



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

PROVINCE OF THE WESTERN CAPE

PROVINSIE WES-KAAP

IPHONDO LENTSHONA KOLONI

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

Provincial Notice

The following Draft Amendment Bill is published for comment:

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Any person or organisation wishing to comment on the Draft Bill is requested to submit the comments in writing before or on 6 April 2023.

- (a) By posting the comments to:
Head of Department
Western Cape Department of
Local Government
Private Bag X 9076
Cape Town
8000
(Attention: Mr R Ockhuis)
- (b) by delivering the comments to:
Mr R Ockhuis
80 St George's Mall
Waldorf Building
8th Floor
Cape Town
8001
- (c) by emailing the comments to:
Rudi.Ockhuis@westerncape.gov.za

Queries can be directed to:
Mr K Makan (021) 483 4365.

INHOUD

(*Afskrifte is verkrygbaar by Kamer M21, Provinsiale Wetgewer-gebou, Waalstraat 7, Kaapstad 8001.)

Provinsiale Kennisgewing

Die volgende Konsepwysigingswetsontwerp word vir kommentaar gepubliseer:

- 22 Konsepwysigingswetsontwerp op die monitering en ondersteuning van munisipaliteite in die Wes-Kaap, 2023.....18

Enige persoon of organisasie wat op die Konsepwysigingswetsontwerp kommentaar wil lewer, word versoek om die kommentare skriftelik voor of op 6 April 2023 in te dien.

- (a) Stuur kommentaar per pos na:
Hoof van die Departement
Wes-Kaapse Departement van
Plaaslike Regering
Privaatsak X 9076
Kaapstad
8000
(Vir aandag: Mnr R Ockhuis)
- (b) lewer die kommentaar af by:
Mnr R Ockhuis
St. George-Wandellaan 80
Waldorfgebou
8ste Vloer
Kaapstad
8001
- (c) E-pos die kommentaar na:
Rudi.Ockhuis@westerncape.gov.za

Navrae kan gerig word aan:
Mnr K Makan (021) 483 4365.

IZIQLATHO

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

ISaziso sePhondo

Olu qulunqo lulandelayo loMthetho oSayilwayo lupapashelwa ukunika izimvo:

- 22 UQulunqo loMthetho oSayilwayo wokuBek' iLiso neNkxaso weNtshona Koloni, ka-202335

Nawuphi na umntu okanye umbutho onqwenela ukunika izimvo kuQulunqo loMthetho oSayilwayo uyacelwa ukuba angenise izimvo zakhe ezibhaliweyo ngaphambi okanye ngomhla 6 UTshazimpuzi 2023.

- (a) Ngokuposela izimvo kwi:
Ntloko yeSebe
Western Cape Department of
Local Government
Private Bag X 9076
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8000
(Inggale kuMnu. R Ockhuis)
- (b) ngokuzisa izimvo ku:
Mnu. R Ockhuis
80 St George's Mall
Isakhiwo Waldorf
Umgangatho wesi-8
eKapa
8001
- (c) ngoku imeyila izimvo ku:
Rudi.Ockhuis@westerncape.gov.za

Imibuzo ingabhekiswa
kuMnu. K Makan (021) 483 4365

PROVINCIAL NOTICE

The following Provincial Notice is published for comment.

DR HC MALILA,
DIRECTOR-GENERAL

Provincial Legislature Building,
Wale Street,
Cape Town.

PROVINSIALE KENNISGEWING

Die volgende Provinsiale Kennisgewing word vir kommentaar gepubliseer.

DR HC MALILA,
DIREKTEUR-GENERAAL

Provinsiale Wetgewer-gebou,
Waalstraat,
Kaapstad.

ISAZISO SEPHONDO

Esi saziso silandelayo sipapashelwe ukunika izimvo.

GQIR HC MALILA,
MLAWULI-JIKELELE

ISakhiwo sePhondo,
Wale Street,
eKapa.

PROVINCIAL NOTICE

P.N. 22/2023

24 February 2023

**DRAFT WESTERN CAPE MONITORING AND SUPPORT OF MUNICIPALITIES
AMENDMENT BILL, 2023**

To amend the Western Cape Monitoring and Support of Municipalities Act, 2014 (Act 4 of 2014), so as to insert certain definitions; to provide for the Provincial Minister to require any municipality or category of municipality by notice in the *Provincial Gazette* to submit information to a specified provincial organ of state; to provide for access to records of a municipality during an assessment or an investigation by certain provincial functionaries; to provide for the designation of support officers to municipalities; to provide for the designation of a provincial support officer; to amend the provisions that provide for cooperation between a municipality and the Department; to provide for procedures for the proactive monitoring of municipalities; to provide procedures for the inspection, securing and copying of records in specified circumstances; to provide for the Provincial Minister to direct a municipal council to conduct a preliminary assessment on receipt of certain allegations; to authorise the Minister to await the outcome of investigations by other organs of state prior to taking action under section 106 of the Municipal Systems Act or this Act; to amend the requirements relating to the assessment to be made by the Provincial Minister before invoking section 106(1) of the Municipal Systems Act; to amend the procedures when invoking that section; to delete certain reporting requirements; to create further offences; and to provide for incidental matters.

BE IT ENACTED by the Provincial Parliament of the Western Cape, as follows:—

Amendment of section 1 of Act 4 of 2014

1. Section 1 of the Western Cape Monitoring and Support of Municipalities Act, 2014 (Act 4 of 2014) (the principal Act), is amended—

- (a) by the insertion after the definition for “investigator” of the following definitions:
 “**“minister’s support officer”** means an independent person or an official of the Provincial Government, a provincial public entity or a municipality in the Province, suitably qualified to perform the functions contemplated in section 4A;”;
- (b) by the insertion after the definition of “municipality” of the following definition:
 “**“political office bearer”** means a political office bearer as defined in section 1 of the Municipal Systems Act;”;
- (c) by the insertion after the definition of “Provincial Minister” of the following definitions:
 “**“provincial support officer”** means an independent person or an official of the Provincial Government, a provincial public entity or a municipality in the Province, suitably qualified to perform the functions contemplated in section 3A;
 “**“record”** means recorded information, regardless of form or medium, including a file, document, book or other written or electronic record;” and

- (d) by the insertion after the definition of “regulation” of the following definition:
““staff member”, in relation to a municipality, means an employee of the municipality, and includes the municipal manager.””.

Amendment of section 2 of Act 4 of 2014

2. Section 2 of the principal Act is amended by the addition of the following subsections, the existing section becoming subsection (1):

“(2) The Provincial Minister may by notice in the *Provincial Gazette* require any municipality, or any category or type of municipality specified in the notice, to submit to a specified provincial organ of state such information as may be required in the notice, either at regular intervals or within a specified period.

(3) When exercising his or her powers in terms of subsection (2), the Provincial Minister—

- (a) must rely as far as possible on the relevant established statutory reports that are submitted by municipalities in terms of any law; and
- (b) may make reasonable requests to municipalities for additional information after taking into account—
 - (i) the administrative burden on municipalities to furnish the information;
 - (ii) the cost involved; and
 - (iii) existing mechanisms, systems and processes for performance monitoring in the municipality.”

Insertion of sections 2A and 2B in Act 4 of 2014

3. The following sections are inserted in the principal Act after section 2:

“Access to records of municipalities

2A. For the purposes of monitoring, assessing or investigating a municipality in terms of this Act, a municipality or any municipal entity under the sole or shared control of the municipality must provide the Provincial Executive, Provincial Minister, minister’s support officer, provincial support officer or officials of the Department, upon request by any of these persons, with access to such records as may be necessary for such monitoring, assessment or investigation.

Designation of local government support officers

2B. The Provincial Minister may designate one or more—

- (a) officials of the Provincial Government;
- (b) representatives of a provincial public entity;
- (c) staff members of a municipality in the Province;
- (d) independent persons,

as a local government support officer, to provide support to a municipality as contemplated in section 154(1) and section 155(6) of the Constitution.”

Amendment of section 3 of Act 4 of 2014

4. Section 3 of the principal Act is amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) [A] The municipal council, speaker, mayor or municipal manager of a municipality may request the Provincial Minister or the head of any provincial department to assist the municipality in performing its functions generally or to deal with a specific matter.”; and

(b) by the substitution for subsection (2) of the following subsection:

“(2) When such a request is made[—],

[(a) the Department or the other relevant provincial department must cooperate with the municipality and, as far as is reasonably possible, provide the assistance requested; and

(b)] the Department, or the other relevant provincial department, and the municipality must cooperate with each other and coordinate their actions as far as is reasonably possible.”.

Insertion of section 3A in Act 4 of 2014

5. The following section is inserted after section 3 of the principal Act:

“Proactive monitoring

3A. (1) In order to monitor and support municipalities proactively, the Provincial Minister may, in respect of a municipality, designate a provincial support officer to—

- (a) determine compliance by a municipality with relevant statutory obligations, policies, standard operating procedures and practice notes;
- (b) identify risks and suggest improvements to procedures and processes in order to prevent fraud, corruption, maladministration and malpractice; and
- (c) proactively assist with the detection of fraud, corruption, maladministration or malpractice in a municipality.

(2) If the Provincial Minister decides to designate a provincial support officer in terms of subsection (1), the Provincial Minister must in writing determine the scope of the monitoring and support to be provided and the other terms of reference for the designation.

(3) The provincial support officer must provide the Provincial Minister with—

- (a) a report on the findings of the monitoring and support and an analysis contemplated in this section, including the reasons for those findings; and
- (b) his or her recommendations relating to the findings.

(4) The Provincial Minister must, when practicable, provide a copy of the report and recommendations of the provincial support officer to the municipality concerned.”.

Amendment of section 4 of Act 4 of 2014

6. Section 4 of the principal Act is amended by the substitution for subsection (4) of the following subsection:

“(4) Practice notes issued in terms of subsection (1) have the status of non-binding guidelines.”.

Insertion of sections 4A, 4B and 4C in Act 4 of 2014

7. The following sections are inserted after section 4 of the principal Act:

“Inspection, securing and copying of records

4A. (1) If the Provincial Minister, on receipt of information of a suspected failure by a municipality to fulfil a statutory obligation, maladministration, fraud, corruption or other serious malpractice, has reason to believe—

(a) that a record relating to the information received will be concealed or destroyed if not secured as a matter of priority; or

(b) that the alleged infringement is of a serious nature,

he or she may, without prior notice to the municipality, designate a minister’s support officer to travel to the municipality and inspect, secure and copy a record relating to the received information in the manner contemplated in subsection (5), read with section 7A.

(2) In determining for the purposes of subsection (1) whether the inspection, securing and copying of a record is required, the Provincial Minister may take into account all relevant factors, including—

(a) the identity of the whistle-blower;

(b) the seriousness of the alleged infringement;

(c) whether the infringement is allegedly continuing or likely to occur in the future;

(d) the persons against whom the allegations are made; and

(e) the public interest.

(3) If the Provincial Minister decides to designate a minister’s support officer in terms of subsection (1), the Provincial Minister must in writing determine the scope and the other terms of reference for the designation.

(4) Subject to subsection (5) and section 7A, the minister’s support officer concerned has, at any reasonable time—

(a) full and unrestricted access to any record of the municipality; and

(b) the right to question any staff member or political officer bearer of the municipality,

if he or she reasonably suspects that the record or staff member or political office bearer concerned can provide or has access to information that has a bearing on the matter contemplated in subsection (1).

(5) Subject to section 7A(3), the minister’s support officer may—

(a) enter any property or premises of or under the control of the municipality where he or she reasonably suspects a record is kept that may have a bearing on a matter contemplated in subsection (1);

(b) direct any person he or she reasonably suspects may have a record in his or her possession or under his or her control and that has a bearing on a matter contemplated in subsection (1) to produce, or to deliver at a specified place and time and in a specified form, any such record;

(c) inspect any such record and question any person who may have knowledge of a matter contemplated in subsection (1) about any such record; or

(d) copy, or make extracts from, any such record at the expense of the municipality or remove such record, including any electronic device, to make copies or extracts, provided that the record or electronic device is returned to the municipality without unreasonable delay thereafter.

Preliminary assessment

4B. (1) The Provincial Minister may, on receipt of allegations, regarding a municipality, that he or she is of the opinion are not frivolous, vexatious, speculative or obviously unfounded, direct the municipal council of the municipality to conduct a preliminary assessment of the allegations that—

- (a) the municipality concerned cannot or does not fulfil an executive obligation in terms of the Constitution or other legislation; or
- (b) the municipality concerned cannot or does not fulfil a statutory obligation binding on that municipality, or maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in the municipality in the Province.

(2) If the Provincial Minister decides to direct the municipal council to conduct a preliminary assessment under subsection (1), the Provincial Minister may require that a preliminary assessment report on behalf of the municipality be provided to him or her before or on a specified date stipulating the findings and, if applicable, the steps that have been taken or will be taken by the municipality concerned to address the matter contemplated in paragraph (1).

Duplication of assessments and investigations

4C. If the Provincial Minister is of the opinion that it is more appropriate for an allegation to be investigated by the South African Police Service, a Chapter 9 institution, the Special Investigating Unit and Special Tribunals or another organ of state, he or she may—

- (a) refer the allegation to the body concerned; or
- (b) await the outcome of such investigation before taking action in terms of section 106 of the Municipal Systems Act or this Act.”

Amendment of section 5 of Act 4 of 2014

8. Section 5 of the principal Act is substituted by the following section:

“Assessment before invoking section 106(1) of Municipal Systems Act

5. The Provincial Minister must, before taking action under section 106(1) of the Municipal Systems Act[—],

- [(a) inform the municipality concerned in writing of relevant information received by the Provincial Minister and invite the municipality to furnish the Provincial Minister with written comment by a date determined by the Provincial Minister; and**
- (b)]** objectively assess all relevant information at the Provincial Minister’s disposal, **[taking into account, among other matters] which may include—**
 - (i) the manner in which the information was received;
 - (ii) **[the]** comments, if any, received from the municipality;

- (iii) whether the information indicates that the municipality cannot or does not fulfil a statutory obligation binding on the municipality, and if so, whether or not it is due to incapacity;
- (iv) whether the information indicates that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in the municipality;
- (v) the areas of performance of the municipality that may be affected if action is not taken in accordance with section 106(1) of the Municipal Systems Act;
- (vi) whether the municipality previously requested assistance from the Provincial Minister, or the head of any provincial department, to deal with the matter concerned or a related matter;
- (vii) whether the Provincial Minister, the Department or another provincial department has previously provided assistance to the municipality; **[and]**
- (viii) if applicable, the extent to which the municipality implements relevant practice notes and complies with the essential national standards and minimum standards established in terms of section 108(1) of the Municipal Systems Act;
- (ix) any directives with which the municipal council has failed to comply.”.

Amendment of section 6 of Act 4 of 2014

9. Section 6 of the principal Act is amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) If the Provincial Minister has reason to believe, based on the assessment contemplated in section 5(b), that a municipality cannot or does not fulfil a statutory obligation or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in the municipality, the Provincial Minister must **[in writing inform the municipality of his or her view and the reasons for that view and]**, in accordance with section 106(1) of the Municipal Systems Act—”;
- (b) by the substitution for subsection (2) of the following subsection:

“(2)(a) If the Provincial Minister, after considering **[any] the information, if any,** received in response to a notice referred to in subsection (1)(a), is satisfied that the municipality cannot fulfil a statutory obligation as a result of incapacity, the Provincial Minister **[must] may** determine appropriate steps, in cooperation with the municipality, to develop the capacity of the municipality and to ensure that the municipality implements applicable practice notes and other best-practice standards.

(b) The Provincial Minister is not precluded by acting under subsection (1)(a) or paragraph (a) from designating, if considered necessary, a person or persons to investigate the matter as contemplated in section 7.”;
- (c) by the deletion of subsection (3); and
- (d) by the addition after subsection (3) of the following subsection:

“(4) If the Provincial Minister has reason to believe, based on the assessment contemplated in section 5, that a municipality cannot or does not fulfil a statutory obligation or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in the municipality, but does not consider it necessary to designate a person or persons to investigate the matter, he or she may direct the

municipality to prepare a report stipulating the steps that have been taken or will be taken |
by the municipality to address the matter.”.

Amendment of section 7 of Act 4 of 2014

10. Section 7 of the principal Act is amended—

(a) by the deletion of subsection (3);

(b) by the substitution for subsection (4) of the following subsection:

“(4)(a) If the Provincial Minister decides to designate an investigator in terms of
subsection (1)(a), the Provincial Minister must in writing determine the scope of
the matter to be investigated and the other terms of reference of the investigator.

(b) The investigator may—

(i) determine the format and procedure to be followed in conducting the
investigation with due regard to the circumstances of the matter;

(ii) determine who may be present and who may not be present at any
proceedings pertaining to the investigation, having regard to the nature of the
investigation;

(iii) direct any person who the investigator reasonably suspects may have
information that has a bearing on the investigation to produce, or to deliver at
a specified place and time and in a specified form, any record in the
possession of that person or under his or her control that has a bearing on the
matter being investigated;

(iv) inspect any such record and question any person who may have knowledge of
a matter that has a bearing on the investigation about any such record;

(v) copy, or make extracts from, any such record, at the expense of the
municipality, or remove such record, including any electronic device, to
make copies or extracts, provided that the record or electronic device is
returned to the municipality without unreasonable delay thereafter;

(vi) direct any person who the investigator reasonably suspects may have
information that has a bearing on the investigation to disclose, either orally or
in writing, any information that may be relevant to the investigation, and
question any person about such information.”;

(c) Subject to section 7A(5), the investigator may, for the purposes of paragraphs (b)
and (g), enter any property or premises of or under the control of a municipality
where he or she reasonably suspects a record is kept that may have a bearing on
the investigation.

(d) For the purpose of ascertaining any matter relating to the subject matter of the
investigation, the investigator has the powers of the Western Cape Division of the
High Court of South Africa to cause an oath or affirmation to be administered to a
witness or to subpoena any person to produce any record or object relevant to the
investigation at the time and place specified in the subpoena.

(e) A subpoena contemplated in paragraph (d) must be signed by the investigator and
served on the person subpoenaed, by the investigator by registered letter sent
through the post or delivery by the investigator or person authorised thereto by the
investigator.

