector Act confers on me the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.1.3. This complaint was classified as an Administrative Justice and Service Delivery complaint for resolution by way of a formal investigation in line with sections 6(4) and (5) of the Public Protector Act, 1994.

4.2 Approach to the investigation

4.2.1. Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:
(a) What happened?
(b) What should have happened?
(c) Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration?

(d) In the event of maladministration, what would it take to remedy the wrong or to place the Complainants as close as possible to where she would have been, but for the maladministration or improper conduct?

4.2.2. The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether there was improper conduct and/or undue delay and maladministration on the part of the SANDF, the SAPS and the CF during the investigation process into the death of the deceased and the subsequent processing and paying of compensation benefits to the Complainant, and whether such conduct caused prejudice to the Complainant as envisaged in section 6(4)(a)(v) of the Public Protector Act.

4.2.3. The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by an organ of state to prevent maladministration and prejudice.

4.2.4. The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of the improper conduct, undue delay and maladministration. Where a Complainant has suffered prejudice the idea is to place him or her as close as possible to where he/she would have been had the organ of state complied with
the regulatory framework setting the applicable standards for good administration.

4.3 On analysis of the review of the matter the following issues were considered and investigated:

4.3.1 **Issue 1**: Whether there was any undue delay by the SAPS to investigate the death of the deceased and failure to keep the Complainant informed of progress in the inquest investigation.

4.3.2 **Issue 2**: Whether the SANDF unduly delayed the finalisation of a Military Board of Enquiry into the death of the deceased and failed to communicate the findings of the Board to the Complainant.

4.3.3 **Issue 3**: Whether the SANDF failed to timeously report the claim to the CF and to submit comprehensive documents to the CF for the processing and payment of compensation benefits to the Complainant.

4.3.4 **Issue 4**: Whether the Compensation Fund unduly delayed to process the claim for payment of compensation benefits.

4.3.5 **Issue 5**: Whether the Complainant was improperly prejudiced by the conduct of the SANDF, the SAPS and the CF, as envisaged by section 6(4)(a)(v) of the Public Protector Act.
4.4 **Key sources of information**

4.4.1 The investigation inter alia comprised of the consideration of evidence submitted by the Complainant, telephonic and written enquiries to the SAPS in Oudtshoorn, the SANDF, the CF and the Magistrate’s Court in Oudtshoorn.

4.4.2 A meeting was held between the Complainant, her brother and the former Public Protector personally.

4.4.3 The brother of the Complainant, Mr Sammy Madzime, acted as her spokesperson and also provided information to the Investigation Team.

4.4.4 Notices in terms of section 7(9) of the Public Protector Act**13 were issued to the General Solly Shokhe, Chief of the South African National Defence Force, Mr Vuyo Mafata, the Compensation Commissioner and General Khehla Sitole, the National Commissioner of the South African Police Service.

4.4.5 No responses were received on the notices in terms of section 7(9) from the Chief of the South African National Defence Force and the the Compensation Commissioner.

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13 Section 7(9) of the Public Protector Act, 1994, provides that: “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.”
4.4.5 The National Commissioner of the SAPS however responded on 21 November 20198 to the notice in terms of section 7(9).

5. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

5.1 Issue 1: Whether there was any undue delay by the SAPS to investigate the death of the deceased and to keep the Complainant informed of progress in the inquest investigation.

*Common cause*

5.1.1 It is not in dispute that the SAPS was responsible for the investigation of the death of the deceased for the purposes of preparing an inquest docket for a judicial inquest to be held by a Magistrate to determine whether anyone should be held accountable for the death of the deceased.

*Issues in dispute*

5.1.2 The issue for my determination is whether the SAPS unduly delayed to investigate the death of the deceased and to keep the Complainant informed of progress of the investigation.

5.1.3 The Complainant alleged that the SAPS unnecessarily delayed the finalisation of the inquest investigation, thus also delaying the finalisation of the judicial inquest for approximately 3 (three) years.
after the incident. She also alleged that the SAPS failed to keep the family abreast with the progress of the inquest investigation.

5.1.4 A copy of the investigation diary of the SAPS inquest docket (SAP 5), was submitted to the Investigator as evidence. An analysis of the investigation diary indicated that the docket was submitted monthly to the Commanding Officer of the Investigating Officer for an inspection on progress.

