INFORMATION ON THE OFFICE OF THE PUBLIC PROTECTOR

Definition

The Public Protector is an official who is independent of government and any political party. He is appointed by Parliament in terms of the Constitution. He receives complaints from aggrieved persons against government, government departments, government agencies and government officials. He has powers to investigate matters referred to him, recommend corrective action and issue reports to Parliament. The office is established under Chapter 9 of the Constitution of the Republic of South Africa Act 108 of 1996. The operational requirements of the office are provided for under the Public Protector Act 23 of 1994 as amended.

The Public Protector is appointed by the President subsequent to the approval by Parliament of a candidate nominated by a joint committee of the National Assembly.

The Office of the Public Protector was established on 1 October 1995. Previously, the office was known as the Office of the Ombudsman, which was established on 22 November 1991. The latter office evolved from the Office of the Advocate-General, which was established on 18 July 1979.

The Constitution and the Public Protector Act provides that the Public Protector shall be a South African citizen who is a fit and proper person to hold such office, and who –

- is a judge of a High Court of South Africa; or
- is qualified to be admitted as an advocate or attorney and has, for a cumulative period of at least 10 years after having so qualified practised as an advocate or attorney, or lectured in law at a university; or

- has specialized knowledge of or experience for a period of at least 10 years in the administration of justice, public administration or public finance.

Jurisdiction

Section 182(1) of the Constitution provides as follows:

> *"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."*

Section 6(4) of the Public Protector Act provides that the Public Protector shall, in addition to any powers and functions assigned to him or her by any law, be competent to investigate on his or her own initiative or on receipt of a complaint, any maladministration in connection with the affairs of government at any level. He also has jurisdiction to investigate any complaint against any person performing a public function or against public entities or any institution in which the State is the majority or controlling shareholder.

Nature of complaints

Any person or institution may complain to the Public Protector. The Public Protector may investigate:

- Maladministration;
- Abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct;

- Improper or unlawful enrichment or receipt of any improper advantage, or promise of such enrichment or advantage;
- Improper or dishonest acts, or omission or corruption, with respect to public money;
- Any act or omission which results in unlawful or improper prejudice.

Powers

The Public Protector is competent to:

- Direct any person to appear before him to give evidence or to produce any other document in his or her possession or under his or her control which, in the opinion of the Public Protector, has a bearing on the matter being investigated, and may examine such person for that purpose; and
- Enter or authorize another person to enter any building or premises and there to make such an investigation or enquiry as he or she may deem necessary and seize anything on those premises which in his or her opinion has a bearing on the purpose of the investigation.

1. INTRODUCTION

BACKGROUND

1.1 During August 1996, Dr P M Maduna, then Minister of Minerals and Energy Affairs and the present Minister of Justice, received inquiries from the office of the then Deputy President of the Republic of South Africa. The enquiries were made by Dr Pahad, Deputy Minister in the office of the Deputy President. Questions were asked *inter alia* regarding Egyptian contracts for the supply of crude oil to the Strategic Fuel Fund Association (SFF) and payments made by the SFF to Interstate, also known as Africa Middle East Petroleum Company (AMEP), a company owned by an Egyptian trader, one Fakhry Abdelnour. Minister Maduna in turn made enquiries about the aforesaid matters and sought information from and interacted with members of the Department of Minerals and Energy Affairs, the Chairman of the Board, and the Management and staff of SFF.

1.2 Minister Maduna subsequently convened a meeting on 18 October 1996 at his office in Pretoria to discuss the course of action to be taken with regard to the renewal of the 1992 “evergreen” crude oil agreement with EGPC, the negotiation for a reduction of the price of Egyptian crude oil, as well as the furnishing to him of additional relevant documentation in that regard. Extensive correspondence thereafter ensued between him and the Management of SFF.

1.3 When the Minister raised questions about the matters referred to above, the then General Manager, Mr Van Zyl, suggested on 31 October 1996 that the Minister institute an in-depth audit. This suggestion was later re-iterated by the Chairman of the Board at the time, Mr Pithey.

1.4 Both Mr Van Zyl and Mr Pithey seemed to be of the view that SFF had an obligation to pay Interstate, whilst the Minister was of the contrary view. They warned that the Minister could well expect Interstate to take some action upon default of payment of the monies. It became clear that there was no meeting of the minds between the Minister on the one hand and the General Manager and the Chairman of the Board on the other hand.

1.5 After the above events, on 12 February 1997, Minister Maduna appointed the firm Nkonki Sizwe Ntsaluba Chartered Accountants (SA) (NSN) to conduct a management audit of the SFF with due regard, *inter alia*, to the Egyptian contracts and the payments to Interstate.

1.6 The terms of reference for the Management Audit were the following:

- *"To investigate what quantities of Egyptian crude oil were purchased by the SFF Association from 1 January 1992 hereto;*
- *To investigate who/what parties were to any agreement/s that governed such purchases;*
- *To investigate when and by whom the current contract/s was/were entered into and signed;*
- *To investigate whether such contract/s was/were approved by the Board of the SFF Association and if so, when;*
- *To investigate what the basis of determining the purchase price/s of the crude oil thus purchased was;*
- *To investigate whether any commission or additional money was paid by the SFF Association to any third party, which was not declared in the contracts governing the purchase of crude oil from both the EGPC and AMOCO;* [See Annexure A for a list of acronyms.]

- *If indeed and to the extent that any commission or additional money was paid to any third party to investigate:*
  - *what such commission or additional amount was paid for in respect of each such payment;*
  - *the details of each such payment, including details such as the date and the place where each such payment was effected, and of the recipient/s of each such payment;*
  - *what if anything, the Board of the CEF and the SFF Association knew about such payments/s;*
- *to investigate the underlying contract/s (if any) allowing for such payments to be made and to find out who negotiated the terms and conditions of such contract/s, who authorised and (if they were in writing) who signed such contracts;*
- *to investigate whether the SFF Association's internal audit section had sight of such contract/s i.e. if it/they was/were in writing) and if so, regularly cleared the payments made to any third party;*
- *to investigate who the signatories are in respect of each purchase or sale of crude oil involving the SFF Association; and*
- *to find out what the current commitments of the SFF Association are in respect of purchases of Egyptian crude oil.*
- *Furthermore, the said Mr Petersen shall investigate whether the*
  - *Chairman of the CEF (Pty) Ltd, as the accounting officer, regularly complied with the provisions of Section 1E(2)(a)(b) and (c) of the Central Energy Fund Act,*
  - *Books, accounts, statements and balance sheets of the SFF Association reflecting the payments in question were ever investigated, examined and audited by the Auditor-General as required under section 1E(3) of the Act, and*
  - *Said payments to Interstate or any third party, were accounted for to Parliament during the relevant period, and if so how and when.*
- *For effecting the purposes aforementioned, the said Mr Petersen shall have access to and scrutinise any relevant document, interview*

any person and may utilise the resource of any person, who in his opinion shall be helpful in attaining the objective of the management audit. Generally and without derogating from anything, as fully and effectually, to all intents and purposes, as I might or could do as Minister if personally present and acting in this regard."

