



Western Cape Government • Wes-Kaapse Regering • URhulumente weNtshona Koloni

PROVINCE OF THE WESTERN CAPE

PROVINSIE WES-KAAP

IPHONDO LENTSHONA KOLONI

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INHOUD

IZIQUATHO

(*Reprints are obtainable at Room M21, Provincial Legislature Building, 7 Wale Street, Cape Town 8001.)

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(*Ushicilelo oLutsha lufumaneka kwigumbi M21, kwiSakhiwo sePhondo seNdlu yoWiso Mthetho, 7 Wale Street, eKapa 8001.)

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The following draft regulations are published for comment:

Die volgende konsepregulasies word vir kommentaar gepubliseer:

Le migaqo ilandelayo ipapashelwe ukuba abantu banike izimvo zabo:

The Draft Western Cape Provincial Police Ombudsman Regulations, 2014.

Die Konsepregulasies op die Wes-Kaapse Provinsiale Polisie-ombudsman, 2014

IMigaqo kaNozikhalazo wa Mapolisa ePhondo leNtshona Koloni eSayilwayo, 2014.

Any person or organisation wishing to comment on the draft regulations is requested to lodge such comment in writing before or on 31 January 2015:

Enige persoon of organisasie wat op die konsepregulasies kommentaar wil lewer, word versoek om sodanige kommentaar voor of op 31 Januarie 2015 in te dien. Kommentaar kan ingedien word:

Nawuphi na umntu okanye umbutho ofuna ukufaka izimvo zawo ngale migaqo isayilwayo, uyacelwa ukuba angensie ezo zimvo zakhe ezibhalile phambi komhla okanye ngomhla wama-31 eyhoMqungu 2015. Izimvo zakho ungazithumela ngokuthi:

(a) by posting it to:
The Head of the Department of Community Safety
PO Box 5346
Cape Town 8000
Attention: Adv JC Gerber SC

(a) deur dit te pos aan:
Die Hoof van die Departement van Gemeenskapsveiligheid
Posbus 5346
Kaapstad 8000
Aandag: Adv JC Gerber SC

(a) Uziposele kulo ulandelayo:
INtloko yeSebe lezokKhuseleka loLuntu
PO Box 5346
Cape Town 8000
Kwingqalelo: ka-Adv JC Gerber SC

(b) by delivering it to:
Room 2.18
2nd Floor
35 Wale Street
Cape Town 8000
Attention: Adv JC Gerber SC

(b) deur dit af te lewer by:
Kamer 2.18
2de Vloer
Waalstraat 35
Kaapstad 8000
Aandag: Adv JC Gerber SC

(b) Okanye uzise:
KwiGumbi 2.18
kuMgangatho wesi-2
35 Wale Street
EKapa 8000
Ufune u-: Adv JC Gerber SC

(c) by faxing it to:
Fax no: 086 531 4283
Attention: Adv JC Gerber SC

(c) deur dit te faks aan:
Faksnommer: 086 531 4283
Aandag: Adv JC Gerber SC

(c) Ungazifeksela kule nombolo:
Inombolo yefeksi: 086 531 4283
Kwingqalelo: ka-Adv JC Gerber SC

(d) by e-mailing it to:
jan.gerber@westerncape.gov.za

(d) deur dit te e-pos aan:
jan.gerber@westerncape.gov.za

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jan.gerber@westerncape.gov.za

PROVINCIAL NOTICE

The following Provincial Notice is published for comment.

ADV. B. GERBER,
DIRECTOR-GENERAL

Provincial Building,
Wale Street,
Cape Town.

PROVINSIALE KENNISGEWING

Die volgende Provinsiale Kennisgewing word vir kommentaar gepubliseer.

ADV. B. GERBER,
DIREKTEUR-GENERAAL

Provinsiale Gebou,
Waalstraat,
Kaapstad.

ISAZISO SEPHONDO

Esi saziso silandelayo sipapashelwe ukunika izimvo.

ADV. B. GERBER,
UMLAWULI-JIKELELE

iSakhiwo sePhondo,
Wale Street,
eKapa.

PROVINCIAL NOTICE

P.N. 323/2014

2 December 2014

DEPARTMENT OF COMMUNITY SAFETY**THE DRAFT WESTERN CAPE PROVINCIAL POLICE OMBUDSMAN REGULATIONS, 2014**

The Provincial Minister of Community Safety intends to make the regulations set out in the Schedule under section 31 of the Western Cape Community Safety Act, 2013 (Act 3 of 2013).

SCHEDULE**ARRANGEMENT OF REGULATIONS***Regulations*

1. Definitions
2. Submitting complaints
3. Manner of submitting complaints
4. Processing of complaints
5. Notice of investigation
6. Publication of information regarding investigations
7. Cooperation by organs of state in investigations
8. Format of investigation
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13. Method of resolving complaints
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15. Monitoring of recommendations
16. Reporting by Ombudsman
17. Certificate of appointment of investigating officers
18. Conditions of appointment
19. Short title

Definitions

1. In these regulations, a word or expression to which a meaning has been assigned in the Western Cape Community Safety Act, 2013 (Act 3 of 2013) has the meaning so assigned and, unless the context indicates otherwise—

“**complaint**” means a complaint submitted to the Ombudsman in terms of section 16 (1) or (2) of the Act;

“**complainant**” means a person or member of the Provincial Parliament contemplated in section 16 of the Act who submits a complaint to the Ombudsman;

“**investigating officer**” means a staff member or other suitable person designated as investigating officer in terms of section 18(3) of the Act;

“**staff member**” means a staff member of the Office of the Ombudsman established in terms of section 10 of the Act;

“**the Act**” means the Western Cape Community Safety Act, 2013 (Act 3 of 2013).

Submitting complaints

2. (1) A complaint submitted to the Ombudsman should preferably be in writing but an oral complaint submitted in person or by telephone may be accepted—

- (a) if it is not possible for a person who wishes to submit a complaint to reduce it to writing;
- (b) if it is not possible for a person who wishes to submit a complaint to send a written complaint to the Office of the Ombudsman; or
- (c) if the complaint concerns an urgent matter making it inadvisable to insist on a written complaint.

(2) An oral complaint must as soon as is reasonably possible be reduced to writing by a staff member, as duly designated by the Ombudsman, on the form provided for in Annexure A.

(3) The staff member, as duly designated, must, after an oral complaint has been reduced to writing in terms of subregulation (2), verify the correctness thereof by reading it back to the complainant and make amendments, if necessary.

(4) Subject to subregulation (1), a complaint is submitted in writing by submitting a completed and signed form in Annexure A to the Office of the Ombudsman.

- (5) A complaint must specify—
- (a) the name, identification or passport number and contact particulars of the complainant, if available;
 - (b) the nature of the complaint;
 - (c) the date and place of occurrence;
 - (d) a description of the incident and the grounds on which the complainant feels that the complaint should be investigated;
 - (e) the name of any police official involved in the incident or matter, if known to the complainant;
 - (f) the name of the police station, if applicable;
 - (g) the names and addresses, if available, of any person who could provide information relevant to the complaint;
 - (h) information regarding other mechanisms that the complainant has used in an attempt to resolve the complaint;
 - (i) particulars of any person who was involved in an attempt to resolve the complaint; and
 - (j) any other relevant information or documents that can be used during the investigation.
- (6) The completed and signed form in Annexure A must be accompanied by the following documents:
- (a) a copy of the complainant's identity document or passport, if available; and
 - (b) if a person is submitting the complaint as a member or in the interests of a group or class of persons or on behalf of an association or organisation, proof that the person submitting the complaint is authorised to act on behalf of the group or class of persons or on behalf of the association or organisation.
- (7) A staff member, duly designated by the Ombudsman, must render the necessary assistance, free of charge, to enable any person to comply with this regulation.

Manner of submitting complaints

3. (1) An oral complaint in person or by telephone as contemplated in regulation 2 may be submitted to the Office of the Ombudsman as contemplated in regulation 2(2) and (3).

(2) A written complaint contemplated in regulation 2(4) must be submitted to the Office of the Ombudsman in the following manner—

- (a) by handing it in during the office hours of the Office of the Ombudsman;
- (b) by facsimile;
- (c) by registered post, in which case the complainant must keep proof that the complaint has been posted;
- (d) by e-mail;
- (e) by Short Message Service; or
- (f) by completing and submitting a complaint form online via the Office of the Ombudsman's website or via social media.

Processing of complaints

4. (1) The Ombudsman must acknowledge receipt of a complaint submitted to the Office of the Ombudsman.

(2) The Ombudsman must upon receipt of a complaint determine whether the complaint falls within the ambit of section 16(1) or (2) of the Act.

(3) Any complaint or aspect thereof may be referred in writing by the Ombudsman to an appropriate authority or institution that is competent to deal with the complaint.

(4) The complainant must be informed in writing by the Ombudsman of the referral thereof to an appropriate authority or institution.

(5) If a complaint is investigated by the Ombudsman, the complainant must be informed in writing by the Ombudsman that his or her complaint is being investigated by an identified investigating officer and of the name and contact details of the investigating officer.

Notice of complaint

5. The Ombudsman must give written notice to the executive head of the municipal police service or the Provincial Commissioner concerned of an investigation in terms of section 17 of the Act and invite the relevant police service to submit written comment on the complaint to the Ombudsman within the period stated in the notice.