5.1.5 From the written notes in the investigation diary it appears that the Investigating Officer struggled for months to obtain certain documents and statements relevant to the investigation from members of the SANDF and various other witnesses at the Hospitals where the deceased was treated, as well as the persons who dealt with the body of the deceased at the mortuary.

5.1.6 However, no entries were found in the investigation diary that the Investigating Officer contacted the family of the deceased to update them with the progress made in the inquest investigation.

5.1.7 The inquest investigation was completed and on 10 August 2000 the Police inquest docket was submitted to the Senior Public Prosecutor in Oudtshoorn for a decision on possible prosecution, thus two (2) years and six (6) months after the death of the deceased.

5.1.8 The Senior Public Prosecutor, in terms of section 5(1) of Inquest Act 58 of 1959, declined any criminal prosecution based on the evidence
contained in the inquest docket and the evidence was submitted to the
Magistrate in Oudtshoorn to conduct a judicial inquest.

5.1.9 The Magistrate presiding over the judicial inquest in terms of the
Inquest Act 58 of 1959, recorded on form J56 (a covering document
for the formal judicial inquest) on 19 January 2001 that the “Cause or
likely cause of death” was heatstroke and that the death was not
“brought about by any act or omission involving or amounting to an
offence on the part of any person”.

5.1.10 It was also recorded on the form J56 by the Magistrate, Mr RJ Gerber,
that no family member was present when the judicial inquest was

5.1.11 In terms of the Inquest Act 58 of 1959, the duty to inform the next of
kin of the proceedings relating to the judicial inquest, lies with the
Magistrate that deals with the matter.

5.1.12 As part of my review of the investigation, an inquiry was sent to the
Magistrate in Oudtshoorn on 25 May 2017 to establish if the next of kin
of the deceased was informed of proceedings in the judicial inquest.

5.1.13 The Magistrate informed me that in view of the time that had lapsed
since the inquest was held, the record of the proceedings was
destroyed. The only remaining document containing evidence of the
formal inquest findings was the copy of the form J56 that was filed in the inquest docket of the SAPS.

5.1.14 The inquest docket was returned to the SAPS in Oudtshoorn on 5 February 2001, after the completion of the judicial inquest.

5.1.15 In view of the finding of the Magistrate in the judicial inquest, the matter was regarded as finalised and the inquest docket was archived by the SAPS on 14 February 2001.

Application of the relevant legal framework

5.1.16 The standard of service delivery by organs of state is set out in the provisions of the Constitution, national legislation regulating administrative action, applicable policy frameworks and case law.


5.1.17 The conduct of the SAPS needs to be tested against the principles of public administration as envisioned in section 195 of the Constitution. Section 195(1)(f) requires that public administration must be accountable. In terms of section 195(1)(g), transparency must be fostered by providing the public with timely, accessible and accurate information.

5.1.18 Section 237 of the Constitution provides that all constitutional obligations must be performed diligently and without delay. The SAPS and its officials are required to handle complaints received from the
public with diligence and without delay, and to treat all citizens reasonably, fairly, with courtesy and consideration.

**The SAPS Standing orders 321(Case Dockets)**

5.1.19 The SAPS Standing orders 321(Case Dockets) “regulate the administration of a case docket after obtaining of the first information of crime from the complainant, informant and any witness”. (Own emphasis)

“The complainant in a case is to be provided with a Confirmation of Report [SAPS 429] after the docket has been registered. This can be done in the community service centre or detective service centre, if that was the place of the report, or by the investigating officer visiting the scene, and it must be recorded in the Investigation Diary. Complainants may also be informed via SMS of the case number and who the investigating official of his/her case is.

If the complainant, in a case not sent for trial, requests to be advised of the result of the investigation, he must be informed of the position without disclosing information of a confidential or privileged nature. Care shall be taken not to discuss the merits of the case, especially where doubt exists as to whether an offence was actually committed. He/she should not be informed that the case was closed as "Unfounded", or how it was or is likely to be finally disposed of. If the Public Prosecutor declines to prosecute, the complainant must be informed tactfully of such a decision.
Should the case not have been finalised within two months, the parties are to be notified that the investigation has not yet been completed, but that the case is still receiving attention.

