

**CONSTITUTIONAL & LEGISLATIVE MANDATE OF THE  
PUBLIC PROTECTOR**



**PUBLIC PROTECTOR  
SOUTH AFRICA**



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## FOREWORD

The Public Protector is a constitutional institution. It is one of several institutions established by Chapter 9 of the Constitution to support and strengthen constitutional democracy. We ordinarily refer to these institutions as Chapter 9 Institutions. However, each of these institutions plays a distinct and unique role in supporting and strengthening constitutional democracy. The Public Protector is both an institution and a person. The person, who holds the same rank as a judge of the Supreme Court, is appointed on the basis of a parliamentary selection process, which culminates in a National Assembly vote followed by a Presidential appointment of whoever is recommended by Parliament.

The Public Protector has a most general mandate of all the Chapter 9 Institutions. There are two key pieces of legislation that regulate the operations of the Public Protector. These are the Public Protector Act of 1994, and the Executive Members' Ethics Act. The powers under the Public Protector Act cover the conduct of all public authorities except court decisions. The Executive Members' Ethics Act empowers the Public Protector to investigate all allegations of violations of the Act and Code by the members of the executive, that is, Ministers, Premiers, and MECs etc. Other pieces of legislation, which include Anti Corruption legislation and the Protected Disclosures Act, also recognise the role of the Public Protector with regard to investigating state action and taking remedial action.

The mandate of the Public Protector focuses on strengthening democracy by ensuring that all state organs are accountable, fair and responsive in the way they treat all persons and deliver services. The mandate includes ensuring integrity and general good governance in the management of public resources. The Constitution requires the Public Protector to investigate all complaints or allegations of improper conduct by public officials and public office bearers and take remedial action. Additional powers include conciliation, mediation and negotiating.

Like all Chapter 9 institutions, the Public Protector is independent and subject only to the Constitution and the law. The Public Protector must be impartial and exercise its powers and perform its functions without fear, favour or prejudice.

The Public Protector is accountable to the National Assembly and must report on activities and performance of functions to the Assembly at least once a year. No person or organ of state may interfere with the functioning of the Public Protector. All organs of state are required by the Constitution to assist and protect the Public and other constitutional institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions. They are further forbidden from interfering with the functioning of the Public Protector and other constitutional institutions.

This booklet sets out constitutional and legislative provisions that give a mandate to the Public Protector of the Republic of South Africa while regulating the Public Protector's discharge of its mandate.

Adv T. N. Madonsela  
Public Protector of the Republic of South Africa

## 1. THE CONSTITUTION

### 1.1. Introductory Note

The Constitution establishes the Public Protector as one of the several independent institutions that are to strengthen and support constitutional democracy. These institutions, which have different but complementary mandates are established by Chapter 9 of the Constitution.

#### 181 Establishment and governing principles

(1) The following state institutions strengthen constitutional democracy in the Republic:

- (a) The **Public Protector**.
- (b) The South African Human Rights Commission.

[Para. (b) amended by s. 4 of the Constitution Second Amendment Act of 1998.]

(c) The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.

- (d) The Commission for Gender Equality.
- (e) The Auditor-General.
- (f) The Electoral Commission.

(2) These institutions are independent, and subject only to the Constitution and the law, and they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice.

(3) Other organs of state, through legislative and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions.

(4) No person or organ of state may interfere with the functioning of these institutions.

(5) These institutions are accountable to the National Assembly, and must report on their activities and the performance of their functions to the Assembly at least once a year.

#### 182 Functions of Public Protector

(1) 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.

(2) The Public Protector has the additional powers and functions prescribed by national legislation.

(3) The Public Protector may not investigate court decisions.

(4) The Public Protector must be accessible to all persons and communities.

(5) An report issued by the Public Protector must be open to the public unless exceptional circumstances, to be determined in terms of national legislation, require that a report be kept confidential.

### 183 Tenure

The Public Protector is appointed for a non-renewable period of seven years.

### 193 Appointments

(1) The Public Protector and the members of any Commission established by this Chapter must be women or men who-

- (a) are South African citizens;
- (b) are fit and proper persons to hold the particular office; and
- (c) comply with any other requirements prescribed by national legislation.

(4) The President, on the recommendation of the National Assembly, must appoint the Public Protector, the Auditor-General and the members of-

- (a) the South African Human Rights Commission;

[Para. (a) amended by s. 4 of the Constitution Second Amendment Act of 1998.]

- (b) the Commission for Gender Equality; and
- (c) the Electoral Commission.

(5) The National Assembly must recommend persons-

(a) nominated by a committee of the Assembly proportionally composed of members of all parties represented in the Assembly; and

- (b) approved by the Assembly by a resolution adopted with a supporting vote-

(i) of at least 60 per cent of the members of the Assembly, if the recommendation concerns the appointment of the Public Protector or the Auditor-General; or

(ii) of a majority of the members of the Assembly, if the recommendation concerns the appointment of a member of a Commission.

(6) The involvement of civil society in the recommendation process may be provided for as envisaged in section 59 (1) (a).

### 194 Removal from office

(1) The Public Protector, the Auditor-General or a member of a Commission established by this Chapter may be removed from office only on-

- (a) the ground of misconduct, incapacity or incompetence;
- (b) a finding to that effect by a committee of the National Assembly; and
- (c) the adoption by the Assembly of a resolution calling for that person's removal

from office

(2) A resolution of the National Assembly concerning the removal from office of-

(a) the Public Protector or the Auditor-General must be adopted with a supporting vote of at least two thirds of the members of the Assembly; or

(b) a member of a Commission must be adopted with a supporting vote of a majority of the members of the Assembly.

(3) The President-

(a) may suspend a person from office at any time after the start of the proceedings of a committee of the National Assembly for the removal of that person; and

(b) must remove a person from office upon adoption by the Assembly of the resolution calling for that person's removal.

## 2. THE PUBLIC PROTECTOR ACT 23 of 1994

[ASSENTED TO 16 NOVEMBER 1994]  
1994]

[DATE OF COMMENCEMENT: 25 NOVEMBER

(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.]

### 1 Definitions

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.]

## **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]2 Remuneration, 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.]

## **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.]

### **3 Staff 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-ss. (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.]

#### **4 Finances 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.

## **5 Liability 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.

## **6 Reporting 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 there from 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 anybody 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.]

## **7 Investigation 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.]

## **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.]

## **8 Publication 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 thereof 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.

## **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.

## **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.

## **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.

**12** .....

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

### **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.

### **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.

### **15 Short title**

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

### 3. EXECUTIVE MEMBERS' ETHICS ACT 82 OF 1998

[ASSENTED TO 20 OCTOBER 1998] [DATE OF COMMENCEMENT: 28 OCTOBER 1998]

(English text signed by the President)

ACT

To provide for a code of ethics governing the conduct of members of the Cabinet, Deputy Ministers and members of provincial Executive Councils; and to provide for matters connected therewith.

#### 1 Definitions

In this Act, unless the context indicates otherwise-

'Cabinet' means the Cabinet referred to in section 91 (1) of the Constitution

'Cabinet member' includes the President

'code of ethics' means the code of ethics contemplated in section 2;

'Executive Council' means a provincial Executive Council contemplated in section 132 of the Constitution

'government', in relation to-

- (a) a Cabinet member or Deputy Minister, means the national government;
- (b) an MEC, means the provincial government of which that MEC is a member;

'MEC' means a member of an Executive Council, and includes the Premier

'Public Protector' means the Public Protector contemplated in section 181 of the Constitution.