Publication of information regarding investigations

6. If the Ombudsman is investigating a complaint and it appears that further information is required from members of the public, the Ombudsman may in addition to the notice in the *Provincial Gazette* in terms of section 17(3) of the Act, publish information regarding the complaint being investigated and, if applicable, information required in connection with the investigation in any newspaper circulating in the area concerned and invite members of the public to make written representations regarding the complaint to the Ombudsman.

Cooperation by organs of state in investigations

7. (1) The Ombudsman must before exercising the power to direct a police official or person employed by an organ of state in terms of section 18(1) of the Act, endeavour to seek the co-operation in terms of subregulations (2) to (6) of the police service or organ of state concerned for purposes of investigating the complaint.

(2) The Ombudsman may, during the performance of his or her functions, request through the Provincial Commissioner or executive head of the relevant municipal police service, an interview with a police official relating to the investigation of a complaint.

(3) The purpose of the interview contemplated in subregulation (2) is to—

- (a) where necessary, inform the relevant police official more fully of the complaint;
- (b) obtain the views of the relevant police official regarding the complaint and the factual averments on which the complaint is based; and
- (c) if possible, resolve the complaint.

(4) During the interview contemplated in subregulation (2), the police official must—

- (a) provide the information relevant to the investigation, either in writing or orally, as may reasonably be required; and
- (b) produce any document in his or her possession or under his or her control as may reasonably be required.

(5) A police official required to attend an interview may, depending on the circumstances, be given reasonable notice either orally or in writing of the nature and purpose of the interview and the date, place and time thereof.

(6) The Ombudsman is responsible for ensuring that any document received from the police is duly recorded and kept in safe custody.

(7) Any refusal by a police official to co-operate with the Ombudsman in terms of this regulation must be brought to the attention of the Provincial Commissioner or executive head of the relevant municipal police service, as the case may be, and the Provincial Minister.

Format of investigation

8. The procedure to be followed in conducting an investigation in terms of section 17 of the Act must be determined by the Ombudsman with due regard to the circumstances of each case and may include the following or any combination thereof:

- (a) communication by telephone, e-mail or any other form of correspondence;
- (b) research, inspections *in loco*, surveys or questionnaires;
- (c) meetings with affected persons reasonably believed to have information relevant to the investigation; or
- (d) appearance of a person before the Ombudsman for purposes of obtaining or clarifying information, or to produce any document as contemplated in section 18(1) of the Act.

Form of directions

9. (1) A direction issued by the Ombudsman in terms of section 18(1) of the Act must be in writing and contain the following:

- (a) particulars of the matter in connection with which the person is directed to appear, submit an affidavit or affirmed declaration or to produce any document;
- (b) the date, time and place of the appearance or where the affidavit or affirmed declaration must be submitted or the document must be produced; and
- (c) the reason why the person has been directed to appear, submit an affidavit or affirmed declaration or to produce any document.

(2) The direction must be signed by the Ombudsman and served, either by a letter sent per registered post or delivery by the Ombudsman, on the person who is required to appear, submit an affidavit or affirmed declaration or to produce any document.

Legal representation and reply to implications

10. (1) A person directed to appear in terms of section 18(1) of the Act may not be assisted by a legal representative at an appearance unless he or she has applied to the Ombudsman to be so assisted and the Ombudsman has approved the application in terms of subregulation (2).

(2) If the Ombudsman is satisfied that the factual or legal issues justify that a person contemplated in subregulation (1) be assisted by a legal representative, he or she may approve that the person be so assisted.

(3) A person directed to appear in terms of section 18(1) of the Act who is not in the employ of the state is entitled to witness fees in accordance with the tariff prescribed in the regulations issued in terms of section 191(3) of the Criminal Procedure Act, 1977 (Act 51 of 1977).

(4) If it appears to the Ombudsman during the course of an investigation that any person is being implicated in the matter being investigated and that the implications may be to the detriment of that person or result in an adverse finding against that person, the Ombudsman must afford that person an opportunity to reply in connection therewith in any manner that may be expedient under the circumstances.

(5) If the implication referred to in subregulation (4) is made by a person by virtue of a direction in terms of section 18(1) of the Act, then the implicated person or his or her legal representative may not question the person who made the implication unless the Ombudsman is satisfied that the factual or legal issues justify the questioning.

Confidentiality and disclosure

11. (1) Every person employed in the execution of the functions of the Ombudsman, including any person appointed or designated to take down or record the proceedings of an investigation in writing or mechanically, or employed to transcribe the records so taken down, must preserve the confidentiality of any matter or information that may come to his or her knowledge in the performance of his or her duties in connection with the said functions, except in so far as the publication of such matter or information is necessary or incidental to any report of the Ombudsman.

(2) No person may disclose to any other person any matter or information obtained for the purpose of and in connection with an investigation in terms of section 17 and 18 of the Act or allow or permit any other person to have access to any records of the Ombudsman relating to an investigation, except in so far as it is necessary in the performance of his or her duties in connection with the functions of the Ombudsman or unless the Ombudsman determines otherwise.

(3) The Ombudsman may in the interest of justice direct that any category of persons or all persons whose presence is not desirable may not be present at any appearance in terms of section 18(1) of the Act.

Recording of proceedings

12. (1) When a person appears before the Ombudsman to give oral evidence in terms of section 18(1) of the Act, the proceedings must be recorded in a manner determined by the Ombudsman.

(2) A person appointed or designated to—

(a) record the proceedings in terms of section 18(1) of the Act, must at the outset take an oath or make an affirmation in the following form:

“I, AB, declare under oath or affirm that I shall faithfully and to the best of my ability record the proceedings and related matters by using the method determined by the Ombudsman or a person designated in terms of section 18(3) of the Western Cape Community Safety Act, 2013 (Act 3 of 2013).”;

(b) transcribe the record of proceedings of the Ombudsman referred to in paragraph (a), must upon completion of the transcription, take an oath or make an affirmation in the following form:

“I, AB, declare under oath or affirm that I have fully and to the best of my ability transcribed the whole of the record of the proceedings of the Ombudsman handed to me in this matter.”.

Method of resolving complaints

13. The Ombudsman must endeavour to resolve a complaint at the earliest possible opportunity in any appropriate manner in accordance with these regulations, including but not limited to the following:

(a) where insufficient information has been provided, by requesting the complainant to provide further information;

(b) where sufficient information has been provided, by sending a notice contemplated in regulation 5 to the executive head of the relevant municipal police service or Provincial Commissioner concerned and requesting a reply to the complaint;

(c) where all the required information is received, by proceeding with a negotiation and conciliation process, if necessary; and

- (d) where the complaint cannot be resolved by a negotiation and conciliation process, by finalising the investigation and submitting a report and recommendation to the Provincial Minister.

Conclusion of complaints

14. (1) A complaint is concluded by the Ombudsman under the following circumstances:

- (a) before or after conclusion of an investigation where the complaint is rejected due to the fact that it does not fall within the ambit of the Act or if it is frivolous or vexatious;
 - (b) if the complaint is resolved by means of agreement, negotiation or conciliation;
 - (c) after conclusion of an investigation where it is found that—
 - (i) there is police inefficiency or a breakdown in relations but it could not be resolved, and if a report is submitted as contemplated in section 17(8);
 - (ii) there was police inefficiency or a breakdown in relations, and if the said police inefficiency or a breakdown in relations is remedied; or
 - (iii) there was police inefficiency or a breakdown in relations, and the said police inefficiency or a breakdown in relations has been reported to the Provincial Commissioner or Executive Head to deal further with the matter;
 - (d) if a complaint is withdrawn by the complainant and the Ombudsman is satisfied that there are no compelling reasons to proceed with the investigation; or
 - (e) if a complainant despite request does not provide further information that is within his or her knowledge and which is required to finalise the investigation of the complaint.
- (2) The Ombudsman may within his discretion on appropriate grounds reopen any complaint that was concluded in terms of this regulation.
- (3) The Ombudsman must keep a record of his or her functions including the following:
- (a) all categories of complaints received, including the following categories:
 - (i) investigated complaints;
 - (ii) referred complaints;

- (iii) concluded complaints;
- (iv) complaints not concluded;
- (b) the particulars of the complainant;
- (c) the category of each complaint and the number of complaints received in each category;
- (d) the police station or police unit involved;
- (e) the outcome of all cases referred by the Provincial Minister to the Provincial Commissioner or executive head of the relevant municipal police service; and
- (f) the outcome of all complaints referred by the Ombudsman to any other organisation.

Monitoring of recommendations

15. The Ombudsman must monitor the implementation of any recommendations in terms of section 17(9) of the Act made by the Provincial Minister.

Reporting by Ombudsman

16. (1) The Ombudsman must submit the report contemplated in section 13(1) of the Act to the Provincial Minister in writing and within 30 days of the end of each financial year.

(2) The Provincial Minister must table the report contemplated in section 13(1) of the Act in the Provincial Parliament within 30 days of receiving the report.

Certificate of appointment of investigating officers

17.(1) A certificate of appointment issued to an investigating officer in terms of section 18(5) of the Act must be in writing, signed by the Ombudsman and set out the following:

- (a) the full names and identity number of the investigating officer;
- (b) a recent photograph of the investigating officer; and
- (c) the functions in terms of sections 18(1) or (2) of the Act to be performed by the investigating officer.

(2) An investigating officer must when performing a function in terms of sections 18(1) or (2) of the Act show his or her certificate of appointment to any person who is affected by the exercise of the functions of the investigating officer and requests to see the certificate.