5.1.20 In his response to the section 7(9) notice, the National Commissioner of the SAPS however stated that the Standing Order referred to in paragraph 5.1.18 above, "refers to a complainant in a criminal docket and is therefore not applicable to Oudtshoorn CAS 464/12/1998" (the inquest docket):

**The Inquest Act 58 of 1959**

5.1.21 Section 7 of the Inquest Act 1959 determines: "Except in cases where the spouse or a near adult relative of the alleged deceased person is being subpoenaed as a witness, the magistrate who is to hold an inquest shall cause reasonable notice thereof to be given to such spouse or relative, provided the spouse or relative is available and the giving of such notice will not, in the opinion of the magistrate, unduly delay the holding of the inquest." (Own emphasis)

**Conclusion**

5.1.22 In the absence of evidence I cannot make a negative determination on the time spent by the SAPS to investigate the death and to submit the inquest docket to the Senior Public Prosecutor for a decision.

5.1.23 The SAPS Investigation Diary in the inquest investigation docket was submitted as evidence. The notes contained in the diary indicate that
the docket was regularly seen by the Supervisor of the Investigation Officer. It however does not provide sufficient evidence to conclude that the investigation was unduly delayed by the SAPS.

5.1.24 Although the SAPS Standing Orders that regulates the service delivery of the SAPS only applies to a "complainant" in criminal investigations, the SAPS still had a duty in terms of the Constitution to keep the Complainant, as the next of kin, informed of progress in the inquest investigation.

5.1.25 Although the SAPS was responsible for the investigation of preparing an inquest docket, the formal judicial inquest is held by a Magistrate.

5.1.26 In terms of the Inquest Act 58 of 1959, the official duty to inform the next of kin of the proceedings relating to the judicial inquest, lies with the Magistrate that deals with the matter.

5.1.27 Due to the fact that the Magistrates Court file has been destroyed, no evidence could be obtained as to whether or not the next of kin were ever invited or informed of the date of the inquest by the Magistrate

5.2 Issue 2: Whether the SANDF unduly delayed the finalisation of a Military Board of Enquiry into the death of the deceased and failed to communicate the findings of the Board to the Complainant.
Common cause

5.2.1 On 3 February 1998 the deceased participated in an exercise marathon and collapsed at about 13h00. He was transported to the Oudtshoorn Hospital at approximately 15h30. The Oudtshoorn Hospital was unable to give him the necessary medical treatment and he was therefore transferred to the Lamprecht Clinic in George, where he passed away a day later on 4 February 1998.

5.2.2 The first Military Board of Inquiry into the death of the deceased was convened a month later on 4 March 1998.

5.2.3 On 4 June 1998 the Board of Inquiry was re-convened and additional evidence was heard.

5.2.4 Prior to her complaint lodged with the Public Protector in 2006, the Complainant lodged a complaint on 29 November 1998 with the then Minister of Defence, Mr Joe Modise, who was responsible for the SANDF from 1994 to 1999.

5.2.4.1 In response to this complaint, the Military Secretary of the Ministry of Defence, addressed a letter to the Chief of the SANDF on 9 December 1998 and directed the following:

"Kindly make the findings of the Board of Inquiry into Lt's Pietersen's death available to the Minister of Defence."
The Minister is concerned that there might have been negligence and unprofessional conduct in the handling of Lt. Pietersen after his collapse and also in the administrative action which should have ensured that his benefits were paid into his estate in the shortest possible time. He has therefore requested that a board of inquiry be convened to investigate these aspects and that it should make recommendations to ensure that the medical handling of a person during training exercises is such that the member will receive immediate medical care. The inquiry should also establish where the delays occurred in the processing of his benefits and make recommendations regarding disciplinary action which should be taken if there was negligence of the part of individuals.

The Board should be completed within 30 days and the findings made known to the Minister that he may respond to the parents".

5.2.4.2 The Board of Inquiry was reconvened on 27 January 1999 as per the direction of the Military Secretary of the Ministry of Defence and included a medical doctor on the panel. This Board of Inquiry was finally concluded on 5 February 1999.

5.2.4.3 The final findings of the Board of Inquiry were inter alia that the death of the deceased was not caused by any negligence, irregularities, lack of discipline or failure to comply with any standing orders or instructions. No disciplinary action was recommended against any member of the SANDF.
5.2.4.4 The Investigator raised the complaint with the SANDF on 25 April 2006. The then Commander G D Daniels, Chief Director: Human Resource Management at the Head Office of the Defence Force, informed the Investigator on 16 June 2006 that the complaint was already raised by the Complainant with the Ministry of Defence and that all future correspondence by the Public Protector should be addressed to the Minster. The then Minster was Mr Mosiuoa Lekota.