1.7 NSN further reported as follows:

"During the performance of the management audit, the auditors became aware of certain matters and Minister PM Maduna extended the terms of reference to include the matters below:

- *Salem Recoveries;*
- *Discrepancies with the 1993 Annual Financial Statements."*

1.8 NSN eventually brought out two reports, respectively dated 26 August 1997 (first report) and 13 October 1997 (second report). These reports dealt in the main with matters referred to in the terms of reference. The reports of NSN raised a number of queries regarding SFF. These included oil contract payments, management and the auditing of SFF. These are the matters which are referred to as "alleged irregularities with regard to the affairs and financial statements of the SFF Association."

1.9 On 18 June 1997 Minister Maduna responded in Parliament to questions by Mr J A Jordaan MP concerning the SFF. When issues with regard to SFF were raised in Parliament the Management Audit by NSN was still in progress. In summary Minister Maduna queried why a loss of R170 million described as the transfer of oil stock was not disclosed in the Auditor-General's report to Parliament. He indicated that the Auditor-General in not disclosing the loss had done some "nimble footwork" and hidden behind the "fig leaf" of the secrecy provisions relating to oil

transactions. He queried as to who had been the recipient of these stocks and why they were transferred at a loss, indicating that it was unusual if there was nothing wrong that the Auditor-General should not disclose it. He further raised queries with regard to a margin of US $0,075 paid per barrel in respect of Egyptian crude oil and detailed that his investigations showed that the amounts were not due and payable (full details of his response are quoted in Annexure B attached to this report).

1.10 On 31 July 1997 the Auditor-General responded to the allegations in a special report to Parliament. In that report he argued that the amount of R170 million had indeed been included as part of another entry in his audit and that it was not a loss. Minister Maduna responded by saying that he had wider evidence of irregularities in the Central Energy Fund and even suggested that the Auditor-General was not qualified for his job.

1.11 In a press briefing held on 13 August 1997 the Minister:

- was still convinced that the R170 million was reflected as a loss and unaccounted for to Parliament;
- expressed his view that the special report to Parliament by the Auditor-General did not clarify or explain the matters raised satisfactorily;
- was also still concerned about the Salem issue, the Interstate payment issue, and the auditing thereof by the Auditor-General and his agent;
- repeated his bafflement at the R170 million “loss” and the alleged failure by the Auditor-General to disclose this to Parliament.

1.12 Extracts of the agreed version (between the parties to this investigation) of what took place at the press conference on 13 August 1997 is quoted in Annexure C hereto.

1.13 The SFF was established by the previous Government to secure fuel supplies and to circumvent the oil embargo, which had been imposed by the United Nations in protest against Apartheid policies. Until the altercation between Minister Maduna and the Auditor-General oil procurement was not a matter which was in the public eye. Oil procurement itself was governed by secrecy laws until 23 November 1994. The "fig leaf" referred to in the response of the Minister (quoted in Annexure B) was a reference to the secrecy provisions. This secrecy was sanctioned in laws such as the Petroleum Products Act 120 of 1977 and the Central Energy Fund Act 38 of 1977, which *inter alia* gave a discretion to the Auditor-General to limit his reporting about oil transactions after consultation with the State President, the Minister of Minerals and Energy Affairs, and the Minister of Finance.

1.14 After the statements and reports referred to above by the Minister and by the Auditor-General, there were calls by some opposition parties for the Minister to resign or for him to be dismissed. This matter was discussed in Parliament on 21 August 1997. Parliament decided to ask a specially appointed Parliamentary Committee and the Office of the Public Protector to investigate Minister Maduna's allegations of irregularities by the State-owned SFF and the allegation that the office of Mr Kluever (the Auditor-General) had covered this up in the past.

1.15 The Auditor-General is accountable to Parliament and the interlink between his office and Parliament is the Public Accounts Committee which examines and advises on matters arising out of his reports.

However, as mentioned, a special Committee was appointed by Parliament to examine Minister Maduna's conduct, but only with regard to Parliamentary rules. More specifically reference was made to Rule 99 of the said rules which reads as follows:

> *"99. No member shall reflect upon the competence or honour of a judge of a superior court, or of the holder of an office (other than a member of the Government) whose removal from such office is dependent upon a decision of this House, except upon a substantive motion in this House alleging facts which, if true, would in the opinion of the Speaker* prima facie *warrant such a decision."*

1.16 The special Parliamentary Committee was a multi-party committee. It ultimately found that Minister Maduna had acted in an unparliamentary manner when he made his utterances on 18 June 1997 about the Auditor-General, Mr Henry Kluever, in Parliament. He was found to have acted in contravention of Rule 99 in that he did not follow the correct Parliamentary procedures. The merits of what he said, however, were not gone into. The Committee agreed to give the Minister two weeks to respond before deciding on what sanction to apply. The Minister later apologised in Parliament for having acted in contravention of Rule 99 in that he did not follow the correct Parliamentary procedures. I accordingly do not deal at all with this aspect in my investigation. However, the Minister did not retract any of the comments he made in Parliament.

1.17 The referral of the matter to me for investigation, was contained in a resolution of Parliament which is quoted in full hereunder:

"RESOLUTION

I have the honour to notify you that the National Assembly on 21 August 1997 adopted the following Resolution:

That the House resolves to request the Public Protector, in terms of section 182(1)(a) and (b) of the Constitution, 1996, to investigate, and to report to the National Assembly on, the alleged irregularities with regard to the affairs and financial statements of the SFF Association including, having due regard to the Report of the Minister of Minerals and Energy and to the applicable law, whether the reports of the Auditor-General to Parliament thereon were correct and proper."

1.18 The above resolution constitutes the mandate in terms of which I conducted this investigation and this report represents the culmination of that process.

1.19 This investigation has been about matters which occurred within the specialised environment of oil procurement particularly during the relaxation of the sanctions period. The vehicle created for achieving that goal was the SFF Association. The investigative process has involved going through about 25 000 pages of evidence. I have tried to keep the size of the report to a minimum. I have also tried to crystallise the issues which are dealt with in the report into five broad categories. The purpose was to avoid getting bogged down in minute details which do not assist in carrying out the mandate given to my office.

1.20 The broad categories are:

- The purchase of Egyptian crude oil and the related payments to Interstate;
- Change in accounting policy (R170 million issue);
- Corporate governance at SFF;
- The Salem recovery;
- Payments on 1 April 1997 by SFF to the Government;
- The Auditor-General's reports on the above matters.