Conditions of appointment

18. (1) The conditions contemplated in section 18(4) of the Act governing the appointment of an investigating officer who is not in the full-time service of the state are as follows:

- (a) the appointee holds office as an investigating officer for the hours, days or other period or periods as the Ombudsman may determine; and
- (b) the investigating officer performs his or her functions faithfully and diligently and subject to the control and directions of the Ombudsman.

(2) The remuneration payable to an investigating officer who is not in the full-time service of the state must be determined by the Head of the Department in accordance with the laws governing appointments within the public service or the procurement of services at the time of the appointment.

Short title

19. These regulations are called the Western Cape Provincial Police Ombudsman Regulations, 2014.

ANNEXURE A
Form 1
WESTERN CAPE DEPARTMENT OF COMMUNITY SAFETY

COMPLAINT TO THE OMBUDSMAN

Western Cape Community Safety Act, 2013 (Act 3 of 2013)
(Section 16 of the Act)

Details of Complainant

Surname:
Full first names:
Identification or Passport number
Residential address:
Postal address:
Home Tel no: Work Tel No:
Cell No: e-mail:
Fax no:

Details of the complaint (Attach blank form if more space is required).

1. Provide a short explanation of the nature of the complaint.
2. Date and Place of occurrence
3. Provide a description of the incident and the grounds on which you feel that the complaints should be investigated.
4. Provide the names and addresses of any other person who could provide information in respect of the complaint

5. Provide information regarding other mechanisms that you have used in an attempt to resolve the complaint

.....

.....

.....

6. Provide particulars of any person who was involved in an attempt to resolve the complaint.

.....

.....

7. Provide all other relevant information known to you.

.....

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.....

.....

8. Provide the name of any police official(s) involved in the incident or matter if known.

.....

.....

9. Provide the name of the police station and the police reference number (if known).....

.....

I, the complainant whose details are provided above, confirm that the information provided by me is to the best of my knowledge true and correct.

Signature **Date**

PROVINSIALE KENNISGEWING

P.K. 323/2014

2 Desember 2014

DEPARTEMENT VAN GEMEENSKAPSVEILIGHEID**DIE KONSEPREGULASIES OP DIE WES-KAAPSE PROVINSIALE POLISIE-OMBUDSMAN, 2014**

Die Provinsiale Minister van Gemeenskapsveiligheid is van voorneme om die regulasies in die Bylae uiteengesit, uit te vaardig kragtens artikel 31 van die Wes-Kaapse Wet op Gemeenskapsveiligheid, 2013 (Wet 3 van 2013).

BYLAE**INDELING VAN REGULASIES***Regulasies*

1. Woordomskrywing
2. Indiening van klagtes
3. Wyse van indiening van klagtes
4. Verwerking van klagtes
5. Kennisgewing van ondersoek
6. Publikering van inligting oor ondersoeke
7. Samewerking deur staatsorgane in ondersoeke
8. Formaat van ondersoek
9. Vorm van lasgewings
10. Regsverteenvoording en antwoord op implisering
11. Vertroulikheid en openbaring
12. Aantekening van verrigtinge
13. Metode om klagtes op te los
14. Afhandeling van klagtes
15. Monitering van aanbevelings
16. Verslagdoening deur Ombudsman
17. Aanstellingsertifikaat van ondersoekbeampes
18. Aanstellingsvoorwaardes
19. Kort titel

Woordomskrywing

1. In hierdie regulasies het 'n woord of uitdrukking waaraan daar in die Wes-Kaapse Wet op Gemeenskapsveiligheid, 2013 (Wet 3 van 2013), 'n betekenis geheg is, die betekenis aldus daaraan geheg en, tensy dit uit die samehang anders blyk, beteken—

“**die Wet**” die Wes-Kaapse Wet op Gemeenskapsveiligheid, 2013 (Wet 3 van 2013);

“**klaer**” 'n persoon of lid van die Provinsiale Parlement in artikel 16 van die Wet beoog wat 'n klagte by die Ombudsman indien;

“**klagte**” 'n klagte wat ingevolge artikel 16(1) of (2) van die Wet by die Ombudsman ingedien is;

“**ondersoekbeampte**” 'n personeellid of ander geskikte persoon wat ingevolge artikel 18(3) van die Wet as ondersoekbeampte aangewys is;

“**personeellid**” 'n personeellid van die Kantoor van die Ombudsman wat ingevolge artikel 10 van die Wet ingestel is.

Indiening van klagtes

2. (1) 'n Klagte ingedien by die Ombudsman moet verkieslik skriftelik wees, maar 'n mondelinge klagte persoonlik of per telefoon ingedien kan aanvaar word—

- (a) as dit nie vir 'n persoon wat 'n klagte wil indien, moontlik is om dit skriftelik te doen nie;
- (b) as dit nie vir 'n persoon wat 'n klagte wil indien, moontlik is om 'n skriftelike klagte aan die Kantoor van die Ombudsman te stuur nie; of
- (c) as die klagte oor 'n dringende aangeleentheid handel, wat dit nie raadsaam maak om op 'n skriftelike klagte aan te dring nie.

(2) 'n Mondelinge klagte moet so gou as wat redelikerwys moontlik is, op skrif gestel word deur 'n personeellid, soos behoorlik deur die Ombudsman aangewys, op die vorm waarvoor in Aanhangsel A voorsiening gemaak word.

(3) Die personeellid, soos behoorlik aangewys, moet, nadat 'n mondelinge klagte op skrif gestel is ingevolge subregulasie (2), die korrektheid daarvan verifieer deur dit aan die klaer terug te lees en wysigings aan te bring indien nodig.

(4) Behoudens subregulasie (1) word 'n klagte skriftelik ingedien deur 'n ingevulde en getekende vorm in Aanhangsel A by die Kantoor van die Ombudsman in te dien.

(5) 'n Klagte moet die volgende spesifiseer:

- (a) die naam, identiteits- of paspoortnommer en kontakbesonderhede van die klaer, indien beskikbaar;
- (b) die aard van die klagte;
- (c) die datum en plek van voorkoms;
- (d) 'n beskrywing van die voorval en die gronde waarop die klaer voel dat die klagte ondersoek moet word;
- (e) die naam van enige polisiebeampte betrokke by die voorval of aangeleentheid, indien aan die klaer bekend;
- (f) die naam van die polisiestasie, indien van toepassing;
- (g) die name en adresse, indien beskikbaar, van enige persoon wat inligting rakende die klagte kan verskaf;
- (h) inligting rakende ander meganismes wat die klaer gebruik het in 'n poging om die klagte op te los;
- (i) besonderhede van enige persoon wat betrokke was by 'n poging om die klagte op te los; en
- (j) enige ander tersaaklike inligting of dokumente wat gedurende die ondersoek gebruik kan word.

(6) Die ingevulde en getekende vorm in Aanhangsel A moet van die volgende dokumente vergesel gaan:

- (a) 'n afskrif van die klaer se identiteitsdokument of paspoort, indien beskikbaar; en
- (b) as 'n persoon die klagte indien as 'n lid of in belang van 'n groep of klas persone of namens 'n vereniging of organisasie, bewys dat die persoon wat die klagte indien, gemagtig is om namens die groep of klas persone of namens die vereniging of organisasie op te tree.

(7) 'n Personeellid wat behoorlik deur die Ombudsman aangewys is, moet die nodige bystand kosteloos verleen om enige persoon in staat te stel om aan hierdie regulasie te voldoen.

Wyse van indiening van klagtes

3. (1) 'n Mondelinge klagte persoonlik of per telefoon soos in regulasie 2 beoog, kan by die Kantoor van die Ombudsman ingedien word soos in regulasie 2(2) en (3) beoog.

(2) 'n Skriftelike klagte in regulasie 2(4) beoog moet op die volgende wyse by die Kantoor van die Ombudsman ingedien word:

- (a) deur dit gedurende die kantoorure van die Kantoor van die Ombudsman in te dien;
- (b) per faksimilee;
- (c) per geregistreerde pos, in welke geval die klaer bewys moet hou dat die klagte gepos is;
- (d) per e-pos;
- (e) per Kortboodskapdiens (SMS); of
- (f) deur 'n klagtevorm aanlyn in te vul en in te dien via die Kantoor van die Ombudsman se webblad of via sosiale media.

Verwerking van klagtes

4. (1) Die Ombudsman moet ontvangs erken van 'n klagte wat by die Kantoor van die Ombudsman ingedien is.

(2) Die Ombudsman moet by ontvangs van 'n klagte bepaal of die klagte binne die omvang van artikel 16(1) of (2) van die Wet val.

(3) Enige klagte of aspek daarvan kan skriftelik deur die Ombudsman verwys word na 'n geskikte owerheid of instelling wat bevoeg is om die klagte te hanteer.

(4) Die klaer moet skriftelik deur die Ombudsman in kennis gestel word van die verwysing daarvan na 'n geskikte owerheid of instelling.

(5) Indien 'n klagte deur die Ombudsman ondersoek word, moet die klaer skriftelik deur die Ombudsman in kennis gestel word dat sy of haar klagte deur 'n geïdentifiseerde ondersoekbeampte ondersoek word, en van die naam en kontakbesonderhede van die ondersoekbeampte.