#### 2 Code of ethics

(1) The President must, after consultation with Parliament, by proclamation in the Gazette, publish a code of ethics prescribing standards and rules aimed at promoting open, democratic and accountable government and with which Cabinet members, Deputy Ministers and MECs must comply in performing their official responsibilities.

(2) The code of ethics must-

- (a) include provisions requiring Cabinet members, Deputy Ministers and MECs-
  - (i) at all times to act in good faith and in the best interest of good governance; and
  - (ii) to meet all the obligations imposed on them by law; and
- (b) include provisions prohibiting Cabinet members, Deputy Ministers and MECs from-
  - (i) undertaking any other paid work;
  - (ii) acting in a way that is inconsistent with their office;
  - (iii) exposing themselves to any situation involving the risk of a conflict between their official responsibilities and their private interests;
  - (iv) using their position or any information entrusted to them, to enrich themselves or improperly benefit any other person; and
  - (v) acting in a way that may compromise the credibility or integrity of their office or of the government.

(c) require Cabinet members and Deputy Ministers to disclose to an official in the office of the President designated for this purpose, and MECs to disclose to an official in the office of the Premier concerned designated for this purpose-

(i) all their financial interests when assuming office; and

(ii) any financial interests acquired after their assumption of office, including any gifts, sponsored foreign travel, pensions, hospitality and other benefits of a material nature received by them or by such persons having a family or other relationship with them as may be determined in the code of ethics; and

(d) prescribe that the financial interests to be disclosed in terms of paragraph (c) must at least include the information, and be under the same conditions of public access thereto, as is required by members of the National Assembly as determined by that House from time to time, but may prescribe the disclosure of additional information.

(3) The code of ethics may prescribe any matter that may be necessary for the effective implementation of the code of ethics.

### **3 Public Protector to investigate breaches**

(1) The Public Protector must investigate any alleged breach of the code of ethics on receipt of a complaint contemplated in section 4.

(2) The Public Protector must submit a report on the alleged breach of the code of ethics within 30 days of receipt of the complaint-

(a) to the President, if the complaint is against a Cabinet member, Premier or Deputy Minister; and

(b) to the Premier of the province concerned, if the complaint is against an MEC.

(3) If the Public Protector reports at the end of the period referred to in subsection (2) that the investigation has not yet been completed, the Public Protector must submit another report when the investigation has been completed.

(4) When conducting an investigation in terms of this section, the Public Protector has all the powers vested in the Public Protector in terms of the Public Protector Act, 1994 (Act 23 of 1994).

(5) (a) The President must within a reasonable time, but not later than 14 days after receiving a report on a Cabinet member or Deputy Minister referred to in subsection 2 (a), submit a copy of the report and any comments thereon, together with a report on any action taken or to be taken in regard thereto, to the National Assembly.

(b) The President must within a reasonable time, but not later than 14 days after receiving a report on a Premier referred to in subsection (2) (a), submit a copy of the report and any comments thereon to the National Council of Provinces.

(6) The Premier must within a reasonable time, but not later than 14 days after receiving a report referred to in subsection 2 (b), submit a copy of the report and any comments thereon, together with a report on any action taken or to be taken in regard thereto, to the provincial legislature.

### **4 Complaints**

(1) The Public Protector must investigate, in accordance with section 3, an alleged breach of the code of ethics on receipt of a complaint by-

(a) the President, a member of the National Assembly or a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet member or Deputy Minister; or

(b) the Premier or a member of the provincial legislature of a province, if the complaint is against an MEC of the province.

(2) The complaint must be in writing and must contain-

(a) the name and address of the complainant;

(b) full particulars of the alleged conduct of the Cabinet member, Deputy Minister or MEC; and  
(c) such other information as may be required by the Public Protector or prescribed in the code of ethics.

(3) Nothing in this section may prevent the Public Protector from investigating any complaint by a member of the public in accordance with the Public Protector Act, 1994 (Act 23 of 1994).

## **5 Appointment and dismissal of Cabinet members, Deputy Ministers and MECs not affected**

Nothing in this Act may prevent or delay the appointment or the termination of the appointment of any Cabinet member, Deputy Minister or MEC or the amendment of any determination or allocation of a portfolio in terms of the Constitution.

## **6 Criminal prosecutions not affected**

Nothing in this Act may prevent or delay the prosecution of a Cabinet member, Deputy Minister or MEC in a court.

## **7 Short title**

This Act is called the Executive Members' Ethics Act, 1998.

#### **4. EXECUTIVE ETHICS CODE**

In terms of section 2 (1) of the Executive Members' Ethics Act, 1998 (Act No. 82 of 1998), I hereby, after consultation with Parliament, publish the Executive Ethics Code with which Members of the Cabinet, Deputy Ministers and Members of Provincial Executive Councils must comply in performing their official responsibilities.

Given under my hand and the Seal of the Republic of South Africa at Pretoria on this Twentieth day of July, Two Thousand.

J.G. ZUMA

Acting President

By Order of the President-in-Cabinet:

A. K. ASMAL

Minister of the Cabinet

##### **1. Definitions**

In this Code, any word or expression defined in the Act bears that meaning and, unless the context indicates otherwise -

'company or corporate entity' includes any public or private company, any close corporation and any trust, other than a charitable trust, but does not include a charitable organisation or an association not for gain (section 21 company);

'family member', in relation to a member, means the members parent, spouse, companion or dependent child;

member of the Executives' means a Cabinet member, a Deputy Minister or a Member of a Provincial Executive Committee, and "member' and 'Executive' have corresponding meanings;

'permanent companion', in relation to a member, means a person who is cohabiting with the member and is publicly acknowledged by the member as the member's permanent companion;

'Secretary', in relation to members of the Cabinet, means the Secretary of the Cabinet and, in respect of members of an Executive Council, the Secretary of the Executive Council;

'the Act' means The Executive Members' Ethics Act, 1998 (Act No 82 of 1998).

## **2. General Standards**

2.1 Members of the Executive must to the satisfaction of the President or the Premier, as the case may be

- (a) perform their duties and exercise their powers diligently and honestly;
- (b) fulfil all the obligations imposed upon them by the Constitution and law; and
- (c) act in good faith and in the best interest of good governance; and
- (d) act in all respects in a manner that is consistent with the integrity of their office or the government.

**2.2** in deciding whether members of the Executive complied with the provisions of clause 2. 1, the President or Premier, as the case may be, must take into account the promotion of an open, democratic and accountable government.

2.3 Members of the Executive may not

- (a) wilfully mislead the legislature to which they are accountable;
- (b) wilfully mislead the President or Premier, as the case may be;
- (c) act in a way that is inconsistent with their position;
- (d) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person;
- (e) use information received in confidence in the course of their duties otherwise than in connection with the discharge of their duties;
- (f) expose themselves to any situation involving the risk of a conflict between their official responsibilities and their private interests;
- (g) receive remuneration for any work or service other than for the performance of their functions as members of the Executive or
- (h) make improper use of any allowance or payment properly made to them, or disregard the administrative rules which apply to such allowance or payments.

## **3. Conflict of interest**

3.1 A member must declare any personal or private financial or business interest that the member may have in a matter

- (a) that is before the Cabinet or an Executive Council:
- (b) that is before a Cabinet Committee or Executive Council. on which the member serves; or

(c) in relation to which the member is required to take a decision as a member of the Executive.