5.2.6 On 28 September 2006 the SANDF submitted the following documents to the Investigator in the Western Cape Provincial Office of the Public Protector, under the signature of Commander G D Daniels:

5.2.6.1 A copy of the report on the Medico-Legal Post-Mortem Examination;

5.2.6.2 A copy of an extract from the Military Board of Inquiry, 2/98;

5.2.6.3 A copy of an extract from the re-opened Military Board of Inquiry (BOI) 2/98; and

5.2.6.4 A copy of form (J56) of the Judicial Inquest No 50/2000, held by the Oudtshoorn Magistrate, encompassing the judicial inquest finding.

5.2.7 Copies of the documentation mentioned above were submitted to the Complainant by the Investigator, as requested in her complaint.
5.2.8 When the investigation was re-opened in 2014 by the then Public Protector, a copy of the full Board of Inquiry report was obtained from the SANDF and provided to the Complainant.

5.2.9 The Head of Legal Support (South African Army Head Quarters) also then submitted an Executive Summary of the Board of Inquiry, dated 28 March 2014.

**Issues in dispute**

5.2.10 The issue for my determination is whether the SANDF unduly delayed the finalisation of a Military Board of Enquiry into the death of the deceased and failed to communicate the findings of the Board of Inquiry to the Complainant.

5.2.11 The evidence submitted during the investigation indicated that within a period of one year, the Board of Inquiry was convened and twice re-convened and that the findings by the Board were finalised by March 1999.

5.2.12 It is however unknown as to whether the then Minister was provided with the findings of the re-opened Board of Inquiry. Upon further inquiries into this matter in May 2019, the Senior Staff Officer of Legal Support in the Office of the SANDF informed the Investigator that no records could be found to indicate that the specified concerns of the then Minister of Defence was addressed, due to extensive lapse of time since the incident.
5.2.13 The SANDF were also unable to provide any records that the Complainant was informed of the outcome and findings of the Board of Inquiry.

*Application of the relevant legal framework*

5.2.14 The standard of service delivery by organs of state is set out in the provisions of the Constitution, national legislation regulating administrative action, applicable policy frameworks and case law. *The Constitution of the Republic of South Africa, 1996*

5.2.15 The conduct of the SANDF needs to be tested against the principles of public administration as envisioned in section 195 of the Constitution. Section 195(1)(f) requires that public administration must be accountable. In terms of section 195(1)(g), transparency must be fostered by providing the public with timely, accessible and accurate information.

5.2.16 Section 237 of the Constitution provides that all constitutional obligations must be performed diligently and without delay. The SANDF and its officials are required to handle complaints received from the public with diligence and without delay, and to treat all citizens reasonably, fairly, with courtesy and consideration.
The Defence Act, 44 of 1957

5.2.17 The Defence Act, 44 of 1957 (referred to in the Act as the Code) was applicable at the time when the Military Board of Inquiry was held. This Act was subsequently replaced by the Defence Act 42 of 2002.

5.2.18 Section 1 of the Code provided the following definition in respect of a Board of Inquiry:

(1) "In this Code any expression to which a meaning has been assigned in the Act, bears the meaning so assigned thereto, and unless the context otherwise indicates:

'Board of inquiry' means a board of inquiry convened under section one hundred and thirty-five or one hundred and thirty-six;"

5.2.19 Section 136 (1) of the Code dealt with Boards of Inquiry:

"The General Officer Commanding, South African Defence Force, or any prescribed officer, may at any time or place convene a board of inquiry to inquire into any matter concerning the South African Defence Force, any member thereof or any public property or the property or affairs of any institution or any regimental or sportsfunds of the said Force, and to report thereon or to make a recommendation as may be directed."

5.2.20 The Code did not specifically provide for the Board of Inquiry to inform any third party of the findings and recommendations of the Board.
Conclusion

5.2.21 I did not come across any evidence that points towards the fact that the finalisation of the Board of Inquiry was unduly delayed by any of the officials/parties involved. The evidence submitted during the investigation indicated that within a period of one year, the Board of Inquiry was convened and re-convened and that the findings by the Board were finalised.

5.2.22 The Board of Inquiry that was subsequently re-convened in January 1999 also included a medical doctor as a panel member, to address the concern of the Minster that "(there) has been negligence and unprofessional conduct in the handling of Lt. Pietersen after his collapse".