Kennisgewing van klagte

5. Die Ombudsman moet skriftelik aan die uitvoerende hoof van die betrokke munisipale polisie diens of die Provinsiale Kommissaris kennis gee van 'n ondersoek ingevolge artikel 17 van die Wet en moet die betrokke polisie diens uitnoui om skriftelike kommentaar oor die klagte by die Ombudsman in te dien binne die tydperk in die kennisgewing vermeld.

Publisering van inligting oor ondersoek

6. Indien die Ombudsman 'n klagte ondersoek en dit blyk dat verdere inligting van lede van die publiek verlang word, kan die Ombudsman benewens die kennisgewing in die *Provinsiale Koerant* ingevolge artikel 17(3) van die Wet, inligting oor die klagte wat ondersoek word en, indien van toepassing, inligting wat in verband met die ondersoek verlang word, publiseer in enige nuusblad in omloop in die betrokke gebied en lede van die publiek uitnoui om skriftelike verhoë oor die klagte aan die Ombudsman te rig.

Samewerking deur staatsorgane in ondersoek

7. (1) Die Ombudsman moet voor uitoefening van die bevoegdheid om 'n polisiebeampte of persoon in diens van 'n staatsorgaan ingevolge artikel 18(1) van die Wet te gelas, poog om ingevolge subregulasies (2) tot (6) die samewerking van die betrokke polisiebeampte of staatsorgaan te verkry vir doeleindes van die ondersoek van die klagte.

(2) Die Ombudsman kan, gedurende die verrigting van sy of haar funksies, deur die Provinsiale Kommissaris of uitvoerende hoof van die betrokke munisipale polisiebeampte, 'n onderhoud met 'n polisiebeampte versoek rakende die ondersoek van 'n klagte.

(3) Die doel van die onderhoud in subregulasie (2) beoog, is om—

- (a) waar nodig, die betrokke polisiebeampte volledig in te lig oor die klagte;
- (b) die menings van die betrokke polisiebeampte te kry oor die klagte en die feitelike bewerings waarop die klagte gebaseer is; en
- (c) indien moontlik, die klagte op te los.

(4) Gedurende die onderhoud in subregulasie (2) beoog, moet die polisiebeampte—

- (a) die inligting rakende die ondersoek verstrek, hetsy skriftelik of mondeling, soos wat redelikerwys vereis word; en
- (b) enige dokument in sy of haar besit of onder sy of haar beheer indien soos wat redelikerwys vereis word.

(5) 'n Polisiebeampte wat 'n onderhoud moet bywoon kan, afhangende van die omstandighede, redelike kennis gegee word, hetsy mondeling of skriftelik, van die aard en doel van die onderhoud en die datum, plek en tyd daarvan.

(6) Die Ombudsman is daarvoor verantwoordelik om te verseker dat enige dokument wat van die polisie ontvang word, behoorlik aangeteken en veilig bewaar word.

(7) Enige weiering deur 'n polisiebeampte om met die Ombudsman saam te werk ingevolge hierdie regulasie, moet onder die aandag van die Provinsiale Kommissaris of uitvoerende hoof van die betrokke munisipale polisediens, na gelang van die geval, en die Provinsiale Minister gebring word.

Formaat van ondersoek

8. Die prosedure wat gevolg moet word by die onderneem van 'n ondersoek ingevolge artikel 17 van die Wet, moet deur die Ombudsman bepaal word met behoorlike inagneming van die omstandighede van elke geval en kan die volgende of enige kombinasie daarvan insluit:

- (a) kommunikasie per telefoon, e-pos of enige ander vorm van korrespondensie;
- (b) navorsing, inspeksies *in loco*, opnames of vraelyste;
- (c) vergaderings met geaffekteerde persone wat op redelike gronde vermoed word te beskik oor inligting rakende die ondersoek; of
- (d) verskyning van 'n persoon voor die Ombudsman met die doel om inligting te verkry of te verduidelik, of om enige dokument voor te lê soos in artikel 18(1) van die Wet beoog.

Vorm van lasgewings

9. (1) 'n Lasgewing uitgereik deur die Ombudsman ingevolge artikel 18(1) van die Wet moet skriftelik wees en moet die volgende bevat:

- (a) besonderhede van die aangeleentheid in verband waarmee die persoon gelas word om te verskyn, 'n beëdigde verklaring of plegtige verklaring in te dien of enige dokument voor te lê;
- (b) die datum, tyd en plek van die verskyning of waar die beëdigde verklaring of plegtige verklaring ingedien of die dokument voorgelê moet word; en
- (c) die rede waarom die persoon gelas word om te verskyn, 'n beëdigde verklaring of plegtige verklaring in te dien of enige dokument voor te lê.

(2) Die lasgewing moet deur die Ombudsman onderteken word en moet, hetsy per brief per geregistreerde pos gestuur of aflewering deur die Ombudsman, beteken word aan die persoon wat moet verskyn, 'n beëdigde verklaring of plegtige verklaring moet indien of enige dokument moet voorlê.

Regsverteenwoordiging en antwoord op implisering

10. (1) 'n Persoon wat gelas is om ingevolge artikel 18(1) van die Wet te verskyn, mag nie tydens 'n verskyning deur 'n regsverteenwoordiger bygestaan word nie tensy hy of sy by die Ombudsman aansoek gedoen het om aldus bygestaan te word en die Ombudsman die aansoek ingevolge subregulasie (2) goedgekeur het.

(2) Indien die Ombudsman daarvan oortuig is dat die feite- of regskwessies dit regverdig dat 'n persoon in subregulasie (1) beoog, deur 'n regsverteenwoordiger bygestaan word, kan hy of sy goedkeur dat die persoon aldus bygestaan word.

(3) 'n Persoon wat ingevolge artikel 18(1) van die Wet gelas is om te verskyn, wat nie in diens van die staat is nie, is geregtig op getuiegelde ooreenkomstig die tarief voorgeskryf in die regulasies uitgevaardig kragtens artikel 191(3) van die Strafproseswet, 1977 (Wet 51 van 1977).

(4) Indien dit in die loop van 'n ondersoek vir die Ombudsman blyk dat enige persoon geïmpliseer word in die aangeleentheid wat ondersoek word en dat die implisering tot nadeel van daardie persoon kan wees of tot 'n nadelige bevinding teen daardie persoon kan lei, moet die Ombudsman daardie persoon 'n geleentheid bied om in verband daarmee te antwoord op enige wyse wat in die omstandighede dienstig is.

(5) Indien die implisering in subregulasie (4) bedoel, deur 'n persoon gemaak word op grond van 'n lasgewing ingevolge artikel 18(1) van die Wet, mag die geïmpliseerde persoon of sy of haar regsverteenwoordiger nie die persoon wat die implisering gemaak het, ondervra nie tensy die Ombudsman daarvan oortuig is dat die feite- of regskwessies die ondervraging regverdig.

Vertroulikheid en openbaring

11. (1) Elke persoon wat in diens is in die uitvoering van die funksies van die Ombudsman, insluitend enige persoon wat aangestel of aangewys is om die verrigtinge van 'n ondersoek skriftelik of meganies aan te teken of op te neem, of wat in diens geneem is om die rekords wat aldus geneem is, te transkribeer, moet die vertroulikheid handhaaf van enige aangeleentheid of inligting wat tot sy of haar kennis kom by die verrigting van sy of haar pligte in verband met die genoemde funksies, uitgesonderd in soverre die publisering

van sodanige aangeleentheid of inligting nodig is vir of in verband staan met enige verslag van die Ombudsman.

(2) Geen persoon mag enige aangeleentheid of inligting wat vir die doel van en in verband met 'n ondersoek ingevolge artikels 17 en 18 van die Wet verkry is, aan enige ander persoon openbaar nie of toelaat dat enige ander persoon toegang tot enige rekords van die Ombudsman rakende 'n ondersoek kry nie, uitgesonderd in soverre dit nodig is by die verrigting van sy of haar pligte in verband met die funksies van die Ombudsman of tensy die Ombudsman anders bepaal.

(3) Die Ombudsman kan in belang van geregtigheid gelas dat enige kategorie persone of alle persone wie se teenwoordigheid nie wenslik is nie, nie teenwoordig mag wees nie by enige verskyning ingevolge artikel 18(1) van die Wet.

Aantekening van verrigtinge

12. (1) Wanneer 'n persoon voor die Ombudsman verskyn om mondelinge getuienis af te lê ingevolge artikel 18(1) van die Wet, moet die verrigtinge aangeteken word op 'n wyse wat die Ombudsman bepaal.

(2) 'n Persoon wat aangestel of aangewys is om—

(a) die verrigtinge ingevolge artikel 18(1) van die Wet aan te teken, moet aan die begin 'n eed of plegtige verklaring in die volgende vorm aflê:

“Ek, AB, verklaar onder eed of plegtig dat ek die verrigtinge en verbandhoudende aangeleenthede getrou en na my beste vermoë sal aanteken deur die metode te gebruik wat bepaal word deur die Ombudsman of 'n persoon aangewys ingevolge artikel 18(3) van die Wes-Kaapse Wet op Gemeenskapsveiligheid, 2013 (Wet 3 van 2013).”;

(b) die rekord van verrigtinge van die Ombudsman in paragraaf (a) bedoel te transkribeer, moet by voltooiing van die transkripsie 'n eed of plegtige verklaring in die volgende vorm aflê:

“Ek, AB, verklaar onder eed of plegtig dat ek die geheel van die rekord van die verrigtinge van die Ombudsman wat aan my oorhandig is in hierdie aangeleentheid, volledig en na my beste vermoë getranskribeer het.”.