3.2 A member must withdraw from the proceedings of any committee of the Cabinet or an Executive Council considering a matter in which the member has any personal or private financial or business interest unless the President or the Premier as the case may be, decides that the member's interest is trivial or not relevant.

3.3 If, a member is required to adjudicate upon or decide a matter in which the member has a personal or private financial or business interest the member must declare that interest to the President or the Premier, as the case may be, and seek the permission of the President or Premier to adjudicate upon or decide the matter

3.4 If a member makes representations to another member of the Executive with regard to a matter in which the member has a personal or private financial or business interest, the member must declare that interest to the other member.

3.5 For the purposes of the paragraphs 3.1, 3. 2, 3.3 and 3. 4 the personal or private financial or business interest of a member includes any financial or business interest which, to the member's knowledge, the member's spouse, permanent companion or family member has.

3.6 Where a member holds any financial or business interest in a company or corporate entity or profit-making enterprise which may give rise to a conflict of interest in the performance of that member's functions as a member of the Executive, the member must, within two months of the promulgation of this Code, or within two months of assuming office, or within two months of acquiring such interest, as the case may be. or within such longer period as the President or, if the member is a member on an Executive Council, the Premier determines-

(a) dispose of such interest: or

(b) place the administration of the interest under the control of an independent and professional person or agency.

3.7 When the administration of a member's interest has been placed under the control of a person as contemplated in paragraph 3.6(b), the member may not, during the course of his or her term as member, have any communication with or give any instructions to that person regarding the interest or the administration or control thereof, save for purposes of complying with any legal requirement in respect of such interest, or to give instructions to sell such interest.

3.8 When a member is required to make arrangements to meet the conditions of paragraph 3.6, the professional costs occasioned thereby are recoverable from the state.

#### **4. Gifts**

4.1 A member may not solicit or accept a gift or benefit which

(a) is in return for any benefit received from the member in the member's official capacity;

(b) constitutes improper influence on the member, or

(c) constitutes an attempt to influence the member in the performance of the member's duties.

4.2 When a member, in the course of the member's duties, has received or has been offered a gift with a value of more than R1000, the member may request permission from the President or Premier, as the case may be to retain or accept the gift. If the permission is granted the member may retain or accept the gift, but must disclose particulars thereof in terms of paragraph 6.5 of this Code. Where such permission has not been requested or granted the member must either

(a) return the gift or decline the offer; or

(b) donate the gift to the state.

4.3 For the purposes of paragraph 4.2 'gift' does not include travel facilities or hospitality arising from attendance at meals, functions, meetings, cocktail parties, conventions, conferences or similar events attended by the member as part of the member's executive duties.

## **5. Disclosure of Financial Interests**

5.1 Every member must disclose to the Secretary particulars of all the financial interests, as set out in paragraph 6, of-

(a) the member; and

(b) the member's spouse, permanent companion or dependent children, to the extent that the member is aware of those interests.

5.2 The first disclosure must be made within 60 days after the promulgation of this Code or of a member's assumption of office or of a member becoming aware of such interest, as the case may be.

5.3 After the first disclosure, members must annually disclose particulars of their financial interests on or before a date determined by the Secretary.

5.4 Cabinet members and Deputy Ministers who are members of the National Assembly and are required to disclose particulars of their financial interests in terms of the Rules of Parliament, comply with paragraph 5.1 -

(a) by submitting to the Secretary a copy of those particulars on the same date as they are filed with the relevant parliamentary official; and

(b) in so far as those particulars do not meet the requirements of paragraph 6 of this Code, by filing with the Secretary a statement containing the necessary additional disclosure.

5.5 Where any doubt exists as to whether particular financial interests must be disclosed, the member must consult the Secretary.

5.6 When a member makes a disclosure in terms of paragraph 5.1, the member must confirm in writing to the Secretary that the member receives no remuneration other than as a member of the Executive.

**6. Financial Interests to be disclosed:**

Members must disclose the following interests and details:

6.1 Shares and other financial Interests in companies and other corporate entities by indicating:

- (a) The number, nature and nominal value of shares of any type in any public or private company;
- (b) the name of that company; and
- (c) the nature and value of any other financial interests held in any company or any other corporate entity.

6.2 Sponsorships:

- (a) The source and description of direct financial sponsorship or assistance from any source other than the member's party which benefits the member in his or her personal and private capacity; and
- (b) the amount or value of the sponsorship or assistance,

6.3 Gifts and hospitality other than that received from a spouse or permanent companion or family member:

A Description, including the value and source of -

- (a) any gift with a value of more than R350;
- (b) gifts received from a single source which cumulatively exceed the value of R350 in any calendar year;
- (c) hospitality intended as a personal gift and with a value of more than R350; and
- (d) hospitality intended as a gift and received from a single source, and which cumulatively exceeds the value of R350 in any calendar year.

6.4 Benefits:

- (a) The nature and source of any other benefit of a material nature; and
- (b) the value of that benefit.

6.5 Foreign travel other than personal visits paid for by the member, or official travel paid for by the state, or travel paid for by the member's party:

- (a) A brief description of the journey abroad; and
- (b) particulars of the sponsor.

6.6 Land and immovable property, including land or property outside South Africa

(a) A description of and the extent of the land or property; (b) area in which it is situated; and (c) nature and value of interest in the land or property.

6.7 Pensions:

(a) The source of any pension; and

(b) the value of the pension.

## **7. Register of Financial Interests**

7.1 Each Secretary must keep a register of all financial interests disclosed by members. The register must have a confidential part and a public part.

7.2 The following financial interests must be recorded in the confidential part of a register:

(a) The value of interests in a corporate entity other or public company;

(b) the details of foreign travel when the nature of those details to be confidential;

(c) the details, including the address, of any private

(d) the value of any pension;

(e) details of the financial interests of a member's spouse, permanent companion or dependent child;

(f) the member's liabilities.

7.3 Only the President or Premier, as the case may be, the **Public Protector**, the Secretary concerned and staff designated by the Secretary have access to the confidential part of a register.

7.4 No person who has access to the confidential part of a register disclose particulars of any entry in that part to anyone other member concerned or another person who has such access, except when a court or the **Public Protector** so orders.

7.5 Any person has access to the public part of a register during office hours of the secretary concerned

## **8. General**

8.1 A member must instruct a member of the staff of the member's office or Ministry to assist and monitor compliance with this Code. The information obtained by that staff member may not be disclosed to anyone, except in executing measures envisaged in this Code.

8.2 A member must assist the **Public Protector** in the performance of the **Public Protector's** functions under the Act.

8.3 This code may be amended or replaced, and the amounts specified in the Code adjusted from time to time by proclamation in the Government Gazette.

8.4 This Code is called the Executive Ethics Code, and comes into effect on the date of its promulgation in the Government Gazette.