5.2.23 There is however no evidence in the transcribed record of the Board of Inquiry held on 27 January 1999 that the other issue raised by the Minister was addressed, namely "the administrative action which should have ensured that his benefits were paid into his [the deceased] estate in the shortest possible time". (The delayed payment of pension benefits was however resolved before the Complainant lodged her complaint with my office in 2006.)

5.2.24 Although the then Act (Code) did not specifically provide for the Board of Inquiry to inform anybody of the findings and recommendations of the Board, I am of the view that once the Board of Inquiry was completed the (then) General Officer Commanding of the South
African Defence Force and/or the SANDF should have communicated the findings of the Board of Inquiry to the Complainant, as the mother/next of kin of the late Lieutenant Pietersen.

5.2.25 The Secretary of Defence could not provide evidence that the findings of the Board of Inquiry held on 27 January 1999 was communicated to the then Minister and that the Minister responded to the parents of the deceased, as undertaken.

5.3 Issue 3: Whether the SANDF failed to timeously report the claim to the CF and to submit comprehensive documents to the CF for the processing and payment of compensation benefits to the Complainant.

Common Cause

5.3.1 The compensation claim was reported to the CF by the SANDF on 15 April 1999, thus more than a year after the death of the deceased.

5.3.2 The SANDF submitted the claim form for payment of compensation benefits (Wcl3) to the CF on 11 January 2005.

Issues in dispute

5.3.3 The issue for my determination is whether the SANDF failed to timeously report the claim to the CF and to submit comprehensive documents to the CF for the payment of compensation benefits to the Complainant.
5.3.4 The SANDF indicated that the delay to report the claim was due to the alleged absence of certain detailed clinical information and supporting documents, as required by the CF. The SANDF also explained that the reporting process could only commence after the completion of the Board of Inquiry into the death of the employee, which was finalised in February 1999.

5.3.5 The SANDF did not submit any explanation on why the application forms for the payment of compensation benefits to the Complainant was only submitted to the CF in January 2005, thus seven (7) years after the incident.

5.3.6 The CF requested additional documents and information from the SANDF on 02 September 2005. These documents were submitted to the CF on 15 November 2005.

Application of the relevant legal framework


5.3.7 The conduct of the SANDF needs to be tested against the principles of public administration as envisioned in section 195 of the Constitution. Section 195(1)(f) requires that public administration must be accountable. In terms of section 195(1)(g), transparency must be fostered by providing the public with timely, accessible and accurate information.
5.3.8 Section 237 of the Constitution provides that all constitutional obligations must be performed diligently and without delay. The SANDF and its officials are required to handle complaints received from the public with diligence and without delay, and to treat all citizens reasonably, fairly, with courtesy and consideration.

The Compensation for Occupational Injuries and Diseases Act, 1993 (COIDA)

5.3.9 The Compensation for Occupational Injuries and Diseases Act, 1993 (COIDA) excludes in the definition of employee "a member of the Permanent Force of the South African Defence Force while on 'service in defence of the Republic' as defined in section 1 of the Defence Act, 1957."

5.3.9 Section 1 of the Defence Act 44 of 1957 (the Defence Act) however specifies service in defence of the Republic as:

"means military service and 'operations in defence of the Republic' means military operations-
(a) in time of war; or
(b) in connection with the discharge of the obligations of the Republic arising from any agreement between the Republic and any other state; or
(c) for the prevention or suppression of any armed conflict outside the Republic which, in the opinion of the State President, is or may be a threat to the security of the Republic;"
5.3.10 The definition thus did not include the deceased as being in "service in
defence of the Republic" at the time of his death. He was a permanent
member of the Defence Force in training, but not on 'service in
defence of the Republic' as defined in section 1 of the Defence Act.
Consequently this did not exclude the Complainant (as a partial
dependent of the deceased) from receiving compensation benefits as
a result of his death.

5.3.11 COIDA also prescribes specific timeframes for the reporting of a claim
by an employer and/or employee-and-the submission of documents to
the CF.

5.3.12 Section 39(1) obliges an employer to report the accident to the
Compensation Commissioner within seven (7) days after having
received notice of an accident or having learned in some way that the
employee has met with an accident.

5.3.13 Section 41(2) further obliges an employer to submit any claim, report,
documents or information to the Compensation Commissioner within
seven (7) days after receipt of such.