Metode om klagtes op te los

13. Die Ombudsman moet poog om 'n klagte by die vroegs moontlike geleentheid op te los op enige gepaste wyse in ooreenstemming met hierdie regulasies, insluitende maar nie beperk nie tot die volgende:

- (a) waar onvoldoende inligting verskaf is, deur die klaer te versoek om verdere inligting te verskaf;
- (b) waar voldoende inligting verskaf is, deur 'n kennisgewing in regulasie 5 beoog aan die uitvoerende hoof van die betrokke munisipale polisdienst of die Provinsiale Kommissaris te stuur en 'n antwoord op die klag te versoek;
- (c) waar al die vereiste inligting ontvang is, deur voort te gaan met 'n proses van onderhandeling en versoening, indien nodig; en
- (d) waar die klagte nie deur 'n proses van onderhandeling en versoening opgelos kan word nie, deur die ondersoek te finaliseer en 'n verslag en aanbeveling aan die Provinsiale Minister voor te lê.

Afhandeling van klagtes

14. (1) 'n Klagte word in die volgende omstandighede deur die Ombudsman afgehandel:

- (a) voor of na afsluiting van 'n ondersoek waar die klagte verwerp word as gevolg van die feit dat dit nie binne die omvang van die Wet is nie of as dit beuselagtig of kwelsugtig is;
- (b) as die klagte deur middel van ooreenkoms, onderhandeling of versoening opgelos word;
- (c) na afhandeling van 'n ondersoek waar daar bevind word dat—
 - (i) daar polisie-onbevoegdheid of 'n verbrokkeling in betrekkinge is maar dit nie opgelos kon word nie, en as 'n verslag soos in artikel 17(8) beoog, ingedien word;
 - (ii) daar polisie-onbevoegdheid of 'n verbrokkeling in betrekkinge was en as genoemde polisie-onbevoegdheid of verbrokkeling in betrekkinge reggestel is; of
 - (iii) daar polisie-onbevoegdheid of 'n verbrokkeling in betrekkinge was en genoemde polisie-onbevoegdheid of verbrokkeling in betrekkinge by die Provinsiale Kommissaris of Uitvoerende Hoof aangemeld is vir verdere hantering van die aangeleentheid;

- (d) as 'n klagte deur die klaer teruggetrek word en die Ombudsman daarvan oortuig is dat daar geen dwingende redes is om met die ondersoek voort te gaan nie; of
- (e) as 'n klaer ondanks versoeke nie verdere inligting verskaf nie wat binne sy of haar kennis is en wat benodig word om die ondersoek van die klagte af te handel.

(2) Die Ombudsman kan na goeëddunke op gepaste gronde enige klagte heropen wat ingevolge hierdie regulasie afgehandel is.

(3) Die Ombudsman moet 'n rekord hou van sy of haar funksies, insluitende die volgende:

- (a) alle kategorieë klagtes wat ontvang word, insluitende die volgende kategorieë:
 - (i) klagtes wat ondersoek is;
 - (ii) klagtes wat verwys is;
 - (iii) klagtes wat afgehandel is;
 - (iv) klagtes wat nie afgehandel is nie;
- (b) die besonderhede van die klaer;
- (c) die kategorie van elke klagte en die aantal klagtes wat in elke kategorie ontvang is;
- (d) die polisiestasie of polisie-eenheid wat betrokke is;
- (e) die uitkoms van alle klagtes wat deur die Provinsiale Minister na die Provinsiale Kommissaris of die uitvoerende hoof van die betrokke munisipale polisediens verwys is; en
- (f) die uitkoms van alle sake wat deur die Ombudsman na enige ander organisasie verwys is.

Monitering van aanbevelings

15. Die Ombudsman moet die implementering van enige aanbevelings ingevolge artikel 17(9) van die Wet wat deur die Provinsiale Minister gedoen is, moniteer.

Verslagdoening deur die Ombudsman

16. (1) Die Ombudsman moet die verslag in artikel 13(1) van die Wet beoog, skriftelik en binne 30 dae na die einde van elke finansiële jaar aan die Provinsiale Minister voorlê.

(2) Die Provinsiale Minister moet die verslag in artikel 13(1) van die Wet beoog, in die Provinsiale Parlement ter tafel lê binne 30 dae na ontvangs van die verslag.

Aanstellingserifikaat van ondersoekbeampes

17.(1) 'n Aanstellingserifikaat wat ingevolge artikel 18(5) van die Wet aan 'n ondersoekbeampte uitgereik is, moet skriftelik wees, deur die Ombudsman onderteken wees en die volgende uiteensit:

- (a) die volle name en identiteitsnommer van die ondersoekbeampte;
- (b) 'n onlangse foto van die ondersoekbeampte; en
- (c) die funksies ingevolge artikel 18(1) of (2) van die Wet wat deur die ondersoekbeampte verrig moet word.

(2) 'n Ondersoekbeampte moet by die verrigting van 'n funksie ingevolge artikel 18(1) of (2) van die Wet sy of haar aanstellingserifikaat toon aan enige persoon wat deur die uitoefening van die funksies van die ondersoekbeampte geraak word en versoek om die sertifikaat te sien.

Aanstellingsvoorwaardes

18. (1) Die voorwaardes beoog in artikel 18(4) van die Wet wat die aanstelling reguleer van 'n ondersoekbeampte wat nie voltyds in diens van die staat is nie, is soos volg:

- (a) die aangestelde persoon beklee die amp van ondersoekbeampte vir die ure, dae of ander tydperk of tydperke wat die Ombudsman bepaal; en
- (b) die ondersoekbeampte verrig sy of haar funksies getrou en ywerig en onderhewig aan die beheer en lasgewings van die Ombudsman.

(2) Die besoldiging betaalbaar aan 'n ondersoekbeampte wat nie voltyds in diens van die staat is nie, moet deur die Departementshoof bepaal word in ooreenstemming met die wette wat aanstellings in die staatsdiens of die verkryging van dienste ten tyde van die aanstelling beheer.

Kort titel

19. Hierdie regulasies heet die Regulasies op die Wes-Kaapse Provinsiale Polisie-ombudsman, 2014.

AANHANGSEL A
Vorm 1
WES-KAAPSE DEPARTEMENT VAN GEMEENSKAPSVEILIGHEID

KLAGTE AAN DIE OMBUDSMAN

*Wes-Kaapse Wet op Gemeenskapsveiligheid, 2013 (Wet 3 van 2013)
(Artikel 16 van die Wet)*

Besonderhede van Klaer

Van:

Volle voorname:

Identiteits- of Paspoortnommer

Woonadres:

Posadres:

Tel No Huis: Tel No Werk:

Sel No: E-pos:

Faks no:

Besonderhede van die klagte (Heg blanko vorm aan as meer ruimte nodig is.)

1. Gee 'n kort uiteensetting van die aard van die klagte.
.....
.....
.....

2. Datum en plek van gebeurtenis

3. Gee 'n beskrywing van die voorval en die gronde waarop u reken die klagtes
ondersoek moet word.
.....
.....
.....

4. Verskaf die name en adresse van enige ander persone wat inligting oor die klagte
kan verskaf.
.....
.....
.....

5. Verskaf inligting oor ander meganismes wat u gebruik het in 'n poging om die klagte op te los.

.....
.....
.....

6. Verskaf besonderhede van enige persoon wat betrokke was by 'n poging om die klagte op te los.

.....
.....

7. Verskaf alle ander tersaaklike inligting wat aan u bekend is.

.....
.....
.....
.....

8. Verskaf die naam van enige polisiebeampte(s) wat by die voorval of aangeleentheid betrokke is, indien bekend.

.....
.....

9. Verskaf die naam van die polisiestasie en die polisieverwysingsnommer, indien bekend

.....

Ek, die klaer wie se besonderhede hierbo verskaf word, bevestig dat die inligting wat deur my verskaf is, na my beste wete waar en korrek is.

Handtekening

Datum

ISAZISO SEPHONDO

I.S. 323/2014

2 kweyoMnga 2014

ISEBE LOKHUSELEKO LOLUNTU**IMIGAQO KANOZIKHALAZO WAMAPOLISA EPHONDO LENTSHONA KOLONI ESAYILWAYO, 2014**

UMphathiswa wePhondo woKhuseleko loLuntu uzimisele ukwenza imigaqo echazwe kwiShedyuli phantsi kwecandelo 31 loMthetho weNtshona Koloni woKhuseleko loLuntu, 2013 (uMthetho 3 wama-2013).