## **5. PREVENTION & COMBATING OF CORRUPT ACTIVITIES ACT 12 OF 2004**

Section 6 (4) (a) (iii) of The Public Protector Act states that The Public Protector shall, be competent to investigate-

(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;**

### **Chapter 2 of the Prevention of Combating of Corrupt Activities Act, 2004.**

Offences in respect of corrupt activities (ss 3-21)

Part 1

General offence of corruption (s 3)

#### **3 General offence of corruption**

Any person who, directly or indirectly-

(a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or

(b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner-

(i) that amounts to the-

(aa) illegal, dishonest, unauthorised, incomplete, or biased; or

(bb) misuse or selling of information or material acquired in the course of

the,

exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

(ii) that amounts to-

(aa) the abuse of a position of authority;

(bb) a breach of trust; or

(cc) the violation of a legal duty or a set of rules,

(iii) designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorised or improper inducement to do or not to

do anything,

is guilty of the offence of corruption.

Part 2

Offences in respect of corrupt activities relating to specific persons (ss 4-9)

#### **4 Offences in respect of corrupt activities relating to public officers**

(1) Any-

- (a) public officer who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
- (b) person who, directly or indirectly, gives or agrees or offers to give any gratification to a public officer, whether for the benefit of that public officer or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner-
  - (i) that amounts to the-
    - (aa) illegal, dishonest, unauthorised, incomplete, or biased; or
    - (bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;
  - (ii) that amounts to-
    - (aa) the abuse of a position of authority;
    - (bb) a breach of trust; or
    - (cc) the violation of a legal duty or a set of rules;
  - (iii) designed to achieve an unjustified result; or
  - (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,

is guilty of the offence of corrupt activities relating to public officers.

(2) Without derogating from the generality of section 2 (4), 'to act' in subsection (1), includes-

- (a) voting at any meeting of a public body;
- (b) performing or not adequately performing any official functions;
- (c) expediting, delaying, hindering or preventing the performance of an official act;
- (d) aiding, assisting or favouring any particular person in the transaction of any business with a public body;
- (e) aiding or assisting in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person in relation to the transaction of any business with a public body;
- (f) showing any favour or disfavour to any person in performing a function as a public officer;
- (g) diverting, for purposes unrelated to those for which they were intended, any property belonging to the state which such officer received by virtue of his or her position for purposes of administration, custody or for any other reason, to another person; or
- (h) exerting any improper influence over the decision making of any person performing functions in a public body.

## **5 Offences in respect of corrupt activities relating to foreign public officials**

(1) Any person who, directly or indirectly gives or agrees or offers to give any gratification to a foreign public official, whether for the benefit of that foreign public official or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner-

- (a) that amounts to the-
  - (i) illegal, dishonest, unauthorised, incomplete, or biased; or
  - (ii) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;
- (b) that amounts to-

- (i) the abuse of a position of authority;
- (ii) a breach of trust; or
- (iii) the violation of a legal duty or a set of rules;
- (c) designed to achieve an unjustified result; or
- (d) that amounts to any other unauthorised or improper inducement to do or not to

do anything,

is guilty of the offence of corrupt activities relating to foreign public officials.

(2) Without derogating from the generality of section 2 (4), 'to act' in subsection (1) includes-

- (a) the using of such foreign public official's or such other person's position to influence any acts or decisions of the foreign state or public international organisation concerned; or
- (b) obtaining or retaining a contract, business or an advantage in the conduct of business of that foreign state or public international organisation.

## **6 Offences in respect of corrupt activities relating to agents**

Any-

- (a) agent who, directly or indirectly-
    - (i) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
    - (ii) gives or agrees or offers to give to any person any gratification, whether for the benefit of that person or for the benefit of another person; or
  - (b) person who, directly or indirectly-
    - (i) accepts or agrees or offers to accept any gratification from an agent, whether for the benefit of himself or herself or for the benefit of another person; or
    - (ii) gives or agrees or offers to give any gratification to an agent, whether for the benefit of that agent or for the benefit of another person,
- in order to act, personally or by influencing another person so to act, in a manner-
- (aa) that amounts to the-
    - (aaa) illegal, dishonest, unauthorised, incomplete, or biased; or
    - (bbb) misuse or selling of information or material acquired in the course of

the,

exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

- (bb) that amounts to-
  - (aaa) the abuse of a position of authority;
  - (bbb) a breach of trust; or
  - (ccc) the violation of a legal duty or a set of rules;
- (cc) designed to achieve an unjustified result; or
- (dd) that amounts to any other unauthorised or improper inducement to do or not to

do anything,

is guilty of the offence of corrupt activities relating to agents.

## **7 Offences in respect of corrupt activities relating to members of legislative authority**

(1) Any-

- (a) member of the legislative authority who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
- (b) person who, directly or indirectly, gives or agrees or offers to give any gratification to a member of the legislative authority, whether for the benefit of that member or for the benefit of another person,

in order to act, personally or by influencing another person so to act, in a manner-

- (i) that amounts to the-
  - (aa) illegal, dishonest, unauthorised, incomplete, or biased; or
  - (bb) misuse or selling of information or material acquired in the course of

the,

exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

- (ii) that amounts to-
  - (aa) the abuse of a position of authority;
  - (bb) a breach of trust; or
  - (cc) the violation of a legal duty or a set of rules;

(iii) designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorised or improper inducement to do or not to

do anything,

is guilty of the offence of corrupt activities relating to members of the legislative authority.

(2) Without derogating from the generality of section 2 (4), 'to act' in subsection (1) includes-

- (a) absenting himself or herself from;
- (b) voting at any meeting of;
- (c) aiding or assisting in procuring or preventing the passing of any vote in;
- (d) exerting any improper influence over the decision making of any person

performing his or her functions as a member of; or

(e) influencing in any way, the election, designation or appointment of any

functionary to be elected, designated or appointed by,

the legislative authority of which he or she is a member or of any committee or joint committee of that legislative authority.

## **8 Offences in respect of corrupt activities relating to judicial officers**

(1) Any-

(a) judicial officer who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or

(b) person who, directly or indirectly, gives or agrees or offers to give any gratification to a judicial officer, whether for the benefit of that judicial officer or for the benefit of another person,

in order to act, personally or by influencing another person so to act, in a manner-

- (i) that amounts to the-
  - (aa) illegal, dishonest, unauthorised, incomplete, or biased; or
  - (bb) misuse or selling of information or material acquired in the course of

the,

exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

- (ii) that amounts to-
  - (aa) the abuse of a position of authority;
  - (bb) a breach of trust; or
  - (cc) the violation of a legal duty or a set of rules;

(iii) designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorised or improper inducement to do or not to

do anything,

is guilty of the offence of corrupt activities relating to judicial officers.

(2) Without derogating from the generality of section 2 (4), 'to act' in subsection (1) includes-

- (a) performing or not adequately performing a judicial function;
- (b) making decisions affecting life, freedoms, rights, duties, obligations and property of persons;
- (c) delaying, hindering or preventing the performance of a judicial function;
- (d) aiding, assisting or favouring any particular person in conducting judicial proceedings or judicial functions;
- (e) showing any favour or disfavour to any person in the performance of a judicial function; or
- (f) exerting any improper influence over the decision making of any person, including another judicial officer or a member of the prosecuting authority, performing his or her official functions.

## **9 Offences in respect of corrupt activities relating to members of prosecuting authority**

(1) Any-

- (a) member of the prosecuting authority who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person;
  - (b) person who, directly or indirectly, gives or agrees or offers to give any gratification to a member of the prosecuting authority, whether for the benefit of that member or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner-
    - (i) that amounts to the-
      - (aa) illegal, dishonest, unauthorised, incomplete, or biased; or
      - (bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;
    - (ii) that amounts to-
      - (aa) the abuse of a position of authority;
      - (bb) a breach of trust; or
      - (cc) the violation of a legal duty or a set of rules;
    - (iii) designed to achieve an unjustified result; or
    - (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,
- is guilty of the offence of corrupt activities relating to members of the prosecuting authority.