Conclusion

5.3.14 The evidence obtained indicate that the SANDF did not report the
claim to the CF within the prescribed seven (7) day period.
5.3.15 The explanations that the reporting process could only commence on completion of the Board of Inquiry into the death of the employee, as well as the “availability of certain detailed clinical information and supporting documents”, is not in line with legislation. COIDA regulates that the “reporting” should be done by the employer within 7 days after the incident. This only compels the employer to report the name of the employee (deceased) and the date of the incident.

5.3.16 Section 41(2) of CIODA then affords the employer to submit any additional reports /document or information within 7 days of receipt of such.

5.3.17 I am thus of the view that the reporting of the incident by the SANDF to the CF within the prescribed 7 days was not dependent on the completion of the Board of Inquiry, nor the submission of “certain detailed clinical information and supporting documents.”

5.3.18 The SANDF did not provide any evidence indicating that it regularly attended to the processing of the claim and the submission of the relevant documents. It is evident that there was a significant delay since the reporting of the incident to the CF in 1999 and the submission of the application documents on 11 January 2005.

5.4 Issue 4: Whether the Compensation fund unduly delayed to process the claim for payment of compensation benefits.

Common cause
5.4.1 The SANDF reported the accident to the CF on 15 April 1999. The claim form for payment of compensation (Wcl3) was only received from the SANDF by the CF six (6) years later on 11 January 2005.

5.4.2 The CF accepted liability to pay compensation on 21 March 2005.

5.4.3 The outstanding information was requested by the CF from the SANDF on 2 September 2005 and it was received by the CF on 15 November 2005.

5.4.4 The claim was finalised and a compensation award in respect of partial dependency was issued by the CF to the Complainant eighteen (18) months later, on 11 May 2007.

5.4.5 The original award was sent to the SANDF and the GPAA for payment of compensation benefits to the Complainant by the GPAA.

5.4.6 A copy of the award was posted to the Complainant on 23 May 2007, together with certain forms that the Complainant was required to complete and to submit to the SANDF, who in turn should have submitted the documents to the GPAA for payment of the benefits.

**Issues in dispute**

5.4.7 The issue for my determination whether: the CF unduly delayed the processing of the claim after receiving the claim forms on 11 January 2005 and requesting additional documents in September 2005, and
unduly delayed the adjudication of the claim from 15 November 2005 (upon receiving the final documents from the SANDF), until 11 May 2007, when a compensation award in respect of partial dependency was issued in favour of the Complainant.

5.4.8 The CF indicated that it was in the process of installing a new IT system at the time of receiving the claim forms and that the relevant hard copies of documents received had to be scanned into the electronic system. The documents were received as ordinary mail and "landed in the scanning queue". The relevant section could not process the claim manually as they could not view the documents in the system.

5.4.9 The CF also stated that the documents with regards to claims that were manually processed before 2000 could also not be viewed on the electronic system due to the incompatibility between the two systems used.

Application of the relevant legal framework


5.4.10 The conduct of the CF needs to be tested against the principles of public administration as envisioned in section 195(1) of the Constitution. Section 195(1)(f) requires that public administration must be accountable. In terms of section 195(1)(g), transparency must be fostered by providing the public with timely, accessible and accurate information.
5.4.11 Section 237 of the Constitution provides that all constitutional obligations must be performed diligently and without delay.

5.4.12 The CF and its officials are required to handle claims of injured persons with diligence and without delay, and to treat claimants reasonably, fairly, with courtesy and consideration.

**Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA)**

5.4.13 Section 45 of the Compensation for Occupational Injuries and Diseases Act, 1993 (COIDA) creates an obligation on the Compensation Commissioner to adjudicate a claim reported to the CF.

5.4.14 In terms of section 44, a claim will prescribe after a period of twelve months, and may no longer be instituted by the employer or employee.

5.4.15 Unfortunately no time frames are prescribed by COIDA for the processing and finalisation of a claim by the Fund.

**Case Law**

5.4.16 The Supreme Court of Appeal in *Gqwetha v Transkei Development Corporation Ltd and Others*¹⁴ held that an assessment of an undue delay involves the examining of firstly, a factual enquiry upon which a value judgment is made in the light of all the relevant circumstances,

¹⁴ [2005] ZASCA 51; 2006 (2) SA 603 (SCA)
and if so, secondly, whether, in the discretion of the court, such delay should be excused or overlooked. In the first leg of the enquiry, any explanation offered for the delay is considered. The second part of the enquiry, however, cannot be evaluated in a vacuum, but must be assessed with reference to its potential to prejudice the affected parties. In other words, the examination of whether a delay is undue or not, requires that a value judgment be made, where the reasons provided for the delay is weighed up against the possibility of prejudice as a result of the delay.