ISHEDYULI**ULANDELELWANISO LWEMIGAQO***Imigaqo*

1. linkcazo-magama
2. Ukungeniswa kwezikhalazo
3. Indlela yokungenisa izikhalazo
4. Inkqubo yoqwalaselo lwezikhalazo
5. Isaziso sophando
6. Upapasho lweenkcukacha ezimalunga nophando
7. Intsebenziswano namacandelo karhulumente kuphando
8. Ubume bophando
9. Uhlobo ehamba ngalo imiyalelo
10. Ukumelwa ngabomthetho nempendulo kwisityholo
11. Ubumfihlo nokudiza
12. Ukurekhodwa kweenkqubo zokumanyelwa kwesikhalazo
13. Indlela yokusombulula izikhalazo
14. Ukusongwa kwezikhalazo
15. Ukubeka iliso kwizindululo
16. Unikezelo-ngxelo olwenziwa nguNozikhalazo
17. Isatifikethi sokuqeshwa kwamagosa ophando
18. Imiqathango yengqesho
19. Isihloko esifutshane

linkcazelo

1. Kule migaqo, igama okanye ibinzana elisetyenzisiweyo elinentsingiselo enikiweyo kuMthetho weNtshona Koloni woKhuseleko loLuntu, 2013 (UMthetho 3 wama-2013) ligcina kwalo ntsingiselo inye, ngaphandle kokuba imeko ibhekisa kwinto eyahlukileyo—

“**isikhalazo**” sithetha isikhalazo esingeniswe kuNozikhalazo kulandelwa icandelo 16 (1) okanye (2) loMthetho;

“**umfaki-sikhalazo**” uthetha umntu okanye ilungu lePalamente yePhondo elichazwe kwicandelo 16 loMthetho elifaka isikhalazo kuNozikhalazo;

“**igosa lophando**” lithetha umsebenzi weziko okanye umntu ofanelekileyo onikwe umsebenzi wokuba ligosa eliphandayo ngokwemiqathango yecandelo 18(3) loMthetho;

“**umntu osebenzela iziko**” lithetha umsebenzi weOfisi kaNozikhalazo emiselwe ngokwemiqathango yecandelo 10 loMthetho;

“**uMthetho**” uthetha uMthetho weNtshona Koloni woKhuseleko loLuntu, 2013 (UMthetho 3 wama-2013);

Ukungeniswa kwezikhalazo

2. (1) Isikhalazo esiya kuNozikhalazo masingene sibhaliwe, kambe ke, nokuba umntu uze ngokwakhe waza kusichaza ngomlomo okanye wafowuna, neso singasamkela—

- (a) ukuba ngaba loo mntu ufaka isikhalazo akakwazi kusingenisa sibhaliwe;
- (b) ukuba loo mntu unqwenela ukufaka isikhalazo akanandlela yakuthumela isikhalazo esibhaliweyo kwiOfisi kaNozikhalazo; okanye
- (c) ukuba isikhalazo eso siquletse umba ongxamisekileyo, nto leyo enyanzelisa ukuba eso sikhhalazo asinakubhalwa ngelo xesha.

(2) isikhalazo esichazwe ngomlomo, kufuneka sibhalwe ngoko nangoko kwakufumaneka ixesha lokuba sibhalwe ngumsebenzi weziko, asebenzise ifomu ekwiSihlomelo A njengoko efuna njalo uNozikhalazo.

(3) Umsebenzi weziko eli, okhethiweyo, makathi emva kokuba esibhale phantsi isikhalazo ebesingeniswe ngomlomo, elandela umgaqo (2), aqinisekise ukuba ngaba usibhale kakuhle ngokuthi asifundele umfaki-sikhalazo ze enze izilungiso, ukuba oko kuyimfuneko.

(4) Ngokomgaqwana (1), isikhalazo sifakwa sibhaliwe ngokungenisa ifomu ezalisiweyo nesayiniweyo ekwiSihlomelo A kwiOfisi kaNozikhalazo.

- (5) Isikhalazo masiqulathe ezi zinto—
- (a) igama, inombolo yesazisi okanye yepasipoti kunye neenombolo zoqhagamshelwano zomfaki-sikhalazo, ukuba zikhona;
 - (b) uhlobo lwesikhalazo;
 - (c) Umhla nendawo yesehlo;
 - (d) Inkcazelo yesehlo eso kunye nezizathu ezibangela ukuba umfaki-sikhalazo athi esi sikhalazo masiphandwe;
 - (e) igama lalo naliphi na ipolisa ebelibandakanyeka kweso sehlo okanye kuloo mba, ukuba ngaba umfaki-sikhalazo uyalazi;
 - (f) igama lesitishi samapolisa, ukuba likhona;
 - (g) amagama needilesi, ukuba zikhona, zaye nawuphi na umntu onokunika iinkcukacha ezihambelana nesikhalazo;
 - (h) iinkcukacha zezinye iindlela ezisetyenziswe ngumfaki-sikhalazo xa ebezama ukusombulula esi sikhalazo;
 - (i) iinkcukacha zaye nawuphi na umntu obebandakanyeka ekusombululeni esi sikhalazo; kunye
 - (j) naziphi na ezinye iinkcukacha okanye amaxwebhu anokusetyenziswa ngexesha lophando.
- (6) Ifomu ezalisiweyo nesayiniweyo ekwiSihlomelo A kufuneka ikhatshwe ngala maxwebhu alandelayo:
- (a) ikopi yesazisi okanye yepasipoti yomfaki-sikhalazo, ukuba ikhona; kananjalo
 - (b) ukuba umntu ufaka isikhalazo njengelungu okanye egameni leqela okanye ihlelo labantu okanye egameni lombutho, makubekho ubungqina bokuba lo mntu ufaka isikhalazo ulinikiwe igunya lokumela iqela, okanye ihlelo labantu okanye umbutho.
- (7) Umsebenzi weziko otyunjwe nguNozikhhalazo kufuneka abonelele ngoncedo olufunekayo, olunikezwa mahala, ukunceda wonke ubani akwazi ukuwuthobela lo mqathango.

Indlela yokungenisa izikhalazo

3. (1) Isikhalazo esifakwe ngomlomo okanye ngefowuni ngendlela exelwe kumqathango 2, singangeniswa kwiOfisi kaNozikhhalazo kulandelwa umqathango 2(2) no-(3).

(2) Isikhalazo esibhaliweyo esixelwe kumqathango 2(4) masingeniswe kwiOfisi kaNozikhalazo ngezi ndlela zilandelayo—

- (a) ngokusingenisa ngeeyure zomsebenzi kwiOfisi kaNozikhalazo;
- (b) ngefeksi;
- (c) ngeleta erejistarishiweyo, apho umfaki-sikhalazo kulindeleke ukuba agcine ubungqina bokuba isikhalazo siposiwe;
- (d) nge-imeyili;
- (e) ngomyalezo omfutshane weselula; okanye
- (f) ngokuzalisa ze angenise ifomu yesikhalazo ayithumele ngekhompyutha kwiwebhusayithi yeOfisi kaNozikhalazo okanye ngamajelo okuncokola ngeekhompyutha okanye ngeselula.

Inkqubo yoqwalaselo lwezikhalazo

4. (1) UNozikhalazo kufuneka echazile ukuba usifumene isikhalazo esithunyelwe kwiOfisi kaNozikhalazo.

(2) Akusifumana isikhalazo uNozikhalazo, kufuneka ajonge ukuba ingaba esi sikhalazo sifanele ukuza kuye na ngokwemiqathango yecandelo 16(1) okanye (2) loMthetho.

(3) UNozikhalazo angasidlulisela nasiphi na isikhalazo okanye inxalenye yaso kugunyaziwe ofanelekileyo okanye kwiziko elifanelekileyo ukuba lijongane neso sikhalazo ngokuthi alibhalele.

(4) Umfaki-sikhalazo kufuneka abhalelwe aziswe nguNozikhalazo xa ethe wasidlulisela kwelinye iziko elifanele ukusijonga isikhalazo zakhe.

(5) Ukuba isikhalazo siphandwa nguNozikhalazo, umfaki-sikhalazo makaziswe ngokuthi abhalelwe nguNozikhalazo ukuba isikhalazo sakhe siyaphandwa ligosa lophando elichongiweyo, anikwe negama kunye neenkukacha zoqhagamshelwano zegosa eliphandayo.

Isaziso sesikhalazo

5. UNozikhalazo makanikeze ngesaziso esibhaliweyo kwintloko ephethe inkonzo yamapolisa yomasipala okanye uMkomishinala wePhondo ochaphazelekayo esimalunga nophando olo ngokwemiqathango yecandelo 17 loMthetho ze acele loo nkonzo yamapolisa ichaphazelekayo ukuba ingenise izimvo zayo ezibhaliweyo malunga neso sikhalazo kuNozikhalazo kwisithuba sexesha elikhankanywe kweso saziso.

Ukupapashwa kweenkcukacha ezimalunga nophando

6. Ukuba uNozikhhalazo uphanda isikhhalazo yaye kubonakala ukuba kusafuneka ezinye iinkcukacha kuluntu, ukongeza kwisaziso, uNozikhhalazo angathi apapashe *kwiGazethi yePhondo* ngokwemiqathango yecandelo 17(3) loMthetho, iinkcukacha malunga nesikhhalazo esiphandwayo, yaye, ukuba kuyimfuneko, angapapasha neenkukacha ezihlangene nolu phando kulo naliphi na iphephandaba elijikeleza kuloo mmandla uchaphazelekayo, acele uluntu ukuba lungenise izimvo zalo ezibhaliweyo malunga nesikhhalazo kuNozikhhalazo.

Intsebenziswano namacandelo karhulumente kuphando

7. (1) Phambi kokusebenzisa amagunya okuyalela ipolisa okanye umntu oqeshwe liziko likarhulumente, uNozikhhalazo, ngokwemiqathango yecandelo 18(1) loMthetho, kufuneka afune intsebenziswano yenkonzo yamapolisa okanye yeziko likarhulumente elandela imiqathango yemigaqwana (2) no-(6) ukulungiselela uphando lweso sikhhalazo.

