ANNUAL REPORT

HEALTH OMBUD | 2023/24

Ihhovisi Lokulandela Amaqophelo Ezempilo
Office of the Health Ombud
Kantoro ya Mosekaseki wa Maphelo

Annual Health Ombud

Report 2023/24

Contents

GLOSSARY OF TERMS

CAU	Complaints Assessment Unit
IPID	Independent Police Investigative Directorate
JICS	Judicial Inspectorate for Correctional Services
NDoH	National Department of Health
NHAA	National Health Amendment Act 12 of 2013
NHI	National Health Insurance
NPM	National Preventative Mechanism
OHO	Office of Health Ombud
OHSC	Office of Health Standards Compliance
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
SAHRC	South African Human Rights Commission
SLA	Service Level Agreement

LIST OF TABLES

LIST OF FIGURES

1. Foreword

It is my honour and privilege to present the Annual Report on the operations and performance of the Office of the Health Ombud (OHO) for the 2023/24 financial year, as the new Health Ombud of South Africa

The report highlights the core functions of the OHO – investigation of health complaints, and improvement of the healthcare system, and also focuses on the OHO stakeholder engagements. This includes interactive engagements that provide educational material and guidance to professionals and personnel within the health sector, communities, government departments and civil society organisations.

The results in this Annual Report indicate the commitment and dedication of the OHO staff in ensuring that the mandate of the Health Ombud to "*protect and promote the health and safety of users of health services by considering, investigating and disposing of complaints in the national health system*", has been fulfilled. The Health Ombud is supported by staff of the Office of Health Standards Compliance (OHSC) designated by section 81(3(c) of the National Health Amendment Act, 12 of 2003, in concurrence with the Ombud.

In the financial year under review, I have had the opportunity to engage with various stakeholders nationally and internationally, signed Memoranda of Understanding with these institutions with the aim of promoting enhanced co-operation and the exchange of knowledge, experience, and skills in investigating and managing user or client complaints.

We have assembled a team of investigators to participate for the first time in activities of the National Preventative Mechanism (NPM), which is an instrument for the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), to which South Africa became a signatory of, since 2019. Under Article 3 of the OPCAT, States or parties must designate, maintain, or establish a National Preventive Mechanism (NPM) to strengthen the protection of persons who are or may be deprived of their liberty.

The Health Ombud is committed to seeing the building of an efficient health care system in South Africa in line with the Bill of Rights which enshrines the rights of all people in South Africa and affirms the democratic values of human dignity, equality and freedom. President Nelson Mandela once stated, "*Health cannot be a question of income; it is a fundamental human right*".

Professor Taole Mokoena

Health Ombud of South Africa

2. Mandate

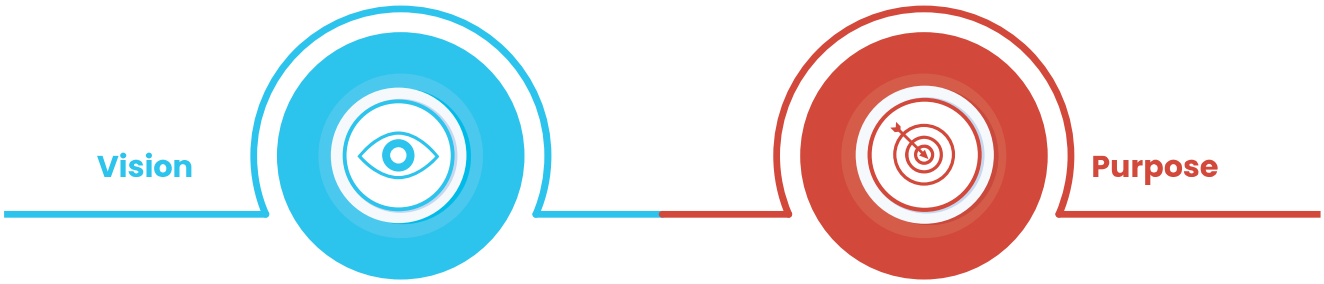
2.1 Legislative Mandate

The Health Ombud is appointed by the Minister of Health in terms of section 81 of the NHAA, and is supported by staff designated and seconded by the OHSC, with the concurrence of the Ombud.

The functions of the Ombud are set out in section 81A wherein the Ombud may, on receipt of a written or verbal complaint relating to norms and standards, or on his or her own initiative, consider, investigate and dispose of the complaint in a fair, economical and expeditious manner.

These statutory provisions enable the Ombud to investigate complaints, request documents or any evidentiary material, whilst maintaining his independence and impartiality.

2.2 Vision, Mission and Values



The **vision** of the OHO is to *"Promote and protect against infractions of quality of healthcare".* .

The **mission** of the OHO is *"To consider, investigate and resolve complaints or infractions".*

Values

The values of the OHO are:

1. Accountability
2. Independence
3. Honesty
4. Advocacy
5. Effectiveness
6. Professionalism
7. Confidentiality
8. Results driven

3. Summary

On 1st June 2023, Professor Taole Mokoena succeeded Professor Malegapuru William Makgoba whose seven (7) year term expired on 31st May 2023.

This summary provides the highlights and salient points on the Annual Report for 2023/24 financial year.

There was a decrease in complaints lodged with the Health Ombud during the 2023/24 financial year. This decline continues the trend noted for the past three years. However, the acuity or severity of cases has steadily increased proportionally. This may reflect the perception of the general public regarding the seriousness of the matters to be dealt with by the Health Ombud.

Gauteng Province continues to have more complaints by far, whether this is taken as absolute figures or as per population size or number of hospital beds available. This might reflect the parlous state of complaints resolution mechanisms at the health establishments or provincial health department levels in Gauteng.

Public health establishments represented the bulk (74%) of complaints that needed further investigation. This correlates with distribution of public (80%) versus private (20%) hospital beds capacity in the country. However, there was proportionately more overall complaints from private health establishments (41%) but many private cases there were minor and some were out of scope or mandate of Health Ombud, e.g. medical aid payments or professional misconduct or behaviour by practitioners. Maternal and perinatal morbidity and mortality contributed nearly half of high acuity cases. This reflects poor management of pregnancy in the country.

The perennial shortage of staff has led to increasing backlog in investigation of high acuity complaints. The Health Ombud has prioritised investigation of recent and current complaints while the cases are still fresh in the memories of both complainants and potential witnesses. The Health Ombud proposes to have a special task team "*Letsema*" to solve this backlog. ***Justice delayed is Justice denied***:- the Health Ombud seeks to avoid the perpetuation of this state of affairs. The slavish and parochial following of policies within the OHSC procurement processes even where they are not for fit for purpose, delayed finalisation of some cases which require expert health professional advice. There are cases that remain *stuck in limbo* for which, predictably, no clinical experts have responded to repeated advertisements.

The imminent implementation of the National Health Insurance (NHI) is expected to increase complaints to the Health Ombud which will put further strain to the current under resourced Office of Health Ombud (OHO).

There have been only 11 cases that were appealed against the Health Ombud during the year under review. Of these, four (4) have been heard by the ad hoc Tribunal and three (3) were found in favour of the Ombud, six (6) are still pending adjudication while one (1) has been withdrawn. One (1) was adjudicated against the Ombud on procedural grounds in terms of Promotion of Administrative Justice Act (PAJA), 2000, Act No. 3 of 2000. The low number of appeals and their ad hoc Tribunal adjudication in favour of the Ombud reflect well on the good quality of the work of the OHO.

The independence of the Health Ombud is paramount. The OHO should be not only independent but also be seen to be independent by the public. The current legislative framework negates the independence of the Health Ombud. The new draft Health Ombud Bill is designed to correct this anomaly. However, National Treasury has stalled the enactment of the Bill. The Health Ombud has proposed, through the National Department of Health, an interim legal framework to give clearer independence of the OHO through amendment of the current National Health Act.

The Health Ombud started participating in the National Preventative Mechanism (NPM) which is a tool of the United Nations' Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) to which South Africa has been a signatory since 2019. South Africa adopted a multiple institutions option for NPM which include the Health Ombud, the Human Rights Commission (as a co-ordinator), the Judicial Inspectorate for Correctional Services, Independent Police Investigative Directorate and the Military Ombud.

Parliament did not vote specific funding for the NPM process but rather expected member institutions to fund their role in the NPM out of their own resources. There has not been funding for NPM from the OHSC hence the previous Health Ombud did not participate in NPM. However, this is not an option because the Office of the Health Ombud is the only member of the NPM with the requisite expertise to inspect and monitor for healthcare provision within places of deprivation of liberty, particularly psychiatric hospitals.

It is in this backdrop that the current Health Ombud started participating in the NPM process during the year under review, even while still waiting for the requested funding from Treasury. The OHO has participated in inspections in three (3) provinces during the year under review. The inspections found generally poor healthcare provision in most places of deprivation of persons' liberty including psychiatric hospitals in North West and Northern Cape provinces which although both hospitals were more recently built, the infrastructure has been poorly finished and is already crumbling. Both hospitals are half utilised because of staff shortage. If these were fully commissioned, they could absorb a large number of State patients languishing in prisons especially from Mpumalanga Province which has got no psychiatric hospital.

The Health Ombud requested funding from Treasury and received some money to translate temporary contract employees to permanent appointments. This has had the desired effect of stabilising the workforce and increasing efficiency.

The office accommodation for OHSC and OHO staff is deplorable. Senior staff members, including the Health Ombud, are accommodated in storerooms which have got no natural light and no proper ventilation with no windows to the outside. Junior staff use open plan offices which make them prone to distraction and afford no privacy or confidentiality during (telephonic) interviews with patients or complainants. The building does not comply with legal requirements nor Occupational Health and Safety regulations. It is simply **not fit for human habitation**.

The imminent implementation of the NHI is expected to increase complaints, not only from users of the health establishments but also from health establishments *per se*.

Despite many institutional shortcomings, the staff of the OHO remain professional and dedicated to their work; this is witnessed by the high quality of their work. It is hoped that adequate funding will be provided in the coming years to further capacitate the OHO.

4. Organisation of the Office of the Health Ombud (OHO) Complaints Management Process

The overall mandate of the Health Ombud is to consider, investigate and dispose of complaints relating to breaches of prescribed norms and standards in a fair, economic and expeditious manner. The OHO Complaints Management comprises four (4) distinct but interrelated units, namely Complaints Call Centre, Complaints Assessment Unit, Clinical Complaints Investigation Unit and Legal Complaints Handling and National Preventative Mechanism Unit.

4.1 Complaints Call Centre Unit

Purpose: to receive complaints from the public through telephone calls, walk-in submissions, emails and written letters. The call centre staff register, record and screen all complaints received and refer to the next level as appropriate. All *"low-risk"* complaints are addressed and resolved at the level of the call centre. All complaints that receive "*medium*" and "*high*" risk rating may be referred to the Complaints Assessment Unit. Complaints that receive an "*extremely-high*" risk rating may be referred directly to the Clinical Complaints Investigation Unit while those with legal merit or from lawyers and other statutory bodies are referred to the legal Complaints Unit.

Definition of risk ratings:

Low risk is where the complaint involves no harm to patients, staff or visitors, no loss of service and minimal financial loss. There is minor damage to customer service relationships.

Medium risk is where the complaint involves limited patient complications from treatment but requires no further treatment. A staff member was injured and required treatment with loss of time or restricted functionality and reduced or disruption of services, significant financial loss or some loss of services.

High risk involves death of a patient from treatment otherwise not expected from usual patient management; permanent injury to staff members or visitors; loss of service capacity, major financial loss and breakdown of customer service relationships.

Extreme risk involves death of patient from treatment otherwise not expected from usual patient management; death of staff member or visitor; complete loss of service capacity; major financial loss, and serious threat to customer service relationships.

4.2 Complaints Assessment Unit

Purpose: to analyse and dispose of *"extreme", "medium" and "high"* risk rated complaints.

4.3 Clinical Complaints Investigation Unit

Purpose: to investigate *high* and *extremely-high* risk rated complaints.

4.4 Legal Complaints Handling and National Preventative Mechanism Unit

Purpose: to investigate complaints with legal merit or from lawyers and other statutory bodies. The Unit also provides legal advice and expertise to the Health Ombud, liaises with the legal units in the Office of Health Standards Compliance (OHSC) and National Department of Health and investigate some extremely-high risk rated complaints. The Unit further coordinates the input and participation of the Health Ombud and the OHO in the National Preventative Mechanism (NPM).