Conclusions

5.4.17 The act obligates the Compensation Commissioner to adjudicate a claim reported to the CF. There is no evidence that the CF followed up on the matter since it was reported by the SANDF in 1999. The matter was left unattended for six (6) years until January 2005 when the SANDF submitted the claim form.

5.4.18 After receiving the claim forms from the SANDF in January 2005, the CF only alluded to the SANDF in September 2005, indicating that partial dependency documents were outstanding, thus 9 months after receipt of the original claim form.

5.4.19 The CF received the final documents in November 2005 from the SANDF. It is however alarming that the adjudication of the claim was

15 Para [5], [24] and [33].
only concluded when the award was issued on 11 May 2007 (20 months later).

5.4.20 The period spent by CF on finalising the claim was unreasonable and improper, bearing in mind that COIDA provides for prescription after a period of 12 months, should a claim not be reported to the CF.

5.4.21 The justification of the CF with regards to the incompatibility of the two electronic systems in use at the time, without an emergency contingency backup programme, is of serious concern.

5.4.22 A Section 7(9) letter was sent to the Compensation Commissioner to enable him to respond to the conclusions and provisional findings in this report. The Compensation Commissioner however did not provide any inputs or comments on the evidence in the section 7(9) letter.

5.5 Issue 5: Whether the Complainant was improperly prejudiced by the conduct of the SANDF, the SAPS and the CF, as envisaged by section 6(4)(a)(v) of the Public Protector Act.

Issues in dispute

5.5.1 The issue for my determination is whether the Complainant was improperly prejudiced by the conduct of the SANDF, the SAPS and the CF.
5.5.2 The Complainant alleged that she is aggrieved by the discourteous and inconsiderate treatment she received from the SANDF after the death of her son.

5.5.3 In response to the Complainant’s contention, Commander Daniels in his letter referred above explained that there were three (3) visits made to the Complainant. The first visit was to notify her of her son’s death, the second visit was in regard to the funeral arrangements and to discuss the payment of his benefits, and the third visit was to provide her with support.

5.5.4 The Complainant received a letter from the SANDF, dated 21 April 2006, addressed to “Mr S J Pietersen” regarding the compensation claim and requesting the Complainant to submit a copy of the Post Mortem report, two (2) certified copies of the identity document of the deceased and the completion of dependency documentation. The Complainant was very distressed about the incorrect name and address on the letter.

5.5.5 In a letter dated 7 November 2007 the Chief of Human Resources of the SANDF indicated that this issue was an oversight by the official dealing with the matter, that the Investigator should convey his sincere apology to the Complainant and assure her that the military records were rectified to avoid any reoccurrence of the incident.
Applicable legal framework

5.5.6 Section 182(1)(c) of the Constitution requires me to consider whether any of my findings of maladministration or improper conduct in state affairs resulted in prejudice to the Complainant, and to take appropriate remedial action.

Conclusion

5.5.7 From the available evidence, it is clear that the Complainant was visited on at least 3 occasions by officials of the SANDF immediately after the incident. There is however there is no indication nor evidence that the Complainant received further emotional support from them, as indicated by Commander Daniels in his letter to the Public Protector.

5.5.8 With regards to the incorrect title used in the correspondence (Mr instead of Ms), this appears to be a bona fide administrative mistake by the official attending to the correspondence, with no maltreatment intended.

5.5.9 The failure of the SANDF to communicate the findings of the Board of Inquiry to the Complainant, as well as its failure to submit all relevant documents/information to the CF for finalising the claim, left the Complainant in having no closure regarding the death of her son for many years.
6. **FINDINGS**

After careful examination of the evidence obtained during the investigation, and the regulatory framework setting the standard that should have been upheld by the SAPS, the SANDF and the CF, my findings are as follows:

6.1 **Issue 1: Whether there was any undue delay by the SAPS to investigate the death of the deceased and failure to keep the Complainant informed of progress in the investigation.**

6.1.1 In the absence of substantive evidence I cannot make a negative determination on the time spent by the SAPS to complete the inquest investigation and to submit the inquest docket to the Senior Public Prosecutor for a decision on criminal prosecution.