(f) If required to do so by the investigator, a witness must take an oath or make an
affirmation, which oath or affirmation must be administered by the investigator.

- (g) The municipality and any person referred to in subsections (b)(iii), (iv) and (vi) must cooperate with the investigator and provide all reasonable assistance requested by the investigator for the purposes of the investigation.
- (h) Subject to paragraph (b)(iii) to (vi) and section 7A, the investigator has full and unrestricted access, at all reasonable times, to—
 - (i) any record of the municipality;
 - (ii) any staff member or political office bearer of the municipality, if he or she reasonably suspects that the record or staff member or political office bearer concerned can provide or has access to information that has a bearing on the investigation.
- (i) If it appears to the investigator during the course of the investigation that any person is being implicated in the matter being investigated and that such implication may be detrimental to that person or that an adverse recommendation pertaining to that person may result, the investigator must afford that person an opportunity to be heard in any manner that may be expedient under the circumstances.
- (j) No person may without the permission of the investigator disclose to an unauthorised person the contents of any document pertaining to an investigation submitted to, or in the possession of, the investigator or the record of any proceedings of the investigation.
- (k) The investigator must, in writing and within the period determined by the Provincial Minister, provide the Provincial Minister with—
 - (i) a report on the findings of the investigation, including the reasons for those findings; and
 - (ii) the investigator's recommendations relating to the matter.
- (l) The Provincial Minister must when practicable provide a copy of the report and recommendations of the investigator to the municipality concerned.
- (m) The Provincial Minister may, on his or her own initiative, provide a copy of the report and recommendations of the investigator to the South African Police Service, a Chapter 9 institution, the Special Investigating Unit and Special Tribunals, another organ of state or to the councillors of the municipality concerned.
- (n) If the investigator's report indicates that the municipality cannot or does not fulfil a statutory obligation or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in the municipality, the Provincial Minister must—
 - (i) direct that the municipality prepare a report, by a date determined by the Provincial Minister, stipulating the steps that have been taken or will be taken by the municipality to give effect to the findings and recommendations of the investigator's report;
 - (ii) assess the seriousness of the situation and the municipality's response to the situation;
 - (iii) determine whether the situation justifies or requires an intervention in terms of section 139 of the Constitution;
 - (iv) determine whether the situation requires steps to be taken to monitor and support the municipality or to promote the development of the municipality's capacity to enable it to perform its functions, as the case may be; and

- (iv) if satisfied that the municipality cannot fulfil a statutory obligation as a result of incapacity, determine appropriate steps, after consultation with the municipality, to develop the capacity of the municipality and to ensure that the municipality implements applicable practice notes and other best-practice standards.”

Insertion of section 7A

11. The following section is inserted after section 7 of the principal Act:

“Exercise of functions under section 4A and 7

7A. (1) The following provisions of the Protection of Personal Information Act, 2013 (Act 4 of 2013), are not applicable to the exercise of the functions of the minister’s support officer under section 4A and of the investigator under section 7(4):

- (a) sections 11(3), 11(4), 12, 15 and 18; and
- (b) any other provision in respect of which the Information Regulator has granted an applicable exemption under section 37 of that Act.

(2) The minister’s support officer or investigator may require a staff member, councillor or political office bearer of a municipality to comply with a direction of, or answer questions put to him or her by, such minister’s support officer or such investigator as contemplated in section 4A or section 7(4), notwithstanding—

- (a) a duty of confidentiality imposed on that person by legislation that regulates, or an agreement that relates to the conduct of a staff member, councillor or political office bearer of, the municipality; or
- (b) any provision in legislation or other instrument regulating the management or control of archives or records of a municipality.

(3) If, in the course of the exercise of the minister’s support officer’s functions as contemplated in section 4A, or the investigator’s functions as contemplated in section 7, a person claims that a record he or she has been directed to disclose is legally privileged and for that reason refuses to disclose the record concerned, the minister’s support officer or investigator, as the case may be, may, if he or she is of the opinion that the record has a bearing on the information contemplated in section 4A(1) or on an investigation contemplated in section 7, request the Registrar of the High Court or his or her delegate to collect and remove that record for safe custody until a court of law has made a ruling on the question whether the information concerned is legally privileged or not.

(4) For the purpose of subsection (3), a delegate of the Registrar of the High Court may include a legal practitioner appearing on the Roll of Legal Practitioners in terms of section 30(3) of the Legal Practice Act, 2014 (Act 28 of 2014), to collect and remove the record on the Registrar’s behalf.

(5) A minister’s support officer or investigator must, in the exercise of his or her powers of entry to the property or premises of a municipality under section (4A)(5) or 7(4)(c)—

- (a) limit the hours of entry to ordinary business hours, unless the minister’s support officer or investigator reasonably considers entry at another time necessary on the grounds of urgency;

- (b) strictly observe decency and order at all times;
- (c) identify himself or herself to the highest-ranked staff member or political office bearer present at the property or premises;
- (d) on the request of the highest-ranked staff member or political office bearer present at the property or premises—
 - (i) disclose evidence of his or her designation as the minister’s support officer or investigator;
 - (ii) explain the purpose, scope and the reason for entry;
 - (iii) permit him or her to be present at all times;
 - (vi) provide an inventory of the items removed for making copies.”

Amendment of section 9 of Act 4 of 2014

12. Section 9 of the principal Act is substituted by the following section:

“Reporting

9. [(1)] If action is taken in terms of section 6(1)(a) or (b), the Provincial Minister must within 14 days—

- (a) submit a written statement to the National Council of Provinces motivating the action; and
- (b) forward a copy of that statement to the national minister responsible for local government[,] and the national minister responsible for finance [**and the South African Local Government Association**].

[(2) **The Provincial Minister must as soon as practicable submit a copy of the investigator’s report referred to in section 7(4)(f) to the National Council of Provinces, the national minister responsible for local government, the national minister responsible for finance and the South African Local Government Association.**].”

Amendment of section 11 of Act 4 of 2014

13. The following section is substituted for section 11 of the principal Act:

“Offences and penalties

11. A person who—

- (a) fails or refuses to produce any **[document] record** in his or her possession or under his or her control when directed to do so by a minister’s support officer in terms of section 4A(5)(b) or by an investigator in terms of section 7(4)(b)(iii);
- (b) prevents any person from producing any **[document] record** in that person’s possession or under that person’s control when that person is directed to do so by a minister’s support officer in terms of section 4A(5)(b) or by an investigator in terms of section 7(4)(b)(iii);
- (c) contravenes section 7(4)(j); **[or]**
- (d) with the intention of hindering or obstructing the investigation of a matter by the investigator, destroys or conceals any **[document] record** **[, or object,]** that to his or her knowledge may be of assistance to an investigator;

- (e) with the intention of hindering or obstructing the inspection, securing or copying of a record by a minister's support officer in terms of section 4A, destroys or conceals any record that to the person's knowledge may be of assistance to a minister's support officer;
- (f) fails to comply with a directive issued by the Provincial Minister in terms of section 7(4)(n)(i);
- (g) hinders or interferes with the investigator or any person exercising a power, or carrying out a duty, in terms of this Act;
- (h) furnishes false or misleading information when responding to a request of a minister's support officer or an investigator;
- (i) fails to produce any record or object in his or her possession or under his or her control and that he or she has been called to produce in terms of a subpoena issued in terms of section 7;
- (j) after having been sworn or having made an affirmation, gives false evidence before an investigator on any matter, knowing such evidence to be false or not believing it to be true; or
- (k) procures, induces, intimidates, corrupts or bribes any witness to refrain from giving evidence or to give false evidence before an investigator,

commits an offence and is liable on conviction to a fine or to imprisonment not exceeding [12] 24 months.”.

Short title and commencement

14. This Act is called the Western Cape Monitoring and Support of Municipalities Amendment Act, 2023, and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.

MEMORANDUM ON THE OBJECTS OF THE DRAFT WESTERN CAPE MONITORING AND SUPPORT OF MUNICIPALITIES AMENDMENT BILL, 2023

1. BACKGROUND

- 1.1 The Western Cape Monitoring and Support of Municipalities Act, 2014 (Act 4 of 2014) (the principal Act), was enacted in 2014 to give effect to sections 154(1) and 155(6) of the Constitution of the Republic of South Africa, 1996 (the Constitution), and section 106(1) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) (the Municipal Systems Act). The principal Act is currently used in conjunction with the Municipal Systems Act, the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) (the MFMA), and the constitutional provisions that govern provincial intervention in municipalities. One of the crucial shortcomings of these frameworks is that adequate provision is not made for proactive measures for early detection and intervention in cases of municipal corruption and fraud, and instances where a municipality falls into distress.
- 1.2 The advantages of early intervention include the ability to prevent serious misconduct and corruption by identifying patterns of behaviour that precede the occurrence of misconduct. It has been found to impact positively on employee well-being and reduces the costs associated with criminal investigations and performance sanctions.
- 1.3 Research shows that, when interventions were initiated before the municipality reached a state of total collapse, the municipality was more likely to be able to return to a sound operational and financial footing after the intervention. In other words, the worse the state the municipality is in (for example, financial collapse, complete breakdown in governance structures, collapse of infrastructure) prior to intervention, the less likely it is to be able to return to a stable financial and operational state.

2. OBJECTS OF BILL

The objects of the Draft Western Cape Monitoring and Support of Municipalities Amendment Bill (the Amendment Bill) are therefore to—

- (a) provide for the proactive monitoring of municipalities to detect fraud, corruption, maladministration and other serious malpractices early on;
- (b) strengthen the ability of the provincial department responsible for local government (the Department) to support municipalities;
- (c) strengthen the ability of the Department to gain access to information required to conduct investigations and assessments effectively;
- (d) to strengthen the monitoring and support of municipalities by making provision for municipal councils to conduct preliminary assessments where there are allegations that are not frivolous, vexatious, speculative or obviously unfounded that a municipality

- cannot or does not fulfil an executive obligation in terms of the Constitution or a statutory obligation binding on the municipality or that there is maladministration, fraud, corruption or other serious malpractice occurring in the municipality; and
- (e) to reduce red tape and refine technical provisions in the principal Act.

3. CONTENTS OF BILL

- 3.1 **Clause 1** provides for the insertion of definitions for “minister’s support officer”, “political office bearer”, “provincial support officer”, “record” and “staff member”;
- 3.2 **Clause 2** amends section 2 of the principal Act by adding a provision that empowers the Provincial Minister, by notice in the *Provincial Gazette*, to require any municipality, or any category or type of municipality specified in the notice, to submit to a specified provincial organ of state the information required in the notice, either at regular intervals or within a specified period, and a provision setting out the manner in which this power must be exercised;
- 3.3 **Clause 3** inserts the proposed sections 2A and 2B, which provide for—
- 3.3.1 a municipality, on the request of the Provincial Executive, Provincial Minister responsible for local government (the Provincial Minister), minister’s support officer, provincial support officer or officials of the Department, to provide the persons with access to such records as may be necessary for the monitoring, assessment or investigation of a municipality;
- 3.3.2 the designation of local government support officers to provide support to a municipality as contemplated in section 154(1) or 155(6) of the Constitution;
- 3.4 **Clause 4** amends section 3 of the principal Act by—
- 3.4.1 stipulating that a municipal council, speaker, mayor or municipal manager is the specific functionary who may request the Provincial Minister or the head of any provincial department to assist the municipality in performing its functions generally or to deal with a specific matter;
- 3.4.2 making technical refinements to the provision that provides for cooperation between a municipality requesting assistance and the Department;
- 3.5 **Clause 5** inserts the proposed section 3A that provides for—
- 3.5.1 the Provincial Minister to designate a provincial support officer to determine compliance by a municipality with its obligations, to identify risks and suggest improvements to procedures and processes and to proactively assist with the detection of fraud, corruption, maladministration or malpractice in a municipality;
- 3.5.2 the Provincial Minister to determine the scope and other terms of reference of the monitoring and support to be provided if a provincial support officer is designated;
- 3.5.3 the provincial support officer to provide the Provincial Minister with a report on the findings of the monitoring and support, with reasons, and his or her recommendations;
- 3.5.4 when practical, the Provincial Minister to provide a copy of the report to the municipality concerned;

- 3.6 **Clause 6** amends section 4 of the principal Act by clarifying that the practice notes issued in terms of that section have the status of non-binding guidelines;
- 3.7 **Clause 7** inserts the proposed sections 4A, 4B and 4C in the principal Act that provide—
- 3.7.1 for the Provincial Minister, on receipt of information of a suspected failure by a municipality to fulfil a statutory obligation, maladministration, fraud, corruption or other serious malpractice, if he or she has reason to believe that a record relating to the information received will be concealed or destroyed if not secured as a matter of priority or that the alleged infringement is of an exceptionally serious nature, to designate a minister's support officer to travel to the municipality without prior notice to the municipality and inspect, secure and copy a record relating to the received information in the manner provided for in the proposed section 4A, read with the proposed section 7A as inserted by clause 11;
- 3.7.2 for the Provincial Minister, on receipt of well-founded allegations that a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or a statutory obligation binding on the municipality or of maladministration, fraud, corruption or other serious malpractice, to direct the municipal council of the municipality to conduct a preliminary assessment of the allegations, and further that the Provincial Minister may require the municipal council to provide him or her with a preliminary assessment report stipulating the findings and the steps that have been taken or will be taken to address the matter; and
- 3.7.3 for the avoidance of the duplication of assessments and investigations by expressly providing for the Provincial Minister to refer an allegation to the South African Police Service, a Chapter 9 institution, the Special Investigating Unit and Special Tribunals or another organ of state if he or she deems it more appropriate for such a body to investigate the matter and to await the outcome of such an investigation before taking action in terms of section 106 of the Municipal Systems Act or the principal Act.
- 3.8 **Clause 8** substitutes clause 5 of the principal Act by making technical amendments to the required procedures before invoking section 106(1) of the Municipal Systems Act;
- 3.9 **Clause 9** amends section 6 of the principal Act by—
- 3.9.1 making technical amendments to the required procedures when invoking section 106(1) of the Municipal Systems Act;
- 3.9.2 providing that if the Provincial Minister is satisfied that a municipality cannot fulfil a statutory obligation due to incapacity, the Provincial Minister may determine appropriate steps, in cooperation with the municipality, to develop the capacity of the municipality and to ensure that the municipality implements applicable practice notes and other best-practice standards;
- 3.9.3 by clarifying that if the Provincial Minister acts under subsection (1)(a) of section 6 or paragraph (a) of subsection (2), he or she is not precluded from designating a person or persons to investigate the matter as contemplated in section 7;

3.9.4 adding a provision providing that if the Provincial Minister has reason to believe, based on the assessment contemplated in section 5, that a municipality cannot or does not fulfil a statutory obligation or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in the municipality, but does not consider it necessary to designate a person or persons to investigate the matter, he or she may direct the municipality to prepare a report stipulating the steps that have been taken, or will be taken, by the municipality to address the matter;

3.10 **Clause 10** substitutes section 7 of the principal Act by—

3.10.1 providing for additional powers an investigator may exercise for the purposes of an investigation contemplated in section 6(1)(b) of the Act, including the right to enter premises or property of a municipality where he or she reasonably suspects a record is kept that may have a bearing on the investigation, to copy or make extracts from any such record or remove any such record (including an electronic device), provided that the record (or electronic device) is returned to the municipality without unreasonable delay, for the purpose of ascertaining any matter relating to the subject matter of the investigation, to exercise the power to cause an oath or affirmation to be administered to a witness or to subpoena any person to produce any record or object relevant to the investigation at the time and place specified in the subpoena;

3.10.2 providing that the investigator has full and unrestricted access to any record of the municipality or staff member or office bearer of the municipality in the manner set out in that provision and the provision proposed to be inserted by clause 11 of the Amendment Bill, if the investigator reasonably suspects that the record or staff member or political office bearer concerned may give access to or provide information that has a bearing on the investigation;

3.10.3 providing for the Provincial Minister to share the report and recommendations of the investigator with the South African Police Service, a Chapter 9 institution, the Special Investigating Unit and Special Tribunals, another organ of state or to the councillors of the municipality concerned;

3.10.4 adding a provision that provides, in the event that the investigator's report indicates that the municipality cannot or does not fulfil a statutory obligation or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in the municipality, the Provincial Minister may direct that the municipality prepare a report, by a stipulated date, stipulating the steps that have been taken, or will be taken, by the municipality to give effect to the findings and recommendations of the investigator's report;

3.11 **Clause 11** inserts the proposed section 7A that provides for the manner in which the minister's support officer and investigator must exercise their functions—

3.11.1 by enumerating the provisions of the Protection of Personal Information Act, 2013 (Act 4 of 2013), that are not applicable to the exercise of these functions;

3.11.2 by providing that the minister's support officer or investigator may require a staff member, councillor or political office bearer of a municipality to comply with a direction of, or answer questions put to him or her notwithstanding a duty of impartiality imposed

on that person by legislation that regulates, or an agreement that relates to the conduct of a staff member, councillor or political office bearer of, the municipality or any provision in legislation or other applicable instrument regulating the management of records in a municipality;

3.11.3 by indicating the manner in which the minister's support officer and investigator must exercise the power to enter the property or premises of a municipality;

3.12 **Clause 12** amends section 9 of the principal Act by deleting a reporting requirement subsequent to action taken in terms of section 6(1)(a) or (b) of the Act;

3.13 **Clause 13** substitutes section 11 of the principal Act by providing for additional offences.

4. CONSULTATION

The following role players were consulted:

Legal Services Branch, Department of the Premier
Provincial Legislative and Constitutional Task Team on Local Government

5. FINANCIAL IMPLICATIONS

None

6. LEGISLATIVE COMPETENCE

The Provincial Minister responsible for local government is satisfied that all the provisions in the Amendment Bill fall within the legislative competence of the Province.