5. Annual Programme Performance

5.1 Call Centre

During the 2023/24 financial year, there were 2416 new complaints recorded. 1431 were from the public health establishments while 985 were from private health establishments.

Table 1: reflects the complaints received and resolved in the complaints call centre in the financial years 2021/22 until 2023/24, including cases carried over from the previous financial year:

Table 1: Complaints comparison of complaints received from 2021/22 until 2023/24

Financial Quarters	Complaints Received 2021/22	Complaints-Resolved 2021/22	Complaints Received 2022/23	Complaints-Resolved 2022/23	Complaints Received 2023/24	Complaints-Resolved 2023/24
Quarter 1	1 032	666	721	571	568	503
Quarter 2	1 832	1 451	1 466	1 300	1 107	1 042
Quarter 3	2 600	2 092	2 151	1 982	1 553	1 481
Quarter 4	3 317	2 756	2 647	2 476	2 389	2 308
Total	**8781**	**6965**	**6985**	**6329**	**5627**	**5334**

Figure 1 shows that there is consistent increase of complaints received during the course of each year but the total number of complaints steadily declined over the three years under review.

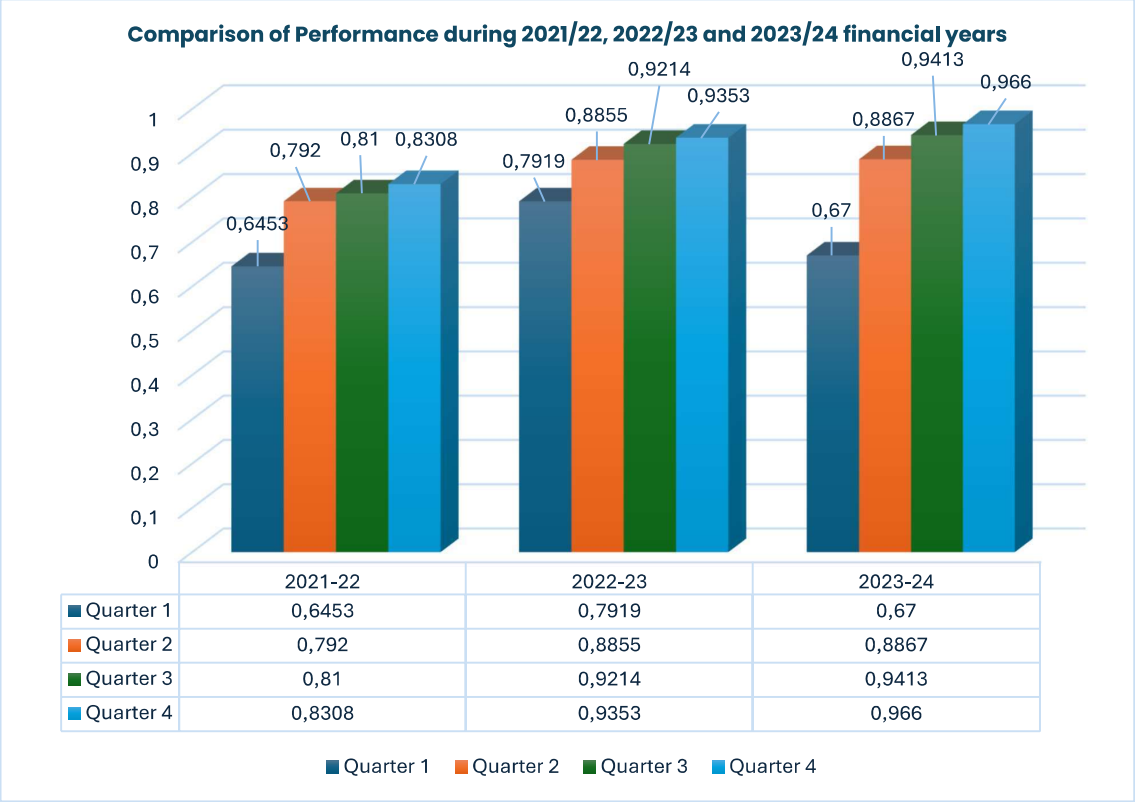


Figure 1: Performance comparison of complaints received from 2021/22 until 2023/24

The relatively low performance during Quarter 1 in all the years is due to carry over of complaints which were not addressed during the December holidays.

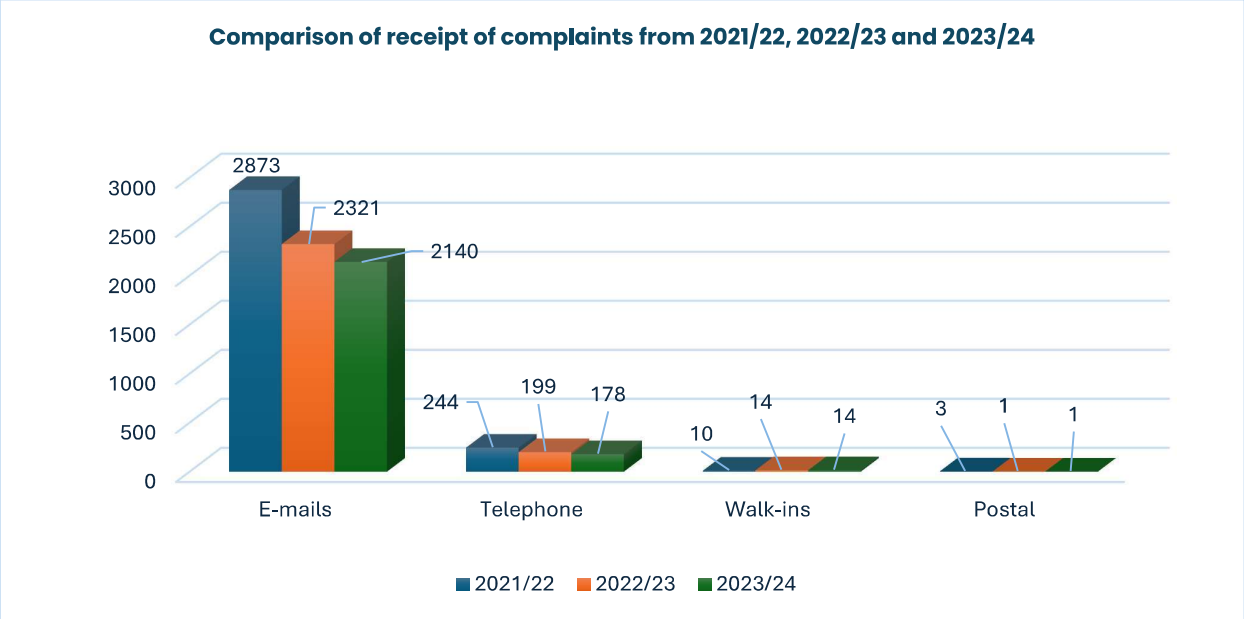


Figure 2: Comparison of receipt of complaints received from 2021/22 until 2023/24

Figure 2 illustrates that the majority of complaints received by the OHO were by far through emails, and hardly through complainants presenting themselves to the OHO offices or by post.

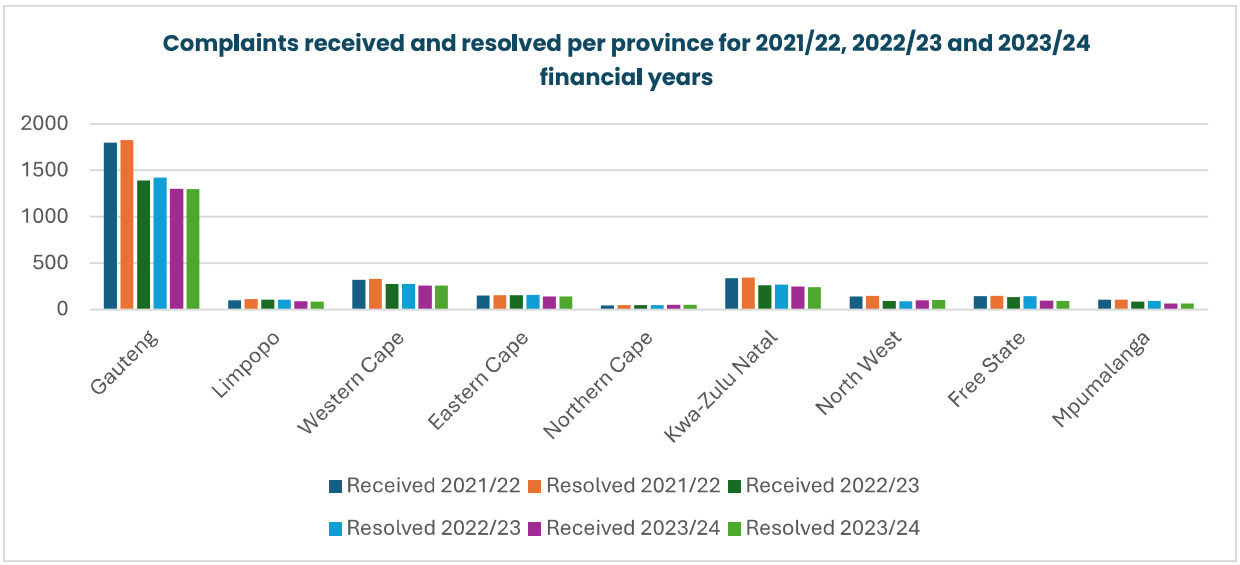


Figure 3: Comparison of complaints received and resolved per province from 2021/22 until 2023/24

It is noted that the highest number of complaints were from the Gauteng province, followed by the Western Cape and KwaZulu-Natal (Figure 3).

5.1.1 Satisfaction survey 2023/2024

A satisfaction survey was conducted to determine the level of satisfaction of complainants with the OHO complaint handling process. This creates an opportunity for the organisation to identify gaps in the process, if any, and attend to them in an effort to improve service rendering.

During the process of closing a complaint, a complaints officer would call the complainant, update them on the progress of their case, and then request that they rate the process followed during the management of their complaint.

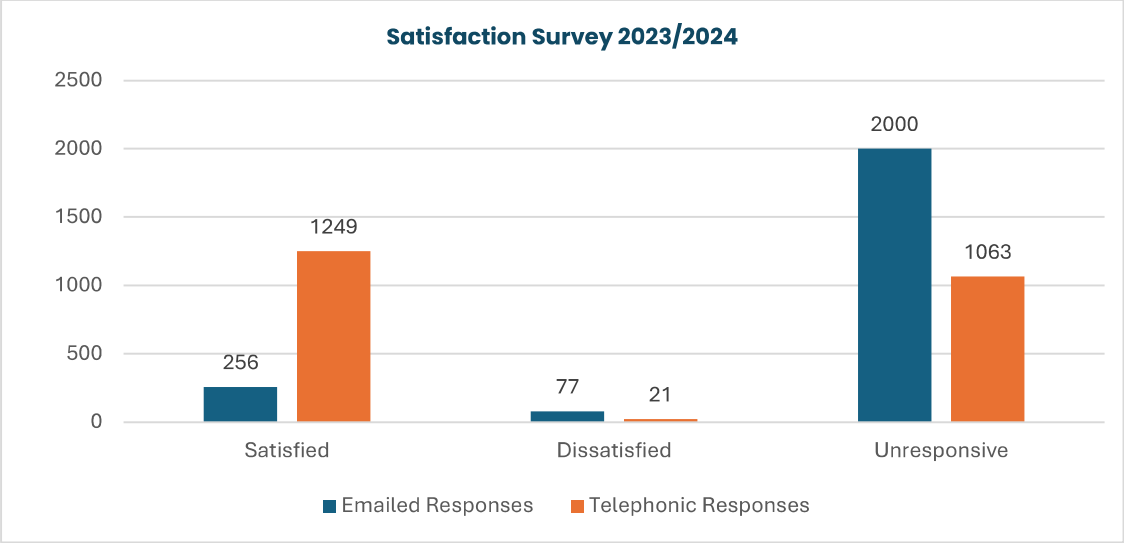


Figure 4 : Satisfaction Survey responses

The Satisfaction Survey (Figure 4) indicates that the majority of complainants were not interested in the survey but of those who participated, the vast majority were satisfied.