1.21 The primary focus of my investigation was the alleged irregularities within the SFF. These were in the main contained in the NSN reports although further allegations were made during the investigation. The process of my investigation has been therefore divided into three segments, namely investigating the irregularities, analysing and evaluating the NSN reports and determining whether the reports of the Auditor–General were correct and proper. The Auditor-General's reports referred to are primarily the 1992/1993 financial year report as well as the special report to Parliament on 31 July 1997. The reports to Parliament for the financial years 1993/1994, 1994/1995 and 1995/1996 also featured in the investigation.

CONSTITUTIONALITY OF THE INVESTIGATION

1.22 At the time of the referral of this matter to my office by Parliament, some members seemed to be doubtful about the constitutionality of such a referral. This was however soon relegated to the back burner when the Auditor-General issued a statement undertaking to co-operate fully with the investigation by my office.

1.23 The matter has however lingered on in the form of submissions by Counsel for the Auditor-General during the investigation. He suggested that a question mark must be placed behind the suggestion that the Public Protector had, or has, the power to investigate the office of the

Auditor-General. This matter needs to be examined and laid to rest once and for all.

1.24 I have considered the matter carefully and come to the conclusion that there is no merit in the submission. The Public Protector is an Officer of Parliament. He is appointed by and reports to Parliament and to no other authority. The SFF and the Department of Minerals and Energy Affairs are entities which fall squarely within the jurisdiction of the Public Protector. This was conceded by Counsel for the Auditor-General.

1.25 The duties and powers of the Auditor-General are detailed in section 5 of the Auditor-General Act 52 of 1989, and include the power to audit all the accounts of all accounting officers and of all other persons in the Public Service. They also include authority to audit all the accounts of statutory bodies and of all persons in the employment of such bodies. No other entity or structure in the public sector has this power or authority.

1.26 It is true that the Audit Commission and the Public Accounts Committee have primary oversight functions over the work of the Auditor-General. These structures/committees form the interlink between the Office of the Auditor-General and Parliament.

1.27 Accepting therefore that the Auditor-General is the only organ of State which has the authority to audit the work of SFF and the Department of Minerals and Energy Affairs, it would lead to an absurdity to suggest that whenever maladministration, capriciousness or unfairness surfaces in the context of an audit, the Office of the Public Protector would have no jurisdiction to investigate such matters. One only needs to state such a proposition to understand its utter absurdity.

1.28 This investigation had nothing to do with the constitutional status of the Office of the Auditor-General and to try and challenge the constitutionality of this investigation by referring to section 167 of the Constitution is totally inappropriate and incorrect.

1.29 Section 182(1) of the Constitution states as follows:

> *"The Public Protector has the power, as regulated by national legislation –*
>
> *(a) to investigate any conduct in state affairs, or in public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;"* (My underlining.)

1.30 The meaning of this section of the Constitution does not need to be elaborated upon.

1.31 It is accordingly my considered view that any doubts about the constitutionality of this investigation should be dispelled as having no basis in law.

APPLICABLE LAW

1.32 The law which is applicable to this investigation is to be found in the statutes mentioned below:

1. The Constitution of the Republic of South Africa Act 108 of 1996;
2. The Public Protector Act 23 of 1994;

3. The Auditor General Act 52 of 1989;
4. The Auditor General Act 12 of 1995;
5. The Audit Arrangements Act 122 of 1992;
6. The Central Energy Fund Act 38 of 1977;
7. The Petroleum Products Act 120 of 1977 and the regulations published in terms thereof;
8. The Companies Act 61 of 1973;
9. The Public Accountants and Auditors Act 80 of 1991;
10. The Exchequer Act 66 of 1975.

PROCEDURES

1.33 Section 6(4) of the Public Protector Act 23 of 1994 at the time provided that the Public Protector is empowered on his or her own initiative or after a complaint has been received, to investigate *inter alia* maladministration, or the abuse of power or unfair, capricious or other improper actions in respect of any defined public entity or an entity in which the State is the controlling or majority shareholder, which would include SFF. Jurisdiction over the Minister derived from section 182 of the Constitution.

1.34 Section 7(1) of the Public Protector Act 23 of 1994 at the time provided as follows:

> *"The procedure to be followed in conducting an investigation shall be determined by the Public Protector with due regard to the circumstances of each case and the Public Protector may direct that any category of person or all persons whose presence is not desirable, shall not be present at the proceedings during the investigation or any part thereof."*

1.35 The above section enabled me to decide whether or not to investigate in a formal or informal manner. It has been my experience during the years I have been in office that the latter method results in a swift, smooth and non-confrontational process. The former results in a quasi-judicial process which in the nature of things is to some extent confrontational though still inquisitorial and not accusatorial in nature.

1.36 Section 7(3)(b) of the Public Protector Act 23 of 1994 at the time provided as follows:

> *"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 assign to him or her, and the provisions of section 9 and the instructions issued by the Treasury under section 39 of the Exchequer Act, 1975 (Act No 66 of 1975), in respect of Commissions of Inquiry, shall apply* mutatis mutandis *in respect of that person."*

1.37 It was clear from the very onset that the investigation would involve an evaluation and assessment of accounting and auditing principles and prescripts. This would be the case because one would have to evaluate not only the Auditor-General's and his agent's (Price Waterhouse) report but also that of Nkonki Sizwe Ntsaluba Chartered Accountants who conducted the Management Audit on behalf of Minister Maduna.

1.38 To that extent, it was necessary that I be assisted by people who are properly and adequately qualified in that field. I accordingly established an investigation team consisting of Dr M Schutte (Assistant to the Public Protector), Mrs J Record from the international accounting firm Arthur

Andersen, and Ms Z Manase of the firm Manase and Associates (Chartered Accountants).

1.39 Mrs Record is a UK Chartered Accountant and head of Arthur Andersen's Business Fraud and Litigation Services Division in South Africa. She has proven experience in fraud investigations, fraud prevention and litigation support both in South Africa and overseas.

1.40 Ms Manase is the Managing Partner of the firm Manase and Associates (Chartered Accountants). She is a Chartered Accountant with many years experience both in the private and public sector. However, she did not procede with the investigation after a conflict of interest objection from the Auditor-General's legal representatives. She withdrew voluntarily so as not to delay the investigation.

1.41 I determined that the investigation would proceed on a formal basis. This investigation route was the only appropriate one because the main parties (Minister Maduna and the Auditor-General) were represented by legal representatives from the very beginning and there were accounting, legal and constitutional issues to be determined.

1.42 It was clear from the beginning that most of the witnesses to be called would be from SFF. This was the company which the investigation would mainly revolve around. During or about 26 August 1997 my investigation team began to gather information from the Department of Minerals and Energy Affairs and to take statements from some of the employees and former employees of SFF. The intention was to call these employees as witnesses with regard to the operational history and practices at SFF during and after the sanctions busting period.