PROVINSIALE KENNISGEWING

P.K. 22/2023

24 Februarie 2023

WES-KAAPSE KONSEPWYSIGINGSWETSONTWERP OP MONITERING EN
ONDERSTEUNING VAN MUNISIPALITEITE, 2023

Tot wysiging van die Wes-Kaapse Wet op Monitoring en Ondersteuning van Munisipaliteite, 2014 (Wet 4 van 2014), ten einde sekere woordomsrywings in te voeg; om voorsiening te maak vir die Provinsiale Minister om van enige munisipaliteit of kategorie munisipaliteit by kennisgewing in die *Provinsiale Koerant* te vereis om inligting aan 'n bepaalde provinsiale staatsorgaan voor te lê; om voorsiening te maak vir toegang tot rekords van 'n munisipaliteit gedurende 'n evaluering of ondersoek deur sekere provinsiale funksionaris; om voorsiening te maak vir die aanwysing van steunbeampes aan munisipaliteite; om voorsiening te maak vir die aanwysing van 'n provinsiale steunbeampte; om die bepalings te wysig wat voorsiening maak vir samewerking tussen 'n munisipaliteit en die Departement; om voorsiening te maak vir prosedures vir die proaktiewe monitoring van munisipaliteite; om prosedures te bepaal vir die inspeksie, beveiliging en kopiëring van rekords in bepaalde omstandighede; om voorsiening te maak vir die Provinsiale Minister om by ontvangs van sekere bewerings 'n munisipale raad opdrag te gee om 'n voorlopige evaluering uit te voer; om die Provinsiale Minister te magtig om die uitkoms van ondersoeke deur ander staatsorgane af te wag voor 'n besluit kragtens artikel 106 van die Wet op Plaaslike Regering: Munisipale Stelsels, 2000, of hierdie Wet geneem word; om die vereistes te wysig met betrekking tot die evaluering wat deur die Provinsiale Minister uitgevoer moet word voor 'n beroep op artikel 106(1) van die Wet op Plaaslike Regering: Munisipale Stelsels, 2000; om die prosedures te wysig by die beroep op daardie artikel; om sekere verslagdoeningsvereistes te skrap; om verdere misdrywe te skep; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Provinsiale Parlement van die Wes-Kaap, soos volg:—

Wysiging van artikel 1 van Wet 4 van 2014

1. Artikel 1 van die Wes-Kaapse Wet op Monitoring en Ondersteuning van Munisipaliteite, 2014 (Wet 4 van 2014) (die Hoofwet), word gewysig—

- (a) deur ná die omskrywing van “hierdie Wet” die volgende omskrywing in te voeg:
 ““ministersteunbeampte” ’n onafhanklike persoon of ’n beampte van die Provinsiale Regering, ’n provinsiale openbare instelling of ’n munisipaliteit in die Provinsie, gepas gekwalifiseer om die funksies beoog in artikel 4A te verrig;”;
- (b) deur ná die omskrywing van “ondersoeker” die volgende omskrywings in te voeg:
 ““personeellid”, met betrekking tot ’n munisipaliteit, ’n werknemer van die munisipaliteit, en ook die munisipale bestuurder;”;
 ““politieke ampsbekleër” ’n politieke ampsbekleër soos omskryf in artikel 1 van die Wet op Munisipale Stelsels;”;
- (c) deur ná die omskrywing van “Provinsiale Minister” die volgende omskrywing in te voeg:
 ““provinsiale steunbeampte” ’n onafhanklike persoon of ’n beampte van die Provinsiale Regering, ’n provinsiale openbare instelling of ’n munisipaliteit in die Provinsie, gepas gekwalifiseer om die funksies beoog in artikel 3A te verrig;” en
- (d) deur ná die omskrywing van “regulasie” die volgende omskrywing in te voeg:
 ““rekord” geboekstaafde inligting, ongeag die vorm of medium, met inbegrip van ’n lêer, dokument, boek of ander skriftelike of elektroniese rekord;”.

Wysiging van artikel 2 van Wet 4 van 2014

2. Artikel 2 van die Hoofwet word gewysig deur die volgende subartikels by te voeg, met die bestaande artikel wat subartikel (1) word:

“(2) Die Provinsiale Minister kan by kennisgewing in die *Provinsiale Koerant* van enige munisipaliteit, of enige kategorie of soort munisipaliteit vermeld in die kennisgewing vereis om, hetsy met gereelde tussenposes of binne ’n vermelde tydperk, aan ’n vermelde provinsiale staatsorgaan die inligting voor te lê wat in die kennisgewing vereis mag word.

(3) Wanneer die Provinsiale Minister sy of haar bevoegdheid ingevolge subartikel (2) uitoefen—

- (a) moet die Provinsiale Minister so ver as moontlik staatmaak op die tersaaklike ingestelde statutêre verslae wat ingevolge enige wet deur munisipaliteite voorgelê word; en
- (b) kan die Provinsiale Minister redelike versoeke aan ’n munisipaliteit rig vir bykomende inligting ná inagneming van—
 - (i) die administratiewe las op munisipaliteite om die inligting te verskaf;
 - (ii) die koste daaraan verbonde; en
 - (iii) bestaande meganismes, stelsels en prosesse vir prestasiemonitering in die munisipaliteit.”

Invoeging van artikels 2A en 2B in Wet 4 van 2014

3. Die volgende artikels word ná artikel 2 van die Hoofwet ingevoeg:

“Toegang tot rekords van munisipaliteite

2A. Vir die doeleindes van die monitering, evaluering of ondersoek van ’n munisipaliteit ingevolge hierdie Wet moet ’n munisipaliteit of enige munisipale instelling onder die alleen of gedeelde beheer van die munisipaliteit aan die Provinsiale Uitvoerende Gesag, Provinsiale Minister, ministersteunbeampte, provinsiale steunbeampte of beamptes van die Departement, op versoek van enige van hierdie persone, toegang gee tot die rekords wat nodig mag wees vir sodanige monitering, evaluering of ondersoek.

Aanwysing van plaaslikeregering-steunbeamptes

2B. Die Provinsiale Minister kan een of meer—

- (a) beamptes van die Provinsiale Regering;
- (b) verteenwoordigers van ’n provinsiale openbare instelling;
- (c) personelede van ’n munisipaliteit in die Provinsie;
- (d) onafhanklike persone,

as ’n plaaslikeregering-steunbeampte aanwys om ondersteuning aan ’n munisipaliteit te verleen soos beoog in artikel 154(1) en artikel 155(6) van die Grondwet.”

Wysiging van artikel 3 van Wet 4 van 2014

4. Artikel 3 van die Hoofwet word gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) [**n Munisipaliteit**] Die munisipale raad, speaker, burgemeester of munisipale bestuurder van ’n munisipaliteit kan die Provinsiale Minister of die hoof van enige provinsiale departement versoek om die munisipaliteit in die verrigting van sy funksies in die algemeen by te staan of om met ’n spesifieke aangeleentheid te handel.”; en

(b) deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Wanneer so ’n versoek gemaak word[—],

[(a) moet die Departement of die ander tersaaklike provinsiale departement met die munisipaliteit saamwerk en, so ver as wat redelik moontlik is, die bystand wat versoek is, verleen; en

(b)] moet die Departement, of die ander tersaaklike provinsiale departement, en die munisipaliteit met mekaar saamwerk en hul handeling so ver as wat redelikerwys moontlik is, koördineer.”.

Invoeging van artikel 3A in Wet 4 van 2014

5. Die volgende artikel word ná artikel 3 van die Hoofwet ingevoeg:

“Proaktiewe monitering

3A. (1) Ten einde munisipaliteite proaktief te moniteer en te ondersteun, kan die Provinsiale Minister, ten opsigte van ’n munisipaliteit, ’n provinsiale steunbeampte aanwys ten einde—

- (a) voldoening deur ’n munisipaliteit aan die tersaaklike statutêre verpligtinge, beleid, standaardbedryfsprosedures en praktyknotas te bepaal;
- (b) risiko’s te identifiseer en verbeteringe aan prosedures en prosesse voor te stel ten einde bedrog, korrupsie, wanadministrasie en wanpraktyke te voorkom; en
- (c) proaktief bystand te verleen met die bespeuring van bedrog, korrupsie, wanadministrasie of wanpraktyke in ’n munisipaliteit.

(2) Indien die Provinsiale Minister besluit om ’n provinsiale steunbeampte aan te wys, moet die Provinsiale Minister die bestek van die monitering en ondersteuning wat verskaf staan te word, en die ander opdragte vir die aanwysing skriftelik bepaal.

(3) Die provinsiale steunbeampte moet die volgende aan die Provinsiale Minister verskaf:

- (a) ’n verslag van die bevindings van die monitering en ondersteuning en ’n ontleding beoog in hierdie artikel, met inbegrip van die redes vir daardie bevindings; en
- (b) sy of haar aanbevelings met betrekking tot die bevindings.

(4) Die Provinsiale Minister moet, wanneer doenlik, ’n afskrif van die verslag en bevindings van die provinsiale steunbeampte aan die betrokke munisipaliteit verskaf.”.

Wysiging van artikel 4 van Wet 4 van 2014

6. Artikel 4 van die Hoofwet word gewysig deur subartikel (4) deur die volgende subartikel te vervang:

“(4) Praktyknotas uitgereik ingevolge subartikel (1) het die status van niebindende riglyne.”.

Invoeging van artikels 4A, 4B en 4C in Wet 4 van 2014

7. Die volgende artikels word ná artikel 4 van die Hoofwet ingevoeg:

“**Inspeksie, beveiliging en kopiëring van rekords**

4A. (1) Indien die Provinsiale Minister, by ontvangs van inligting van ’n vermoedelike mislukking deur ’n munisipaliteit om aan ’n statutêre verpligting te voldoen, wanadministrasie, bedrog, korrupsie of ander ernstige wanpraktyk, rede het om te glo—

- (a) dat ’n rekord in verband met die inligting wat ontvang is, versteek of vernietig sal word indien dit nie as ’n saak van prioriteit beveilig word nie; of
- (b) dat die beweerde oortreding ernstig is van aard,

kan hy of sy, sonder voorafkennisgewing aan die munisipaliteit, ’n ministersteunbeampte aanwys om na die munisipaliteit te reis en ’n rekord in verband met die inligting wat ontvang is, te inspekteer, te beveilig en te kopieer op die wyse beoog in subartikel (5), saamgelees met artikel 7A.

(2) By die bepaling vir die doeleindes van subartikel (1) of die inspeksie, beveiliging en kopiëring van ’n rekord nodig is, kan die Provinsiale Minister alle tersaaklike faktore in ag neem, met inbegrip van—

- (a) die identiteit van die fluitjieblaser;
- (b) die erns van beweerde oortreding;
- (c) of die oortreding na bewering voortduur of waarskynlik in die toekoms sal plaasvind ;
- (d) die persone teen wie die bewerings gemaak word; en
- (e) die openbare belang.

(3) Indien die Provinsiale Minister besluit om ’n ministersteunbeampte ingevolge subartikel (1) aan te wys, moet die Provinsiale Minister die bestek en die nader opdragte vir die aanwysing skriftelik bepaal.

(4) Behoudens subartikel (5) en artikel 7A het die betrokke ministersteunbeampte, op enige redelike tyd—

- (a) volle en onbeperkte toegang tot enige rekord van die munisipaliteit; en
- (b) die reg om enige personeellid of politieke ampsbekleër van die munisipaliteit te ondervra,

indien hy of sy redelikerwys vermoed dat die betrokke rekord of personeellid of politieke ampsbekleër inligting wat op die aangeleentheid beoog in subartikel (1) betrekking het, kan verskaf of toegang daartoe kan gee.

(5) Behoudens artikel 7A(3), kan die ministersteunbeampte—

- (a) enige eiendom of perseel van of onder die beheer van die munisipaliteit betree waar hy of sy redelikerwys vermoed 'n rekord gehou word wat op 'n aangeleentheid beoog in subartikel (1) betrekking het;
- (b) enige persoon wat hy of sy redelikerwys vermoed 'n rekord in sy of haar besit of onder sy of haar beheer mag hê en wat op 'n aangeleentheid beoog in subartikel (1) betrekking het, opdrag gee om enige sodanige rekord te verskaf of op 'n vermelde tyd of plek en in 'n vermelde vorm af te lewer;
- (c) enige sodanige rekord inspekteer en enige persoon wat kennis mag dra oor 'n aangeleentheid beoog in subartikel (1) oor enige sodanige rekord ondervra; of
- (d) enige sodanige rekord op die onkoste van die munisipaliteit kopieer of uittreksels daaruit maak of sodanige rekord verwyder, met inbegrip van enige elektroniese toestel, om dit te kopieer of uittreksels daaruit te maak, mits die rekord of elektroniese toestel sonder onredelike vertraging daarná aan die munisipaliteit teruggegee word.

Voorlopige evaluering

4B. (1) Die Provinsiale Minister kan, by ontvangs van bewerings, rakende 'n munisipaliteit, wat na sy of haar mening nie beuselagtig, kwelsugtig, spekulatief of voor die hand liggend ongegrond is nie, die munisipale raad van die munisipaliteit opdrag gee om 'n voorlopige evaluering uit te voer van die bewerings dat—

- (a) die betrokke munisipaliteit nie 'n uitvoerende verpligting ingevolge die Grondwet of ander wetgewing nakom nie; of
- (b) die betrokke munisipaliteit nie 'n statutêre verpligting wat op daardie munisipaliteit bindend is, nakom of kan nakom nie, of wanadministrasie, bedrog, korrupsie of enige ander ernstige wanpraktyk in die munisipaliteit in die Provinsie plaasgevind het of plaasvind.

(2) Indien die Provinsiale Minister besluit om die munisipale raad opdrag te gee om kragtens subartikel (1) 'n voorlopige evaluering uit te voer, kan die Provinsiale Minister vereis dat 'n voorlopige evalueringsverslag namens die munisipaliteit voor 'n vermelde datum aan hom of haar verskaf word wat die bevindings en, indien van toepassing, die stappe stipuleer wat deur die betrokke munisipaliteit gedoen is of sal gedoen word om die aangeleentheid beoog in subartikel (1) aan te spreek.

Duplikasie van evaluerings en ondersoeke

4C. Indien die Provinsiale Minister van mening is dat dit meer gepas is dat 'n bewering deur die Suid-Afrikaanse Polisie, 'n Hoofstuk 9-instelling, die Spesiale Ondersoekeenheid en Spesiale Tribunale of 'n ander staatsorgaan ondersoek word, kan hy of sy—

- (a) die bewering na die betrokke liggaam verwys; of
- (b) die uitkoms van sodanige ondersoek afwag voor hy of sy ingevolge artikel 106 van die Wet op Munisipale Stelsels of hierdie Wet optree.”

Wysiging van artikel 5 van Wet 4 van 2014

8. Artikel 5 van die Hoofwet word deur die volgende artikel vervang:

“Evaluering voor beroep op artikel 106(1) van Wet op Munisipale Stelsels

5. Die Provinsiale Minister moet, voordat hy of sy kragtens artikel 106(1) van die Wet op Munisipale Stelsels optree[—],

[(a) die betrokke munisipaliteit skriftelik verwittig van tersaaklike inligting wat die Provinsiale Minister ontvang het en die munisipaliteit uitnooi om die Provinsiale Minister teen ’n datum bepaal deur die Provinsiale Minister van skriftelike kommentaar te voorsien; en

(b)] alle tersaaklike inligting tot die Provinsiale Minister se beskikking objektief evalueer, **[met inagneming van onder meer] wat die volgende kan insluit—**

- (i) die wyse waarop die inligting ontvang is;
- (ii) **[die]** kommentaar, indien enige, ontvang van die munisipaliteit;
- (iii) of die inligting aandui dat die munisipaliteit ’n statutêre verpligting wat bindend is op die munisipaliteit nie kan uitvoer nie of nie uitvoer nie, en indien dit so is, of dit weens onvermoë is al dan nie;
- (iv) of die inligting aandui dat wanadministrasie, bedrog, korrupsie of enige ander ernstige wanpraktyk plaasgevind het of plaasvind in die munisipaliteit;
- (v) die gebiede van **[verrigting] prestasie** van die munisipaliteit wat geraak kan word indien daar nie ooreenkomstig artikel 106(1) van die Wet op Munisipale Stelsels opgetree word nie;
- (vi) of die munisipaliteit voorheen bystand van die Provinsiale Minister of die hoof van enige provinsiale departement versoek het om met die betrokke aangeleentheid of ’n verwante aangeleentheid te handel;
- (vii) of die Provinsiale Minister, die Departement of ’n ander provinsiale departement voorheen bystand aan die munisipaliteit verleen het; **[en]**
- (viii) indien van toepassing, die mate waarin die munisipaliteit tersaaklike praktyknotas implementeer en aan die noodsaaklike nasionale standaarde en minimum standaarde ingestel ingevolge artikel 108(1) van die Wet op Munisipale Stelsels voldoen;
- (ix) enige voorskrifte waaraan die munisipale raad versuim het om te voldoen.”.**

Wysiging van artikel 6 van Wet 4 van 2014

9. Artikel 6 van die Hoofwet word gewysig—

(a) deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan, deur die volgende woorde te vervang:

“(1) Indien die Provinsiale Minister rede het om te glo, gegrond op die evaluering beoog in artikel 5(b), dat ’n munisipaliteit nie ’n statutêre verpligting kan uitvoer of uitvoer nie, of dat wanadministrasie, bedrog, korrupsie of enige ander ernstige wanpraktyk plaasgevind het of plaasvind in die munisipaliteit, moet die Provinsiale Minister **[die munisipaliteit skriftelik verwittig van sy of haar mening en die redes**

vir daardie mening en,] ooreenkomstig artikel 106(1) van die Wet op Munisipale Stelsels—”;

(b) deur subartikel (2) deur die volgende subartikel te vervang:

“(2)(a) Indien die Provinsiale Minister, na oorweging van **[enige]** inligting, indien enige, ontvang as antwoord op ’n kennisgewing bedoel in subartikel (1)(a), tevrede is dat die munisipaliteit as gevolg van onvermoë nie ’n statutêre verpligting kan uitvoer nie, **[moet]** kan die Provinsiale Minister geskikte stappe bepaal, in samewerking met die munisipaliteit, om die vermoë van die munisipaliteit te ontwikkel en toe te sien dat die munisipaliteit toepaslike praktyknotas en ander bestespraktyk-standaarde implementeer.

(b) Die Provinsiale Minister word nie **[by]** deur te handel kragtens subartikel (1)(a) of paragraaf (a) verhoed om, indien dit nodig geag word, ’n persoon of persone aan te wys om die aangeleentheid te ondersoek soos beoog in artikel 7 nie.