(2) Without derogating from the generality of section 2 (4), 'to act' in subsection (1) includes-

- (a) performing or not adequately performing a function relating to the-
  - (i) institution or conducting of criminal proceedings;
  - (ii) carrying out of any necessary functions incidental to the institution or conducting of such criminal proceedings; or
  - (iii) continuation or discontinuation of criminal proceedings;
- (b) delaying, hindering or preventing the performance of a prosecutorial function;
- (c) aiding or assisting any particular person in the performance of a function relating to the institution or conducting of criminal proceedings;
- (d) showing any favour or disfavour to any person in the performance of a function relating to the institution or conducting of criminal proceedings; or
- (e) exerting any improper influence over the decision making of any person, including another member of the prosecuting authority or a judicial officer, performing his or her official functions.

Offences in respect of corrupt activities relating to receiving or offering of unauthorised gratification (s 10)

### **10 Offences of receiving or offering of unauthorised gratification by or to party to an employment relationship**

Any person-

(a) who is party to an employment relationship and who, directly or indirectly, accepts or agrees or offers to accept from any other person any unauthorised gratification, whether for the benefit of that person or for the benefit of another person; or

(b) who, directly or indirectly, gives or agrees or offers to give to any person who is party to an employment relationship any unauthorised gratification, whether for the benefit of that party or for the benefit of another person,

in respect of that party doing any act in relation to the exercise, carrying out or performance of that party's powers, duties or functions within the scope of that party's employment relationship, is guilty of the offence of receiving or offering an unauthorised gratification.

Part 4

Offences in respect of corrupt activities relating to specific matters (ss 11-16)

### **11 Offences in respect of corrupt activities relating to witnesses and evidential material during certain proceedings**

(1) Any person who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person, in return for-

(a) testifying in a particular way or fashion or in an untruthful manner in a trial, hearing or other proceedings before any court, judicial officer, committee, commission or officer authorised by law to hear evidence or take testimony;

(b) withholding testimony or withholding a record, document, police docket or other object at any such trial, hearing or proceedings;

(c) giving or withholding information relating to any aspect at any such trial, hearing or proceedings;

(d) altering, destroying, mutilating, or concealing a record, document, police docket or other object with the intent to impair the availability of such record, document, police docket or other object for use at such trial, hearing or proceedings;

(e) giving or withholding information relating to or contained in a police docket;

(f) evading legal process summoning that person to appear as a witness or to produce any record, document, police docket or other object at such trial, hearing or proceedings; or

(g) being absent from such trial, hearing or proceedings,  
is guilty of the offence of corrupt activities relating to witnesses and evidential material during certain proceedings.

(2) Any person who, directly or indirectly, gives or agrees or offers to give any gratification to any other person, whether for the benefit of that other person or for the benefit of another person, with the intent to-

(a) influence, delay or prevent the testimony of that person or another person as a witness in a trial, hearing or other proceedings before any court, judicial officer, committee, commission or any officer authorised by law to hear evidence or take testimony; or

(b) cause or induce any person to-

(i) testify in a particular way or fashion or in an untruthful manner in a trial, hearing or other proceedings before any court, judicial officer, committee, commission or officer authorised by law to hear evidence or take testimony;

(ii) withhold testimony or to withhold a record, document, police docket or other object at such trial, hearing or proceedings;

(iii) give or withhold information relating to any aspect at any such trial, hearing or proceedings;

(iv) alter, destroy, mutilate, or conceal a record, document, police docket or other object with the intent to impair the availability of such record, document, police docket or other object for use at such trial, hearing or proceedings;

(v) give or withhold information relating to or contained in a police docket;

(vi) evade legal process summoning that person to appear as a witness or to produce any record, document, police docket or other object at such trial, hearing or proceedings; or

(vii) be absent from such trial, hearing or other proceedings,

is guilty of the offence of corrupt activities relating to witnesses and evidential material during certain proceedings.

## **12 Offences in respect of corrupt activities relating to contracts**

(1) Any person who, directly or indirectly-

(a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of that other person or of another person; or

(b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person-

(i) in order to improperly influence, in any way-

(aa) the promotion, execution or procurement of any contract with a public body, private organisation, corporate body or any other organisation or institution; or

(bb) the fixing of the price, consideration or other moneys stipulated or otherwise provided for in any such contract; or

(ii) as a reward for acting as contemplated in paragraph (a),

is guilty of the offence of corrupt activities relating to contracts.

(2) Any person who, in order to obtain or retain a contract with a public body or as a term of such contract, directly or indirectly, gives or agrees or offers to give any gratification to any other person, whether for the benefit of that other person or for the benefit of another person-

(a) for the purpose of promoting, in any way, the election of a candidate or a category or party of candidates to the legislative authority; or

(b) with the intent to influence or affect, in any way, the result of an election conducted for the purpose of electing persons to serve as members of the legislative authority, is guilty of an offence.

## **13 Offences in respect of corrupt activities relating to procuring and withdrawal of tenders**

(1) Any person who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person, as-

(a) an inducement to, personally or by influencing any other person so to act-

(i) award a tender, in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, to a particular person; or

(ii) upon an invitation to tender for such contract, make a tender for that contract which has as its aim to cause the tenderee to accept a particular tender; or

(iii) withdraw a tender made by him or her for such contract; or

(b) a reward for acting as contemplated in paragraph (a) (i), (ii) or (iii),

is guilty of the offence of corrupt activities relating to procuring and withdrawal of tenders.

(2) Any person who, directly or indirectly-

- (a) gives or agrees or offers to give any gratification to any other person, whether for the benefit of that other person or the benefit of another person, as-
  - (i) an inducement to, personally or by influencing any other person so to act, award a tender, in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, to a particular person; or
  - (ii) a reward for acting as contemplated in subparagraph (i); or
- (b) with the intent to obtain a tender in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, gives or agrees or offers to give any gratification to any person who has made a tender in relation to that contract, whether for the benefit of that tenderer or for the benefit of any other person, as-
  - (i) an inducement to withdraw the tender; or
  - (ii) a reward for withdrawing or having withdrawn the tender,

is guilty of the offence of corrupt activities relating to procuring and withdrawal of tenders.

#### **14 Offences in respect of corrupt activities relating to auctions**

(1) Any auctioneer who, directly or indirectly-

- (a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person-
  - (i) in order to conduct the bidding process at an auction in a manner so as to favour or prejudice a specific person; or
  - (ii) as a reward for acting as contemplated in subparagraph (i); or
- (b) gives or agrees or offers to give any gratification to any other person, whether for the benefit of that other person or for the benefit of another person-
  - (i) in order to influence that person to-
    - (aa) refrain from bidding at an auction; or
    - (bb) participate, personally or by influencing any other person so to participate, in the bidding process at an auction in such a manner so as to get a specific offer for the article or to sell the article at a specific amount or to sell the article to a specific bidder; or
  - (ii) as a reward for acting as contemplated in subparagraph (i),

is guilty of the offence of corrupt activities relating to auctions.