1.43 Initially I had hoped that we could conduct the investigation in a more informal way by my office addressing the issues with the parties concerned. However, the parties chose to be legally represented as was their right. This was a right which is constitutionally guaranteed which I could not deny them. Whilst the investigation itself was assisted by the presence of a number of legal representatives, this did also imply and result in a much longer and costlier investigation. I shall say more about this matter in paragraph 1.47 and further below.

1.44 The collection and compilation of the documentary evidence was not a simple process. The oil procurement business is not a simple business at the best of times. Proclaiming the propriety and correctness or otherwise of the Auditor-General's report was not a process of reaching simple arithmetical conclusions.

1.45 There was a history regarding the oil procurement as well as a history regarding the legal regime (of sometimes draconian laws) under which oil had been procured, and this had all taken place against the backdrop of sanctions and sanctions busting. The Management Audit by the firm NSN which had taken place at the behest of the Minister had covered this period of about 10 years. The oral evidence stage of my investigation began when the documentary evidence discovered by the parties was already in the order of about 20 000 pages. Not all these documents became part of the record, however.

1.46 We took oral evidence intermittently from 2 March 1998 to July 1999. We recorded oral evidence from 10 witnesses and obtained written submissions from several witnesses. Oral evidence mechanically recorded amounted to 5 000 pages.

1.47 The taking of oral evidence was still nowhere near completion as at 14 December 1998. I had to take cognisance of the fact that the costs of all the parties were being borne by the State, or to be more precise, by the tax payer. At that stage five witnesses had been called and four of them had concluded their testimony. It was clear that we were not making progress with the speed that I had envisaged. It was against that background that I decided to utilise the powers granted to me in terms of section 7(1) of the Public Protector Act, which is fully quoted above.

1.48 I ordered that the parties present an agreed statement of facts as far as such agreement could be reached on or before 17 December 1998. I also requested the parties to present submissions about the further conduct of the investigation. This request was made with a view to abridging the investigation which had taken a long time and was likely to cost millions of rand to the tax payer.

1.49 After receiving oral and written submissions about the further conduct of the investigation, I, duly assisted by my panelists, made the following ruling:

> "*The Office of the Public Protector has been created by Section 182 of the 1996 Constitution as one of the State Institutions supporting constitutional democracy. It is South Africa's version of the Institution that is internationally known as the Ombudsman.*
>
> *The hallmark of such an Institution is that it creates an avenue for the citizen to challenge the bureaucratic and executive excesses in a speedy and inexpensive manner.*

Whilst investigations may be conducted in a formal or quasi-judicial manner, this fundamental character of the Institution should not be lost sight of.

To facilitate a speedy resolution of matters the Institution has been infused with a certain measure of flexibility so as not to be bogged down in evidential and procedural rules. The Public Protector may accordingly conduct investigations in an informal manner and in making such a decision he may rely on the provisions granted to him by Section 7(1) of the Act, which allows him to determine the method of investigation.

As directed by the legislator in Section 7(1) we have given due consideration to the circumstances surrounding the current investigation. We have also given very careful consideration to the submissions made by the various counsel.

We are of the firm view that whilst ensuring that the constitutional rights of the parties are not prejudiced, it is also our duty to ensure that the investigation stays within reasonable limits with due regard to time, to costs and to the mandate contained in the resolution of Parliament.

It is a fact that whilst the process of leading evidence and questioning is one of the methods through which truth can be pursued, it is not the only one. There are other methods which can lead us to the same result sooner.

We have accordingly determined that the further conduct of this investigation be proceeded with as follows:

As stated before, the panel will receive an agreed statement of facts not later than 17 December 1998 and this will be delivered to the office of the Public Protector.

The panel will thereafter deliver a written set of questions to the parties or to any other person who may be suspected of being in possession of information relevant to this investigation. Such questions will be delivered on or before 4 February 1999.

It needs to be stated however, that in response to those questions parties will not be limited to respond merely in terms of the questions. The parties may address any further matters which are relevant to this investigation and which the parties feel that the panel needs to be aware of.

The parties or any other person requested must deliver a response thereto not later than 4 March 1999. The parties may comment on the responses to the questions not later than 1 April 1999.

It is intended that this process will crystallise the issues in such a manner that we shall be able to determine whether to call any further witnesses or to allow any further questions.

It is envisaged that it may be necessary to allow questions on certain limited issues only to those witnesses who will be called or

re-called. Those witnesses would be notified in writing not later than 31 May 1999. After this process the parties will be allowed to present written heads of argument and to argue the matter before the panel. Oral argument will be allowed on a limited time basis only, each legal representative or party not being allowed more than two hours each.

We do not propose to make any interim finding on any issue or issues until we hear oral argument by counsel at the end of these proceedings.

That is our ruling."

1.50 In reaching the above conclusion we had to take into account the fact that resolving disputes by the adversarial court system so beloved of lawyers is expensive and time consuming.

1.51 Hearings have occurred in the existing Public Protector system but are not used as part of the regular dispute resolution process. Because of the delay and expense factors the Public Protector conducts them not as an adversarial contest but on his own terms in terms of the existing legislation. The hearing was an inquisitorial exercise with the Public Protector playing the role of an Inquisitor. The aims of the Ombudsman (Public Protector) process involve a flexible, quick and cheap method of resolving disputes and this means a certain lack of formality and the limitation to the right to an expensive hearing.

1.52 The question which we also considered in reaching the above ruling was how the lawyer can participate in that process without destroying the effective benefits of it. This has not been an easy question to give a clear answer to. Plainly, if lawyers become too involved, they

inevitable want to formalise what takes place and, indeed, encourage hearings. Neither would be beneficial for the ordinary user of the system. Nevertheless if lawyers can realise that many Ombudsman systems rely increasingly on the written form of advocacy and can appreciate that in providing this service, they are fulfilling a very useful adjunct to the Ombudsman system, that will be a very positive way forward. It could be more helpful and certainly in the long term, it will lead to the lawyers' involvement in the process without destroying it. At this point in time we are firmly wedded to the benefits of the Ombudsman system and to the fact that it does provide a serious and genuine alternative to our presently unaffordable system to the vast majority of people.

1.53 Hundreds of documentary exhibits were handed in during this investigation. The documents were handed in by the parties. They were mainly the NSN reports, the Auditor-General's reports, company documents from CEF/SFF, correspondence, contractual documents and audit working papers. Some of these exhibits are dealt with in this report. They have however not been annexed to this report to avoid it becoming too bulky and voluminous.

1.54 It should be noted that where the factual situation is stated without further ado in this report such facts are derived from undisputed evidence on matters which are common cause.

BACKGROUND OF THE WITNESSES

Mr B W Casey

1.55 Mr Casey was the SFF Deputy General Manager: Crude Oil from February 1995. He was appointed as Acting General Manager of SFF in 1998.

Mr S A Cilliers

1.56 Mr Cilliers is a qualified Chartered Accountant. He joined SFF as a Senior Manager in 1988. He was promoted to Deputy General Manager: Finance during 1993.