(c) deur subartikel (3) te skrap; en

(d) deur ná subartikel (3) die volgende subartikel by te voeg:

“(4) Indien die Provinsiale Minister rede het om te glo, gegrond op die evaluasie beoog in artikel 5, dat ’n munisipaliteit nie ’n statutêre verpligting nakom of kan nakom nie of dat wanadministrasie, bedrog, korrupsie of enige ander ernstige wanpraktyk plaasgevind het of plaasvind in die munisipaliteit maar dit nie nodig ag om ’n persoon of persone aan te wys om die aangeleentheid te ondersoek nie, kan hy of sy die munisipaliteit opdrag gee om ’n verslag op te stel wat die stappe uiteensit wat deur die munisipaliteite gedoen is of gedoen sal word om die aangeleentheid aan te spreek.”

Wysiging van artikel 7 van Wet 4 van 2014

10. Artikel 7 van die Hoofwet word gewysig—

(a) deur subartikel (3) te skrap;

(b) deur subartikel (4) deur die volgende subartikel te vervang:

“(4)(a) Indien die Provinsiale Minister besluit om ’n ondersoeker ingevolge subartikel (1)(a) aan te wys, moet die Provinsiale Minister die bestek van die aangeleentheid wat ondersoek moet word en die ander opdragte aan die ondersoeker skriftelik bepaal.

(b) Die ondersoeker kan—

- (i) die formaat en prosedure wat gevolg moet word by die uitvoering van die ondersoek bepaal met behoorlike inagneming van die omstandighede van die aangeleentheid;
- (ii) bepaal wie teenwoordig kan wees en wie nie teenwoordig mag wees nie by enige verrigtinge wat betrekking het op die ondersoek, met inagneming van die aard van die ondersoek;
- (iii) enige persoon wat die ondersoeker redelikerwys vermoed inligting mag hê wat betrekking het op die ondersoek, beveel om enige rekord in daardie persoon se besit of onder sy of haar beheer wat betrekking het op die aangeleentheid wat ondersoek word, te verskaf of om dit op ’n vermelde plek en tyd en in ’n vermelde vorm af te lewer;
- (iv) enige sodanige rekord inspekteer en enige persoon wat kennis mag dra van ’n aangeleentheid wat betrekking het op die ondersoek, oor enige sodanige rekord ondervra;

- (v) enige sodanige rekord kopieer of uittreksels daaruit maak, op die onkoste van die munisipaliteit, of sodanige rekord verwyder, met inbegrip van 'n elektroniese toestel, om dit te kopieer of uittreksels daaruit te maak, mits die rekord of elektroniese toestel sonder onredelike vertraging daarná aan die munisipaliteit teruggegee word;
- (vi) enige persoon wat die ondersoeker redelikerwys vermoed inligting mag hê wat betrekking het op die ondersoek om, hetsy mondelings of skriftelik, enige inligting wat tersaaklik tot die ondersoek mag wees, bloot te lê, en enige persoon oor sodanige inligting ondervra.
- (c) Behoudens subartikel 7A(5) kan die ondersoeker, vir die doeleindes van paragraaf (b) en (g), enige eiendom of perseel van of onder die beheer van die munisipaliteit waar hy of sy redelikerwys vermoed 'n rekord gehou word wat betrekking op die ondersoek mag hê, betree.
- (d) Vir die doel om enige aangeleentheid vas te stel wat met die onderwerp van die ondersoek verband hou, het die ondersoeker die bevoegdhede van die Wes-Kaapse Afdeling van die Hoë Hof van Suid-Afrika om aan 'n getuie 'n eed of beëdigde verklaring te laat maak of enige persoon te subpoena om enige rekord of voorwerp tersaaklik tot die ondersoek op die tyd en plek vermeld in die subpoena te verskaf.
- (e) 'n Subpoena beoog in paragraaf (d) moet deur die ondersoeker onderteken word en aan die persoon wat gesubpoena word, beteken word, deur die ondersoeker per geregistreerde brief gestuur per pos of aflewering deur die ondersoeker of persoon daartoe gemagtig deur die ondersoeker.
- (f) Indien deur die ondersoeker vereis moet 'n persoon 'n eed of beëdigde verklaring maak, welke eed of beëdigde verklaring deur die ondersoeker opgelê moet word.
- (g) Die munisipaliteit en enige persoon bedoel in paragraaf (b)(iii), (iv) en (vi) moet met die ondersoeker saamwerk vir die doeleindes van die ondersoek.
- (h) Behoudens paragraaf (b)(iii) tot (vi) en artikel 7A, het die ondersoeker, te alle redelike tye, volle en onbepaalde toegang tot—
 - (i) enige rekord van die munisipaliteit;
 - (ii) enige personeellid of politieke ampsbekleër van die munisipaliteit,indien hy of sy redelikerwys vermoed dat die betrokke rekord of personeellid of politieke ampsbekleër toegang kan verskaf of het tot inligting wat op die ondersoek betrekking het.
- (i) Indien dit gedurende die ondersoek vir die ondersoeker voorkom dat enige persoon by die aangeleentheid wat ondersoek word, geïmpliseer word en dat sodanige implikasie tot die nadeel van daardie persoon kan wees of dat dit 'n nadelige aanbeveling ten opsigte van daardie persoon tot gevolg mag hê. Moet die ondersoeker daardie persoon 'n geleentheid gee om gehoor te word op enige wyse wat onder die omstandighede dienstig mag wees.
- (j) Geen persoon mag sonder die toestemming van die ondersoeker aan 'n ongemagtigde persoon die inhoud van enige dokument in verband met 'n ondersoek wat aan die ondersoeker voorgelê is of in die ondersoek se besit is of die rekord van enige verrigtinge van die ondersoek onthul nie.
- (k) Die ondersoeker moet skriftelik en binne die tydperk bepaal der die Provinsiale Minister, die Provinsiale Minister voorsien van—

- (i) 'n verslag van die bevindings van die ondersoek, met inbegrip van die redes vir daardie bevindings; en
- (ii) die ondersoeker se aanbevelings ten opsigte van die aangeleentheid.
- (l) Die Provinsiale Minister moet wanneer doenlik 'n afskrif van die verslag en aanbevelings van die ondersoeker aan die betrokke munisipaliteit verskaf.
- (m) Die Provinsiale Minister kan, uit eie beweging, 'n afskrif van die verslag en aanbevelings van die ondersoeker aan die Suid-Afrikaanse Polisiediens, 'n Hoofstuk 9-instelling, die Spesiale Ondersoekeenheid en Spesiale Tribunale, 'n ander staatsorgaan of aan die raadslede van die betrokke munisipaliteit verskaf.
- (n) Indien die ondersoeker se verslag aandui dat die munisipaliteit nie 'n statutêre verpligting nakom of kan nakom nie of dat wanadministrasie, bedrog, korrupsie of enige ander ernstige wanpraktyk plaasgevind het of plaasvind in die munisipaliteit, moet die Provinsiale Minister—
 - (i) opdrag gee dat die munisipaliteit 'n verslag opstel, teen 'n datum bepaal deur die Provinsiale Minister, wat die stappe uiteensit wat deur die munisipaliteit gedoen is of gedoen sal word om gevolg te gee aan die bevindings en aanbevelings van die ondersoeker se verslag;
 - (ii) die erns van die situasie en die munisipaliteit se reaksie op die situasie evalueer;
 - (iii) bepaal of die situasie 'n ingryping ingevolge artikel 139 van die Grondwet regverdig of vereis;
 - (iv) bepaal of die situasie vereis dat stappe gedoen word om die munisipaliteit te monitor en te ondersteun of om die ontwikkeling van die munisipaliteit se vermoë om sy funksies te verrig te bevorder, na gelang van die geval; en
 - (iv) indien tevrede dat die munisipaliteit nie 'n statutêre verpligting kan nakom nie as gevolg van onvermoë, gepaste stappe bepaal, ná oorlegpleging met die munisipaliteit, om die vermoë van die munisipaliteit te ontwikkel en toe te sien dat die munisipaliteit toepaslike praktyknotas en ander bestepraktykstandaarde implementeer.”.

Invoeging van artikel 7A

11. Die volgende artikel word ná artikel 7 van die Hoofwet ingevoeg:

“Uitvoering van funksies kragtens artikel 4A en 7

7A. (1) Die volgende bepalings van die “Protection of Personal Information Act, 2013” (Wet 4 van 2013), is nie van toepassing op die uitoefening van die funksies van die ministersteunbeampte kragtens artikel 4A en van die ondersoeker kragtens artikel 7(4) nie:

- (a) artikels 11(3), 11(4), 12, 15 en 18; en
- (b) enige ander bepaling ten opsigte waarvan die Inligtingsreguleerder 'n toepaslike vrystelling kragtens artikel 37 van daardie Wet verleen het.

(2) Die ministersteunbeampte of ondersoeker kan van 'n personeellid, raadslid of politieke ampsbekleër van 'n munisipaliteit vereis om 'n opdrag te gehoorsaam van, of vrae te beantwoord wat aan hom of haar gestel word deur, sodanige

ministersteunbeampte of sodanige soos beoog in artikel 4A of artikel 7(4), nieteenstaande—

- (a) ’n plig van vertroulikheid opgelê aan daardie persoon deur wetgewing wat die munisipaliteit reguleer of ’n ooreenkoms wat verband hou met die gedrag van ’n personeellid, raadslid of politieke ampsbekleër van die munisipaliteit; of
- (b) enige bepaling in wetgewing of ander instrument wat die bestuur of beheer van argiewe of rekords van ’n munisipaliteit reguleer.

(3) Indien, gedurende die uitoefening van die ministersteunbeampte se funksies beoog in artikel 4A, of die ondersoeker se funksies soos beoog in artikel 7, ’n persoon beweer dat ’n rekord wat hy of sy opdrag gegee is om bloot te lê regsvertroulik is en om daardie rede weier om die betrokke rekord bloot te lê, kan die ministersteunbeampte of ondersoeker, na gelang van die geval, indien hy of sy van mening is dat die rekord betrekking het op inligting beoog in artikel 4A(1) of op ’n ondersoek beoog in artikel 7, die Registrateur van die Hoë Hof of sy of haar afgevaardigde versoek om die rekord vir veilige bewaring te kollekteer totdat ’n geregshof beslis het oor die vraag of die betrokke inligting regsvertroulik is al dan nie.

(4) Vir die doeleindes van subartikel (3) kan ’n afgevaardigde van die Registrateur van die Hoë Hof ’n regspraktisyn insluit wat ingevolge die “Legal Practice Act, 2014” (Wet 28 van 2014) op die Rol van Regspraktisyns verskyn om die rekord namens die Registrateur te kollekteer en te verwyder.

(5) ’n Ministersteunbeampte of ondersoeker moet, by die uitvoering van sy of haar bevoegdhede van betreding op die eiendom of perseel van die munisipaliteit kragtens artikel 4A(5) of 7(4)(c)—

- (a) die ure van betreding tot gewone sake-ure beperk, tensy die ministersteunbeampte of ondersoeker redelikerwys betreding op enige ander tyd nodig ag op grond van dringendheid;
- (b) te alle tye ordentlikheid en orde handhaaf;
- (c) hom- of haarself identifiseer aan die personeellid of politieke ampsbekleër met die hoogste rang teenwoordig op die eiendom of perseel;
- (d) op versoek van die personeellid of politieke ampsbekleër met die hoogste rang teenwoordig op die eiendom of perseel—
 - (i) bewys van sy of haar aanwysing as die ministersteunbeampte of ondersoeker verskaf;
 - (ii) die doel, bestek en die rede vir die betreding verduidelik;
 - (iii) hom of haar toelaat om te alle tye teenwoordig te wees;
 - (vi) ’n inventaris verskaf van die items wat verwyder is om afskrifte van te maak.”.

Wysiging van artikel 9 van Wet 4 van 2014

12. Artikel 9 van die Hoofwet word deur die volgende artikel vervang:

“Verslagdoening

9. [(1)] Indien daar ingevolge artikel 6(1)(a) of (b) opgetree word, moet die Provinsiale Minister binne 14 dae—

- (a) ’n skriftelike verklaring wat die optrede motiveer aan die Nasionale Raad van Provinsies voorlê; en

- (b) 'n afskrif van daardie verklaring aan die nasionale minister verantwoordelik vir plaaslike regering[,] en die nasionale minister verantwoordelik vir finansies [**en die Suid-Afrikaanse Vereniging vir Plaaslike Regering**] aanstuur.

[(2) Die Provinsiale Minister moet so gou doenlik 'n afskrif van die ondersoeker se verslag bedoel in artikel 7(4)(f) aan die Nasionale Raad van Provinsies, die nasionale minister verantwoordelik vir plaaslike regering, die nasionale minister verantwoordelik vir finansies en die Suid-Afrikaanse Vereniging vir Plaaslike Regering voorlê.]”.

Wysiging van artikel 11 van Wet 4 van 2014

13. Artikel 11 van die Hoofwet word deur die volgende artikel vervang:

“**Misdrywe en strawwe**

11. 'n Persoon wat—

- (a) versuim of weier om enige **[dokument] rekord** in sy of haar besit of onder sy of haar beheer te verskaf wanneer die persoon ingevolge artikel 4A(5)(b) deur 'n ministersteunbeampte of ingevolge artikel 7(4)(b)(iii) deur die ondersoeker beveel word om dit te doen;
- (b) enige persoon verhinder om enige **[dokument] rekord** in daardie persoon se besit of onder daardie persoon se beheer te verskaf wanneer daardie persoon ingevolge artikel 4A(5)(b) deur 'n ministersteunbeampte of ingevolge artikel 7(4)(b)(iii) deur **[die]** 'n ondersoeker beveel word om dit te doen;
- (c) artikel 7(4)(j) oortree; **[of]**
- (d) enige **[dokument] rekord** [, **of voorwerp,**] wat na sy of haar wete van hulp kan wees vir die ondersoeker vernietig of versteek met die doel om die ondersoek van 'n aangeleentheid deur die ondersoeker te dwarsboom of verhinder;
- (e) enige rekord vernietig of versteek met die doel om die inspeksie, beveiliging of kopiëring van 'n rekord deur 'n ministersteunbeampte ingevolge artikel 4A te verhinder of te belemmer, enige rekord wat na die persoon se kennis van hulp vir 'n ministersteunbeampte kan wees, vernietig of verberg;
- (f) ingevolge artikel 7(4)(n)(i) versuim om te voldoen aan 'n opdrag wat deur die Provinsiale Minister uitgereik is;
- (g) die ondersoeker of enige persoon wat 'n opdrag uitoefen, of 'n plig ingevolge hierdie Wet uitvoer, verhinder of by hulle opdrag inmeng;
- (h) vals of misleidende inligting verskaf wanneer hy of sy op 'n versoek van 'n ministersteunbeampte of 'n ondersoeker reageer;
- (i) versuim om enige rekord of voorwerp in sy of haar besit of onder sy of haar beheer voor te lê en wat hy of sy ingevolge 'n dagvaarding ingevolge artikel 7 versoek is om voor te lê;
- (j) nadat hy of sy beëdig is of 'n bevestiging gemaak het, valse getuienis voor 'n ondersoeker oor enige aangeleentheid lewer, wetende dat sodanige getuienis vals is of nie glo dat dit waar is nie; of

(k) enige getuie verkry, oorreed, intimideer, korrupteer of omkoop om getuienis te weerhou of om valse getuienis voor 'n ondersoeker te lewer, pleeg 'n misdryf en is by skuldigbevinding strafbaar met 'n boete of gevangenisstraf van hoogstens [12] 24 maande.”.

Kort titel en inwerkingtreding

14. Hierdie Wet word die Wysigingswet op die Monitering en Ondersteuning van Munisipaliteite van die Wes-Kaap, 2023 genoem en tree in werking op 'n datum wat by proklamasie in die *Provinsiale Koerant* deur die Premier bepaal.

**MEMORANDUM OOR DIE DOELWITTE VAN DIE WES-KAAPSE
KONSEPWYSIGINGSWETSONTWERP OP MONITERING EN ONDERSTEUNING VAN
MUNISIPALITEITE, 2023**

1. AGTERGROND

- 1.1 Die Wes-Kaapse Wet op Monitoring en Ondersteuning van Munisipaliteite, 2014 (Wet 4 van 2014) (die Hoofwet), is in 2014 bekragtig om uitvoering te gee aan artikel 154(1) en 155(6) van die Grondwet van die Republiek van Suid-Afrika, 1996 (die Grondwet), en artikel 106(1) van die Wet op Plaaslike Regering: Munisipale Stelsels, 2000 (Wet 32 van 2000) (die Munisipale Stelselswet). Die Hoofwet funksioneer tans saam met die Munisipale Stelselswet, die Wet op Plaaslike Regering: Munisipale Finansiële Bestuur, 2003 (Wet 56 van 2003) (die WMFB), en die grondwetlike bepalings wat provinsiale intervensie in munisipaliteite beheer. Een van die deurslaggewende tekortkominge van hierdie raamwerke is dat daar nie voldoende voorsiening gemaak word vir proaktiewe maatreëls vir vroeë opsporing en intervensie in gevalle van munisipale korrupsie en bedrog, en gevalle waar 'n munisipaliteit in nood verval nie.
- 1.2 Die voordele van vroeë intervensie sluit in die vermoë om ernstige wangedrag en korrupsie te voorkom deur gedragspatrone te identifiseer wat die voorkoms van wangedrag voorafgaan. Daar is gevind dat dit 'n positiewe impak op werknemers se welstand het en die koste wat verband hou met kriminele ondersoeke en prestasie-sanksies verminder.
- 1.3 Navorsing toon dat, wanneer intervensies plaasgevind het voordat die munisipaliteit 'n toestand van totale ineenstorting bereik het, die munisipaliteit meer geneig was om na 'n gesonde operasionele en finansiële grondslag ná die intervensie terug te keer. Met ander woorde, hoe slegter die toestand waarin die munisipaliteit verkeer (byvoorbeeld finansiële ineenstorting, volledige ineenstorting in bestuurstrukture, ineenstorting van infrastruktuur) voor intervensie, hoe minder waarskynlik is dit om na 'n stabiele finansiële en operasionele toestand terug te keer.