(2) Any person who, directly or indirectly-

- (a) accepts or agrees or offers to accept any gratification from any other person or an auctioneer, whether for the benefit of himself or herself or for the benefit of another person-
  - (i) in return for that person-
    - (aa) refraining from bidding at an auction; or
    - (bb) participating, personally or by influencing any other person so to participate, at an auction in the bidding process in order to get a specific offer for the article or to buy the article for a specific amount or to sell the article to a specific bidder; or
  - (ii) as a reward for acting as contemplated in subparagraph (i); or
- (b) gives or agrees or offers to give any gratification to an auctioneer, whether for the benefit of that auctioneer or for the benefit of another person-
  - (i) in order to influence that auctioneer to conduct the bidding process at an auction in such a manner so as to favour or prejudice a specific person; or
  - (ii) as a reward for acting as contemplated in subparagraph (i); or
- (c) gives or agrees or offers to give any gratification to any other person, whether for the benefit of that other person or for the benefit of another person-
  - (i) in return for that other person-
    - (aa) refraining from bidding at an auction; or

(bb) participating, personally or by influencing any other person so to participate, in the bidding process at an auction in such a manner so as to get a specific offer for the article or to sell the article at a specific amount or to sell the article to a specific bidder; or  
(ii) as a reward for acting as contemplated in subparagraph (i),  
is guilty of the offence of corrupt activities relating to auctions.

## **15 Offences in respect of corrupt activities relating to sporting events**

Any person who, directly or indirectly-

(a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of that other person or of another person;  
or

(b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person-

(i) in return for-  
(aa) engaging in any act which constitutes a threat to or undermines the integrity of any sporting event, including, in any way, influencing the run of play or the outcome of a sporting event; or

(bb) not reporting the act contemplated in this section to the managing director, chief executive officer or to any other person holding a similar post in the sporting body or regulatory authority concerned or at his or her nearest police station; or

(ii) as a reward for acting as contemplated in subparagraph (i); or  
(c) carries into effect any scheme which constitutes a threat to or undermines the integrity of any sporting event, including, in any way, influencing the run of play or the outcome of a sporting event,  
is guilty of the offence of corrupt activities relating to sporting events.

## **16 Offences in respect of corrupt activities relating to gambling games or games of chance**

Any person who, directly or indirectly-

(a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of that other person or of another person;  
or

(b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person-

(i) in return for engaging in any conduct which constitutes a threat to or undermines the integrity of any gambling game or a game of chance, including, in any way, influencing the outcome of a gambling game or a game of chance; or

(ii) as a reward for acting as contemplated in subparagraph (i); or  
(c) carries into effect any scheme which constitutes a threat to or undermines the integrity of any gambling game or a game of chance, including, in any way, influencing the outcome of a gambling game or a game of chance,  
is guilty of the offence of corrupt activities relating to gambling games or games of chance.

Part 5

Miscellaneous offences relating to possible conflict of interest and other unacceptable conduct (ss 17-19)

**17 Offence relating to acquisition of private interest in contract, agreement or investment of public body**

(1) Any public officer who, subject to subsection (2), acquires or holds a private interest in any contract, agreement or investment emanating from or connected with the public body in which he or she is employed or which is made on account of that public body, is guilty of an offence.

(2) Subsection (1) does not apply to-

- (a) a public officer who acquires or holds such interest as a shareholder of a listed company;
- (b) a public officer, whose conditions of employment do not prohibit him or her from acquiring or holding such interest; or
- (c) in the case of a tender process, a public officer who acquires a contract, agreement or investment through a tender process and whose conditions of employment do not prohibit him or her from acquiring or holding such interest and who acquires or holds such interest through an independent tender process.

**18 Offences of unacceptable conduct relating to witnesses**

Any person who, directly or indirectly, intimidates or uses physical force, or improperly persuades or coerces another person with the intent to-

- (a) influence, delay or prevent the testimony of that person or another person as a witness in a trial, hearing or other proceedings before any court, judicial officer, committee, commission or any officer authorised by law to hear evidence or take testimony; or
  - (b) cause or induce any person to-
    - (i) testify in a particular way or fashion or in an untruthful manner in a trial, hearing or other proceedings before any court, judicial officer, committee, commission or officer authorised by law to hear evidence or take testimony;
    - (ii) withhold testimony or to withhold a record, document, police docket or other object at such trial, hearing or proceedings;
    - (iii) give or withhold information relating to any aspect at any such trial, hearing or proceedings;
    - (iv) alter, destroy, mutilate, or conceal a record, document, police docket or other object with the intent to impair the availability of such record, document, police docket or other object for use at such trial, hearing or proceedings;
    - (v) give or withhold information relating to or contained in a police docket;
    - (vi) evade legal process summoning that person to appear as a witness or to produce any record, document, police docket or other object at such trial, hearing or proceedings; or
    - (vii) be absent from such trial, hearing or other proceedings,
- is guilty of the offence of unacceptable conduct relating to a witness.

**19 Intentional interference with, hindering or obstruction of investigation of offence**

Any person who, at any stage, with intent to defraud or to conceal an offence in terms of this Chapter or to interfere with, or to hinder or obstruct a law enforcement body in its investigation of any such offence-

- (a) destroys, alters, mutilates or falsifies any book, document, valuable security, account, computer system, disk, computer printout or other electronic device or any entry in such book, document, account or electronic device, or is privy to any such act;
- (b) makes or is privy to making any false entry in such book, document, account or electronic device; or
- (c) omits or is privy to omitting any information from any such book, document, account or electronic device,

is guilty of an offence.

Part 6

Other offences relating to corrupt activities (ss 20-21)

## **20 Accessory to or after offence**

Any person who, knowing that property or any part thereof forms part of any gratification which is the subject of an offence in terms of Part 1, 2, 3 or 4, or section 21 (in so far as it relates to the aforementioned offences) of this Chapter, directly or indirectly, whether on behalf of himself or herself or on behalf of any other person-

(a) enters into or causes to be entered into any dealing in relation to such property or any part thereof; or

(b) uses or causes to be used, or holds, receives or conceals such property or any part thereof,

is guilty of an offence.

## **21 Attempt, conspiracy and inducing another person to commit offence**

Any person who-

(a) attempts;

(b) conspires with any other person; or

(c) aids, abets, induces, incites, instigates, instructs, commands, counsels or

procures another person,

to commit an offence in terms of this Act, is guilty of an offence.

## **6. PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000**

Section 6 (4) (d) of The Public Protector Act, 1994 states that, The Public Protector shall, be competent-

(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.

Section (3) of the Promotion of Access to Information states that,

### **(3) The Human Rights Commission may-**

(h) for the purposes of section 84 (b) (x), request the **Public Protector** to submit to the Commission information with respect to-

(i) the number of complaints lodged with the **Public Protector** in respect of a right conferred or duty imposed by this Act;

## 7. ELECTORAL COMMISSION ACT 51 OF 1996

### 6 Composition of Commission and appointment of commissioners

(1) The Commission shall consist of five members, one of whom shall be a judge, appointed by the President in accordance with the provisions of this section.

(2) No person shall be appointed as a member of the Commission unless he or she-

(a) is a South African citizen;

(b) does not at that stage have a high party-political profile;

(c) has been recommended by the National Assembly by a resolution adopted by a majority of the members of that Assembly; and

(d) has been nominated by a committee of the National Assembly, proportionally composed of members of all parties represented in that Assembly, from a list of recommended candidates submitted to the committee by the panel referred to in subsection (3).