Mr J Ferris

1.57 Mr Ferris was the head of Internal Audit at the Industrial Development Corporation of South Africa (IDC). He became part of Management in 1980 when IDC took over the management of SFF. During that period Mr Ferris was responsible for putting in place the systems, procedures and controls at SFF. He, together with other senior IDC officials, established the Internal Audit Committee. Mr Ferris selected and trained personnel who later took over the operations.

Mrs M Joubert

1.58 Mrs Joubert, at first an internal audit clerk at SFF, became the internal audit department Manager effective from 1 October 1995. She took responsibility for the crude oil line audit function on 1 September 1996.

Professor J A Loots

1.59 Professor Loots was the Deputy Auditor-General to the Auditor-General, Mr H Kluever. The books of SFF/CEF were audited by the Auditor-General. An agent, namely Price Waterhouse Meyernel (Price Waterhouse), was used by the Auditor-General in this regard. Professor Loots was the ultimate overseer of this auditing work, within

the reporting structure of the Auditor-General's office. In my investigation the Auditor-General, Mr Kluever, did not participate but was at all times represented by Professor Loots. Professor Loots was also then the person who featured prominently on behalf of the Auditor-General in the interaction between that office, Price Waterhouse Meyernel, SFF, the Ministry and NSN.

Dr P M Maduna

1.60 Dr Maduna became Minister of Minerals and Energy Affairs during the middle of 1996. He succeeded Minister Pik Botha when a change took place in the Government of National Unity. SFF is a wholly government owned company and the Minister of Minerals and Energy Affairs is the Minister responsible for accounting to Parliament about its operations.

Mr B Petersen

1.61 Mr Petersen is a qualified Chartered Accountant who holds a B Comm Honours degree from the University of South Africa. He is a partner in a firm of Chartered Accountants, Nkonki Sizwe Ntsaluba SA (NSN). Mr Petersen joined the firm on 1 January 1997. He heads the Cape Town branch of the firm and is also Head of their Forensic Auditing Division. Prior to joining NSN Mr Petersen worked in various capacities and at various firms and companies. He gathered experience with regard to the oil industry during his employment at Engen. He worked in that company as accounting analyst, senior business analyst, as well being the person responsible for the marketing of Petroleum Activities Return. Mr Petersen was the representative of NSN during the investigation.

Mr E R Pithey

1.62 Mr Pithey was appointed by Mr G Bartlett, the then Minister of Minerals and Energy Affairs as Chairman of the Boards of CEF (Pty) Ltd (CEF), and SOEKOR for a period of three years with effect from 1 April 1994 (1994 – 1997). The Board of Directors of CEF appointed Mr Pithey as Chairman of its subsidiary companies SFF, MOSSGAS and Syncat.

Dr H W Roberts

1.63 Dr Roberts was the Deputy General Manager: Technical in SFF before he became Acting General Manager of CEF and SFF at the end of March 1998. This was brought about by the suspension of the then General Manager, Mr Van Zyl. In March 1998 Mr Roberts ceased to be acting General Manager of SFF but remained General Manager of CEF.

Mr J Van der Nest

1.64 Mr Van der Nest is a senior partner at the firm Price Waterhouse Meyernel (now PriceWaterhouseCoopers), who was the appointed agent on behalf of the Auditor-General to audit the CEF group of companies. Mr Van der Nest was the partner responsible for the CEF group audit, including SFF.

1.65 It must be understood that wherever the auditing firm Price Waterhouse is referred to in this report, it is being referred to in its capacity as agent of the Auditor-General.

Mr S J Van Zyl

1.66 Mr Van Zyl was the General Manager of SFF and CEF from 1 April 1989 to 31 March 1997. He was suspended by Minister Maduna in March 1997 and was later dismissed after a formal disciplinary hearing.

Mr D R Vorster

1.67 From 1960 to 1965 he worked for Shell and BP refineries in oil refining. Upon formation of CEF in 1985, Mr Vorster was seconded by the IDC for approximately 50% of his time to the CEF group. He was appointed Chairman of CEF and SFF, as well as Accounting Officer of CEF. He was subsequently appointed as Chairman of SOEKOR and MOSSGAS.

BACKGROUND TO CEF, SFF AND THE AUDITOR-GENERAL'S OFFICE

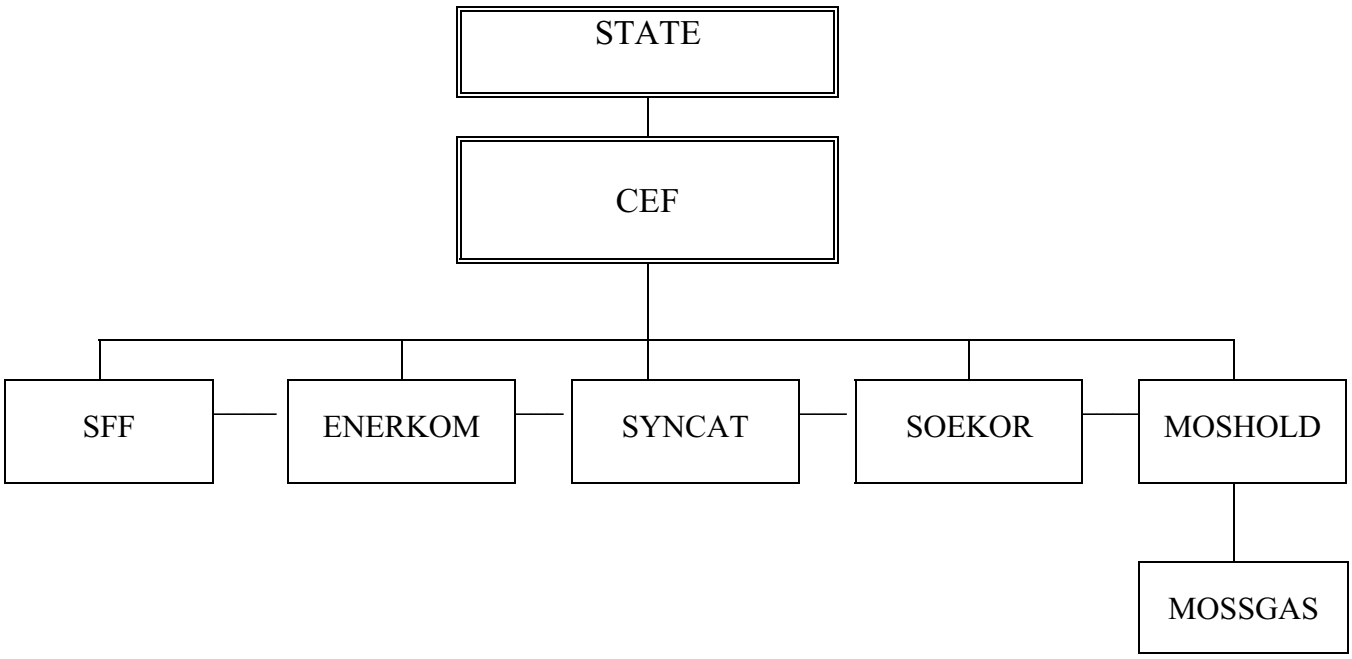
CEF

1.68 CEF is a holding company wholly owned by the South African Government. Its purpose is to co-ordinate the interests of the government in the South African liquid fuels industry. Its total share holding vests in the State. Its Directors are appointed by the Minister of Minerals and Energy Affairs.