2. DOELWITTE VAN DIE WETSONTWERP

Die doelwitte van die Wes-Kaapse Konsepwysigingswetsontwerp op Monitoring en Ondersteuning van Munisipaliteite (die Wysigingswetsontwerp) is dus om—

- (a) voorsiening te maak vir die proaktiewe monitoring van munisipaliteite om bedrog, korrupsie, wanadministrasie en ander ernstige wanpraktyke vroegtydig op te spoor;
- (b) die vermoë van die Provinsiale Departement verantwoordelik vir Plaaslike Regering (die Departement) te verbeter om munisipaliteite te ondersteun;
- (c) die vermoë van die Departement te verbeter om toegang te verkry tot inligting wat nodig is om ondersoeke en assesserings doeltreffend uit te voer;

- (d) die monitering en ondersteuning van munisipaliteite te versterk deur voorsiening te maak vir munisipale rade om voorlopige assesserings te doen waar daar bewerings is wat nie ligsinnig, ergerlik, spekulatief of ooglopend ongegrond is dat 'n munisipaliteit nie aan 'n uitvoerende verpligting of 'n statutêre verpligting wat bindend op die munisipaliteit is ingevolge die Grondwet voldoen of daaraan kan voldoen nie of dat daar wanadministrasie, bedrog, korrupsie of ander ernstige wanpraktyke in die munisipaliteit voorkom; en
- (e) rompslomp te verminder en tegniese bepalings in die Hoofwet te verfyn.

3. INHOUD VAN DIE WETSONTWERP

- 3.1 **Klousule 1** maak voorsiening vir die invoeging van definisies vir “ministersondersteuningsbeampte”, “politieke ampsbekleër”, “provinsiale ondersteuningsbeampte”, “rekord” en “personeellid”;
- 3.2 **Klousule 2** wysig artikel 2 van die Hoofwet deur 'n bepaling by te voeg wat aan die Provinsiale Minister deur kennisgewing in die Provinsiale Koerant die mag verleen om van enige munisipaliteit, of enige kategorie of tipe munisipaliteit gespesifiseer in die kennisgewing, te vereis dat hulle die inligting wat in die kennisgewing gevra word aan 'n bepaalde provinsiale staatsorgaan verskaf, hetsy met gereelde tussenposes of binne 'n bepaalde tydperk, sowel as 'n bepaling wat die wyse uiteensit waarop hierdie bevoegdheid uitgeoefen moet word;
- 3.3 **Klousule 3** voeg die beoogde artikel 2A en 2B in, wat voorsiening maak vir—
 - 3.3.1 'n munisipaliteit, op versoek van die Provinsiale Uitvoerende Bestuur, Provinsiale Minister verantwoordelik vir Plaaslike Regering (die Provinsiale Minister), ministersondersteuningsbeampte, provinsiale ondersteuningsbeampte of amptenare van die Departement, om die persone toegang te gee tot die rekords wat nodig mag wees vir die monitering, assessering of ondersoeking van 'n munisipaliteit;
 - 3.3.2 die aanwysing van Plaaslike Regering ondersteuningsbeamptes om ondersteuning aan 'n munisipaliteit te verskaf soos beoog in artikel 154(1) of 155(6) van die Grondwet;
- 3.4 **Klousule 4** wysig artikel 3 van die Hoofwet deur—
 - 3.4.1 te bepaal dat 'n munisipale raad, speaker, burgemeester of munisipale bestuurder die spesifieke funksionaris is wat die Provinsiale Minister of die hoof van enige provinsiale departement kan versoek om die munisipaliteit by te staan in die uitvoering van sy funksies in die algemeen of om 'n spesifieke saak te hanteer;
 - 3.4.2 tegniese verfynings aan te bring aan die bepaling wat voorsiening maak vir samewerking tussen 'n munisipaliteit wat bystand versoek en die Departement;
- 3.5 **Klousule 5** voeg die beoogde artikel 3A in, wat voorsiening maak vir—
 - 3.5.1 die Provinsiale Minister om 'n provinsiale ondersteuningsbeampte aan te wys om die voldoening van 'n munisipaliteit aan sy verpligtinge te bepaal, om risiko's te identifiseer en verbeterings aan prosedures en prosesse voor te stel en om proaktief te help met die opsporing van bedrog, korrupsie, wanadministrasie of wanpraktyke in 'n munisipaliteit;

- 3.5.2 die Provinsiale Minister om die omvang en ander opdragte van die monitering en ondersteuning wat verskaf moet word te bepaal indien 'n provinsiale ondersteuningsbeampte aangewys word;
 - 3.5.3 die provinsiale ondersteuningsbeampte om die Provinsiale Minister te voorsien van 'n verslag oor die bevindings van die monitering en ondersteuning, met redes, en sy of haar aanbevelings;
 - 3.5.4 die Provinsiale Minister om, waar prakties moontlik, 'n afskrif van die verslag aan die betrokke munisipaliteit te verskaf;
- 3.6 **Klousule 6** wysig artikel 4 van die Hoofwet deur te verduidelik dat die praktyknotas wat ingevolge daardie artikel uitgereik is, die status van nie-bindende riglyne geniet;
- 3.7 **Klousule 7** voeg die beoogde artikel 4A, 4B en 4C in die Hoofwet in, wat voorsiening maak—
- 3.7.1 vir die Provinsiale Minister, by ontvangs van inligting van 'n vermoedelike versuim deur 'n munisipaliteit om 'n statutêre verpligting na te kom, wanadministrasie, bedrog, korrupsie of ander ernstige wanpraktyke, indien hy of sy rede het om te glo dat 'n rekord met betrekking tot die inligting wat ontvang is versteek of vernietig word indien dit nie as 'n aangeleentheid van prioriteit verseker is nie of dat die beweerde oortreding van 'n buitengewone ernstige aard is, om 'n ministersondersteuningsbeampte aan te wys om sonder vooraf kennisgewing aan die munisipaliteit na die munisipaliteit te reis en 'n rekord met betrekking tot die inligting wat ontvang is te inspekteer, te beveilig en 'n afskrif daarvan te maak op die wyse waarop daar voor voorsiening gemaak word in die beoogde artikel 4A, saamgelees met die beoogde artikel 7A soos deur klousule 11 ingevoeg;
 - 3.7.2 vir die Provinsiale Minister, by ontvangs van gegronde bewerings dat 'n munisipaliteit nie voldoen aan of kan voldoen aan 'n uitvoerende verpligting ingevolge die Grondwet of 'n statutêre verpligting bindend op die munisipaliteit of van wanadministrasie, bedrog, korrupsie of ander ernstige wanpraktyke nie, om die munisipale raad van die munisipaliteit opdrag te gee om 'n voorlopige assessering van die bewerings te doen, en verder dat die Provinsiale Minister van die munisipale raad kan vereis om aan hom of haar 'n voorlopige assesseringsverslag te verskaf wat die bevindings en die stappe wat geneem is of geneem gaan word om die saak te takel uiteensit; en
 - 3.7.3 vir die vermyding van die duplisering van aanslae en ondersoeke deur uitdruklik voorsiening te maak dat die Provinsiale Minister 'n bewering na die Suid-Afrikaanse Polisie, 'n Hoofstuk 9-instelling, die Spesiale Ondersoekeenheid en Spesiale Tribunale of 'n ander staatsorgaan verwys indien hy of sy meen dit meer gepas vir so 'n liggaam is om die aangeleentheid te ondersoek en die uitslag van so 'n ondersoek af te wag voordat stappe geneem word ingevolge artikel 106 van die Munisipale Stelselwet of die Hoofwet.
- 3.8 Klousule 5 word deur **klousule 8** van die Hoofwet vervang deur tegniese wysigings aan die vereiste prosedures aan te bring voordat artikel 106(1) van die Munisipale Stelselwet opgeroep word;

- 3.9 Artikel 6 word deur **klousule 9** van die Hoofwet gewysig deur—
- 3.9.1 tegniese wysigings aan die vereiste prosedures aan te bring tydens die beroep op artikel 106(1) van die Munisipale Stelselwet;
- 3.9.2 met dien verstande dat indien die Provinsiale Minister oortuig is dat 'n munisipaliteit nie kan voldoen of nie voldoen aan 'n statutêre verpligting weens onbevoegdheid nie, die Provinsiale Minister gepaste stappe kan bepaal, in samewerking met die munisipaliteit, om die kapasiteit van die munisipaliteit te ontwikkel en om te verseker dat die munisipaliteit toepaslike praktyknotas en ander beste-praktykstandaarde implementeer;
- 3.9.3 te verduidelik dat indien die Provinsiale Minister kragtens subartikel (1)(a) van artikel 6 of paragraaf (a) van subartikel (2) optree, hy of sy nie verhinder word om 'n persoon of persone aan te wys om die aangeleentheid te ondersoek soos beoog in artikel 7 nie;
- 3.9.4 'n bepaling by te voeg wat bepaal dat indien die Provinsiale Minister rede het om te glo, gegrond op die beoordeling beoog in artikel 5, dat 'n munisipaliteit nie of nie kan voldoen aan 'n statutêre verpligting nie, of dat wanadministrasie, bedrog, korrupsie of enige ander ernstige wanpraktyke plaasgevind het of besig is om in die munisipaliteit plaas te vind, maar dit nie nodig ag om 'n persoon of persone aan te wys om die aangeleentheid te ondersoek nie, kan hy of sy die munisipaliteit opdrag gee om 'n verslag op te stel wat die stappe bepaal wat deur die munisipaliteit geneem is of geneem gaan word om die saak te takel;
- 3.10 Artikel 7 word deur **Klousule 10** van die Hoofwet vervang deur—
- 3.10.1 voorsiening te maak vir bykomende mag wat 'n ondersoeker kan uitoefen vir die doeleindes van 'n ondersoek beoog in artikel 6(1)(b) van die Wet, insluitend die reg om 'n perseel of eiendom van 'n munisipaliteit te betree waar hy of sy redelikerwys vermoed 'n rekord gehou word wat 'n invloed mag hê op die ondersoek, om enige sodanige rekord te kopieer of uittreksels te maak of enige sodanige rekord (insluitend 'n elektroniese toestel) te verwyder, mits die rekord (of elektroniese toestel) sonder onredelike vertraging aan die munisipaliteit terugbesorg word vir die doel om te bepaal of daar enige aangeleentheid is wat verband hou met die onderwerp van die ondersoek, om die bevoegdheid uit te oefen om 'n eed of bevestiging aan 'n getuie te laat aflê of om enige persoon te dagvaar om enige rekord of voorwerp wat op die ondersoek betrekking het te oorhandig op die tyd en plek wat in die dagvaarding gespesifiseer word;
- 3.10.2 daarvoor voorsiening te maak dat die ondersoeker volle en onbeperkte toegang het tot enige rekord van die munisipaliteit of personeelid of ampsdraer van die munisipaliteit op die wyse uiteengesit in daardie bepaling en die bepaling wat beoog word om by klousule 11 van die Wysigingswetsontwerp ingevoeg te word, indien die ondersoeker redelikerwys vermoed dat die betrokke rekord of personeelid of politieke ampsdraer toegang kan gee tot of inligting verskaf wat 'n invloed op die ondersoek het;
- 3.10.3 voorsiening te maak vir die Provinsiale Minister om die verslag en aanbevelings van die ondersoeker te deel met die Suid-Afrikaanse Polisie, 'n Hoofstuk 9-instelling, die Spesiale Ondersoekeenheid en Spesiale Tribunale, 'n ander staatsorgaan of met die raadslede van die betrokke munisipaliteit;
- 3.10.4 die byvoeging van 'n bepaling wat voorsiening maak, in die geval dat die ondersoeker se verslag aandui dat die munisipaliteit nie of nie kan voldoen aan 'n statutêre verpligting of

dat wanadministrasie, bedrog, korrupsie of enige ander ernstige wanpraktyke in die munisipaliteit voorgekom het of voorkom, dat die Provinsiale Minister kan las dat die munisipaliteit teen 'n vasgestelde datum 'n verslag opstel wat die stappe bepaal wat deur die munisipaliteit geneem is of geneem gaan word om uitvoering te gee aan die bevindings en aanbevelings van die ondersoeker se verslag;

- 3.11 **Klousule 11** voeg die beoogde artikel 7A in wat voorsiening maak vir die manier waarop die ministersondersteuningsbeampte en ondersoeker hul funksies moet uitoefen —
- 3.11.1 deur die bepalings van die Wet op die Beskerming van Persoonlike Inligting, 2013 (Wet 4 van 2013) wat nie op die uitoefening van hierdie funksies van toepassing is nie op te som;
- 3.11.2 deur te bepaal dat die ministersondersteuningsbeampte of ondersoeker van 'n personeellid, raadslid of politieke ampsdraer van 'n munisipaliteit kan vereis om te voldoen aan 'n voorskrif, of om vrae aan hom of haar te beantwoord, nieteenstaande 'n vertroulikheidsplig wat deur wetgewing aan daardie persoon opgelê word wat reguleer, of 'n ooreenkoms wat verband hou met die gedrag van 'n personeellid, raadslid of politieke ampsdraer van die munisipaliteit of enige bepaling in wetgewing of ander toepaslike instrument wat die bestuur van rekords in 'n munisipaliteit reguleer;
- 3.11.3 deur die wyse aan te dui waarop die ministersondersteuningsbeampte en ondersoeker die mag om die eiendom of perseel van 'n munisipaliteit te betree moet uitoefen;
- 3.12 Artikel 9 van die Hoofwet word deur **Klousule 12** gewysig deur 'n verslagdoeningsvereiste na stappe geneem ingevolge artikel 6(1)(a) of (b) van die Wet te skrap;
- 3.13 Artikel 11 van die Hoofwet word deur **Klousule 13** vervang deur voorsiening te maak vir bykomende oortredings.

4. OORLEGPLEGING

Die volgende belanghebbendes is geraadpleeg:

Regsdienstetak, Departement van die Premier
Wetgewende en Grondwetlike Taakspan oor Plaaslike Regering

5. FINANSIËLE IMPLIKASIES

Geen

6. WETGEWENDE BEVOEGDHEID

Die Provinsiale Minister van Plaaslike Regering is tevrede dat al die bepalings in die Wysigingswetsontwerp binne die wetgewende bevoegdheid van die Provinsie val.

ISAZISO SEPHONDO

I.S. 22/2023

24 kweyoMdumba 2023

**UQULUNQO LOMTHETHO OSAYILWAYO WOLUNGISO WOBEKOLISO NENKXASO
YOOMASIPALA
WENTSHONA KOLONI, 2023**

Ukwenza izilungiso kuMthetho weNtshona Koloni woBekoliso neNkxaso yooMasipala, 2014 (uMthetho 4 ka-2014), ukuze kufakelwe iinkcazelo ezithile; ukunika uMphathiswa wePhondo ukuze afune nawuphi na umasipala okanye udidi lukamasipala ngesaziso *kwiGazethi yePhondo* ukungenisa iingcombolo kwisigqeba sikarhulumente sephondo esichaziweyo; ukubonelela ngofikelelo kwiirekhodi zikamasipala ngexesha lovavanyo okanye kuphando ngamagosa athile ephondo; ukubonelela ngokuchongwa kwamagosa enkxaso koomasipala; ukubonelela ngokuchongwa kwegosa elixhasayo lephondo; ukulungisa izibonelelo ezibonelela ngentsebenziswano phakathi kukamasipala neSebe; ukubonelela ngeenkqubo zobekoliso kwangaphambili koomasipala; ukubonelela ngeenkqubo zokuhlolwa, ukugcinwa nokukhutshelwa kweirekhodi kwiimeko ezithile; ukubonelela uMphathiswa wePhondo ukuba ayalele ibhunga likamasipala ukuba lenze uhlobo lokuqala lakuba lifumene izityholo ezithile; ukugunyazisa uMphathiswa ukuba alinde iziphumo zophando olwenziwe ngamanye amaziko karhulumente phambi kokuba athathe amanyathelo phantsi kwecandelo 106 lomthetho iMunicipal Systems Act okanye lo Mthetho; ukulungisa iimfuno eziphathelele kuvavanyo olwenziwa nguMphathiswa wePhondo phambi kokuba kusetyenziswe icandelo 106(1) lomthetho iMunicipal Systems Act; ukwenza izilungiso kwiinkqubo xa kucelwa elo candelo; ukucima iimfuno ezithile zokunika ingxelo; ukudala ulwaphulo-mthetho olongezelelweyo; kunye nokubonelela ngemibandela enokwenzeka.

MAWUMISELWE yiPalamente yePhondo leNtshona Koloni, ngolu hlobo lulandelayo:—

Ukulungiswa kwecandelo 1 lo Mthetho 4 ka-2014

1. ICandelo 1 loMthetho weNtshona Koloni woBekoliso neNkxaso yooMasipala, 2014 (uMthetho 4 ka-2014) (uMthetho ngqangi), liyalungiswa.—

- (a) ngokufakela emva kwenkcazo “yomphandi” kwezi nkcazelo zilandelayo:
“igosa lenkxaso yomphathiswa” lithetha umntu ozimeleyo okanye igosa likaRhulumente wePhondo, iqumrhu loluntu lephondo okanye umasipala kwiPhondo, onemfundo efanelekileyo ukwenza imisebenzi echazwe kwicandelo. 4A;”;
- (b) ngokufakela emva kwenkcazo “kamasipala” yezi nkcazelo zilandelayo:
“igosa lezopolitiko” lithetha igosa lezopolitiko njengoko lichazwa kwicandelo 1 lomthetho iMunicipal Systems Act;”;
- (c) ngokufakela emva kwenkcazo “UMphathiswa wePhondo” yezi nkcazelo zilandelayo:
“igosa lenkxaso lephondo” lithetha umntu ozimeleyo okanye igosa likaRhulumente wePhondo, iqumrhu loluntu lephondo okanye umasipala kwiPhondo, onemfundo efanelekileyo ukwenza imisebenzi echazwe kwicandelo. 3A;”;
“irekhodi” lithetha iingcombolo ezirekhodiweyo, nokuba luluphi na uhlobo okanye umthombo, kuquka ifayile, uxwebhu, incwadi okanye enye ingxelo ebhaliweyo okanye ekwikhompyutha;”; kwaye
- (d) ngokufakela emva kwenkcazo “umgaqo” wale nkcazelo ilandelayo:
“umsebenzi”, ngokunxulumene nomasipala, uthetha umsebenzi kamasipala, kwaye kuquka umphathi kamasipala;”.