(2) UNozikhhalazo angathi, xa esenza umsebenzi wakhe, eqale kuMkomishinala wePhondo okanye kwintloko yamapolisa yomasipala ochaphazelekayo, acele udliwano-ndlebe nepolisa elinento yokwenza neso sikhhalazo.

(3) Injongo yodliwano-ndlebe oluxelwe kumgaqwana (2) kukwenza oku—

- (a) apho kuyimfuneko, kukwazisa ipolisa elichaphazelekayo ngokupheleleyo ngesikhhalazo eso;
- (b) kukufumana izimvo zepolisa elichaphazelekayo malunga nesikhhalazo nokufumana imiba yokwenyani esisekelwe kuso eso sikhhalazo; kananjalo
- (c) ukuba kunokwenzeka, kukuba kusionjululwe umba lowo.

(4) Ngexesha lodliwano-ndlebe oluxelwe kumgaqwana (2), ipolisa kufuneka—

- (a) linikeze ngeenkukacha ezimalunga nolu phando, ngokuzibhala okanye ngokuzichaza ngomlomo, kuxhomekeke kuloo ndlela ifunwayo; yaye
- (b) likhuphe naluphi na uxwebhu elinalo okanye elilawulwa nguye ngokweemfuno zomphandi.

(5) Ipolisa elifuneka kudliwano-ndlebe, kuxhomekeke kwimeko, linganikwa isaziso ngokuchazelwa ngomlomo okanye ngeleta, lichazelwe ngohlobo kunye nenjongo yodliwan-ondlebe kunye nomhla, indawo kunye nexesha lwalo.

(6) UNozikhalazo makaqinisekise ukuba naluphi na uxwebhu olufunyenwe kwipolisa luyarekhodwa phantsi ze lugcinwe kwindawo ekhuselekileyo.

(7) Ukuba ipolisa liyala ukusebenzisana noNozikhalazo nangayiphi na indlela ngokwalo mqathango, oko kufuneka kuchazwe kuMkomishinala wePhondo okanye kwintloko yamapolisa yomasipala ochaphazelekayo, ngokwemeko leyo, kunye nakuMphathiswa wePhondo.

Ubume bophando

8. Inkqubo emayilandelwe ekwenzeni uphando ngokwemiqathango yecandelo 17 loMthetho mayigqitywe nguNozikhalazo kwimeko yomba ngamnye yaye ingabandakanya oku kulandelayo okanye indibanisela yako—

- (a) unxibelelwano ngefowuni, nge-imeyili okanye ngezinye iindlela zonxibelelwano;
- (b) uphando, uhlolo lwendawo ekumangalwa ngayo, imfuna-luvo okanye iifomu zemibuzo;
- (c) iintlanganiso namaqela achaphazelekayo okanye abantu ekukholeleka ukuba banolwazi oluphathelele kolo phando; okanye
- (d) ukuvela komntu phambi koNozikhalazo ngeenjongo zokufumana okanye zokucacisa ulwazi, okanye ukuza nawo nawaphi na amaxwebhu achazwe kwicandelo 18(1) loMthetho.

Uhlobo ehamba ngalo imiyalelo

9. (1) Umyalelo okhutshwa nguNozikhalazo ngokwemiqathango yecandelo 18(1) loMthetho kufuneka ubhalwe yaye kufuneka uqulathe oku kulandelayo:

- (a) iinkcukacha zomcimbi umntu abizelwa wona, ezomba ekufuneka umntu efake ingxelo efungelweyo ngawo, nezaxa kufuneka ekhuphe amaxwebhu;
- (b) umhla, ixesha nendawo abizelwa kuyo okanye indawo ingxelo efungelweyo ekufuneka iye kungeniswa kuyo okanye ivezwe kuyo; kunye
- (c) nesizathu sokuba aze kuvela kwiofisi kaNozikhalazo, okanye kutheni kufuneka efake ubungqina obufungelweyo okanye kufuneka ekhuphe amaxwebhu.

(2) Lo myalelo kufuneka usayinwe nguNozikhalazo ze uthunyelwe ngeleta erejistarishiweyo, isiwe nguNozikhalazo kulo mntu ubizwayo ukuba aze kuvela kwiofisi kaNozikhalazo, okanye loo mntu kufuneka engenise ubungqina obufungelweyo okanye akhuphe amaxwebhu.

Ukumelwa ngabomthetho nependulo kwisityholo

10. (1) Umntu oyalelwe ukuba avele phambi koNozikhalazo ngokwemiqathango yecandelo 18(1) loMthetho, akanakuncediswa ngummeli wezomthetho xa ebiziwe ngaphandle kokuba ufake isicelo kuNozikhalazo ukuba abe nommeli yaye uNozikhalazo usamkele eso sicelo ngokomgaqwana (2).

(2) Ukuba uNozikhalazo wanelisekile ukuba imiba yesikhalazo yenyanyisekileyo okanye imiba yezomthetho inyanzelisa ukuba umntu ochazwe kumgaqwana (1) ancediswe ngummeli wezomthetho, angavuma ukuba loo mntu ancedwe.

(3) Umntu oyalelwe ukuba avele phambi koNozikhalazo ngokwemiqathango yecandelo 18(1) loMthetho ongaqeshwanga ngurhulumente, unokuhlalulwa imali yokuba lingqina ehambelana nomrhumo ochazwe kwimiqathango yecandelo 191(3) leCriminal Procedure Act, 1977 (UMthetho 51 ka-1977).

(4) Ukuba kuNozikhalazo kubonakala ngathi ngexesha lophando kukho umntu obekwa izityholo kumcimbi ophandwayo yaye iziphumo zoko zingamchaphazela kakubi loo mntu, uNozikhalazo kufuneka anike loo mntu ithuba lokuphendula kuloo mcimbi ngendlela enokuthi ikhawuleze ngokwaloo meko.

(5) Ukuba isiphumo ekubhekiswe kuso kumgaqwana (4) senzeke ngenxa yomntu olandela umyalelo ngokwemiqathango yecandelo 18(1) loMthetho, loo mntu utyholwayo okanye ummeli wakhe wasemthethweni akanakumbuzwa loo mntu ngaphandle kokuba uNozikhalazo wanelisekile ukuba umcimbi lowo kufuneka ubuziwe.

Ubumfihlo nokudiza

11. (1) Nabani na umntu oqeshelwe ukuba ancedise uNozikhalazo ukuba enze umsebenzi wakhe okanye oqeshelwe ukuba abhale iinkqubo zalo naluphi na uphando okanye azitayiphe, okanye akhuphele izinto ezithethwayo, kufuneka zonke ezo zinto azigcine ziyimfihlo; kanjalo kufuneka ewugcine uyimfihlo nawuphi na umba okanye iinkcukacha ezifika kuye xa esenza umsebenzi wakhe, ngaphandle kwaxa loo mba kufuneka upapashiwe okanye ezo nkcukacha ziyafuneka kuyo nayiphi na ingxelo kaNozikhalazo.

(2) Akukho mntu unokuchazela omnye malunga nomcimbi okanye iinkcukacha ezifunyenwe ngenjongo yophando okanye ezihlangene nophando ngokwemiqathango yecandelo 17 nele-18 loMthetho okanye avumele nawuphi na umntu ukuba afikelele kwiirekhodi zikaNozikhalazo ezidibene nophando, ngaphandle kwaxa kuyimfuneko ukuba azisebenzise xa esenza umsebenzi wakhe ohlangene nemisebenzi kaNozikhalazo okanye ngaphandle kokuba uNozikhalazo uza nesinye isigqibo.

(3) UNozikhalazo unokuthi elungiselela ubulungisa anike umyalelo wokuba abantu abathile abavumelekanga ukuba babekhona xa kuxoxwa ngesikhalazo esithile ngokwemiqathango yecandelo 18(1) loMthetho.

Ukurekhodwa kweenkqubo zokumanyelwa kwezikhalazo

12. (1) Xa umntu evela phambi koNozikhalazo ukuba anike ubungqina bomlomo ngokwemiqathango yecandelo 18(1) yalo Mthetho, ukumanyelwa kwesikhalazo makurekhodwe ngendlela agqibe ngayo uNozikhalazo.

(2) Umntu oqeshelwe okanye okhethelwe ukuba—

(a) arekhode ukumanyelwa kwesikhalazo ngokwemiqathango yecandelo 18(1) loMthetho, kufuneka kwasekuqaleni athathe isifungo okanye isiqinisekiso ngolu hlobo lulandelayo:

“Mna, AB, ndiyafunga okanye ndiyaqinisekisa ukuba ndakurekhoda ngokunyanisekileyo kangangoko ndinakho, iinkqubo zokumanyelwa kwezikhalazo kunye nezinto ezihamba nazo ndisebenzisa inkqubo ebekwe nguNozikhalazo okanye umntu othunywe nguye ngokwemiqathango yecandelo 18(3) loMthetho weNtshona Koloni wokhuselo loLuntu, 2013 (UMthetho 3 wama-2013).”;

(b) xa umntu ekhuphela ngokuthi atayiphe zonke inkqubo zokumanyelwa kwezikhalazo uNozikhalazo abhekise kuzo kumgaqwana (a), kufuneka akugqiba ukutayipha, athathe isifungo okanye isiqinisekiso ngolu hlobo lulandelayo:

“Mna, AB, ndiyafunga okanye ndiyaqinisekisa ukuba ndikhuphele yonke into ibithethwa kwinkqubo yokumanyelwa kwezikhalazo kangangoko ndinakho, yeerekhodi endizininikwe nguNozikhalazo ezimalunga nesikhalazo.”.