(3) The panel shall, subject to subsection (6), consist of-

(a) the President of the Constitutional Court, as chairperson;

(b) a representative of the Human Rights Commission established by section 115 (1) of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993);

(c) a representative of the Commission on Gender Equality established by section 119 (1) of the said Constitution; and

(d) the **Public Protector** established by section 110 (1) of the said Constitution.

## 8. PROTECTED DISCLOSURES 26 OF 2000

### 8 Protected disclosure to certain persons or bodies

(1) Any disclosure made in good faith to-

(a) the **Public Protector**;

(b) the Auditor-General; or

(c) a person or body prescribed for purposes of this section; and

in respect of which the employee concerned reasonably believes that-

(i) the relevant impropriety falls within any description of matters which, in the ordinary course are dealt with by the person or body concerned; and

(ii) the information disclosed, and any allegation contained in it, are substantially true,

is a protected disclosure.

### 10 Regulations

(1) The Minister may, after consultation with the Minister for the Public Service and Administration, by notice in the Gazette make regulations regarding-

(a) for the purposes of section 8 (1), matters which, in addition to the legislative provisions pertaining to such functionaries, may in the ordinary course be referred to the **Public Protector** or the Auditor-General, as the case may be.

## 9. NATIONAL ARCHIVES AND RECORD SERVICE ACT 43 OF 1996

### (4) The functions of the Council shall be to-

- (a) advise the Minister and the Director-General: Arts, Culture, Science and Technology on any matter related to the operation of this Act;
- (b) advise the National Archivist on furthering the objects and functions of the National Archives;
- (c) advise and consult with the South African Heritage Resources Agency on the protection of records forming part of the National Estate;
- (d) .....
- (e) consult with the **Public Protector** on investigations into the unauthorised destruction of records otherwise protected under this Act; and
- (f) annually submit a business plan to the Minister for approval.

## 10. NATIONAL ENERGY ACT 40 OF 2004

### 51 Disclosure of information

(1) In this section 'information' includes anything purporting to be information or containing or providing information.

(2) Subject to subsection (4) and any national legislation contemplated in section 32 (2) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)-

(a) no person may disclose to any other person or publish any information which relates to any nuclear installation or site or vessel or action described in section 2 (1) (c) in respect of which a nuclear authorisation has been issued or is to be issued and not yet public knowledge if the disclosure of that information is likely to jeopardise the physical security arrangements in respect of such installation, site, vessel or action as required by the Regulator for the protection of persons or the security of the Republic;

(b) no person may be in possession of any documents if not authorised and such possession is likely to jeopardise the physical security arrangements in respect of such installation, site, vessel or action as required by the Regulator for the protection of persons or the security of the Republic;

(c) no person may receive any information knowing or having reasonable grounds to believe that it has been disclosed to him or her in contravention of the provisions of paragraph (a) or (b);

(d) a person must take reasonable steps to safeguard information which he or she has in his or her possession or under his or her control and which he or she is in terms of paragraph (a) or (b) prohibited from disclosing to any person, or publishing, or so conduct himself or herself as not to endanger the secrecy thereof.

(3) No member of the board or a committee of the board or an employee of the Regulator may disclose any information obtained by him or her in the performance of his or her functions in terms of this Act except-

- (a) to the extent to which it may be necessary for the proper administration of this Act;
- (b) for the purposes of the administration of justice; or

- (c) at the request of any person entitled thereto.
- (4) Despite the provisions of any other law, no person is civilly or criminally liable or may be dismissed, disciplined, prejudiced or harassed on account of having disclosed any information if-
- (a) the person in good faith reasonably believed at the time of the disclosure that he or she was disclosing evidence of a health or safety risk or a failure to comply with a duty imposed by this Act; and
- (b) the disclosure was made in accordance with subsection (5).
- (5) Subsection (4) applies only if the person concerned-
- (a) disclosed the information concerned to-
- (i) a committee of Parliament or a provincial legislature;
  - (ii) the **Public Protector**;
  - (iii) the Human Rights Commission;
  - (iv) the Auditor-General;
  - (v) the National Director of or a Director of Public Prosecutions;
  - (vi) the Minister;
  - (vii) the Regulator; or
  - (viii) more than one of the bodies or persons referred to in subparagraphs (i) to (vii); or
- (b) disclosed the information concerned to one or more news medium and on clear and convincing grounds (of which he or she bears the burden of proof) believed at the time of the disclosure-
- (i) that disclosure was necessary to avert an imminent and serious threat to the health or safety of an individual or the public, to ensure that the health or safety risk or the failure to comply with a duty imposed by the Act was properly and timeously investigated or to protect himself or herself against serious or irreparable harm from reprisals; or
  - (ii) giving due weight to the importance of open, accountable and participatory administration, that the public interest in disclosure of the information clearly outweighed any need for non-disclosure; or
- (c) disclosed the information concerned substantially in accordance with any applicable external or internal procedure (other than the procedures contemplated in paragraph (a) or (b)); or
- (d) disclosed information which, before the time of the disclosure of the information, had become available to the public, whether in the Republic or elsewhere.

## 11. HOUSING PROTECTION MEASURES ACT 95 OF 1998

**22 (4) After exercising his or her rights in terms of subsection (3), a housing consumer or a home builder may refer-**

- (i) any decision or action of the Council, its staff or its agents to the **Public Protector** for review in terms of the **Public Protector Act, 1994 (Act 23 of 1994)**; or
- (ii) any decision of the Council to arbitration in terms of the Arbitration Act, 1965 (Act 42 of 1965).

## National Home Builders Registration Council Rules

### 30 Referral to internal complaints procedure, arbitration and Public Protector

(1) A housing consumer or a home builder wishing to have a decision or action of the staff of the Council or its agents reviewed in terms of the Council's internal complaint procedure must notify the Council in this regard within 30 days of receiving notice of the relevant decision or action.

(2) The notice referred to in subrule (1), must-

- (a) set out all the relevant details of the disputed action or decision; and
- (b) indicate the basis on which the decision or action is disputed.

(3) When notifying the Council, the housing consumer or the home builder must lodge a prescribed internal complaints deposit with the Council.

(4) The housing consumer or the home builder may request that the decision or the action be reviewed by either-

- (a) the chief executive officer of the Council; or
- (b) the committee,

depending on the nature of the matter.

## 12. PROMOTION OF EQUALITY & PREVENTION OF UNFAIR DISCRIMINATION ACT 4 OF 2000

### 25 Duty of State to promote equality

(1) The State must, where necessary with the assistance of the **relevant constitutional institutions**-

- (a) develop awareness of fundamental rights in order to promote a climate of understanding, mutual respect and equality;
- (b) take measures to develop and implement programmes in order to promote equality; and
- (c) where necessary or appropriate-
  - (i) develop action plans to address any unfair discrimination, hate speech or harassment;
  - (ii) enact further legislation that seeks to promote equality and to establish a legislative framework in line with the objectives of this Act;
  - (iii) develop codes of practice as contemplated in this Act in order to promote equality, and develop guidelines, including codes in respect of reasonable accommodation;
  - (iv) provide assistance, advice and training on issues of equality;
  - (v) develop appropriate internal mechanisms to deal with complaints of unfair discrimination, hate speech or harassment;
  - (vi) conduct information campaigns to popularise this Act.