Ukulungiswa kwecandelo 2 lo Mthetho 4 ka-2014

2. ICandelo 2 loMthetho ngqangi lenziwa izilungiso ngokuthi kongezwe la macandelwana alandelayo, eli candelo likhoyo libe licandelwana (1):

“(2) UMphathiswa wePhondo unokuthi ngesaziso kwiGazethi yePhondo afune nawuphi na umasipala, okanye naluphi na udidi okanye uhlobo lukamasipala oluchazwe kwisaziso, ukuba angenise kwisigqeba sombuso wephondo esichaziweyo ezo nkukacha ezinokuthi zifunwe kwisaziso, nokuba ngamathuba athile okanye ngamaxsha achaziweyo.

(3) Xa esebenzisa amagunya akhe ngokwecandelwana (2), uMphathiswa wePhondo—

- (a) kufuneka athembele kangangoko kunokwenzeka kwiingxelo ezifanelekileyo ezisemthethweni ezingeniswe ngoomasipala ngokubhekiselele kuwo nawuphi na umthetho;
- (b) angenza izicelo ezifanelekileyo koomasipala zokufumana iingcombolo ezongezelekileyo emva kokuthathela ingqalelo—
 - (i) umthwalo wolawulo koomasipala ukubonelela ngeengcombolo;
 - (ii) iindleko ezibandakanyekayo; kunye
 - (iii) iindlela zokusebenza ezikhoyo, isistimu kunye neenkqubo zokubek' iliso ekwenziweni komsebenzi kumasipala.”

Ukufakelwa kwamacandelo 2A no-2B kuMthetho 4 ka-2014

3. La macandelo alandelayo afakelwe kuMthetho ngqangi emva kwecandelo 2:

“Ukufikelela kwiirekhodi zoomasipala

2A. Ngenjongo yokubek' iliso, ukuhlola okanye ukuphanda umasipala ngokoMthetho, umasipala okanye naliphi na iqumrhu likamasipala eliphantsi kolawulo lomasipala oyedwa okanye ekwabelwana ngalo kufuneka libonelele ngeSigqeba sePhondo, uMphathiswa wePhondo, igosa elixhasa umphathiswa, igosa lenxaso lephondo okanye amagosa weSebe, xa ecelwe nguye nawuphi na kwaba bantu, ukufikelela kwiirekhodi ezinokuthi zibe yimfuneko kubekoliso olo, kuvavanyo okanye uphando.

Ukuchongwa kwamagosa enxaso karhulumente wengingqi

2B. UMphathiswa wePhondo usenokuchonga libe linye okanye ngaphezulu—

- (a) amagosa kaRhulumente wePhondo;
- (b) abameli bequmrhu likarhulumente lephondo;
- (c) abasebenzi bakamasipala kwiPhondo;
- (d) abantu abazimeleyo,

njengegosa lenxaso lorhulumente wengingqi, ukunika inkxaso kumasipala njengoko kuchaziwe kwicandelo 154(1) nakwicandelo 155(6) loMgaqosiseko.”

Ukulungiswa kwecandelo 2 loMthetho 3 ka-2014

4. ICandelo 3 loMthetho ngqangi lenziwe izilungiso—

- (a) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (1):

“(1) [A] Ibhunga likamasipala, isithethi, usodolophu okanye umphathi kamasipala angacela uMphathiswa wePhondo okanye intloko yalo naliphi na isebe lephondo ukubaancedise umasipala ekwenzeni imisebenzi yakhe ngokubanzi okanye ukujongana nomcimbi othile.”; kwaye

(b) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (2):

“(2) Xa isicelo esinjalo senziwe[—],

[(a) ISebe okanye elinye isebe lephondo elifanelekileyo kufuneka lisebenzisane nomasipala kwaye, kangangoko kunokwenzeka, libonelele ngoncedo oluceliweyo; kwaye

(b)] iSebe, okanye elinye isebe lephondo elifanelekileyo, kunye nomasipala kufuneka basebenzisane omnye nomnye kwaye balungelelanise iintshukumo zabo kangangoko kunokwenzeka.”.

Ukufakelwa kwecandelo 3A kuMthetho 4 ka-2014

5. Eli candelo lilandelayo lifakelwe emva kwecandelo 3 loMthetho ngqangi:

“**Ukubeka iliso lwatanci**

3A. (1) Ukuze kubekw' iliso kwaye kuxhaswe oomasipala kwatanci, uMphathiswa wePhondo usenokuthi, ngokunxulumene nomasipala, achonge igosa elinik' inkxaso lephondo ukuba—

- (a) limisela uthotyelo lukamasipala ngezibophelelo ezisemthethweni ezifanelekileyo, imigaqonkqubo, iinkqubo zokusebenza ezisemgangathweni kunye namanqaku okusebenza;
- (b) achonge imingcipheko aze acebise ngophuculo kwiinkqubo neendlela zokwenz' oku ukuze kuthintelwe ubuqhophololo, ubuqhetseba, ulawulo olugwenxa kunye umsebenz' ombi; kwaye
- (c)ancedise kwatanci ukufumanisa ubuqhophololo, ubuqhetseba, ulawulo olugwenxa okanye umsebenz' ombi kumasipala.

(2) Ukuba uMphathiswa wePhondo wenza isigqibo sokuchonga igosa elinik' inkxaso lephondo ngokwecandelwana (1), uMphathiswa wePhondo kufuneka amisele ngokubhala phantsi ubungakanani bemiba yokubek' iliso nenkxaso emayibonelelwe kunye neminye imimiselo yobhekiselelo lwelo chongo.

(3) Igosa elinik' inkxaso lephondo kufuneka linike uMphathiswa wePhondo—

- (a) ingxelo ngeziphumo zokubek' iliso nenkxaso kunye nohlalutyo olukhankanywe kweli candelo, kuquka nezizathu zezo ziphumo; kunye
- (b) nezindululo zalo ezinxulumene neziphumo.

(4) UMphathiswa wePhondo kufuneka, xa kunokwenzeka, anikezele ikopi yengxelo kunye nezindululo zegosa elinik' inkxaso lephondo kumasipala ochaphazelekayo.”.

Ukulungiswa kwecandelo 4 loMthetho 4 ka-2014

6. Icandelo 4 loMthetho ngqangi lenziwa izilungiso ngokufakela eli candelwana lilandelayo endaweni yecandelwana (4):

“(4) Amanqaku okwenz' umsebenzi akhutshwe ngokwecandelwana (1) anexabiso lezikhokelo ezingabopheleliyo.”.

Ukufakelwa kwamacandelo 4A, 4B no-4C kuMthetho 4 ka-2014

7. La macandelo alandelayo afakelwe emva kwecandelo 4 loMthetho ngqangi:

“Ukuhlolwa, ukugcinwa nokotshwa kweerekhodi

4A. (1) Ukuba uMphathiswa wePhondo, xa ethe wafumana iinkcukacha zokusilela okukrokrekayo komasipala ekufezekisa isibophelelo esisemthethweni, ulawulo olugwenxa, ubuqhophololo, ubuqhethseba okanye omnye umsebenzi ombi, unesizathu sokukholelwa—

(a) ukuba ingxelo enxulumene neengcombolo ezifunyenweyo ziya kufihlwa okanye zitshatyalaliswe ukuba azikhuselwanga njengomba emakuqalwe ngawo; okanye

(b) ukuba ulwaphulomthetho olutyholwayo luhlobo olunobuzaza, unokuthi, ngaphandle kokwazisa kwatanci kumasipala, achonge igosa lenkxaso lomphathiswa ukuba lihambe liye kumasipala kwaye lihlole, likhusele kwaye likope iirekhodi ezinxulumene neengcombolo ngendlela echazwe kwicandelwana (5), elifundwa necandelo 7A..

(2) Ekufumaniseni ngeenjongo zecandelwana (1) nokuba ngaba ukuhlolwa, ukukhuselwa kunye nokukotshwa kweerekhodi kuyafuneka kusini na, uMphathiswa wePhondo usenokuthi ayithathele ingqalelo yonke imiba efanelekileyo, kuquka—

(a) ukwazisa umntami;

(b) ubuzaza besityholo solwaphulomthetho;

(c) nokuba kutyholwa ukuba luyaqhubeka ulwaphulomthetho okanye lunokwenzeka kwixesha elizayo;

(d) abantu ekwenziwa kubo izityholo; kunye

(e) nomdla woluntu.

(3) Ukuba uMphathiswa wePhondo wenza isigqibo sokuchonga igosa elinik' inkxaso lomphathiswa ngokwecandelwana (1), uMphathiswa wePhondo kufuneka amisele ngokubhala phantsi ubungakanani kunye neminye imimiselo yobhekiselelo lwelo chongo.

(4) Ngokuxhomekeke kwicandelwana (5) kunye necandelo7A, igosa elinik' inkxaso lomphathiswa elichaphazelekayo, nangeliphi na ixesha elifanelekileyo—

(a) linofikelelo olupheleleyo nolungenamiqathango kuzo naziphi na iirekhodi zikamasipala; kunye

(b) nelungelo lokubuza nawuphi na umsebenzi okanye igosa lezopolitiko likamasipala,

ukuba ukrokrela ngokufanelekileyo ukuba iirekhodi okanye umsebenzi okanye igosa lezopolitiko elichaphazelekayo lingabonelela okanye lifikelele kwiingcombolo ezinento yokwenza nombamba ochazwe kwicandelwana (1).

(5) Ngokuxhomekeke kwicandelo 7A(3), igosa elinik' inkxaso lomphathiswa linokuthi—

(a) lingene nakweyiphi na ipropathi okanye imihlaba okanye phantsi kolawulo lukamasipala apho akrokrela ngokufanelekileyo ukuba zigcinwe khona iingcombolo ezinokuba negalelo kumcimbi ochazwe kwicandelwana. (1);

(b) liyalele nawuphi na umntu elimkrokrela ngokufanelekileyo ukuba uneerekhodi kuye okanye phantsi kolawulo lwakhe kwaye zinento yokwenza nomcimbi ochazwe kwicandelwana (1) ukuvelisa, okanye ukunikezelwa kwindawo ethile

kunye nexesha elibekiweyo kwaye ngendlela ethile, naziphi na iirekhodi ezinjalo;

- (c) lihlole naziphi na iirekhodi ezinjalo kwaye libuze nawuphi na umntu onolwazi ngomba ochazwe kwicandelwana (1) malunga ngazo naziphi na iirekhodi ezinjalo;
- (d) likope, okanye lenze izicatshulwa kuzo naziphi na iirekhodi ezinjalo ngeendleko zikamasipala okanye lizisuse iirekhodi ezinjalo, kubandakanywa nasiphi na isixhobo sombane, ukwenza iikopi okanye izicatshulwa, ngaphandle kokuba iirekhodi okanye isixhobo sombane sibuyiselwa kumasipala ngaphandle kokulibazisa okungafanelekanga emva koko.

Uvavanyo lokuqala

4B. (1) UMphathiswa wePhondo usenokuthi, akuba efumene izityholo ezimalunga nomasipala, ukuba unoluvo olungenamfeketho, alucaphukelanga, alukrokrisi okanye alunasihlahla, ayalele ibhunga likamasipala ukuba lenze uhlolo lokuqala lwezityholo zokuba—

- (a) umasipala ochaphazelekayo akanako okanye akayizalisekisi isibophelelo solawulo ngokoMgaqosiseko okanye omnye umthetho; okanye
- (b) umasipala ochaphazelekayo akanako okanye akasizalisekisi isibophelelo esisemthethweni esibophelelayo kuloo masipala, okanye ulawulo olugwenxa, ubuqhophololo, ubuqhetseba okanye nabuphi na ubugwenxa obumandundu okwenzekileyo okanye okwenzekayo kumasipala apha kwiPhondo.

(2) Ukuba uMphathiswa wePhondo ugqiba kwelokuba ayalele ibhunga likamasipala ukuba luqhube uhlolo lokuqala phantsi kwecandelwana (1), uMphathiswa wePhondo usenokufuna ukuba ingxelo yovavanyo lokuqala eyenzelwa umasipala ayinikwe phambi okanye ngomhla obekiweyo omisela umasipala. okufunyanisiweyo kwaye, ukuba kufanelekile, amanyathelo athathiweyo okanye aya kuthathwa ngumasipala ochaphazelekayo ukulungisa umba ochazwe kumhlathi (1).

Uphindaphindo lovavanyo nophando

4C. Ukuba uMphathiswa wePhondo unoluvo lokuba kufanelekile ukuba isityholo masiphandwe yiNkonzo yamaPolisa oMzantsi Afrika, iziko leSahluko 9, iYunithi yoPhando oluKhethekileyo kunye nooGunyaziwe baMatyala abaKhethekileyo okanye elinye iziko lombuso, unokuthi—

- (a) adlulisele isityholo kwiqumrhu elichaphazelekayo; okanye
- (b) alinde iziphumo zolo phando phambi kokuba athathe amanyathelo ngokwecandelo 106 lomthetho iMunicipal System Act lo Mthetho.”.

Ukulungiswa kwecandelo 5 loMthetho 4 ka-2014

8. ICandelo 5 loMthetho ngqangi lifakelwe endaweni yeli candelo lilandelayo:

“Uvavanyo phambi kwecandelo lokucela 106(1) lomthetho iMunicipal Systems Act

5. UMphathiswa wePhondo kufuneka, phambi kokuba athathe amanyathelo phantsi kwecandelo 106(1) lomthetho iMunicipal Systems Act[—],

- [(a) ukwazisa umasipala ochaphazelekayo ngembalelwano ngolwazi olufanelekileyo olufunyenwe nguMphathiswa wePhondo kwaye ameme umasipala ukuba anike uMphathiswa wePhondo izimvo ezibhaliweyo ngomhla omiselwe nguMphathiswa wePhondo; kwaye**
- (b)]** ahlole ngokungakhethiyo zonke iingcombolo ezifanelekileyo azifumanayo uMphathiswa wePhondo, **[athathele ingqalelo, phakathi kweminye imiba] enokubandakanya—**
- (i) indlela ekufunyenwe ngayo iingcombolo;
 - (ii) **[i]** zimvo, ukuba zikhona, ezifunyenwe kumasipala;
 - (iii) nokuba iingcombolo zibonisa ukuba umasipala akanako okanye akasizalisekisi isibophelelo esisemthethweni esibophelela umasipala, kwaye ukuba kunjalo, nokuba kungenxa yokungakwazi ukusebenza okanye akunjalo;
 - (iv) nokuba ngaba iingcombolo zibonisa ukuba lwenzekile okanye obenzekayo ulawulo olugwenxa, ubuqhophololo, ubuqhetseba okanye nabuphi na ubugwenxa obumandundu kumasipala;
 - (v) iindawo zokusebenza zikamasipala ezinokuchaphazeleka ukuba inyathelo alithathwanga ngokuhambelana necandelo 106(1) lomthetho iMunicipal Systems Act;
 - (vi) nokuba ngaba umasipala ebekhe walucela na uncedo kuMphathiswa wePhondo, okanye kwintloko yalo naliphi na isebe lephondo, ukuba ajongane nomcimbi ochaphazelekayo okanye umba onxulumene nawo;
 - (vii) nokuba ngaba uMphathiswa wePhondo, iSebe okanye elinye isebe lephondo sele linike uncedo ngaphambili kumasipala; **[kwaye]**
 - (viii) ukuba kufanelekile, indlela umasipala asebenzisa ngayo amanqaku enkqubo efanelekileyo kwaye uthobela imigangatho kazwelonke eyimfuneko kunye nemigangatho esezantsi esekwe ngokwecandelo 108(1) lomthetho iMunicipal Systems Act;
 - (ix) nayiphi na imiyalelo ibhunga likamasipala elithe lasilela ukuyithobela.**”.

Ukulungiswa kwecandelo 6 loMthetho 4 ka-2014

9. ICandelo 6 loMthetho ngqangi lenziwe izilungiso—

- (a) ngokufakela la magama alandelayo endaweni yecandelwana (1) la magama andulela umhlathi (a):

“(1) Ukuba uMphathiswa wePhondo unesizathu sokukholelwa, ngokusekelwe kuhlolo olukhankanywe kwicandelo 5(b), sokuba umasipala akanako okanye akasizalisekisi isibophelelo esisemthethweni okanye ulawulo olugwenxa, ubuqhophololo, ubuqhetseba okanye nawuphi na omnye umsebenzi ogwenxa othe wenzeka okanye owenzekayo kumasipala, uMphathiswa wePhondo kufuneka **[ngokubhaliweyo azise umasipala ngoluvo lwakhe kunye nezizathu zolo luvo kunye]**, ngokuhambelana necandelo. 106(1) lomthetho iMunicipal Systems Act—”;

- (b) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (2):

“(2)(a) Ukuba uMphathiswa wePhondo, emva kokuthathela ingqalelo **[naziphi na] iingcombolo, ukuba zikhona**, ezifunyenweyo kwimpendulo yesaziso ekubhekiselelwa kuso kwicandelwana (1)(a), wanelisekile ukuba umasipala akanako ukuzalisekisa isibophelelo esisemthethweni ngenxa yokungakwazi ukusebenza, UMphathiswa wePhondo **[kufuneka] angamisela** amanyathelo afanelekileyo, ngentsebenziswano nomasipala, ukuphuhlisa amandla kamasipala nokuqinisekisa ukuba umasipala

usebenzisa amanqaku enkqubo esebenzayo kunye neminye imigangatho yendlela yokusebenza eyiyo.

(b) UMphathiswa wePhondo akathintelwanga ngokwenz' umsebenzi phantsi kwecandelwana (1)(a) okanye umhlathi (a) ukuba achonge umntu okanye abantu ukuba baphande ngalo mbandela njengoko kuchaziwe kwicandelo 7..”;

(c) ngokucima icandelwana (3); kunye

(d) nangokongeza eli candelwana lilandelayo endaweni yecandelwana (3):

“(4) Ukuba uMphathiswa wePhondo unesizathu sokukholelwa, ngokusekelwe kuhlolo olukhankanywe kwicandelo 5, ukuba umasipala akanako okanye akasizalisekisi isibophelelo esisemthethweni okanye ukuba ulawulo olugwenxa, ubuqhophololo, ubuqhethseba okanye nakuphi na okanye ukusebenza gwenxa okwenzekileyo okanye okwenzekayo kumasipala; kodwa engakuboni kuyimfuneko ukuchonga umntu okanye abantu abaza kuphanda umcimbi lowo, unokuyalela umasipala ukuba alungise ingxelo echaza amanyathelo athathiweyo okanye aya kuthatyathwa ngumasipala ukulungisa loo mcimbi.”.