Indlela yokusombulula izikhalazo

13. UNozikhalazo kufuneka azame ukusombulula isikhalazo kwithuba lokuqala alifumanayo ngendlela efanelekileyo ehambelana nale migaqo, ebandakanya kodwa ingaphelelanga koku kulandelayo—

- (a) apho kufakwe iinkcukacha ezingaphelelanga, kucelwe umfaki-sikhalazo ukuba anikeze ngezinye iinkcukacha;
- (b) apho kufakwe iinkcukacha ezipheleleyo, kuthunyelwe isaziso esixelwe kumaqathango 5 kwintloko yamapolisa yomasipala ochaphazelekayo okanye UMkomishinala wePhondo ze kucelwe impendulo kwisikhalazo sakhe;
- (c) apho zonke iinkcukacha ezifunekayo zifunyenwe, makuqhutyekwe nenkqubo yeengxoxo neyoxolelwano, ukuba oko kuyimfuneko; yaye
- (d) xa isikhalazo singasombululeki ngothetha-thethwano noxolelwano, makugqityezelwe uphando ze kufakwe ingxelo nesindululo kuMphathiswa wePhondo.

Ukusongwa kwezikhalazo

14. (1) Isikhalazo siye sisongwe nguNozikhalazo phantsi kwezi meko zilandelayo—

- (a) phambi okanye emva kokugqitywa kophando apho isikhalazo siye sakhatywa ngenxa yento yokuba asingeni phantsi kwalo Mthetho okanye asivakali okanye asibambeki;
- (b) ukuba isikhalazo sisonjululwe ngesivumelwano, ngothetha-thethwano okanye ngoxolelwano;
- (c) emva kokugqitywa kophando, apho kufunyaniswe ukuba—
 - (i) amapolisa akawenzi kakuhle umsebenzi wawo okanye kukho ukungavani okungasombululekanga, naxa ingxelo echazwe kwicandelo 17(8) ingenisiwe;
 - (ii) amapolisa akawenzi kakuhle umsebenzi wawo okanye kukho ukungavani okungasombululekanga, naxa oko kungenzi kwamapolisa umsebenzi wawo nokungavani kuye kwalungiswa; okanye
 - (iii) amapolisa akawenzi kakuhle umsebenzi wawo okanye kukho ukungavani okungasombululekanga, naxa oko kungenzi kwamapolisa umsebenzi wawo nokungavani kuye kwachazwa kuMkomishinala wePhondo okanye kwiNtloko yeZiko ukuze iqhube iwuqwalasele loo mba;

- (d) ukuba isikhalazo sirhoxisiwe ngumfaki-sikhalazo yaye uNozikhalazo wanelisekile ukuba akukho zizathu zimnyanzelisa ukuba aqhube nophando; okanye
 - (e) Ukuba umfaki-sikhalazo, noxa ecelwa ukuba abonelele ngezinye iinkcukacha, akezi nazo ngaphambili, ekufuneka zisetyenzisiwe ukugqibezela uphando lwesikhalazo.
- (2) UNozikhalazo angasebenzisa amagunya akhe xa kukho izizathu, aphinde asivule nasiphi na isikhalazo ebesisongiwe, elandela lo mqaqo.
- (3) UNozikhalazo kufuneka agcine iirekhodi zomsebenzi wakhe kubandakanywa oku kulandelayo:
- (a) zonke izintlu zezikhalazo ezifunyenweyo, ezibandakanya ezi zintlu zilandelayo:
 - (i) izikhalazo eziphandiweyo;
 - (ii) izikhalazo ezidlulisiweyo;
 - (iii) izikhalazo ezisongiweyo;
 - (iv) izikhalazo ezingasonjululwanga;
 - (b) iinkcukacha zomfaki-sikhalazo;
 - (c) uluhlu lwesikhalazo ngasinye nenani lezikhalazo ezifunyenweyo kuluhlu ngalunye;
 - (d) isitishi samapolisa okanye iyuniti yamapolisa ebandakanyekayo;
 - (e) isiphumo sazo zonke izikhalazo ezithunyelwe nguMphathiswa wePhondo kuMkomishinala wePhondo okanye intloko yamapolisa yomasipala ochaphazelekayo; kunye
- (f) nesiphumo sazo zonke izikhalazo ezithunyelwe nguNozikhalazo kulo naliphi na elinye iziko.

Ukubeka iliso kwizindululo

15. UNozikhalazo kufuneka abeke iliso kumiselo lwazo naziphi na izindululo ngokwemiqathango yecandelo 17(9) loMthetho ezenziwe nguMphathiswa wePhondo.

Unikezelo-ngxelo olwenziwa nguNozikhhalazo

16. (1) UNozikhhalazo kufuneka angenise ingxelo echazwe kwicandelo 13(1) loMthetho kuMphathiswa wePhondo ibhaliwe zingaphelanga liintsuku ezingama-30 ekupheleni konyaka-mali ngamnye.

(2) UMphathiswa wePhondo kufuneka athi thaca ingxelo echazwe kwicandelo 13(1) loMthetho kwiPalamente yePhondo zingaphelanga liintsuku ezingama-30 emva kokufumana ingxelo.

Isatifikethi sokuqeshwa kwamagosa ophando

17.(1) Isatifikethi sophando esinikwe igosa lophando ngokwemiqathango yecandelo 18(5) loMthetho kufuneka asinikwe sibhaliwe, sisayinwe nguNozikhhalazo yaye sichaza oku kulandelayo:

- (a) amagama apheleleyo nenombolo yesazisi segosa lophando;
- (b) ifoto yamvanje yegosa lophando; kunye
- (c) nemisebenzi emayenziwe ligosa lophando ngokwamacandelo 18(1) okanye (2) oMthetho.

(2) Xa igosa lophando lisenza umsebenzi walo, kufuneka ngokwemiqathango yamacandelo 18(1) okanye (2) oMthetho libonise isatifikethi salo sengqesho kuye nawuphi na umntu ochaphazelekayo ngumsebenzi wegosa lophando othi acele ukubona isatifikethi sakhe.

Imiqathango yengqesho

18.(1) Imiqathango echazwe kwicandelo 18(4) loMthetho elilawula ukuqeshwa kwegosa lophando elingengomsebenzi karhulumente oqeshwe isigxina imi ngolu hlobo lulandelayo:

- (a) umqeshwa ukwisithuba sokuba ligosa lophando iiyure, liintsuku isithuba esibekwe nguNozikhhalazo; yaye
- (b) igosa lophando lenza umsebenzi walo ngokunyanisekileyo nangokuzinikela yaye liphantsi kolawulo nemiyalelo kaNozikhhalazo.

(2) Umvuzo ohlawulwa igosa lophando elingaqeshwanga isigxina kurhulumente kufunekwa ugqitywe yiNtloko yeSebe ilandela imithetho elawula ingqesho kwinkonzo karhulumente okanye elawula ukuthengwa kweenkonzo zeziko ngexesha lokuqeshwa kwalo.

Isihloko esifutshane

19. Le migaqo ibizwa ngokuba yiMigaqo kaNozikhhalazo waMapolisa ePhondo leNtshona Koloni eSayilwayo, 2014.

**ISIHLOMELO A
Fomu 1
ISEBE LEZOKHUSELEKO LOLUNTU LENTSHONA KOLONI**

ISIKHALAZO ESIYA KUNOZIKHALAZO

*UMthetho weNtshona Koloni wezoKhuseleko loLuntu, 2013 (uMthetho No 3 wama-2013)
(Icandelo le-16 loMthetho)*

Iinkcukacha zowenza isikhalazo

Ifani:

Amagama ngokupheleleyo:

INombolo yeSazisi okanye yePasipoti:

Idilesi yesitalato:

Idilesi yeposi:

Umnxeba ekhaya: Umnxeba emsebenzini:

Iselula:..... Idilesi ye-imeyile:

Ifeksi:

Iinkcukacha zesikhalazo (qhoboshela elinye iphepha ukuba iinkcukacha azoneli).

1. Nika inkcazelo emfutshane ngohlobo lwesikhalazo.
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.....
.....

2. Umhla nendawo esenzeke kuyo isehliso eso.
.....

3. Nika ingcaciso yesehliso kwakunye nezizathu ezibangela ukuba ufune kuphandwe ngesi sikhalazo.
.....
.....
.....

4. Nika amagama needilesi zaye nawuphi na umntu onokunikezela ngeenkukacha ezifanelekileyo ngesi sikhalazo.
.....
.....
.....

5. Nika iinkcukacha ngezinye iindlela ozisebenzisileyo ukusombulula esi sikhhalazo.

6. Nika iinkcukacha zaye nawuphi na umntu obandakanyekayo kwiinzame zokusombulula esi sikhhalazo.

7. Nika zonke ezinye iinkcukacha ozaziyo malunga noku.

8. Nika igama lalo naliphi na igosa lezesipolisa elibandakanyekayo kwesi sehlo okanye kulo mba ukuba uyalazi.

9. Nika igama lesikhululo samapolisa kwakunye nereferensi-namba (ukuba uyazazi).

Mna, mkhalazi onkcukacha zakhe zinikwe ngasentla apha, ndiqinisekisa ukuba iinkcukacha endizininikileyo zingokolwazi lwam olunyanisekileyo kwaye zichanekile.

Utyikityo **Umhla**