5.2 Complaints Assessment Unit

The purpose of the Complaints Assessment Unit is primarily to further screen and assess *medium* and *high* risk rated complaints. The Complaints Assessment Unit disposes of the medium risk rated complaints and refers *high* risk rated complaints to the Complaints Investigation Units (CIU) for onsite investigation following receipt of information from Health Establishments and/or complainants. However, some "*extremely-high*" risk complaints are presented at the Unit.

5.2.1 Cumulative Performance on the Complaints Assessment Unit (CAU) for the financial year 2023/24

The Assessment unit received 54 new cases from the Call Centre from 1 April 2023 until 31 March 2024. Of the 54 complaints received, 32 were *medium* risk rated, 18 were risk rated *high* and 4 were risk rated *Extreme*. One *medium* risk rated complaint was transferred to the CIU.

Seventeen (17) *medium* risk cases were resolved in the CAU through Desktop Evaluation within 30 working days, and four were resolved outside the SLA (Table 2)

Table 2: Medium risk complaints resolved within 30 days for the 2023/24 financial year

Financial Quarters	Medium Risk cases received	Total Resolved
Quarter 1	6	7
Quarter 2	5	5
Quarter 3	3	3
Quarter 4	3	6
Total	**17**	**21**

Note: Total include the carried over cases from the previous financial year that were not resolved.

5.2.2 Comparison of complaints received and resolved in the Complaints Assessment Unit (CAU) during the 2021/22, 2022/23 and 2023/24 financial years

The CAU received 34 new complaints in the 2021/22 financial year and 112 complaints were carried over from the previous years (2016, 2017, 2018, 2019 and 2020), and resolved 39 complaints. There was a slight improvement in performance during the review period when 63 complaints were received and 34 were resolved but targets were not met due to the human resource constraints (Table 3).

Table 3: Comparison of complaints received and resolved in the CAU from 2021/22 until 2023/24 financial years

Complaints Received 2021-2022	Complaints Resolved 2021-2022	Complaints Received 2022-2023	Complaints Resolved 2022-2023	Complaints Received 2023-2024	Complaints Resolved 2023-2024
146 (34 Received + 112 Carried over)	39	69 (57 Received + 12 Carried over)	42	63 (54 Receive d + 9 Carried over)	34
Annual performance 39/146= 26.71% (Annual Target = 60%)		Annual performance 42/69=60.9 % (Annual Target = 65%)		Annual performance 34/63=54% (Annual Target = 70%)	

5.2.3 Medium, High and Extreme rated cases escalated from Complaints Assessment Unit to Complaints Investigation Unit (CIU)

Table 4: Medium, High and Extreme risk complaints escalated to Complaints Investigation Unit during 2021/22, 2022/23 and 2023/24 financial years

Reporting Period in Financial Years	Medium	High	Extreme	Total
2021/2022	3	14	4	21
2022/2023	0	17	4	21
2023/2024	1	13	3	17
Total	**4**	**44**	**11**	**59**

The Complaints Assessment Unit assigned/ escalated 17 complaints in the 2023/24 financial year. One "*medium*" risk case complaint was escalated due to a failure of the health establishment to submit further information to the OHO despite all efforts.

5.2.4 Complaints received and resolved through assessment by province 2023/24

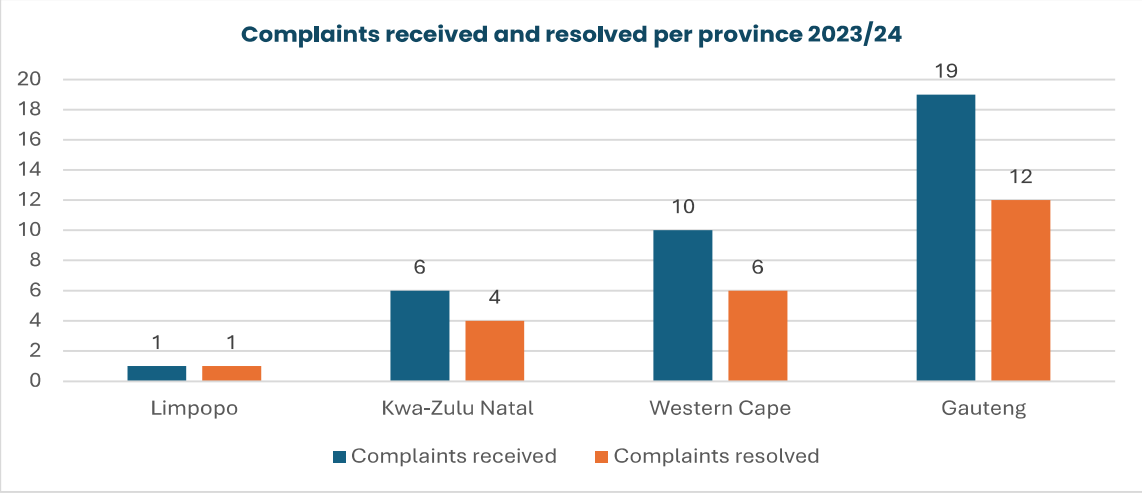


Figure 5 : Complaints received and resolved per province for 2023/24 in ascending order

Figure 5 reflects Gauteng as the province with the highest number of complaints (19) with 12 resolved, followed by the Eastern Cape with 14 complaints and 8 resolved. Limpopo received the least number of complaints.

5.3 Complaints Investigation Unit

5.3.1 Healthcare cases

Figure 6 illustrates cases received for investigation in the Clinical Investigation Unit.

It is noted that the public sector contributed to the bulk (74%) which accords with the distribution of healthcare in the country. This contrasts with the proportion of cases recorded at Call Centre where public sector contributes 59%. This suggests that a significant number (16%) of private complaints were either minor or out of scope of the Health Ombud.

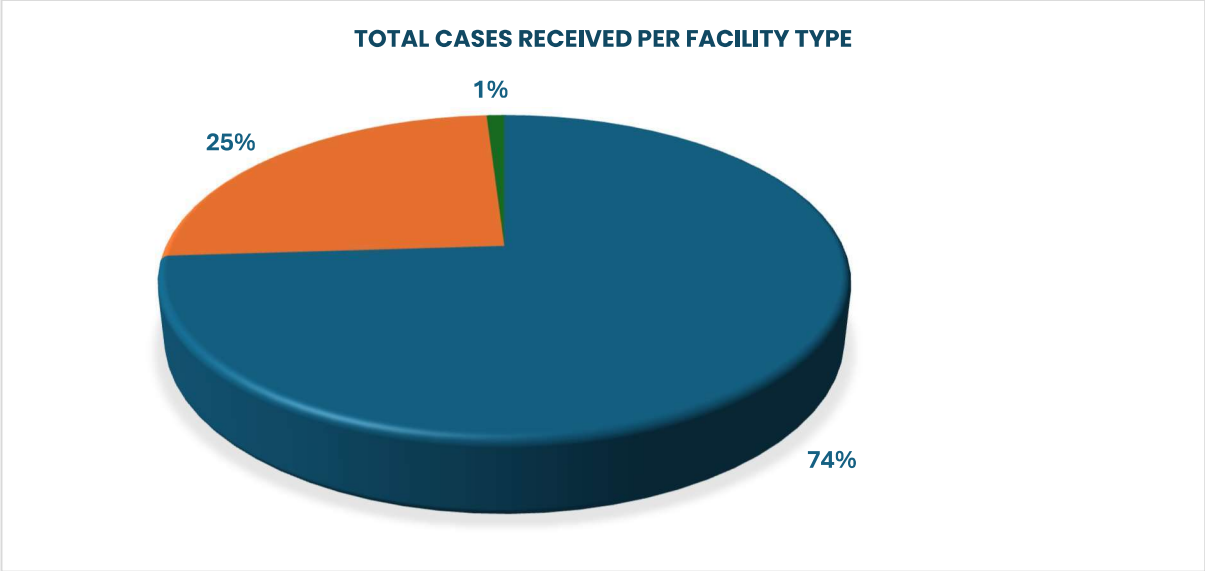


Figure 6 : Cases received per facility type from 01 April 2023 to 31 March 2024

Table 5 illustrates the categorisation of complaints investigated and resolved from 01 April 2023 to 31 March 2024 by province and health discipline. It is noted that the Gauteng province contributed most of the complaints during the period and the general internal medicine was the most frequent complaint.

Table 5: Number of new cases received for investigation by classification of health establishments from 01 April 2023 until 31 March 2024

DISCIPLINE	GAUTENG	KWAZULU-NATAL	WESTERN CAPE	EASTERN CAPE	NORTHERN CAPE	FREE STATE	NORTHWEST	MPUMALANGA	LIMPOPO	TOTAL
Surgical including Theatre	01	0	01	0	0	0	0	0	0	**02**
Gynaecology, Obstetrics and Perinatal	02	0	0	01	0	0	0	0	01	**04**
Accident and Emergency	01	0	0	0	0	0	01	01	01	**04**
General internal medicine	01	0	0	02	0	01	02	0	01	**07**
Paediatrics	01	0	0	0	0	0	0	0	0	**01**
ICU	0	0	0	0	0	0	0	0	0	**00**
Psychiatry, Orthopaedics, OPD, Oncology, Ophthalmology	02			0		0			01	**03**
Total	**08**	**0**	**01**	**03**		**01**	**03**	**01**	**04**	**21**

The analysis of distribution of 138 clinical investigation cases reveals a clear hierarchy (Table 6). Public Regional hospitals were leading with 28 % followed by private with 23% and Specialised hospitals only 1%. It is interesting that central and tertiary hospitals which treat the most serious cases only had 7.2% and 9.4% respectively. These results indicate that there is worrisome handling of case at both district and regional public hospitals as well as private hospitals generally.

Table 6: Type of Cases per Health establishment during the 2023/24 financial year

HEALTH ESTABLISHMENT CLASSIFICATION	TOTAL CASES RECEIVED FOR INVESTIGATION
Public Regional Hospital	39 (28%)
Private Hospital	33 (23%)
District Hospital	27 (20%)
National Central Hospital	10 (7.2%)
Provincial Tertiary Hospital	13(9.4%)
Clinic	5 (4%)
Community Health Centre	4 (2.8%)
Ambulance service	1(0,7%)
Centre for Disease Control	1(0,7%)
Laboratory Services	1(0,7%)
Maternity Services	1(0,7%)
Rehabilitation Center	1 (0.7%)
Specialised hospitals	2(1%)
Total	**138**

5.3.2 Legal cases

5.3.2.1 Cases received in the 2023/24 financial year

The Unit received 8 complaints in 2023/24. The Eastern Cape Province contributed the highest number of complaints (62.5%) as per Figure 7.

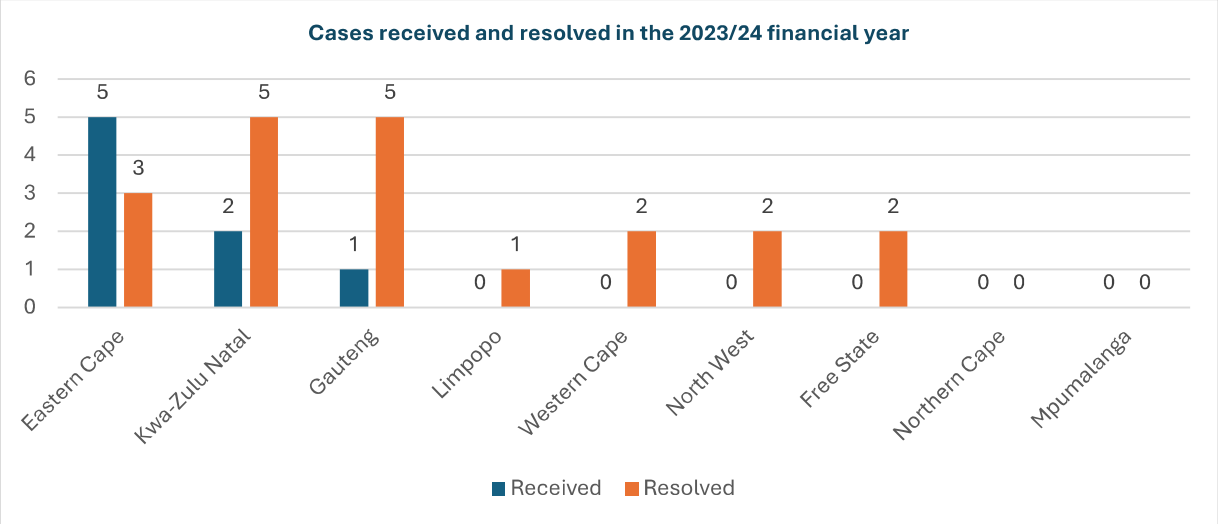


Figure 7: Number of Cases received in the 2023/24 financial year in descending order

Note: Some of the cases that were resolved had been carried over from previous periods.