Ukulungiswa kwecandelo 7 loMthetho 4 ka-2014

10. ICandelo 7 loMthetho ngqangi lenziwe izilungiso—

(a) ngokucima icandelwana (3);

(b) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (4):

“(4)(a) Ukuba uMphathiswa wePhondo ugqiba kwelokuchonga umphandi ngokwecandelwana (1)(a), uMphathiswa wePhondo kufuneka amisele ngembalelwano ubungakanani baloo mcimbi oza kuphandwa kunye neminye imiqathango yokusetyenziswa komphandi.

(b) Umphandi unako—

(i) ukufumanisa ifomathi nenkqubo emayilandelwe xa kuqhutywa uphando ngokuthathela ingqalelo iimeko zaloo mcimbi;

(ii) ukufumanisa ukuba ngubani onokubakho kwaye ngubani na onokungabikho kuzo naziphi na iinkqubo eziphathelele nophando, kuthathelwa ingqalelo uhlobo lophando;

(iii) ukuyalela nawuphi na umntu apho umphandi amkrokrelayo ngokufanelekileyo unokuba neenkukacha ezininto yokwenza nophando oluza kuvelisa, okanye anikezele kwindawo ethile kunye nexesha elithile nangohlobo oluthile, naziphi na iirekhodi ezikulo mntu okanye phantsi kolawulo lwakhe ezininto yokwenza nombala ophandwayo;

(iv) ukuhlola nayiphi na ingxelo elolo hlobo kwaye ubuze nawuphi na umntu onokuba nolwazi ngomba onenxaxheba kuphando ngazo naziphi na iingxelo ezilolo hlobo;

(v) ukukopa, okanye lenze izicatshulwa kuzo naziphi na iirekhodi ezinjalo ngeendleko zikamasipala, okanye lizisuse iirekhodi ezinjalo, kubandakanywa nasiphi na isixhobo sombane, ukwenza iikopi okanye izicatshulwa, ngaphandle kokuba iirekhodi okanye isixhobo sombane sibuyiselwa kumasipala ngaphandle kokulibazisa okungafanelekanga emva koko;

(vi) ukuyalela nawuphi na umntu apho umphandi amkrokrelayo ngokufanelekileyo unokuba neenkukacha ezininto yokwenza nophando ukuba achaze, ngomlomo okanye ngokubhaliweyo, naziphi na iingcombolo ezinokufaneleka kuphando, aze abuze nawuphi na umntu malunga nezo ngombolo.”;

- (c) Ngokuxhomekeke kwicandelo 7A(5), umphandi unokuthi, ngeenjongo zemihlathi (b) no-(g), angene kuyo nayiphi na ipropati okanye umhlaba okanye ephantsi kolawulo lukamasipala apho akrokrela ngokufanelekileyo ukuba kugcinwe iirekhodi ezinokuthi zibenegalelo kuphando.
- (d) Ngeenjongo yokuqinisekisa ngawo nawuphi na umcimbi onxulumene nombawophando, umphandi unamagunya eCandelo laseNtshona Koloni leNkundla ePhakamileyo yoMzantsi Afrika ukwenza isifungo okanye isiqinisekiso senziwe kwingqina okanye ukuwisa isigwebo kuye nawuphi na umntu ukuvelisa naziphi na iirekhodi okanye into efanelekileyo kuphando ngexesha kunye nendawo echazwe kwisamani.
- (e) Isamani echazwe kumhlathi (d) kufuneka isayinwe ngumphandi kwaye ihanjiswe kumntu obiyiweyo, ngumphandi ngeleta ebhalisiweyo ethunyelwe ngeposi okanye esiwe ngesandla ngumphandi okanye umntu ogunyazisiweyo ngumphandi.
- (f) Ukuba kufunwa ukuba kwenziwe njalo ngumphandi, ingqina kufuneka lenze isifungo okanye lenze isiqinisekiso, eso sifungo okanye isiqinisekiso esimele silawulwe ngumphandi.
- (g) Umasipala kunye naye nawuphi na umntu okhankanywe kumacandelwana (b)(iii), (iv) no-(vi) kufuneka asebenzisane nomphandi kwaye abonelele ngalo lonke uncedo olufanelekileyo olucelwe ngumphandi ngeenjongo zophando.
- (h) Ngokuxhomekeke kumhlathi (b)(iii) ukuya ku-(vi) kunye necandelo 7A, umphandi unofikelelo olupheleleyo nolungenamiqathango, ngawo onke amaxesha afanelekileyo,—
- (i) kuzo naziphi na iirekhodi zikamasipala;
 - (ii) kuye nawuphi na umsebenzi okanye igosa lezopolitiko likamasipala, ukuba ukrokrela ngokufanelekileyo ukuba iirekhodi okanye umsebenzi okanye igosa lezopolitiko elichaphazelekayo lingabonelela okanye lifikelele kwiingcombolo ezinento yokwenza nophando.
- (i) Ukuba kubonakala kumphandi ngexesha lophando ukuba kukho nawuphi na umntu obandakanyekayo kumcimbi ophandwayo kwaye loo nto inokuthi ibe yingozi kuloo mntu okanye mhlawumbi isiphakamiso esibi malunga naloo mntu sinokuthi sibe nesiphumo, umcuphi kufuneka amnike loo umntu ithuba lokumanyelwa nangaluphi na uhlobo olunokuthi lube luncedo phantsi kweemeko.
- (j) Akukho mntu unokuthi, ngaphandle kwemvume yomphandi, achaze kumntu ongagunyaziswanga iziqulatho zalo naluphi na uxwebhu oluphathelele kuphando olungeniswe, okanye elugcinwe ngumphandi okanye iirekhodi yazo naziphi na iinkqubo zophando.
- (k) Umphandi kufuneka athi, ngembalelwano nangethuba elibekwe nguMphathiswa wePhondo, abonelele uMphathiswa wePhondo—
- (i) ngengxelo engeziphumo zophando, kuquka nezizathu zezo ziphumo; kunye
 - (ii) neengcebiso zomphandi ngokuphathelele kulo mba.
- (l) UMphathiswa wePhondo kufuneka, xa kunokwenzeka, anikezele ikopi yengxelo kunye neengcebiso zomphandi kumasipala ochaphazelekayo.”.
- (m) UMphathiswa wePhondo usenokuthi, ngokuzibonela ngokwakhe, abonelele ngekopi yengxelo kunye neengcebiso zomphandi kwiNkonzo yaMapolisa oMzantsi Afrika, iziko leSahluko 9, iCandelo loPhando oluKhethekileyo kunye neZigqeba eziZodwa, elinye iziko likarhulumente okanye oceba bakamasipala ochaphazelekayo.

- (n) Ukuba ingxelo yomphandi ibonisa ukuba umasipala akanako okanye akasizalisekisi isibophelelo esisemthethweni okanye ukuba ulawulo olugwenxa, ubuqhophololo, ubuqhetseba okanye naziphi na izezo ezigwenxa ezimandundu ezenzekileyo okanye ezenzekayo kumasipala, uMphathiswa wePhondo kufuneka—
- (i) ayalele ukuba umasipala alungise ingxelo, ngomhla omiselwe nguMphathiswa wePhondo, echaza amanyathelo athathiweyo okanye aya kuthathwa ngumasipala ukunika isiphumo kwiziphumo kunye neengebiso zengxelo yomphandi;
 - (ii) ahlole ubuzaza bemeko kunye nempendulo kamasipala kwimeko;
 - (iii) afumanise ukuba ingaba imeko leyo iyayithethelela okanye ifuna ungenelelo ngokwecandelo 139 loMgaqosiseko;
 - (iv) afumanise ukuba imeko ifuna amanyathelo athatyathiweyo okubek' iliso nokuxhasa umasipala okanye ukukhuthaza uphuhliso lwesakhono sikamasipala ukuze akwazi ukwenza imisebenzi yakhe, njengoko kunokuba njalo; kwaye
 - (iv) ukuba wanelisekile ukuba umasipala akanako ukuzalisekisa uxanduva olusemthethweni ngenxa yokungakwazi ukusebenza, umisela amanyathelo afanelekileyo, emva kokubonisana nomasipala, ukuphuhlisa isakhono sikamasipala nokuqinisekisa ukuba umasipala usebenzisa amanqaku okusebenza asebenzayo kunye neminye imigangatho yendlela yokusebenza eyiyo.”.

Ukufakelwa kwecandelo 7A

11. Eli candelo lilandelayo lifakelwe emva kwecandelo 7 loMthetho ngqangi:

“Ukwenziwa kwemisebenzi phantsi kwecandelo 4A no-7

7A. (1) La malungiselelo alandelayo omthetho Protection of Personal Information Act, 2013 (uMthetho 4 ka-2013), awasebenzi ekwenziweni kwemisebenzi yegosa lenkxaso yomphathiswa phantsi kwecandelo 4A kunye nomphandi phantsi kwecandelo 7(4):

- (a) amacandelo 11(3), 11(4), 12, 15 no-18; kunye
- (b) naliphi na elinye ilungiselelo apho uMlawuli weeNgcombolo enikezele ngemvume esebenzayo phantsi kwecandelo 37 lalo Mthetho.

(2) Igosa elinik' inkxaso kumphathiswa okanye kumphandi linokufuna umsebenzi, uceba okanye igosa lezopolitiko likamasipala ukuba lithobele isikhokelo, okanye liphendule imibuzo eliyibuzwayo, ligosa elinik' inkxaso kumphathiswa okanye umphandi onjalo njengoko kuchaziwe kwicandelo 4A okanye icandelo 7(4), nangona kunjalo—

- (a) umsebenzi wemfihlo obekwe kuloo mntu ngumthetho olawulayo, okanye isivumelwano esinxulumene nokuziphatha komsebenzi, uceba okanye igosa lezopolitiko likamasipala; okanye
- (b) nawuphi na ummiselo kumthetho okanye esinye isixhobo esilawula ukulawula okanye ulawulo loovimba okanye iirekhodi zikamasipala.

(3) Ukuba, ngexesha lokuqhutywa kwemisebenzi yegosa lenkxaso yomphathiswa njengoko kuchaziwe kwicandelo 4A, okanye imisebenzi yomphandi njengoko kuxelwe

kwisiqendu 7, umntu ubanga ukuba ingxelo ekuyalelwe ukuba ayivezwe inelungelo ngokusemthethweni kwaye ngenxa yoko. isizathu sokwala ukuxela irekhodi elichaphazelekayo, igosa elixhasa umphathiswa okanye umphandi, njengoko kunokuba njalo, unokuthi, ukuba unoluvo lokuba irekhodi elo linenxaxheba kulwazi olukhankanywe kwicandelo 4A(1) okanye uphando oluxelwe kwisiqendu 7, lucele uMgcinizincwadi zobhaliso weNkundla ePhakamileyo okanye umthunywa wakhe ukuba aqokelele kwaye ayisuse loo rekhodi ukuze igcinwe ngokukhuselekileyo de inkundla yomthetho yenze isigqibo malunga nombuzo wokuba ulwazi oluchaphazelekayo lunelungelo elikhethekileyo ngokusemthethweni okanye akunjalo.

(4) Ngenjongo yecandelwana (3), umthunywa woMgcini-zincwadi zobhaliso weNkundla ePhakamileyo unokubandakanya igqwetha elivela kuLuhlu lwaBasebenzi bezomthetho ngokwecandelo 30(3) loMthetho wokuSebenza kwezoMthetho, wama-2014 (uMthetho 28 ka-2014), ukuqokelela kunye nokususa irekhodi egameni loMgcinizincwadi zobhaliso.

(5) Igosa elixhasa umphathiswa okanye umphandi kufuneka, ekusebenziseni amagunya akhe okungena kwipropati okanye kwindawo kamasipala phantsi kwecandelo (4A) (5) okanye 7(4)(c)—

- (a) ukunciphisa iiyure zokungena kwiiyure eziqhelekileyo zokusebenza, ngaphandle kokuba igosa lenkxaso yomphathiswa okanye umphandi uqwalasela ngokufanelekileyo ukungena kwelinye ixesha eliyimfuneko ngenxa yezizathu zongxamiseko;
- (b) gcina ngokungqongqo isidima nocwangco ngamaxesha onke;
- (c) azichaze koyena msebenzi ukwinqanaba eliphezulu okanye igosa lezopolitiko elikhoyo kwipropati okanye kwindawo leyo;
- (d) ngesicelo selona lungu liphezulu labasebenzi okanye igosa lezopolitiko elikhoyo kwipropati okanye kumhlaba lowo—
 - (i) achaze ubungqina bokuchongwa kwakhe njengegosa elixhasa umphathiswa okanye umphandi;
 - (ii) chaza injongo, ubukhulu kunye nesizathu sokungena;
 - (iii) umvumele ukuba abekho ngalo lonke ixesha;
 - (vi) bonelela ngoluhlu lwezinto ezisusiweyo ekwenzeni iikopi.”

Ukulungiswa kwecandelo 9 loMthetho 4 ka-2014

12. ICandelo 9 loMthetho ngqangi lifakelwe endaweni yeli candelo lilandelayo:

‘Ukunik’ ingxelo

9. [(1)] Ukuba inyathelo lithathiwe ngokwecandelo 6(1)(a) okanye (b), uMphathiswa wePhondo kufuneka kwiintsuku ezili-14—

- (a) angenise ingxelo ebhaliweyo kwiBhunga leSizwe lamaPhondo exhasa isenzo; kwaye
- (b) uthumele ikopi yaloo ngxelo kumphathiswa kazwelonke onoxanduva lolawulo lwengingqi[,] kunye nomphathiswa wesizwe onoxanduva lwezemali [kunye noMbutho woRhulumente baseKhaya baseMzantsi Afrika].

[(2)] UMphathiswa wePhondo kufuneka ngokukhawuleza kangangoko kunokwenzeka angenise ikopi yengxelo yomphandi ekubhekiswa kuyo kwisiqendu 7(4)(f) kwiBhunga lesiZwe lamaPhondo, kumphathiswa wesizwe ojongene

nolawulozidolophu, kumphathiswa wesizwe osingathe ezemali noMbutho woRhulumente weNgingqi yamaZantsi Afrika baseAfrika.]”.

Ukulungiswa kwecandelo 11 loMthetho 4 ka-2014

13. Eli candelo lilandelayo lifakewe endaweni yecandelo 11 loMthetho ngqangi:

“Amatyala nezohlwayo

11. Umntu—

- (a) osilela okanye uyala ukuveza naluphi na uxwebhu **[uxwebhu]** olukwindawo yakhe okanye phantsi kolawulo lwakhe xa eyalelwa ukuba enze njalo ligosa lenkxaso yomphathiswa ngokwecandelo 4A(5)(b) okanye ngumphandi ngokwemiqathango yecandelo. 7(4)(b)(iii);
- (b) othintela nawuphi na umntu ukuveza naluphi na uxwebhu **[uxwebhu]** irekhodi olukwindawo yakhe okanye phantsi kolawulo lwakhe xa eyalelwa ukuba enze njalo ligosa lenkxaso yomphathiswa ngokwecandelo 4A(5)(b) okanye ngumphandi ngokwemiqathango yecandelo. 7(4)(b)(iii);
- (c) uchasana necandelo 7(4)(j); **[okanye]**
- (d) ngenjongo yokuthintela okanye ukuphazamisa uphando lomcimbi ngumphandi, utshabalalisa okanye ufihla naluphi na **[uxwebhu]** irekhodi **olubhaliweyo [, okanye into,]** ukuba ulwazi lwakhe lunokuba luncedo kumphandi.;
- (e) ngenjongo yokuthintela okanye ukuthintela ukuhlolwa, ukufumana okanye ukukotshwa kwerekhodi ligosa lenkxaso yomphathiswa ngokwecandelo 4A, utshabalalisa okanye ufihla nayiphi na irekhodi enokuthi ngokolwazi lomntu ibe luncedo kwigosa lenkxaso yomphathiswa;
- (f) uyasilela ukuthobela umyalelo okhutshwe nguMphathiswa wePhondo ngokwemiqathango yecandelo 7(4)(n)(i);
- (g) lithintela okanye liphazamisane nomphandi okanye nawuphi na umntu osebenzisa igunya, okanye owenza umsebenzi, ngokwemiqathango yalo Mthetho;
- (h) unika ulwazi olungeyonyani okanye olulahlekisayo xa ephendula isicelo segosa lenkxaso yomphathiswa okanye umphandi;
- (i) osilela ukuvelisa naziphi na irekhodi okanye into ekuye okanye ephantsi kolawulo lwakhe nokuba ubizwe ukuba avelise ngokwemiqathango yesapina ekhutshwe ngokwecandelo 7;
- (j) emva kokuba efungile okanye enze isiqinisekiso, anike ubungqina obungeyonyani phambi komphandi ngawo nawuphi na umba, esazi ukuba obo bungqina obungeyonyani okanye obungakholelwayo ukuba buyinyaniso; okanye
- (k) lifumana, liphembelela, ligrogrise, lirhwaphilize okanye linyobe naliphi na ingqina ukuba linganiki bungqina okanye linike ubungqina obungeyonyaniso phambi komphandi.

wophula umthetho kwaye akuba efunyaniswa enetyala uya kuhlawuliswa ifayini okanye avalelwe entolongweni ixesha elingagqithiyo kwiinyanga ezili-[12] 24.”.

Isihloko esifutshane kunye nokuqalisa ukusebenza kwawo

14. Lo Mthetho ubizwa ngokuba Mthetho weNtshona Koloni woBekoliso neNkxaso yooMasipala, 2014, 2023, kwaye uza kuqalisa ukusebenza ngomhla omiselwe yiNkulumbuso ngompoposho *kwiGazethi yePhondo*.