6.1.2 Although the Standing Orders of the SAPS does not obligate the SAPS to keep the Complainant (as next of kin of the deceased) informed of progress in the inquest investigation, it was reasonably expected of the SAPS to inform the Complainant of progress.

6.1.3 The failure of the SAPS therefore violated sections 195 and 237 of the Constitution and its conduct constitutes improper conduct in terms of section 182(1)(a) of the Constitution.

6.2 **Issue 2: Whether the SANDF unduly delayed the finalisation of a Military Board of Enquiry into the death of the deceased and failed to communicate the findings of the Board to the Complainant.**
6.2.1 The allegation that the SANDF unduly delayed the finalisation of a Military Board of Enquiry into the death of the deceased is found to be unsubstantiated.

6.2.2 The allegation that the SANDF failed to communicate the findings of the Board of Inquiry to the Complainant is substantiated.

6.2.3 The conduct of the SANDF therefore constitutes improper conduct in terms of section 182(1)(a) of the Constitution.

6.3 Issue 3: Whether the SANDF failed to timeously report the claim to the CF and to submit comprehensive documents to the CF for the processing and payment of compensation benefits to the Complainant

6.3.1 The allegation that the SANDF failed to report the claim to the CF within the prescribed seven (7) days is substantiated.

6.3.2 The allegation that the SANDF did not submit comprehensive documents in the period April 1999 to January 2005 to the CF for the processing and payment of compensation benefits, is substantiated.

6.3.3 This conduct is in contravention of sections 195(1)(f) & (g) and 237 of the Constitution.

6.3.4 The conduct of the SANDF also constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration
and undue delay as envisaged in section 6(4)(a)(i) of the Public Protector Act.

6.4 Issue 4: Whether the Compensation Fund unduly delayed to process the claim for payment of compensation benefits.

6.4.1 The allegation that the Compensation Fund unduly delayed to process the claim for payment of compensation benefits is substantiated.

6.4.2 The undue delay is a contravention of sections 195(1)(g) and 237 of the Constitution and also constitutes maladministration as well as the undue delay as envisaged in section 6(4)(i) & (ii) of the Public Protector Act.

6.5 Issue 5: Whether the Complainant was improperly prejudiced by the conduct of the SANDF, the SAPS and the CF, as envisaged by section 6(4)(a)(v) of the Public Protector Act.

6.5.1 The allegations that the SANDF failed to inform the Complainant of the outcome of the Board of Inquiry and failed to timeously report the claim for payment of compensation benefits, are substantiated and caused the Complainant to suffer improper prejudice is as envisaged in section 6(4)(a)(v) of the Public Protector Act.

6.5.2 The allegations that the SAPS failed to inform the Complainant of progress in the investigation into the death of her son is substantiated and caused the Complainant to suffer improper prejudice is as envisaged in section 6(4)(a)(v) of the Public Protector Act.
6.5.3 The allegations that the CF unduly delayed to process and pay compensation benefits to the Complainant is substantiated and caused the Complainant to suffer improper prejudice as envisaged in section 6(4)(a)(v) of the Public Protector Act.

7. REMEDIAL ACTION

The appropriate remedial action I am taking in terms of section 182(1) (c) of the Constitution is as follows:

7.1 The National Commissioner to:

7.1.1 Consider amending the Standing Orders to provide for informing the next of kin of progress made in an inquest investigation.

7.1.2 Issue a written apology within thirty (30) working days from the date of this report to the Complainant, apologising for the delay to keep her informed of progress in the inquest investigation.

7.2 The Chief of the South African National Defence Force to:

7.2.1 Issue a written apology within thirty (30) working days from the date of this report to the Complainant, apologising for the failure to inform her of the outcome of the Board of Inquiry into the death of late Lieutenant Pietersen.

7.3 The Compensation Fund Commissioner to:
7.3.1 Issue a written apology within thirty (30) working days from the date of this report to the Complainant, apologising for the delay to process and pay compensation benefits to her within a reasonable time;

8 MONITORING

8.1 The remedial action will be monitored until such time as it has been complied with in full.

8.2 The submission of the implementation plan and the implementation of my remedial action shall, in the absence of a court order directing otherwise, be complied with within the period prescribed in my report.

ADV. BUSISWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 06/02/2020