5.3.2.2 Backlog cases open from 01 April 2016 to 31 March 2024

As at 01 April 2024, the legal cases sub-unit had seventy-seven (77) backlog cases.

5.3.2.3 Appeals

Any person and/or health establishment may appeal against the findings and recommendations in the Ombud's Final Report, as provided in section 88A.(1) of the National Health Amendment Act of 2013. The Minister of Health appoints an *ad hoc* Tribunal consisting of two medical experts and one legal expert.

There were eleven (11) appeals against the decision of the Health Ombud in the last financial year.

Three (3) appeals were adjudicated in favour of the Ombud whilst one (1) appeal was adjudicated against the Ombud. In the matter adjudicated against the Ombud, the independent *ad hoc* Tribunal found that the Ombud's decision was procedurally unfair and did not give effect to the right to procedurally fair administrative action in terms of Section 3(2)(b) of the Promotion of Administrative Justice Act, 3 of 2000. The Ombud was expected to have given the appellant an opportunity to make a representation about the Ombud's intended decision to close the complaint before making the final decision.

One (1) appeal was withdrawn by the appellant.

Six (6) appeals remain pending.

6. Three Year Overview of Cases

6.1 Call Centre

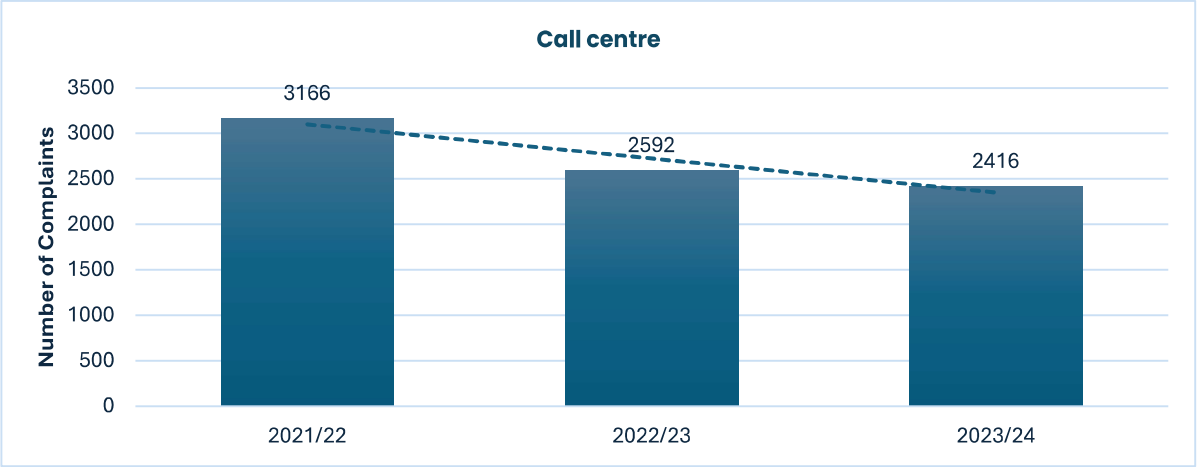


Figure 8: Number of cases at call centre in the last three financial years

Figure 8 reflects that the numbers of cases managed by the Call Centre have decreased over the last three years.

6.2 Number of Cases Per Unit and Escalation rate

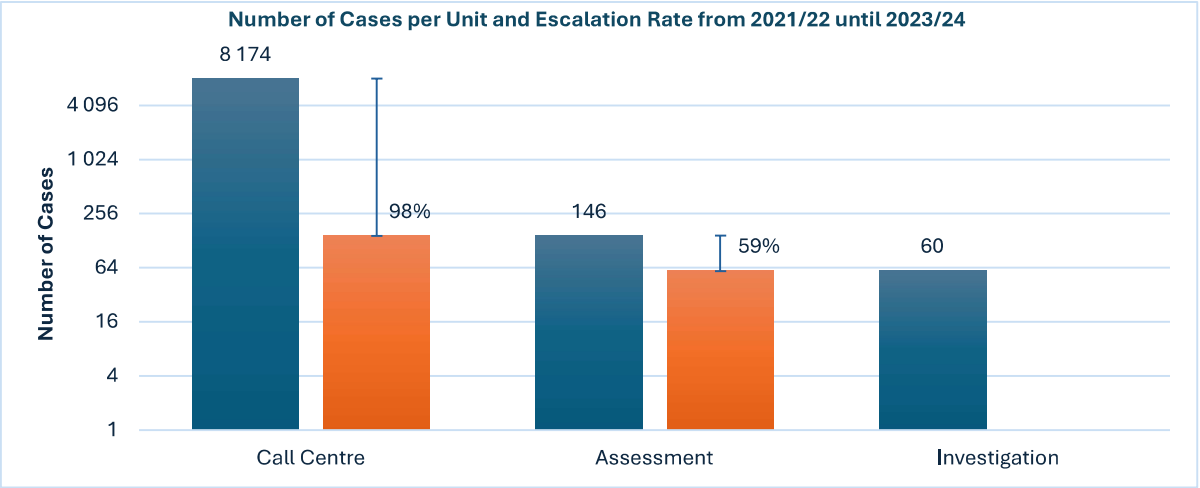


Figure 9: Number of cases per unit and escalation rate from 2021/22 until 2023/24

Figure 9 depicts the number of cases per unit within the OHO. As the Call Centre is the primary portal for complaints, the numbers are much higher. The Call Centre screened and resolved 98% cases, and escalated 2% to Assessment or Investigation units. Only 0,73% ultimately needed full investigation.

6.3 Number of Cases per Unit

6.3.1 Assessments

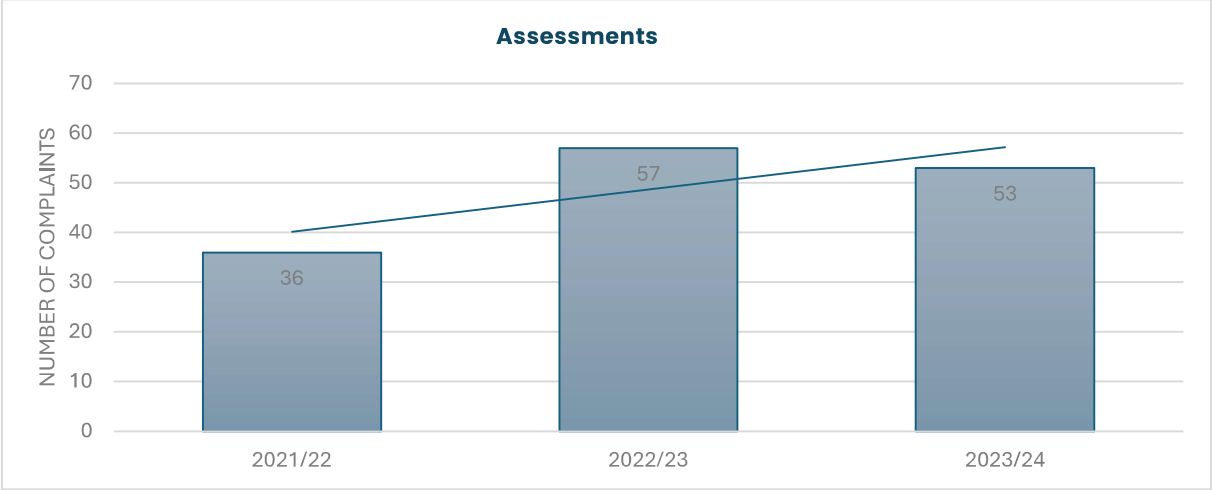


Figure 10: Number of cases for assessments in the last three financial years

In contrast to the Call Centre, figures 10 and 11 show an increasing trend in the number of complaints referred for Assessment and Investigation, suggesting a general increase in severity of cases.

6.3.2 Investigations

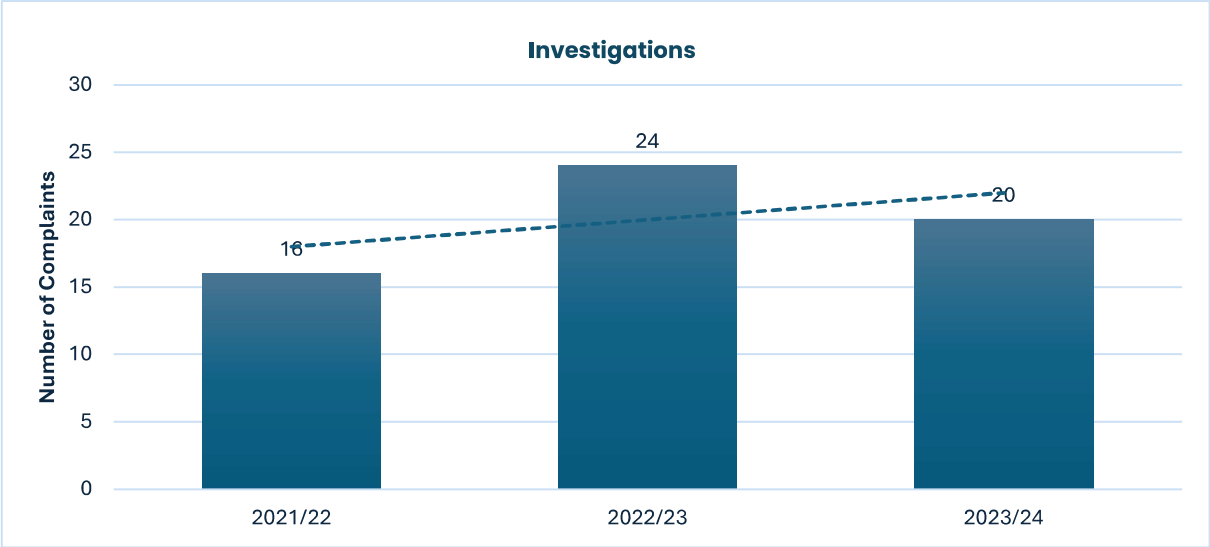


Figure 11: Number of cases for investigations in the last three financial years

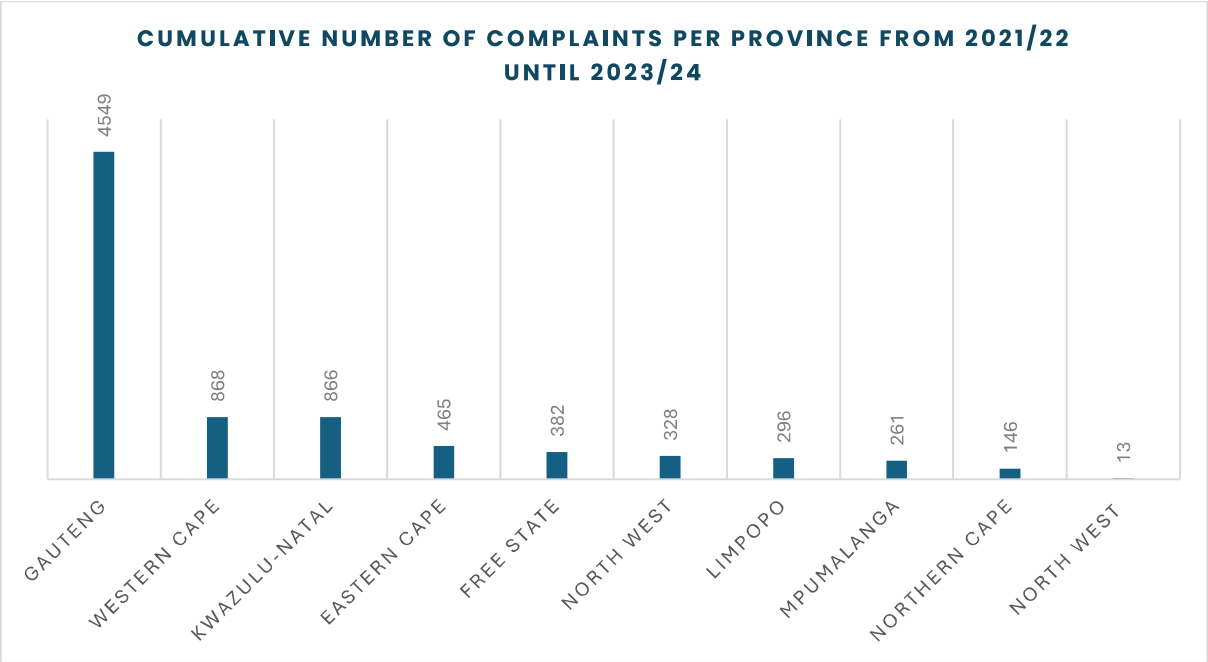


Figure 12: Cumulative number of complaints for per province in the last three financial years

Figure 12 shows that the highest number of complaints were from Gauteng, followed by the Western Cape and KwaZulu-Natal.