**IMEMORANDAM YOMTHETHO OSAYILWAYO WEZILUNGISO ONGEENJONGO
ZOQULUNQO LOMTHETHO WENTSHONA KOLONI WOBEKOLISO NENKXASO
YOOMASIPALA, 2023**

1. INTSUKAPHI

- 1.1 UMthetho weNtshona Koloni woBekoliso neNkxaso yooMasipala, 2014 (uMthetho 4 ka-2014) (uMthetho ngqangi), wenziwa umthetho ngo-2014 ukuze uqalise ukusebenza kwicandelo 154(1) nele-155(6) loMgaqosiseko weRiphabhlikhi yoMzantsi Afrika, 1996 (uMgaqosiseko), kunye necandelo 106(1) lomthetho iLocal Government: Municipal Systems Act, 2000 (uMthetho 32 ka-2000) (umthetho iMunicipal Systems Act). UMthetho ngqangi ngoku usetyenziswa ngokuhambelana nomthetho iMunicipal Systems Act, iLocal Government: Municipal Finance Management Act, 2003 (uMthetho 56 ka-2003) (i-MFMA), kunye nezibonelelo zomgaqosiseko ezilawula ungenelelo lwephondo koomasipala. Esinye seziphene ezibalulekileyo zezi zicwangcisonkqubo kukuba ulungiselelo olwaneleyo alwenzelwanga amanyathelo akhawulezayo okufunyanwa kwangethuba kunye nokungenelela kwiimeko yobuqhetseba nobuqhophololo, nakwiimeko apho umasipala ewela kwicala lezonxunguphalo.
- 1.2 Okulungileyo ngokungenelela kwangethuba kuquka ukukwazi ukunqanda ukuziphatha kakubi kunye nobuqhetseba obumandundu ngokuchonga iindlela zokuziphatha ezandulela ukwenzeka kokuziphatha kakubi. Kufunyaniswe ukuba kunefuthe elihle kwimpilontle yabasebenzi kwaye kunciphisa iindleko ezinxulumene nophando lolwaphulomthetho kunye nezohlwayo zokusebenza.
- 1.3 Uphando lubonisa ukuba, xa ungenelelo luqalisiwe phambi kokuba umasipala afikelele kwisimo sokuwohloka ngokupheleleyo, umasipala wayenokuthi abuyele kwimeko elungileyo yokusebenza neyokuvuseleleka kwezemali emva kongenelelo. Ngamanye amazwi, okukhona imeko kamasipala ekuyo (umzekelo, ukuwohloka kwezimali, ukuwohloka ngokupheleleyo kweziseko zolawulo, ukuwohloka kweziseko zophuhliso) phambi kongenelelo, kunqabile ukuba akwazi ukubuyela kwisimo esizinzileyo sezemali nesokusebenza.

2. IINJONGO ZOMTHETHO OSAYILWAYO

UMthetho oSayilwayo weZilungiso ongeenJongo zoQulunqo loMthetho weNtshona Koloni woBekoliso neNkxaso yooMasipala (uMthetho oSayilwayo weZilungiso) ngoko ke kufuneka—

- (a) ubonelele ngobekoliso olukhawulezileyo koomasipala ukuze kubonwe ubuqhophololo, ubuqhetseba, ulawulo olugwenxa nezinye izenzo ezigwenxa kwangethuba;

- (b) womeleze isakhono sesebe lephondo elinoxanduva lolawulo lorhulumente wengingqi (iSebe) ukuxhasa oomasipala;
- (c) ukomeleza amandla eSebe okufikelela kwiingcombolo ezifunekayo ukuze kuqhutywe uphando novavanyo ngokufanelekileyo;
- (d) womeleza ubekoliso nenkxaso yoomasipala ngokwenza amalungiselelo okuba amabhunga oomasipala enze uhlolo lokuqala apho kukho izityholo ezingekho ngqiqweni, ezicaphukisayo, ezingenasihlahla okanye ezingenabungqina obucacileyo bokuba umasipala akanako okanye akaluzalisekisi uxanduva lolawulo ngokoMgaqosiseko okanye isibophelelo esisemthethweni esibophelelayo kumasipala okanye ukuba kukho ulawulo olugwenxa, ubuqhophololo, ubuqhetseba okanye obunye ubugwenxa obugqithisileyo obenzekayo kumasipala; kwaye
- (e) ukunciphisa izithintelo zamanqanab' olawulo nokucokisa izibonelelo zobugcisa kuMthetho ngqangi.

3. IZIQULATHO ZOMTHETHO OSAYILWAYO

- 3.1 **Igaty 1** libonelela ngokufakela iinkcazelo “zegosa elinik' inkxaso lomphathiswa”, “igosa lezopolitiko”, “igosa elinik' inkxaso lephondo”, “iirekhodi” kunye “nelungu labasebenzi”;
- 3.2 **Igaty 2** lilungisa icandelo 2 loMthetho ngqangi ngokongeza umgaqo ogunyazisa uMphathiswa wePhondo, ngesaziso *kwiGazethi yePhondo*, ukuba afune ukuba nawuphi na umasipala, okanye naluphi na udidi okanye uhlobo lomasipala oluchazwe kwisaziso, ukuba angenise kwiziko likarhulumente lephondo elichaziweyo iingcombolo ezifunekayo kwisaziso, mhlawumbi ngamaxesha athile okanye kwixesha elithile, kunye nommiselo obeka indlela eli gunya elimele lisetyenziswe ngayo;
- 3.3 **Igaty 3** lifakela icandelo elicetywayo 2A no-2B, elibonelela—
 - 3.3.1 umasipala, ngesicelo seSigqeba sePhondo, uMphathiswa wePhondo onoxanduva lorhulumente wengingqi (uMphathiswa wePhondo), igosa elinik' inkxaso lomphathiswa, igosa elinik' inkxaso lephondo okanye amagosa eSebe, ukuba abonelele abantu ngofikelelo kwiirekhodi ezinjengoko kuyimfuneko ukubek' liso, uvavanyo okanye uphando lukamasipala;
 - 3.3.2 ngokuchonga igosa elinik' inkxaso lorhulumente wengingqi, ukunika inkxaso kumasipala njengoko kuchaziwe kwicandelo 154(1) okanye kwicandelo 155(6) loMgaqosiseko.”.
- 3.4 **Igaty 4** lilungisa icandelo 3 loMthetho ngokuthi—
 - 3.4.1 lichaze ukuba ibhunga likamasipala, isithethi, usodolophu okanye umphathi kamasipala ungumphathi ngumsebenzi othile onokucela uMphathiswa wePhondo okanye intloko yalo naluphi na isebe lephondo ukubaancedise umasipala ekwenzeni imisebenzi yakhe ngokubanzi okanye ukujongana nomcimbi othile;
 - 3.4.2 lenza uhlengahlengiso lobugcisa kulungiselelo olubonelela ngentsebenziswano phakathi kukamasipala ocela uncedo kunye neSebe;

- 3.5 **Igaty 5** lifakela icandelo elicetywayo 3A elibonelela—
- 3.5.1 uMphathiswa wePhondo ukuba achonge igosa elinik' inkxaso lephondo eliza kumisela ukuthotyelwa kukamasipala kwiimfanelo zakhe, ukolatha imingcipheko nokucebisa ukuphuculwa kweenkqubo kunye nokuncedisa ngokubonakalayo ukufumanisa ubuqhophololo, ubuqhethseba, ulawulo olugwenxa okanye umsebenzi ombi kumasipala;
- 3.5.2 uMphathiswa wePhondo ukuba amisele umda kunye neminye imigqaliselo yobekoliso nenkxaso eya kunikezelwa ukuba kutyunjwe igosa elinik' inkxaso lephondo;
- 3.5.3 igosa elinik' inkxaso lephondo ukuze linike uMphathiswa wePhondo ingxelo ngeziphumo zokubekwa kweliso nenkxaso, kunye nezizathu, kunye neengebiso zakhe;
- 3.5.4 xa kunokwenzeka, uMphathiswa wePhondo makabonelele ngekopi yengxelo kumasipala lowo;
- 3.6 **Igaty 6** lilungisa icandelo 4 loMthetho ngqangi ngokucacisa ukuba amanqaku omsebenzi akhutshwe ngokwelo candelo anesimo sezikhokelo ezingabopheleliyo;
- 3.7 **Igaty 7** lifakela la macandelo acetywayo 4A, 4B no-4C kuMthetho ngqangi abonelela—
- 3.7.1 uMphathiswa wePhondo, xa ethe afumana ulwazi malunga nokusilela okukrokrekelayo ngumasipala ekufezekiseni isibophelelo esisemthethweni, ulawulo olugwenxa, ubuqhophololo, ubuqhethseba okanye obunye ubugwenxa obunzulu, ukuba unesizathu sokukholelwa ukuba ingxelo enxulumene neengcombolo ezifunyenweyo ziya kufihlwa okanye zitshatyalaliswe ukuba azikhuselwanga njengomba ophambili okanye ulwaphulomthetho olutyholwayo lunobume obumandundu kakhulu, ukuchonga igosa elinik' inkxaso lomphathiswa ukuba lihambe liye kumasipala ngaphandle kokwazisa kwangaphambili kumasipala kwaye lihlole, likhusele kwaye likhuphe iirekhodi ezinxulumene noko. iingcombolo ezifunyenweyo ngendlela ebonelelelwe ngayo kwicandelo 4A elicetywayo, lifundwe kunye necandelo elicetywayo 7A njengoko lifakwe ligaty 11;
- 3.7.2 uMphathiswa wePhondo, akuba efumene izityholo ezinesiseko esibambekayo zokuba umasipala akanako okanye akazalisekisi isibophelelo solawulo ngokoMgaqo-siseko okanye isinyanzeliso esisemthethweni esibophelela kumasipala okanye kulawulo olugwenxa, ubuqhophololo, urhwaphilizo okanye obunye ubugwenxa obunzulu, ukuba ayalele ibhunga likamasipala likamasipala ukuba lenze uhlolo lokuqala lwezityholo, kwaye ngaphezulu koko uMphathiswa wePhondo usenokufuna ukuba ibhunga likamasipala limnike ingxelo yovavanyo lokuqala echaza iziphumo kunye namanyathelo athathiweyo okanye aya kuthathwa. ukulungisa umcimbi; kwaye
- 3.7.3 ukuze kuthintelwe ukuphindwaphindwa kweemvavanyo nophando ngokuthi avumele uMphathiswa wePhondo ukuba adlulisele isityholo kwiNkonzo yamaPolisa oMzantsi Afrika, kwiziko leSahluko 9, kwiCandelo loPhando eliKhethekileyo nakwiZigqeba eziKhethekileyo okanye kwelinye iziko likarhulumente ukuba ubona kufanelekile ukuba elo qumrhu liphande umcimbi kwaye lilinde isiphumo solo phando phambi kokuba lithathe amanyathelo ngokwecandelo 106 lomthetho iMunicipal Systems Act okanye uMthetho ngqangi.

- 3.8 **Igaty 8** lifakela endaweni yegaty 5 loMthetho owenziwa izilungiso ngokwenza izilungiso zobuchule kwiinkqubo ezifunekayo phambi kokuba kusetyenziswe icandelo 106(1) lomthetho iMunicipal Systems Act;
- 3.9 **Igaty 9** lilungisa icandelo 6 loMthetho ngokuthi—
- 3.9.1 lenza izilungiso zobugcisa kwiinkqubo ezifunekayo xa kucelwa icandelo 106(1) lomthetho iMunicipal Systems Act;
- 3.9.2 ngaphandle kokuba uMphathiswa wePhondo wanelisekile ukuba umasipala akanako ukuzalisekisa isinyanzeliso esisemthethweni ngenxa yokungakwazi ukwenza umsebenzi, uMphathiswa wePhondo unokufumanisa amanyathelo afanelekileyo, ngokusebenzisana nomasipala, ukuphuhlisa amandla kamasipala kunye nokuqinisekisa ukuba umasipala uzalisekisa amanqaku asebenzayo kunye neminye imigangatho yokusebenza ngcono;
- 3.9.3 ngokucacisa ukuba xa uMphathiswa wePhondo esebenza phantsi kwecandelwana (1)(a) lecandelo 6 okanye lomhlathi (a) wecandelwana (2), akathintelwanga ukuba achonge umntu okanye abantu ukuba baphande loo mba njengoko kuchaziwe kwicandelo. 7;
- 3.9.4 ngokongeza ummiselo obonelela ukuba uMphathiswa wePhondo unesizathu sokukholelwa, ngokusekelwe kuhlolo olukhankanywe kwicandelo 5, ukuba umasipala akanako okanye akasizalisekisi isibophelelo esisemthethweni okanye ukuba ulawulo olugwenxa, ubuqhophololo, ubuqhetseba okanye nakuphi na okanye ukusebenza gwenxa okwenzekileyo okanye okwenzekayo kumasipala; kodwa engakuboni kuyimfuneko ukuchonga umntu okanye abantu abaza kuphanda umcimbi lowo, unokuyalela umasipala ukuba alungise ingxelo echaza amanyathelo athathiweyo okanye aya kuthatyathwa ngumasipala ukulungisa loo mcimbi;
- 3.10 **Igaty 10** lifakela endaweni yecandelo 7 loMthetho ngqangi—
- 3.10.1 ngokubonelela ngamandla ongezelelweyo kumphandi anokuthi asebenzise iinjongo zophando olukhankanywe kwicandelo 6(1)(b) loMthetho, kubandakanywa nelungelo lokungena kwizakhiwo okanye kwipropati kamasipala apho ngokufanelekileyo ukrokrela ukuba ingxelo igciniwe lunokuba negalelo kuphando, ukukopa okanye ukwenza izicatshulwa kuyo naziphi na iirekhodi okanye ukususa naziphi na iingxelo ezilolo hlobo (kuquka isixhobo sombane), ngaphandle kokuba iirekhodi (okanye isixhobo sombane) sibuyiselwe kumasipala ngaphandle kokulibazisa okungafanelekanga, ngenjongo yokuqinisekisa ngawo nawuphi na umba onxulumene nombala wophando, ukusebenzisa igunya lokwenza isifungo okanye isiqinisekiso ukuba senziwe kwingqina okanye kubizwe nawuphi na umntu ukuba aveze naziphi na iirekhodi okanye into efanelekileyo kuphando ngexesha nakwindawo echaziweyo kwisapina;
- 3.10.2 ngokubonelela ukuba umphandi unofikelelo olupheleleyo nolungenamda kuzo naziphi na iirekhodi zikamasipala okanye zomsebenzi okanye igosa likamasipala ngendlela ebekwe kwelo lungiselelo kunye nommiselo ocetywayo ukuba ufakelwe kwigaty 11 loMthetho oSayilwayo weZilungiso, ukuba umphandi ukrokrela ngokufanelekileyo ukuba iirekhodi okanye umsebenzi okanye igosa lezopolitiko elichaphazelekayo lingakwazi ukufikelela okanye libonelele ngeengcombolo ezininto yokwenza nophando;
- 3.10.3 Ukubonelela uMphathiswa wePhondo ukuba babelane ngengxelo kunye neengcebiso zomphandi neNkonzo yaMapolisa oMzantsi Afrika, iziko leSahluko 9, iCandelo

loPhando oluKhethekileyo kunye neZigqeba eziZodwa, elinye iziko likarhulumente okanye ooceba bakamasipala ochaphazelekayo;

3.10.4 ngokongeza igatya elibonelela, kwimeko apho ingxelo yomphandi ibonisa ukuba umasipala akanako okanye akazalisekisi isibophelelo esisemthethweni okanye ukuba ulawulo olugwenxa, ubuqhophololo, ubuqhetseba okanye nabuphi na obunye ubugwenxa obumandundu benzekile okanye buyenzeka kumasipala, uMphathiswa wePhondo usenokuyalela ukuba umasipala aalungise i, ngomhla ochaziweyo, echaza, echaza amanyathelo athathiweyo, okanye aza kuthathwa, ngumasipala ukunika isiphumo kwiziphumo kunye neengebiso zengxelo yomphandi;

3.11 **Igatya 11** lifakela icandelo elindululiweyo 7A elibonelela ngendlela igosa elinik' inkxaso lomphathiswa nomphandi ekufuneka benze ngayo imisebenzi yabo—

3.11.1 ngokubala amagatya omthetho iProtection of Personal Information Act, 2013 (uMthetho 4 ka-2013), angasebenziyo ekusebenziseni le misebenzi;

3.11.2 ngokubonelela ngokuba igosa elinik' inkxaso lomphathiswa okanye lomphandi lingafuna ukuba umsebenzi, uceba okanye igosa lezopolitiko likamasipala lithobele isikhokelo, okanye liphendule imibuzo eliyibuzwayo ngaphandle kokujonga umsebenzi wokungakhethi cala obekwe kuloo mntu ngumthetho ukuba ulawula, okanye isivumelwano esinxulumene nokuziphatha komsebenzi, uceba okanye igosa lezopolitiko likamasipala okanye nawuphi na ummiselo kumthetho okanye kwesinye isixhobo esisebenzayo esilawula ukulawula iirekhodi kumasipala;

3.11.3 ngokubonisa indlela igosa elinik' inkxaso lomphathiswa nomphandi kufuneka lisebenzise ngayo igunya lokungena kwipropati okanye kumhlaba kamasipala;

3.12 **Igatya 12** lenza izilungiso kwicandelo 9 loMthetho ngokususa imfuneko yokunik' ingxelo emva kwenyathelo elithatyathiweyo ngokwemiqathango yecandelo. 6(1)(a) okanye (b) loMthetho;

3.13 **Igatya 13** lithath' indawo yecandelo 11 loMthetho ngokubonelela ngamanye amatyala ongezelelekileyo.

4. UKUCEBISANA

Kucetyiswene naba bathathinxaxheba balandelayo:

ISebe leeNkonzo zoMthetho, iSebe leNkulumbuso

IQela loMsebenzi woWisomthetho noMgaqosiseko lePhondo kuRhulumente weNgingqi

5. UCHAPHAZELEKO LWEZEZIMALI

Alukho

6. ISAKHONO SOWISOMTHETHO

UMphathiswa wePhondo onoxanduva lorhulumente wengingqi wanelisekile ukuba imimiselo yoMthetho oSayilwayo iphantsi kolawulo lobuchule lwePhondo.