(2) The South African Human Rights Commission and other **relevant constitutional institutions** may, in addition to any other obligation, in terms of the Constitution or any law, request any other component falling within the definition of the State or any person to supply information on any measures relating to the achievement of equality including, where appropriate, on legislative and executive action and compliance with legislation, codes of practice and programmes.

(3) In addition to the powers and functions of the **constitutional institutions** these institutions are also competent to-

- (a) assist complainants in instituting proceedings in an equality court, particularly complainants who are disadvantaged;
- (b) conduct investigations into cases and make recommendations as directed by the court regarding persistent contraventions of this Act or cases of unfair discrimination, hate speech or harassment referred to them by an equality court;
- (c) request from the Department, in the prescribed manner, regular reports regarding the number of cases and the nature and outcome thereof.

(4) All Ministers must implement measures within the available resources which are aimed at the achievement of equality in their areas of responsibility by-

- (a) eliminating any form of unfair discrimination or the perpetuation of inequality in any law, policy or practice for which those Ministers are responsible; and
- (b) preparing and implementing equality plans in the prescribed manner, the contents of which must include a time frame for implementation of such plans, formulated in consultation with the Minister of Finance.

(5) (a) The equality plans must, within two years after the commencement of this Act, be submitted to the South African Human Rights Commission to be dealt with in the prescribed manner.

(b) The South African Human Rights Commission must consult with the Commission on Gender Equality when dealing with the plans contemplated in paragraph (a).

## Regulations

### 24 Preparation of equality plan by State

(1) An equality plan contemplated in section 25(4)(b) of the Act must be prepared-

- (a) with due consideration to the provisions of section 28(3) of the Act; and
- (b) for a period of five years co-inciding with the financial year contemplated in the Public Finance Management Act, 1999 (Act 1 of 1999).

(2) In preparing an equality plan contemplated in section 25(4)(b) of the Act, a Minister must consult-

- (a) the Minister of Finance;
- (b) the Commission on Gender Equality, the Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and the **Public Protector**; and

(c) the community and business sector through any means including a public hearing.

(3) An equality plan contemplated in section 25(4)(b) of the Act must-

- (a) be in writing;
- (b) be signed by the responsible Minister; and
- (c) contain the following information-
  - (i) an analysis of the areas of unfair discrimination and inequalities;
  - (ii) the goals and objectives to be achieved;
  - (iii) the measures to be implemented to achieve these goals and objectives;
  - (iv) time frames for the implementation of each of the measures;
  - (v) the mechanisms to monitor the implementation of the equality plan; and
  - (vi) the criteria to evaluate the implementation of the equality plan;
- (d) within 30 days after the responsible Minister has signed it be-
  - (i) published in the Gazette;

- (ii) made available on the website, if any, of the relevant department;
- (iii) circulated under the signature of the relevant head of the department to all its employees;
- (iv) submitted to the South African Human Rights Commission in an electronic format, if possible;
- (v) tabled in Parliament; and
- (vi) submitted to the Minister of Finance.

[Reg. 24 inserted by GN 563 of 13 June 2003.]

### 13. PUBLIC FINANCE MANAGEMENT ACT 1 OF 1999.

#### Treasury Regulations

##### 21.4 Identity of donors and sponsors

21.4.1 When a donor or sponsor requests to remain anonymous, the accounting officer must submit to the relevant treasury a certificate from both the **Public Protector** and the Auditor-General, which states that the identity of the donor or sponsor has been revealed to them, that they have noted it and have no objection.

21.4.2 The above provision in no way limits the Auditor-General or the **Public Protector** from supplying this information to their staff, and where they deem it in the public interest, to report on this.

### 14. LOTTERIES ACT 57 OF 1997

#### Regulations

##### 8 Security of information

(1) Subject to the Constitution, the Promotion of Access to Information Act, 2000 (Act 2 of 2000), the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000) and the Protected Disclosures Act, 2000 (Act 26 of 2000), no person may in any way-

- (a) disclose any information in connection with any grant application or a grant itself;
- (b) disclose the contents of a report contemplated in regulation 6(1); or
- (c) publish any information obtained in contravention of paragraph (a) or (b); unless-
  - (i) ordered to do so by a court of law;
  - (ii) making a bona fide confidential disclosure or publication to the Minister, the **Public Protector**, Parliament or a committee designated by Parliament, a member of the South African Police Service or the national prosecuting authority;
  - (iii) the juristic person who made a grant application and the board consent thereto in writing prior to that disclosure or publication; or
  - (iv) provided for in these Regulations

## 15. SPECIAL INVESTIGATING UNITS & SPECIAL TRIBUNALS ACT 74 OF 1996

### 5. Powers of Special Investigating Unit.

(1) Subject to this Act and the regulations, the Head of a Special Investigating Unit may determine the procedure to be followed in conducting an investigation.

(6) (a) Upon the establishment of a Special Investigating Unit the Head of such Unit must provide the **Public Protector** with a copy of the proclamation referred to in section 2 (1).

(b) The Head of a Special Investigating Unit may refer any matter which, in his or her opinion, could best be dealt with by the **Public Protector**, to the **Public Protector** and the **Public Protector** may, if he or she deems it appropriate, refer any matter which comes to his or her attention and which falls within the terms of reference of a Special Investigating Unit, to such Unit.

(7) If, during the course of an investigation, any matter comes to the attention of the Head of the Special Investigating Unit which, in his or her opinion, justifies the institution of legal proceedings by a State institution against any person, he or she may bring such matter to the attention of the state attorney or the institution concerned, as the case may be.

(b) any administrative or procedural matter necessary to give effect to the provisions of this Act; and

(c) any other matter which is required or permitted by this Act to be prescribed.

## 16. NATIONAL ENVIRONMENTAL MANAGEMENT ACT 108 OF 1998

### 22 Relevant considerations, report and designated officer

(1) Decisions under this Act concerning the reference of a difference or disagreement to conciliation, the appointment of a conciliator, the appointment of a facilitator, the appointment of persons to conduct investigations, and the conditions of such appointment, must be made taking into account-

(a) the desirability of resolving differences and disagreements speedily and cheaply;

(b) the desirability of giving indigent persons access to conflict resolution measures in the interest of the protection of the environment;

(c) the desirability of improving the quality of decision-making by giving interested and affected persons the opportunity to bring relevant information to the decision-making process;

(d) any representations made by persons interested in the matter; and

(e) such other considerations relating to the public interest as may be relevant.

(2) (a) The Director-General shall keep a record and prepare an annual report on environmental conflict management for submission to the Committee and the Forum, for the purpose of evaluating compliance and conflict management measures in respect of environmental laws.

[NB: Para. (a) has been deleted by s. 11 of the National Environment Laws Amendment Act 14 of 2009, a provision which will be put into operation by proclamation.]

(b) The record and report referred to in paragraph (a) may include the following:

(i) Proceedings under this chapter, including reports of conciliators and agreements reached;

(ii) proceedings under Chapter 7, including complaints, charges and judgements;

(iii) proceedings under other laws listed in Schedule 3;

(iv) proceedings by the Human Rights Commission and the **Public Protector**.

[NB: Para. (b) has been deleted by s. 11 of the National Environment Laws Amendment Act 14 of 2009, a provision which will be put into operation by proclamation.]

(c) The Director-General shall designate an officer to provide information to the public on appropriate dispute resolution mechanisms for referral of disputes and complaints.

(d) The reports, records and agreements referred to in this subsection must be available for inspection by the public.

**Issued by:**

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0001**