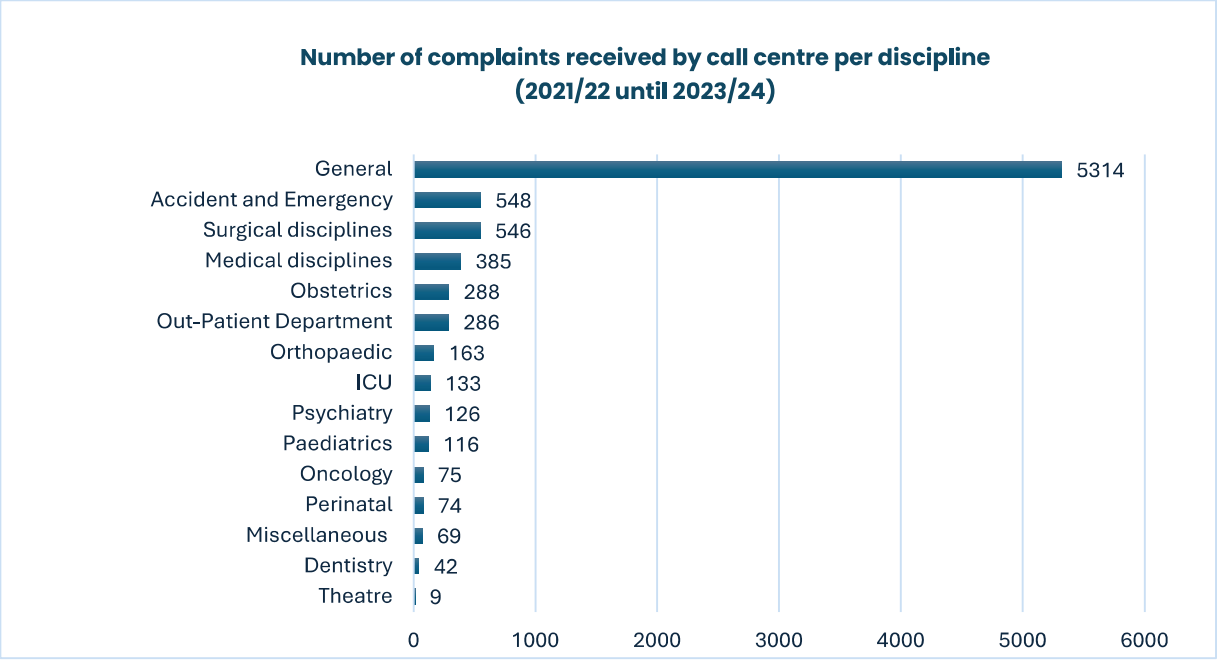


Figure 13: Number of calls per discipline in the last three financial years

It is noted from figure 13 that the majority of cases recorded at the Call Centre were by far the general category.

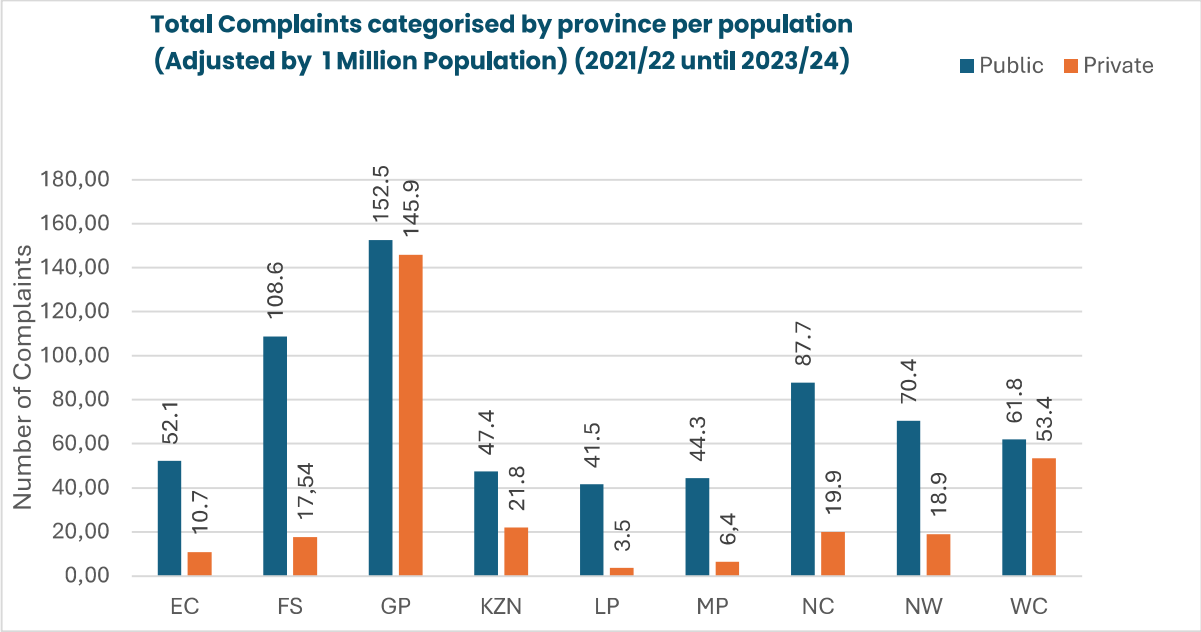


Figure 14: Number of complaints categorised by province per population in the last three financial years

After adjusting the number of complaints to account for population size (Figure 14), Gauteng still remains the highest province with 152.59 and 145.94 per 1 million population for both public and private hospitals respectively.

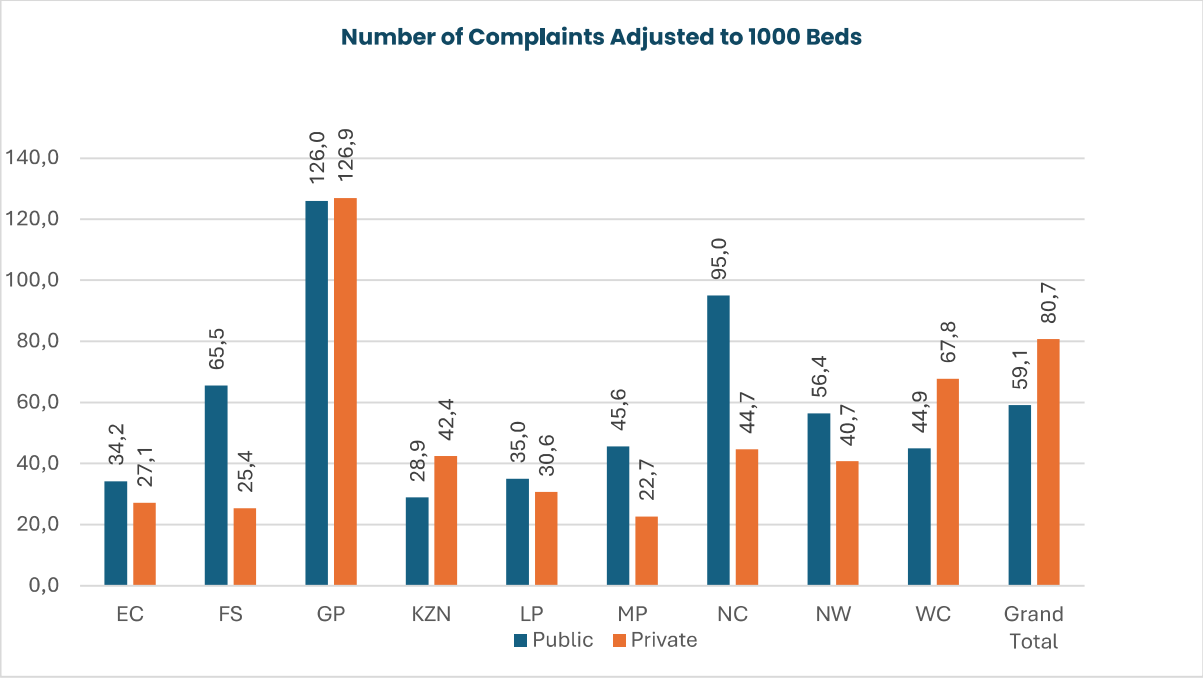


Figure 15: Number of complaints categorised by province per beds in the last three financial years

After adjusting the number of complaints to account for usable beds per province (Figure 15), Gauteng still remains the highest province for both public and private hospitals which were similar. Interestingly, Western Cape and Kwa-Zulu Natal had more private hospital complaints in contrast to all other provinces which had equal or more public hospital complaints and this made the national aggregate to reflect more cases from private hospitals per number of usable beds. Interestingly, that Western Cape and KwaZulu-Natal had less public hospital complaints may reflect their good functioning complaints management processes.

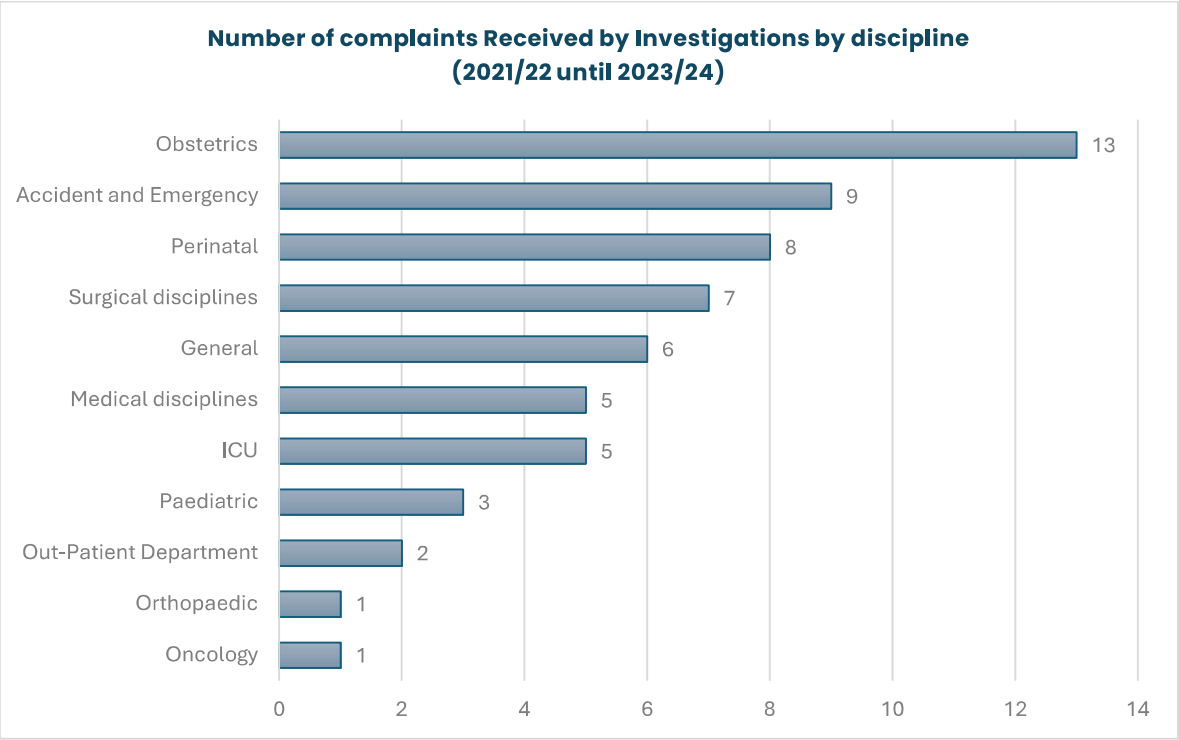


Figure 16: Number of complaints per discipline received by Investigations in the last three financial years

Obstetrics, accident and emergency, and perinatal, were the top three referred cases for investigation (Figure 16). When obstetrics and perinatal cases are put together, they constituted 41% of cases for investigation, this reflects poor pregnancy management in the country.