1.69 The CEF group of companies is made up of SFF, SOEKOR, MOSSGAS, ENERKOM and SYNCAT.

STATUTORY ORGANOGRAM

SHOWING MAIN OPERATIONAL COMPANIES



- SFF is a crude oil trading and storage company. The strategic crude oil reserves of South Africa are managed by SFF, which is a section 21 company.
- SOEKOR is an oil and gas exploration company.
- MOSHOLD is the holding company for MOSSGAS which produces synthetic fuels from natural gas.
- ENERKOM is an intellectual property company which is developing new technology for the application of coal derived products in agricultural, horticultural and pharmaceutical applications.
- SYNCAT is a company which produces a range of catalysts for the refining and petrochemical industries.

1.70 CEF is the 100% shareholder of all the above-named companies with the exception of SYNCAT and MOSSGAS. Sud-Chemie, a German company specialising in catalyst manufacturing, has a 40% interest in SYNCAT. The shareholding in MOSSGAS is 99,4%. Engen retained 0,6% shares in MOSSGAS after their initial participation during the project phase.

1.71 The assets of the CEF group consist mainly of cash, tank farms, crude oil, a pilot plant, intellectual property, a catalyst plant, a drilling rig, oil and gas reserves, onshore and offshore plants, land and buildings. The evidence was that the assets, if added together, total about R13 billion and the CEF group employed approximately 1600 people. This number was considered to be the optimal number for current operations.

1.72 The management functions of CEF which include the administration of the Central Energy Fund are executed by SFF employees and the costs of these services are recovered by SFF from CEF on an annual basis. CEF also acts as a banker for the CEF group.

1.73 Geographically CEF and SFF operations are carried on in Pretoria, Johannesburg (Gauteng Province), Ogies (Mpumalanga) and in Saldanha (Western Cape).

SFF

1.74 SFF was registered on 18 June 1964 to establish a fund for the purpose of procuring goods and services. On 17 June 1975 the main objective of SFF was changed to:

> *"Carry on the business of promoting, conducting, establishing, facilitating, guiding and assisting, by the establishment of a fund or funds and/or in any other manner whatsoever, the location, procurement, storage, production and or exploitation of fuels, materials, products and commodities which are or may become of strategic importance to the Republic of South Africa, not for gain*

but solely in the commercial interest of the general public, and to perform any other acts towards this end."

1.75 SFF is registered in terms of section 21 of the Companies Act 61 of 1973, and accordingly may not declare or pay dividends. It is exempted from paying any State, provincial or local authority taxes.

1.76 SFF was originally established as a 100% subsidiary of the Industrial Development Corporation of South Africa Ltd (IDC). Since the establishment of CEF in 1985, all shares of SFF have been held by CEF in terms of the Central Energy Fund Act 38 of 1977.

1.77 SFF was originally managed by Sasol Ltd on behalf of the State, but this task reverted to IDC in 1983 when Sasol was privatised. The Board of SFF was reconstituted with three IDC representatives, one of whom was Chairman, and two representatives of the Department of Minerals and Energy Affairs.

1.78 Historically, one of the primary functions of SFF was to stockpile crude oil for strategic purposes in view of the oil sanctions against South Africa. The necessary oil stocks and storage facilities were originally funded through a long-term loan from the National Supplies Procurement Fund.

1.79 Due to oil sanctions against South Africa and the world-wide oil shortage which developed after the second oil shock in 1978 following the Shah of Iran being deposed, from 1979 onwards SFF became increasingly involved in procuring commercial crude oil supplies on behalf of the local oil industry. There was a lack of support from international oil majors,

with the exception of Shell and Total, for their South African subsidiaries. This exacerbated the problem of oil supplies to South Africa. By 1981 SFF was buying practically all the oil requirements of the local oil companies, with the exception of Shell and Total who were allowed to purchase for themselves. This situation lasted until about July 1993.

1.80 This investigation would have been incomplete had we not delved into the historical, legal and contractual links between the pre and post 1994 periods. The allegations concerning irregularities spanned these periods.

The Office of the Auditor-General

1.81 The twentieth century has been characterised by the growth of government and state-aided enterprises. Consequently the elected representatives and the public need the assurance that those services and enterprises are kept under control and do not take the law into their own hands. It is for this reason that government institutions are made accountable for the efficient spending of public funds.

1.82 The electorate elects representatives on the basis of trust but the extent of the trust which the public has in public administration is directly related to the way in which the Government and the officials in its service receive, safeguard and spend public funds. Therefore, the connection between government auditing and public accountability is an indispensable link in the democratic government process. The lynchpin between government auditing and public accountability is the Auditor-General.

1.83 In any democratic dispensation the legislative authority (Parliament) has absolute control over the Exchequer of the country and therefore has the right to collect money in various ways for the Exchequer. It also has the right to decide how money should be utilised. The relationship between the legislative authority and the government audit institution, which for purposes of government accountability is the instrument thereof, is regulated by legislation. This serves as a statutory framework within which government auditing takes place.

1.84 The incumbent of the Office of Auditor-General was thus appointed in terms of section 2 of the Auditor-General Act 52 of 1989 (the old Act) which provides as follows:

> *"2(1) The State President shall after consultation with the Speaker of Parliament and the Audit Commission appoint an Auditor-General, regard being had to, inter alia, the knowledge of or experience in auditing, state finances and public administration of such person."*

1.85 This Act has since been superceded by the Auditor-General Act 12 of 1995 (the new Act).

1.86 Section 5(1) of the old Act provides as follows:

> *"5. Duties and powers of Auditor-General*
>
> *(1) The Auditor-General shall, subject to the provisions of any other law and subsection (a), audit all the accounts and financial statements of all accounting officers, excluding the*

person referred to in section 6 of the Audit Arrangements Act, and of all other persons in the public service entrusted with the receipt, custody, payment or issue of state property or state money, stamps, securities, equipment, stores, trust property and other assets."

1.87 Besides national legislation, the Constitution of the Republic of South Africa Act 108 of 1996 contains provisions which regulate the functions of the Auditor-General and his tenure of office (section 188). Section 188 provides that the Auditor-General must be appointed for a fixed, non-renewable term of between five and ten years.