7. Involvement of the Office of Health Ombud in National Preventative Mechanism (NPM)

7.1 Background of the NPM

South Africa ratified the United Nations' Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) of persons deprived of liberty. Under Article 3 of OPCAT, States or parties must designate, maintain, or establish a National Preventive Mechanism (NPM) to strengthen the protection of persons who are or may be deprived of their liberty.

South Africa adopted a multibody mechanism where five (5) pre-existing constitutional and statutory institutions were designated for the NPM process. The rationale is that designating multiple bodies, the NPM process benefits from existing monitoring infrastructure, and each NPM member institution focuses on its thematic field of expertise.

The South African Human Rights Commission (SAHRC) is designated to play a coordinating role in a cooperative model that includes four (4) other independent oversight institutions; the Judicial Inspectorate for Correctional Services (JICS); the Military Ombud (MO); the Independent Police Investigative Directorate (IPID), and the Health Ombud (HO).

7.2 NPM Mandate

The mandate of the NPM is to strengthen the protection of persons who are or may be deprived of their liberty in places of deprivation of liberty. This mandate is realised through proactive and preventive monitoring of places of deprivation of liberty and examining the treatment of persons deprived of their liberty by conducting regular unannounced visits to places of deprivation.

Although the previous Health Ombud did not participate in the NPM due to lack of funding, the current Health Ombud started participation and, in collaboration with other NPM members, conducted joint unannounced visits in three (3) Provinces, i.e. Northwest; Mpumalanga, and the Northern Cape while still awaiting funding that has been requested through the National Department of Health. To date, a total of 34 unannounced NPM visits were conducted.

7.3 Oversight Visits

The NPM visiting delegation conducted the following oversight visits:

7.3.1 North West Province unannounced visit

Seven unannounced visits were conducted in the Northwest Province during 02 – 06 October 2023, as follows:

- 4 x Police Stations
- 1 x Correctional Centre
- 1 x Psychiatric Facility (Bophelong Psychiatric Hospital)
- 1 x Secure Care Centre

The thrust and focus of the Health Ombud team was on healthcare facilities, specifically the psychiatry hospitals. The North West Psychiatry Hospital in Mabatho has only half its wards commissioned because of staff shortage. If fully commissioned, this hospital can absorb a large number of State patients waiting in Mpumalanga prisons. Mpumalanga has got no psychiatric hospital.

7.3.1.1 Findings from the Bophelong Psychiatric Hospital Inspection

7.3.1.1.1 Infrastructure

a) The hospital structure comprised several face brick buildings that were apparently new and were well maintained. However, in a few wards/buildings, the roof was leaking from construction defects.

b) In some instances the toilets/staff changing rooms did not have toilet seats or toilet paper. In the female staff changing room, for example, a dirty/untidy shower was also noted.

c) Another issue noted was the presence of "hard water" (containing too much alkaline) within the facility that contributed to blockage of drains and a need for regular replacement of heating elements. To address this issue, the CEO and his management team have motivated for onsite water treatment plant.

7.3.1.1.2 Security system:

a) There was restricted access to the hospital with multiple security guards in place at the front entrance gate and within the hospital premises.

b) One access gate to the grounds and surrounding security fence around the wards was open, constituting a risk to containment of in-patient MHCUs.

c) The physical infrastructure for security scanners and cameras were installed at all entrances and exits but not fully operational yet.

7.3.1.1.3 Kitchen

a) A spacious and well-laid-out kitchen is fully equipped and fully functioning.

b) Management indicated that in the previous years, there had been shortages in the supply of certain food items due to non-payment of suppliers by other health facilities. In these instances, Mediware, the contracted operator, had provided the kitchen manager with cash to purchase suitable alternative food items.

c) A monthly menu revealed well-balanced meal planning. However, several items were noted to have been substituted/replaced due to non-payment of suppliers. This may compromise the quality, nutritional value and/or variety of food provided to MHCUs in the longer term.

d) There is no dietician employed at BPH.

7.3.1.1.4 Acute male ward

The ward accommodates 30 MHUs and a central nursing station and was well run.

7.3.1.1.5 Male State patient observation ward:

a) The ward comprises gated single-patient rooms with ensuite toilets and water faucets and a large opaque window.

b) There is an ablution block in the ward where some toilets were not in good condition.

c) There was a dining room / recreational area with fixed tables and chairs and a TV. There was also a large fenced-off outdoor exercise area.

d) The security gates were not closed due to load shedding. The opaque glass window in each room was found to hinder visual access to the acute patients (SP's).

e) There were 3 male SP's in the ward, who were interviewed in the outdoor exercise area. They were generally satisfied with BPH facilities and staff. Their main request was for access to cigarettes.

7.3.1.1.6 Female State patient ward:

a) The ward comprises single-patient rooms with ensuite toilets and water faucets.

b) There was also a single large seclusion room in place.

c) The ward was previously intended to be a medical ward.

d) There was no dining room, recreational area, or outdoor exercise area.

e) There were five female MHCUs in the ward. They were generally satisfied with BPH facilities and staff except for a lack of recreational facilities.

7.3.1.1.7 Other challenges

a) The BPH is struggling to hire Psychiatrists and other Specialised Professionals. No children are admitted at the facility. A Child Clinic will only be accommodated in the new building of the BPH in the future.

7.3.1.1.8 Recommendations

7.3.1.1.8.1 Infrastructure

a) Ensure ongoing maintenance and cleanliness of toilets/staff changing rooms

b) Ensure that the responsible building contractor/s attends to all identified structural roof defects

c) Development of an onsite water treatment plant.

7.3.1.1.8.2 Security

Fast-track the operationalization of the electronic security system.

7.3.1.1.8.3 Kitchen

a) Prioritise provision of food items as per scheduled menus.

b) Prioritise the appointment of a Dietician.

7.3.1.1.8.4 Male State patient observation ward

a) Ensure all toilets, taps and water faucets are functional at all times.

b) Install one-way glass windows in each room to allow for improved surveillance and security of MHCUs.

7.3.1.1.8.5 Female State patient ward:

a) Ensure adequate use of available space to create a suitable dining area/facility – immediate implementation.

b) Provide recreational facilities (TV and / radio)

c) Ensure all patients are provided an opportunity to spend at least one hour/day outdoors engaging in physical exercise. Where possible, an outdoor / exercise area should be provided to ensure gender equity/ parity.

7.3.1.1.8.6 Clinical Audits:

a) Monthly audits to be conducted to ensure provision of quality clinical care for MHCUs and compliance with SOPs.

b) Needs-based staff training and re-training to be conducted in line with clinical audit findings.

7.3.2 Mpumalanga Province Unannounced Visit

Eleven unannounced visits were conducted in the Mpumalanga Province during 27 - 29 November 2023 and 01 December 2023, as follows:

8 x Police Stations

1 x Correctional Centre

1 x Psychiatric Facility (Rob Ferreira Psychiatric Unit)

1 x Secure Care Centre

Mpumalanga has got no psychiatric hospital and refers accused mental patients to Weskoppies Psychiatric Hospital in Pretoria for prescribed forensic observations. Mpumalanga prisons have a high number of State patients awaiting admission to psychiatry hospitals in other provinces.

The Rob Ferreira Hospital Psychiatric Unit has got poorly designed and maintained 72-hour observation wards (previously general medical wards). These need refurbishment for psychiatric use. Their short stay purpose built unit is well run. A criticism is poor ventilation in the seclusion cubicles.

7.3.3 Northern Cape Province Unannounced Visit

Sixteen (16) unannounced visits were conducted in Northern Cape Province from 19 – 23 February 2024, as follows:

8 x Police Stations

3 x Correctional Centres

2 x Psychiatric Facilities (Dr Harry Surtie Regional Hospital and Kimberley Psychiatric Hospital)

2 x Secure Care Centres, and

1 x Magistrate Court Holding Cells

NB: Though Dr Harry Surtie Regional Hospital is not a Psychiatric Hospital, it offers 72-hour Mental Health Care User Observation services.

The new Kimberley Psychiatry Hospital had only half its bed capacity utilised because of staff and funding shortage. If fully operational, it could alleviate the high number of State patients waiting in prisons, especially in Mpumalanga Province.

7.3.4 NPM Unannounced Visits Observations/Findings

Some of the general observations of the NPM member institutions are the following:

i. Shortage of staff all round;

ii. Shortage of sleeping beds and or mattresses in police cells;

iii. Shortage of uniforms, e.g. shoes for the juvenile inmates in Douglas Correctional Centre;

iv. Non-compliance with the Occupational Health and Safety Act, e.g. fire extinguishers and hydrants were out of service;

v. Overcrowding in some Correctional Services Centres;

vi. Shortage of Nurses and Doctors in some Correctional Service Centres, and

vii. New Psychiatry hospitals in North West and Northern Cape provinces are woefully under-utilized because of "lack of funding."

7.4 NPM Meetings

In addition to the unannounced provincial visits, the Health Ombud and his team also attended the following NPM meetings:

a) Strategic Plan meeting from 14 to 15 November 2023. The meeting was attended by all 5 NPM member institutions. The purpose of the meeting was to explore the direction of the NPM from a strategic point of view, reflect on the NPM's strategic priorities, and discuss some activities that should be undertaken in the 24/25 financial year.

b) The NPM Technical Working Group Meeting on 21 November 2023 and 05 March 2024. To discuss the Terms of Reference (ToR) for the NPM Technical Working Group, such as the NPM 2024/25 draft Governance Calendar, Appointment Certificates as well as the NPM Draft Bill.

c) The NPM Steering Committee Meeting on 05 September 2023. The meeting was attended by all five NPM member institutions to discuss the strategic directions and governance issues of the NPM, such as the visit of the United Nations Subcommittee on the Prevention of Torture (SPT) and the NPM Strategic Planning, and to get feedback on governance and institutional model.

7.5 NPM Responsible Team

The Health Ombud has assembled a team in Legal Cases Unit to attend to NPM matters, including workshops; training; meetings, and inspections.

8. Human Resources and Funding

8.1 Human Resources

Over the 2023/24 financial year, the number of staff in the Complaints Management process increased from 27 to 32, with the addition of 5 contract investigators. Over this period, the OHO had 20 permanent staff, nine contract staff, and two interns.

Table 7: Human resources capacity in the Office of the Health Ombud

Staff Category	# Permanent	# Contract	Total
Health Ombud	0	1	01
Executive Assistant	1	0	01
Executive Manager	1	0	01
Personal Assistant	1	0	01
Director / Senior Investigators	3	0	03
Deputy Directors / Investigators	4	6	10
Assistant Directors	5	0	05
Complaints Officers	3	2	06
Administration Officer	0	1	01
Administration Clerks	2	0	02
Interns	0	2	02
Total	**20**	**11**	**32**

8.2 Linking Performance with Budgets

Programme	2023/2024			2022/2023		
	Budget	Actual Expenditure	(Over)/ Under Expenditure	Budget	Actual Expenditure	Over /Under Expenditure
Complaints Management and Office of the Ombud	21,403,802	29,387,818	(7,984,016)	**20,890,411**	**23,405,178**	**(2,514,767)**

The total expenditure for the Complaints Management division (the Office of the Health Ombud) was defrayed using the original budget and the surplus from the 2022/23 financial year approved by the National Treasury. Additional employees on short-term contracts were appointed to boost the human resource capacity of the OHO to assist in the resolution of the backlog of investigation cases.

8.3 Medium Term Expenditure Framework Figures

Programme	Audited outcomes 2023/24	2024/25	Medium-term estimates		
			2025/26	2026/27	2027/28
Complaints management and office of the Ombud	29 387 818,44	33 480 304,23	34 644 764,13	35 767 195,99	37 233 190,31

The Health Ombud was awarded R10 million from the MTEF of requested additional funding to translate temporary contract employees into permanent appointments to stabilise the workforce.

The Health Ombud submitted a request for further **R5 904 664** funding to undertake the NPM process.

The Health Ombud proposes a once-off task team *"Letsema"* to tackle the backlog of cases going back eight years in some cases. He submitted a request for a once-off funding of **R7 313 622,48** through the National Department of Health.

9. Office Accommodation

9.1 Background

The Office of Health Standards Compliance (OHSC) entered into a lease agreement for an office space with Mergence Africa Property Investment Trust, a Dipula Income Fund Limited subsidiary, at 79 Steve Biko & Soutpansberg Road, from 01 October 2018 to 31 October 2023. However, before the expiry date, the OHSC board successfully re-negotiated the current lease agreement, which commenced from 01 November 2023 to 31 October 2024, extendable for a further one (1) year while the OHSC is looking for a new building for lease.

9.2 Challenges

The current office space has the following limitations that impact negatively on attaining the effective execution of the Health Ombud's work:

9.2.1 The Health Ombud and senior staff members are placed in previous storerooms with no windows for fresh air or natural light.

9.2.2 The Call Centre operates in an open space that is prone to noise disruptions. There is no confidentiality while interviewing complainants.

9.2.3 Complaints Assessors and Investigators also work in an open space and experience some distractions when doing their work.

9.2.4 All these offices have poor ventilation, they do not have any form of fresh ventilation, and do not comply with the space planning norms and standards for the office buildings as gazetted. The Occupational Health and Safety Act, 85 (OHSA) of 1993 sets out norms and standards and sets out how offices occupied by a specific number of people should be constructed.

9.3 Proposal

To circumvent this situation, it would be best if the National Department of Health (NDoH) could assist in procuring office space for the Office of the Health Ombud that would be customised to its needs.

10. Engagement with External Stakeholders During the 2023/24 Financial year

10.1 Stakeholder Engagement Session for the Former Health Ombud

On 29 May 2023, the Office of the Health Ombud (OHO) hosted a stakeholder engagement session for its first inaugural South African first Health Ombud. Professor Malegapuru William Makgoba, who was appointed by the Minister of Health, Dr Aaron Motsoaledi on 1 June 2016 for a non-renewable term of seven years, concluding on 31 May 2023. The OHO met with internal and external stakeholders who contributed directly and indirectly to the Office in realisation of its mandate during his tenure.

Various stakeholders reflected on the contributions of Professor Makgoba as the Health Ombud in promoting healthcare for citizens in South Africa. These key stakeholders, amongst others, included the Minister of Home Affairs, Dr Aaron Motsoaledi and the Deputy Minister of Health, Dr Sibongiseni Dhlomo and the Chairperson of the OHSC Board.

10.2 Meeting with British Council Staff on Mutual Health Ombud Matters

On 26 July 2023 the Health Ombud, met with the staff of the British Council led by the Better Health Programme Advisor, Ms Tori Bungane, Development Counsellor, Mr Chris Austin, and Deputy Development Director, Mr Will Guest. The purpose of the meeting was to introduce the new Health Ombud to the team of Better Health Programme South Africa now being coordinated through the United Kingdom (UK) Foreign, Commonwealth and Development Office. The OHO have been working in partnership with the Parliamentary and Health Service Ombudsman in several areas through the support of global Better Health Programme to improve the health system in the UK and South Africa to foster co-operation. Amongst matters discussed, were the renewal of the twinning agreement which ended on 30 September 2022.

10.3 Meeting with the Health Professions Council of South Africa

On 14 August 2023, the Health Ombud, met with the Health Professions Council of South Africa (HPCSA) Registrar, Dr Magome Masike. The purpose of this engagement was to officially introduce the Health Ombud to the HPCSA Registrar, to establish rapport and collaboration on matters of common interests such as investigations, inspections and campaign awareness. Consequently, in February 2024, a formal MoU was signed by Dr Masike and Professor Mokoena on behalf of the two offices.

10.4 Meeting with the Military Ombud

On 28 August 2023 the Health Ombud met with the Military Ombud, Lieutenant General (Ret) Vusumuzi Ramakala Masondo. The purpose of the meeting was to officially introduce the Health Ombud to the Military Ombud, to establish rapport, collaboration on matters of common interests, to share best practices, lessons learnt and information dissemination. The meeting reflected on the role of the Office of the Health Ombud in the National Preventative Mechanism as well as the renewal of the MoU between the Ombuds which ended on 10 September 2023. In January 2024, a new MoU was signed by Lieutenant General Masondo and Professor Mokoena on behalf of the two offices.

10.5 Meeting with the South African Nursing Council

On 04 September 2023 the Health Ombud met with the Registrar and the CEO of the South African Nursing Council (SANC), Professor Ntombifikile Mtshali. The purpose was to officially introduce the Health Ombud to the Registrar and CEO to establish rapport, collaboration on matters of common interests such as conducting joint investigations, inspections, awareness campaigns of mutual interest, share best practices, lessons learnt and information dissemination. It was crucial for the OHO and the SANC to have a working relationship that ensures safeguarding the wellbeing of the healthcare users receiving healthcare services in the Republic of South Africa. A MoU is being drafted.

10.6 Meeting with the Public Protector of South Africa

On 18 January 2024 the Health Ombud met with the newly appointed Public Protector of the Republic of South Africa, Adv. Kholeka Gcaleka. The purpose was to officially introduce the Health Ombud to the Public Protector, and to renew the MoU which ended in February 2023. Emanating from the engagement, the two offices would continue to complement and strengthen each other's respective roles and functions, and enhance efficacy between the two institutions. A draft MoU went through an internal process for approval and will be finalised during the 2024/2025 financial year.

10.7 Collaboration with the National Library of South Africa

The interaction between the OHO and the National Library of South Africa (NLSA) commenced on 05 February 2024. The OHO sought access to library resources to enhance quality of work. The initiative was well received by NLSA management. The NLSA provided orientation to the OHO staff through formal presentation on 27 March 2024.

Library material that the OHO was particularly interested in included medical and legal books and journals essential for research during assessment and adjudication of complaints.

10.8 Meeting with the Tax Ombud

On 06 February 2024 the Health Ombud met with the Tax Ombud, Ms Yanga Mputa. The meeting was intended for gaining insight on matters of common interests such as complaints resolution, outreach campaigns and share best practices in the ombud space. The meeting reflected on the prospects of realisation of some degree of independence for the OHO. The Ombuds discussed the possibility of establishing an "Ombuds Campus", with shared services which will be beneficial to all ombuds offices through cost saving.

11. Strategic Planning

11.1 Discussions

The OHO held its two (2) day strategic planning review session during 13-14 December 2023. The strategic session reflected on the role of Health Ombudsman within human rights protection milieu in South Africa. Professor Barney Pityana, the founding Chairman of South African Human Rights Commission, was the keynote speaker.

The strategic session considered the development of distinct identity for the OHO separate from the OHSC in light of possible or perceived conflict of interest between OHSC as a regulator and Health Ombud as the monitor of health care system. The OHO needs its own mission, vision, values, symbols, logo, and email addresses.

In terms of building capacity and institutional memory, the OHO translated ten (10) temporary investigation staff into permanent employment after being granted funding by Treasury for this purpose. The emphasis was on devising and stabilising the workforce strategy to address legacy backlog cases since inception of the Office in 2016. It was decided to employ special contract investigators to tackle these backlog cases (Letsema).

11.2 Other Matters

11.2.1 NPM

Participation of the Health Ombud together with Human Rights Commission (as a coordinator), Judicial Inspectorate for Correction Services, Independent Police Investigative Directorate and the Military Ombud in the National Preventative Mechanism (NPM) which has been mandated by Parliament had hitherto not been undertaken because of lack of funding. However, the participation is **NOT** optional and thus it is imperative for the Health Ombud to participate. In this regard the Health Ombud has started participating in the NPM process and is to seek funding from Treasury via the National Department of Health.

11.2.2 Alternative office accommodation

A proposal of a ombudsmans' campus/village with shared services was briefly discussed. The current office building has got no suitable offices for the OHO staff including the Health Ombud. Furthermore, the office does not meet specification and standards set out by the Department of Employment and Labour for offices. The building is simply not suitable for human habitation.

11.2.3 OHO work processes reorganisation

To increase efficiency and accuracy of the work output. The reorganisation resulted into four (4) independent but interlinked units:

i) Call Centre,

ii) Complaints Assessment,

iii) Clinical/Health Cases Investigation,

iv) Legal Cases Investigation and NPM Team.

11.2.4 Discussion of an alternative, streamlined and cost-effective Appeals process

The Appeals process is managed by the Minister of Health as section 88A.(1) of the National Health Amendment Act of 2013 provides that any person aggrieved by any decision or finding and recommendation of the Ombud may lodge a written appeal with the Minister of Health. The Minister then appoints an ad hoc Tribunal constituting two medical personnel and one legal person to preside over the Appeal. This process has been found to be lengthy and cumbersome. It does not give the Minister any discretion to deal with trivial or frivolous appeals.

In order to streamline the process and allow for more efficiency in this process, The Health Ombud has proposed an alternative and cost-effective Appeals process, which comprises a preliminary internal review of the decisions of the Ombud within the Ministry of Health. The review panel is to be set up by the Minister of Health comprising of a core panel of experts, possibly retired professionals.

The review panel adjudicating the review application shall consider the following:

a) Whether the process of the investigation was fair and adequate to address all the complaint issues raised.

b) The merit of the investigating team's conclusion.

c) Whether the decision was properly explained to the complainant.

The review panel may:

a) Uphold the original decision

b) Change the original decision, or

c) Send the complaint back to the original or another investigator for further investigation.

d) Recommend referral to ad hoc Tribunal.

Should the complainant still be aggrieved by the review panel's decision, he/she may lodge an appeal with the Minister, who will appoint an independent ad hoc tribunal to adjudicate on the Appeal.

12. Health Ombud Bill

12.1 Background

The creation of the post of Health Ombud emanates from section 81 of the NHAA.

Section 81(3)(b) stipulates that the Ombud is located within the OHSC, and section 81(3)(c) provides that the Ombud is assisted by persons designated and seconded by the OHSC with the concurrence of the Ombud – this effectively means that the Health Ombud has no staff, and the staff that are seconded to the OHO continue to be employees of the OHSC.

12.2 Challenges

These restrictive provisions have created various challenges for the functioning of the Office of the Health Ombud as the Ombud is unable amongst others, to recruit and select employees, and procure any goods or services from service providers, without the involvement of the OHSC.

In order to circumvent this and ensure an effective and independent office of the Health Ombud, an Health Ombud Bill was drafted with the intention of defining the functions of the Health Ombud, and to provide for the appointment, remuneration, powers and functions of the Health Ombud which would extend to the staff of the OHO.

12.3 Status Quo

The Bill served at the Social Protection, Community and Human Development (SPCHD Cluster) in January 2023 and National Treasury raised concerns about the number of statutory bodies being created. The Cluster requested the National Department of Health to consult with National Treasury which then rejected the Bill based on a lack of funding.

12.4 Amendment of the Current NHA

Given the reluctance of National Treasury to advance the Health Ombud Bill, an interim solution could be amendment of the current NHA to create an autonomous Office of the Health Ombud which would enjoy ringfenced funding out of which it can appoint its own human resources, make its own procurement of goods and services and above all diffuse liability away from the person of the Health Ombud to the "entity" of the "Office of the Health Ombud".

13. Media Engagements

13.1 Work of the OHO

Radio plays a vital role as a communication medium for the Office of the Health Ombud (OHO). Its extensive reach makes radio advertising an indispensable part of any entity's marketing strategy, regardless of the growing influence of newer platforms. The Office diligently manages media relations to ensure stakeholders are well-informed about the Health Ombud's important work.

During the reporting period, the OHO organised three media briefings facilitated by the Government Communication Information System (GCIS). These briefings aimed to share the investigation report on patient care at Motherwell NU 11 Clinic (below), to reflect on the former Ombud's term and to introduce the new Ombud. Media advisories and releases were also distributed to explain the Ombud's roles in print and digital media. The Health Ombud and OHO executives participated in several radio and television interviews to ensure that the public is well-informed about the Ombud's roles and functions. This proactive approach demonstrates the OHO's commitment to transparency and accountability in addressing healthcare concerns and informing the public.