1.88 Section 3 of the new Act stipulates the functions of the Auditor-General as follows:

"3. Functions of Auditor-General

(1) …….

(2) Notwithstanding the provisions of any other law but subject to the provisions of the Constitution, the Auditor-General shall perform the functions vested in him or her by virtue of any other law, in accordance with the provisions of this Act in relation to –

(a) the accounts which shall be audited;

(b) the procedure according to which auditing shall be done; and

(c) the steps to be taken by the Auditor-General as a result of an audit.

(3) The Auditor-General may at his or her discretion determine the nature and extent of the audit to be carried out and request the details and statements of account which he or she considers necessary: Provided that he or she may, notwithstanding the provisions of any other law, also determine the format in which and the date on which such details, statements of account and financial statements shall be submitted to him or her.

(4) The Auditor-General shall reasonably satisfy himself or herself that –

(a) reasonable precautions have been taken to safeguard the proper collection of money to which an audit in terms of this Act relates, and that the laws and instructions relating thereto have been duly observed;

(b) reasonable precautions have been taken in connection with the receipt, custody and issue of, and accounting for, property, money, stamps, securities, equipment, stores, trust money, trust property and other assets;

(c) receipts, payments and other transactions are made in accordance with the applicable laws and instructions and are supported by adequate vouchers; and

(d) satisfactory management measures have been taken to ensure that resources are procured economically and utilised efficiently and effectively."

1.89 Generally stated, the objectives of the Auditor-General, as provided for both in the Constitution and the Auditor-General Acts (both the old and the new one), in essence entail ascertaining through auditing whether

regularity exists in the financial affairs of public sector institutions, whether resources have been utilised economically, efficiently and effectively and reporting findings to the legislative body concerned. The basic aim of these processes is to ensure control of public funds by the legislature and public accountability in the financial affairs of government institutions and government companies. Given the scarcity of resources, this function is a crucial one.

1.90 The task on the shoulders of an Auditor-General is immense and onerous. His Office cannot and does not perform this task on its own. Section 9 of the old Auditor-General Act 52 of 1989 empowers the Auditor-General at his discretion and subject to such directives as he may deem necessary, in addition to Public Servants, also to appoint other persons to perform the functions assigned to him by law. Section 6 of the new Auditor-General Act 12 of 1995 also provides as follows:

> *"The Auditor-General shall perform the functions assigned to him or her by this Act or any other law with the assistance of persons appointed in the Office in terms of the Audit Arrangements Act, and such other persons as he or she may appoint at his or her discretion against payment of such remuneration as may be agreed upon with such other persons and subject to such directives as the Auditor-General may deem expedient."*

1.91 The Auditor-General, utilising these powers, from time to time appoints audit firms which are in private practice to assist him. Such agents work under his control and direction to ensure that they pursue the policy of his Office. In this case the Auditor-General appointed Price Waterhouse as his agent.

1.92 These agents are appointed on a rotational basis and their activities are regulated by contracts they enter into with the Office of the Auditor-General. It is essential that such persons or firms must, besides the acknowledged professional codes of behaviour, also follow the directives of that Office when government auditing is carried out. Government auditing takes place under the supervision and control of a member of the Auditor-General's staff who is usually referred to as the Audit Controller.

1.93 Although I looked at all the relevant Auditor-General reports, the report that triggered this investigation was the Auditor-General's report dated 31 March 1994 (RP 62/1994) which deals with the financial statements of SFF for the financial year 1992/93. The statements as presented in that report were limited. According to the Auditor-General he limited them utilising his discretion in terms of subsection (5) of section 1E of the Central Energy Fund Act 38 of 1977 which reads as follows:

> *"The Auditor-General shall for the purposes of subsection (4) report on the books, accounts, statements and balance sheets relating to the affairs of the SFF Association and to the transactions entered into for account of the Equalization Fund, with due regard to the special nature of the transactions recorded in those documents and the national interests which may be involved, and shall limit such report to the extent that he, after consultation with the State President, the Minister of Minerals and Energy Affairs and the Minister of Finance, may determine."*

1.94 This section was one of the provisions which are generically referred to in this report as the secrecy provisions. It is necessary therefore to give a brief and chronological background of these provisions.

SECRECY PROVISIONS

1.95 On 24 June 1987 and before the Public Accounts Committee, the then Auditor-General Dr J H de Loor testified, *inter alia*, that in view of the national interest, the major areas on which no information could be provided, in terms of the limitation provision in section 1E(5) of the Central Energy Fund Act 38 of 1977, were:

- the quantity of crude oil and where it was stored;
- where the international sources of international supply were; and
- what the domestic production of petrol and diesel was.

1.96 Until 16 July 1993, in terms of Government Notice R1614 (dated 19 July 1985 and promulgated in terms of the Petroleum Products Act 120 of 1977) the publication of certain information regarding petroleum products was prohibited except by written consent of the Minister of Minerals and Energy Affairs.

1.97 On 16 July 1993 Government Notice R1614 was withdrawn and replaced with Government Notice R1262, which provided as follows:

"1. In these regulations, unless the context otherwise indicates –

(a) any word or expression derived from the Petroleum Products Act, 1977 (Act No 120 of 1977), hereinafter referred to as the Act, shall have the meaning ascribed in the Act to such word or expression; and

(b) 'strategic stock' means any petroleum product stored for strategic purposes by any body for or on behalf of or on the instruction of the Government.

2. No person shall, except by order of a competent court, or unless authorised thereto in writing by the Minister, release, announce, disclose or convey to any other person, or in any way whatsoever publish or make comment on, any information regarding -

(a) the taking place and particulars of any negotiations in respect of the acquisition of petroleum products for importation into the Republic;

(b) any other business transaction in connection with such petroleum products;

(c) the source, transportation or destination of such petroleum products; or

(d) the stock level, nature and storage of any strategic stock."

1.98 The effect of the withdrawal of Government Notice R1614 and the replacement thereof by Government Notice R1262, was that Regulation 2(e), (f) and (g) of Government Notice R1614 as quoted below, were repealed:

"2. No person shall, except with the written permission of the Minister, publish, release, announce, disclose or convey information or make comment regarding –

…

(e) the storage or stock level of any petroleum products acquired or manufactured for or in the Republic;

(f) the consumption of any petroleum product acquired or manufactured for or in the Republic;

(g) the quantity of any petroleum product acquired or manufactured or being acquired or manufactured for or in the Republic."

1.99 The United Nations embargo on oil supplies to South Africa was lifted on 9 December 1993. On 15 December 1993 the then Minister of Mineral and Energy Affairs, Mr G S Bartlett, issued a press release, announcing that the Cabinet on that date approved the withdrawal of the remaining secrecy provisions reflected in Government Notice R1262 relating to countries of origin, trading companies and persons currently involved with the supply of oil to South Africa.