The OHO greatly appreciates the impact that the media has on spreading awareness of its cause. Despite resource limitations, the entity is committed to exploring innovative approaches to effectively communicate its messages.

The OHO has partnered with the GCIS to host government exhibition days nationwide. These events successfully took place in Gauteng, the Free State, and the Western Cape. The aim of these activities was to educate the public and health service users about the expected standards of care in various health establishments and the OHO's role in enforcing compliance with these standards. They also discussed how individuals can use the OHO to lodge complaints or advocate for addressing lapses in quality of care.

The OHO provides valuable information to its stakeholders, especially those who use health services in different communities nationwide. The goal is to effectively communicate the core values of the OHO and maintain consistent engagement with external stakeholders, irrespective of their reach.

13.2 Motherwell Investigation

13.2.1 Background of the Complaint

The complaint was lodged by the Democratic Alliance's (DA) Shadow Minister of Health, Ms Michelle Clarke, MP (M Clarke) against Motherwell NU 11 Clinic, in the Eastern Cape (EC) Province on 30 September 2022.

The complaint was risk rated as "extreme".

It was alleged that the Motherwell NU 11 Clinic failed to assist Ms V, a

15-year-old girl who went to the clinic accompanied by an elderly woman seeking healthcare after being sexually assaulted. Ms V was instead turned away by healthcare workers at the clinic and later died at the Motherwell Police Station Community Service Centre (MPSCSC) where she had been referred to for assistance.

13.2.2 Issues Investigated

The following issues were identified and investigated:

13.0.1.1 Whether Ms. Z V was denied provision of care at Motherwell NU 11 Clinic;

13.0.1.2 Whether Motherwell NU 11 Clinic failed to refer Ms. Z V to the next level of care, and

13.0.1.3 Whether the death of Ms. Z V was due to negligence of the healthcare workers at Motherwell NU 11 Clinic.

13.2.3 Recommendations by the OHO

The following recommendations were made by the OHO:

13.2.3.1 Disciplinary Inquiry

The District Manager of the Nelson Mandela Bay District Health Hospital (NMBDH) should institute a disciplinary inquiry *within one (1) month,* in terms of the prevailing policy and compatible with the Labour Relations Act (LRA), 66 of 1995 against specified personnel.

13.2.4 Security challenges

The HoD must, *within three (3) months*, submit to the CEO of the OHSC a security plan to protect users, healthcare personnel, and clinic property from security threats and risks and ensure that security staff is capacitated to deal with security incidents, threats, and risks for 24 hours daily including weekends and public holidays.

13.2.4.1 Mentoring Offer by Eastern Cape Department of Health (ECDoH) Adult Primary Care (APC) to nurses

The District Manager of NMBDH must, *within two (2) months* ensure that mentoring is provided to the healthcare workers who attended APC training.

13.2.4.2 No Proper Signposting of services and clinic hours.

The District Manager of NMBDH and HoD of ECDoH must, within six (6) months procure the service provider to install the Service/Notice Board at the Motherwell Clinic that indicates the health care services provided by the clinic and indication of working times at the clinic.

Signposts should be installed on the access roads to guide healthcare users about the direction and location of the clinic.

13.2.4.3 Rotational schedule of doctors at Motherwell NU 11 Clinic

The HoD should *within three (3) months* increase the number of doctors' visits at the clinic to three (3) days per week.

13.2.4.4 Staff complement

The NMBDH and ECDoH should prioritise the appointment of an extra permanent cleaner at Motherwell NU 11 Clinic *within three (3) months* in line with the Human Resources Management Policy.

13.2.4.5 Sexual Assault Standard Operating Procedure

The District Manager of NMBDH must *within one (1) month* ensure the Standard Operating Procedure for the management of sexual assault cases is developed and in-service training is provided to the staff at Motherwell NU 11 Clinic.

13.2.4.6 Prioritisation of Motherwell NU 11 Clinic Infrastructure

The Premier of the ECPD should *within six (6) months* ensure that Motherwell Clinic is prioritised for refurbishment.

Mobile containers to be procured to cater to extra consultation rooms as an immediate temporary solution.

13.2.4.7 Supervision of Clinics within Sub-District A

The HoD should within six (6) to twelve (12) months ensure the provision of extra motor vehicles in Sub-District A, to enable the Sub-District Coordinator to support and monitor the implementation of health care services in the clinic.

In instances where staff utilise their own motor vehicles for work-related matters, they should be compensated financially as guided by the Public Finance Management Act (PFMA).

Employees who are not part of the Senior Management Service (SMS), using their own motor vehicles for work-related purposes, should be indemnified in case of accidents.

13.2.4.8 Acting Personnel in key positions.

The HoD must *within six (6) months* ensure that posts occupied by people who are acting within the NMBDH are advertised and filled to ensure continuity and accountability.

13.2.4.9 Redress of Family/Supporting persons

The District Manager of NMBDH must:

(a) Arrange a meeting with the family *within 30 working days*, to explain the conditions and events that led to the death of Ms. Z V and offer an apology in order to facilitate closure.

(b) Arrange counselling to the family of Ms. Z V *within 30 working days*, to facilitate closure regarding her death.

(c) Assist Ms. N. V with transport as necessary in order to facilitate her attending meetings and counselling sessions as contemplated in (a) and (b) above.

The Mother of Ms. Z V, Ms. N V should:

(aa) Attend a redress meeting when invited by the District Manager of NMBDH for an explanation to be offered regarding the events that led to the death of Ms. Z V.

(bb) Attend counselling offered by the District Manager of NMBDH to assist in obtaining closure regarding Ms. Z V's death.

13.2.4.10 Non-compliance with Section 17 of the Occupational Health and Safety Act, 85 of 1993

The HoD of the Eastern Cape Department of Labour *must within 30 working days* conduct routine inspections at Motherwell Police Station CSC, to ensure compliance with section 17 of the Occupational Health and Safety Act, 85 of 1993, and take appropriate action/sanction if found to be non-compliant.

13.2.4.11 Sexual Assault Referral Policy

It is imperative for the District Manager of NMBDH to develop and disseminate a practical and realistic sexual assault referral policy *within two months*. This policy is to be developed in order to coordinate processes and operations between Health facilities, Thutuzela Care Center(s), Family Violence, Child Protection, and Sexual Offences Unit, and SAPS charge offices and other facilities.

The Ombud is to be furnished with a copy of the Sexual Assault Referral Policy within six months of the date of this report.

13.2.4.12 South African Police Services

In view of the *"laissez-faire"* or *"yekelela"* attitude and culture currently prevalent within all echelons of the SAPS in NMBDH, regarding persons in clinical distress, the following are recommended:

a) Plans be put in place that all SAPS employees engaged with the public are trained in first aid or have easy physical access to first responders 24 hours a day. This should be implemented within twelve months of finalisation of this report.

b) Improve record-keeping processes to promote transparency and accountability, within two months of finalisation of the report.

14. Future Plans

The Health Ombud should work to consolidate previous achievements and focus on future areas of development:

14.1 Office Space

The Office of Health Ombud staff is accommodated (together with OHSC) in an uninhabitable building. Most senior staff, including the Health Ombud and his assistant, are housed in storerooms with poor ventilation nor natural light because there are no windows to the outside. The open plan arrangement for junior staff at the call centre and for investigators is disruptive with frequent distractions and a total lack of privacy during patient/complainant interviews.

The Health Ombud should look for suitable office space if the OHSC fails to procure one even after an extended period.

14.2 Resolution of Legacy Backlog Complaints

The legacy of backlog complaints investigation needs to be addressed in earnest. A special project task team "*Letsema*" is needed and funding has been requested but is awaiting approval by Treasury.

The Health Ombud will lobby the National Department of Health, National Treasury and the Parliamentary Health Portfolio Committee to realise this.

14.3 Participation in the National Preventative Mechanism

South Africa became a signatory to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) since 2019. The United Nations Organisation requires States to establish a NPM which will monitor the OPCAT programme. South Africa opted for a multiple institutions model for NPM which includes the SAHRC (which is the designated co-ordinator), JICS, IPID and the Military Ombud in addition to the Health Ombud. Government has not voted special funding for the NPM process but individual member institutions are expected to fund their own participation in the NPM process.

Previously, the Health Ombud did not participate in NPM because of lack of funding. However, the current Health Ombud does not consider the non-participation as a viable option because expertise for inspection and monitoring of psychiatric hospitals only resides with the OHO among the NPM member institutions. Therefore the Health Ombud has started active participation in the NPM process. Request for funding has been submitted and is awaiting approval from National Treasury.

The Health Ombud will lobby the NDoH, National Treasury and the Parliamentary Health Portfolio Committee to realise this.

14.4 Staff Development

The main thrust of the Health Ombud is to monitor and improve quality and safety in the healthcare delivery system, primarily by analysis of complaints and media reports of poor service provision. This needs staff members to research and analyse data.

The Health Ombud intends to seek funding for staff development in order to capacitate staff on data analytics.

14.5 Stakeholder Engagements

14.5.1 The Health Ombud will refresh the previous agreement with the United Kingdom Parliamentary and Health Services Ombudsman.

14.5.2 The Health Ombud seeks to have an agreement/arrangement with the Australian High Commissioner from whose country the Health Ombud the OHO designed investigation tools.

14.5.3 Strengthening and expanding memberships of International Ombuds organisations.

14.5.4 Continued engagements with fraternal institutions for co-operation, learnings and prevention of duplication of efforts.

14.5.5 Campaigns and adverts about the work of the Health Ombud especially among the poor and disadvantaged, particularly rural communities, should be strengthened.

14.5.6 Publicising analysis of reports of the Health Ombud in lay, professional and scientific media.

14.6 Independence of the OHO

The Health Ombud needs to be independent and be seen to be independent. The current legislative architecture of the Health Ombud's office and staff locates them within the OHSC. Likewise, the Health Ombud is appointed by, and reports to the Minister of Health. These create potential areas of conflict.

a) The OHSC is the regulator of health establishments and the recommendations of the Health Ombud are monitored or enforced by the OHSC. When the health establishments are aggrieved by the decision of the OHSC, they have recourse to the Health Ombud. However, the location of the OHO within the OHSC would create doubt about the objectivity of the Health Ombud especially if the Health Ombud finds in favour of the OHSC.

b) The appointment of the Health Ombud by the Minister of Health who is ultimately responsible politically for a large part of healthcare delivery institutions from large central hospitals to community clinics creates a potential conflict and credibility gap when the Health Ombud needs to investigate and monitor these facilities.

c) The current legislation leaves the Health Ombud vulnerable for litigation in his personal capacity.

d) The appeals mechanism against the Health Ombud's decisions directs that appeals be lodged with the Minister of Health who SHALL appoint an independent ad hoc Tribunal whose members are defined. This is an expensive tool which gives no discretion in addressing trivial or frivolous appeals.

Therefore there is a need to press on with the enactment of the current Ombud Bill. As such an enactment process takes long, an interim solution would be to amend the current NHA to

a) Create an independent Office of the Health Ombud;

b) Direct Parliament to appoint the Health Ombud, perhaps with recommendations from the Minister of Health;

c) Delineate the OHO to be the responsible *persona* for the purposes of litigation, and

d) The Minister of Health should have different options to address appeals which could include a standing preliminary committee in addition to the current ad hoc Tribunal provision.

The Health Ombud must drive the separation and independence of the OHO symbols, logos and tools such as email addresses, similar to Health Ombud website, away from the OHSC.

14.7 Preparation for the National Health Insurance (NHI)

It is expected that there will be an increase in complaints with the implementation of the NHI, not only from users of healthcare establishments but also from healthcare establishments themselves when their activities are curtailed by the regulator, the OHSC. The OHO must therefore increase the number of its investigating staff. It is envisaged that some of the temporary "*Letsema*" employees could be absorbed into the permanent workforce in anticipation of this increased activity.

RP257/2024

ISBN: **978-1-77997-214-9**

Title of Publications: **Office of Health Ombud**

OHO Annual Report 2023/24.

Telephone: 012 942 7700

Physical Address: **Office of Health Ombud**

79 Steve Biko Road Prinshof

Pretoria

Postal Address: Private Bag X21

Arcadia, 0007

Website: www.oho.org.za