1.100 On 7 January 1994 Government Notice R1262 was withdrawn by Government Notice R34. The secretive legislative environment created in terms of the Petroleum Products Act 120 of 1977 ceased to exist.

1.101 Section 1E(5) of the Central Energy Fund Act 38 of 1977 (quoted in paragraph 1.93 above) did however linger a little longer in the statute book. This vestige of the secrecy legislation was finally removed from the statutes by Act 48 of 1994, which was assented to by the President on 23 November 1994.

2. EXECUTIVE SUMMARY

INTRODUCTION

2.1 The key driving force to this investigation was to protect the public interest. When it appeared that no loss had occurred, I had to weigh whether the benefit of investigating further would be justified by the cost of the investigation. I have not proceeded to investigate matters which have been dealt with elsewhere or in other investigations. I have also not investigated matters which would not have been of practical benefit to the public.

2.2 Based on my investigation, a number of key issues were identified. Below I have briefly summarised those key issues and my findings and recommendations with regard to them.

2.3 This summary is intended to provide an overview only and should not be taken to represent the entirety of the issues, findings or recommendations, which are fully contained in the remainder of this report.

CHANGE IN ACCOUNTING POLICY (R170 MILLION ISSUE)

2.4 During the 1992/3 financial year, the Strategic Fuel Fund Association (SFF) Management decided to change the accounting policy relating to strategic oil stock that had been sold from one storage facility and replaced in another during the previous three years. This change in accounting policy gave rise to a loss of R170 million in the 1992/3 financial year. This was the R170 million loss that the former Minister of Minerals and Energy Affairs, Dr Maduna, referred to in his responses to questions in Parliament. The Minister indicated that this was possibly a physical loss to the SFF.

2.5 During the initial hearings in June 1998, Counsel for the Minister put on record that the R170 million was not a physical loss as the Minister had indicated in his responses in Parliament, but an accounting loss caused by the change in accounting policy.

2.6 Considering and evaluating the accounting policy change was only necessary for as long as it appeared that the R170 million was a physical loss. Given that there was no physical loss associated with the change in accounting policy, I therefore have made no finding regarding the reasonableness of the change in accounting policy and its disclosure.

PAYMENTS TO INTERSTATE

2.7 The SFF contracted directly with the Egyptian General Petroleum Corporation (EGPC) to purchase Egyptian crude oil in 1992. Prior to this date, due to sanctions, the SFF had effectively purchased Egyptian crude oil through a company called Interstate, paying Interstate a margin for this service, as was normal practice at the time.

2.8 The SFF continued to pay Interstate a reduced margin (US $ 0,06 a barrel) on all oil purchased through EGPC after 1992. Interstate paid the SFF US $ 0,05 a barrel if they, instead of the SFF, lifted the oil under the contract.

2.9 Allegations were made that the payments to Interstate were for no value and were perhaps improper or fraudulent.

2.10 The evidence showed that the payments were made for the effective relinquishing to SFF of Interstate's Egyptian oil contract volumes with EGPC, as EGPC did not have additional oil volumes to contract with the SFF, without Interstate giving up their volumes. Interstate also provided

ad hoc logistical services, but these were not the main *causa* for the payments to Interstate.

2.11 Whilst there were many deficiencies in the documentation of the contract with Interstate which gave rise to the suspicions of impropriety, I find that there was a valid reason or *causa* for the payments to Interstate. It is however equally true that the benefit received for the payments to Interstate reduced or weakened over the years as the oil procurement environment improved.

OTHER ISSUES

2.12 Allegations were also made with regard to:

- a R1 450 million payment by SFF to the Government on April 1997; and
- the incorrect posting in the books of SFF of monies recovered from the Salem oil tanker incident.

Whilst I needed to investigate these allegations and have covered these issues in the report, it is common cause that no losses arose from these issues. As such these issues did not form the primary focus of my investigation.

THE AUDITOR-GENERAL'S REPORTING TO PARLIAMENT

The audit of SFF

2.13 The general allegation was that the audits of the SFF by the Auditor-General and his agent Price Waterhouse should have identified the problems with regard to the contract underlying the payments to

Interstate (referred to as the Six Cents Agreement) and the other alleged irregularities.

2.14 Parliament specifically requested me to look at the alleged irregularities and therefore I considered the audit process only in so far as it related to the alleged irregularities as noted above.

2.15 Given that there was a valid *causa* for the Interstate payments and that the issue regarding the change in accounting policy did not cause an actual loss, I found no basis on which the audit of the SFF could be criticised for not identifying these issues.

The Auditor-General's reports

2.16 The main criticism of the Auditor General's reporting to Parliament was that the 1992/3 management financial statements which in previous years had not been published, were published for the first time in 1992/3 in an abridged format. The abridged financial statements summarised the management financial statements and did not separately disclose the R170 million relating to the change in the accounting policy.

2.17 The argument was that the secrecy provisions, which had previously restricted the publishing of crude oil information, were sufficiently relaxed to allow full publication of the financial statements. The allegations went further to imply that the abbreviation had occurred to cover up the R170 million loss.

2.18 Based on the evidence it appears that the Auditor-General (who had the discretion after consultation to decide what information to publish) in fact published the SFF information much earlier than he was required to do. In addition I found that whilst there were minor technical difficulties with

the abbreviated 1992/3 financial statements they could not be said to be misleading or inappropriate.

CORPORATE GOVERNANCE/REASONABLENESS OF THE ACTIONS OF THE VARIOUS PARTIES

2.19 Extensive evidence was heard on the reasonableness of the actions of the various parties to this investigation. This included:

- The professionalism of Nkonki Sizwe Ntsaluba (CA) SA (NSN) (the Management Auditors appointed by the Minister to audit SFF);
- The appropriateness of the Minister's actions;
- SFF Corporate Governance – the reasonableness of the actions of the SFF Board and Management and their interaction with NSN, the Minister and the Auditor-General.

2.20 Generally I found that there was distrust between the Minister and some of the parties, perhaps due in part to the past difficulties experienced in South Africa. It was this distrust more than anything that hampered the early resolution of these matters between the parties and is probably the main reason that this matter had eventually to be referred to my office. Whilst I can understand that there may be distrust emanating from the past, it is important that this is put behind us so that we can work together to create a truly new South Africa. Politicians and Government Departments should lead the way in this regard.

2.21 The distrust was further heightened by the SFF reporting structure. The General Manager and his team (who are not members of the Board) run SFF on a daily basis. They report to a non-executive Board. This gave rise to suspicions that the information flow to the Board could be manipulated by Management and in particular the General Manager. Whilst these suspicions were not substantiated, I have recommended

that the SFF Board should consist of both executive and non-executive Directors as recommended by the King Report on Corporate Governance.

2.22 The other allegations against the various individuals have been dealt with, where appropriate, in the main body of this report and are too numerous and detailed to be summarised effectively here.