

Provincial Gazette Extraordinary

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<p><i>Registered at the Post Office as a Newspaper</i></p> <p style="text-align: center;">CONTENTS</p> <p style="text-align: center;">DEPARTEMENT OF SOCIAL SERVICES</p> <p>The following Draft Bill is hereby published for general information and comment:—</p> <p style="text-align: center;">Western Cape Commissioner for Children Draft Bill</p> <p>P.N. 132/2002 24 May 2002</p> <p>Any person or organisation wishing to comment on the Draft Bill is requested to submit such comment in writing before or on 24 June 2002 in any of the following ways:</p> <p>(a) by posting it to: Department of Social Services Private Bag X9112 Cape Town 8001 Attention: Ms. R. van Deventer</p> <p>(b) by delivering it to: Ms. R. van Deventer 6th Floor, Union House 14 Queen Victoria Street Cape Town</p> <p>(c) by faxing it to: (021) 483-4481</p> <p>(d) by e-mailing it to: rvdevent@pawc.wcape.gov.za</p>	<p><i>As 'n Nuusblad by die Poskantoor Geregistreer</i></p> <p style="text-align: center;">INHOUD</p> <p style="text-align: center;">DEPARTEMENT VAN MAATSKAPLIKE DIENSTE</p> <p>Die volgende Konsepwetsontwerp word hierby vir algemene inligting en kommentaar gepubliseer:—</p> <p style="text-align: center;">Konsepwetsontwerp op die Wes-Kaapse Kommissaris vir Kinders</p> <p>P.K. 132/2002 24 Mei 2002</p> <p>Enige persoon of organisasie wat kommentaar oor die Konsepwetsontwerp wil lewer, word versoek om sodanige kommentaar skriftelik te lewer vóór of op 24 Junie 2002 op enige van die volgende wyses:</p> <p>(a) deur dit te pos aan: Departement van Maatskaplike Dienste Privaatsak X9112 Kaapstad 8001 Aandag: Me. R. van Deventer</p> <p>(b) deur dit in te handig by: Me. R. van Deventer 6de Vloer, Uniehuis Koningin Victoriastraat 14 Kaapstad</p> <p>(c) deur dit te faks aan: (021) 483-4481</p> <p>(d) deur dit per e-pos aan te stuur na: rvdevent@pawc.wcape.gov.za</p>	<p><i>Ibhaliswe ePosini njengephephandaba</i></p> <p style="text-align: center;">IZIQULATHO</p> <p style="text-align: center;">SEBE LEENKONZO ZENTLALO</p> <p>Oku kukwazisa jikelele ngoMthetho Oyilwayo nokumema iziphakamiso:—</p> <p style="text-align: center;">Umthetho Oyilwayo WoMkomishinala waba-Ntwana eNtshona Koloni</p> <p>P.N. 132/2002 24 kuMeyi 2002</p> <p>Nawuphi na umntu okanye umbutho onqwenela ukwenza iziphakamiso ngoMthetho Oyilwayo uyacelwa ukuba akwenze oko ngokubhalela phambi komhla we-24 kuJuni ka 2002 esebenzisa enye yezi ndlela:</p> <p>(a) Ngokuthumela ngeposi kwi: Sebe leeNkonzo zeNtlalo Private Bag X9112 Cape Town 8001 Mayinikwe u: Nksz. R. van Deventer</p> <p>(b) Ngokuzisa buqu ku: Nksz. R. van Deventer Umgangatho wesithandathu e-UNion House 14 Queen Victoria Street eKapa</p> <p>(c) Ngokuthumela nge feksi: (021) 483-4481</p> <p>(d) Nge imeyile: rvdevent@pawc.wcape.gov.za</p>
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WESTERN CAPE COMMISSIONER FOR CHILDREN DRAFT BILL

To provide for the appointment of a Commissioner for Children in the province of Western Cape; qualifications to hold office; powers and functions; financial provisions and accountability; and matters incidental thereto.

WHEREAS section 78 of the Constitution of the Western Cape, 1997, establishes the office of Commissioner for Children;

AND WHEREAS recognition is given to the need to protect and promote the rights and best interests of children;

NOW THEREFORE the Provincial Parliament of the Western Cape enacts as follows:—

CHAPTER 1

Definitions

1. In this Act, unless the context otherwise indicates— 5
 - “**child**” means a person under the age of 18 years;
 - “**Commissioner**” means a Commissioner for Children established under section 78 of the Constitution of the Western Cape, 1997;
 - “**organ of state**” means an organ of state as defined in section 239 of the Constitution; 10
 - “**Premier**” means the Premier of the province of Western Cape;
 - “**Provincial Constitution**” means the Constitution of the Western Cape, 1997;
 - “**Provincial Minister**” means the Provincial Minister of Finance;
 - “**Provincial Parliament**” means the parliament of the province of Western Cape;
 - “**responsible Minister**” means the Provincial Minister responsible for social services; 15
 - “**the Constitution**” means the Constitution of the Republic of South Africa;
 - “**this Act**” includes any regulations issued in terms thereof.

CHAPTER 2

APPOINTMENT, DISQUALIFICATION, REMOVAL, SUSPENSION, REMUNERATION AND PRINCIPLES GOVERNING COMMISSIONER FOR CHILDREN 20

Appointment

2. (1) The Premier must appoint a Commissioner for a period of five years, renewable once. 25

(2) A committee, composed of all parties represented in the Provincial Parliament which decide to participate, must by means of notices in the media in all three official languages of the Province call for nominations from civil society for names of suitable persons to fill the position of Commissioner.

(3) The committee must publish the names of all nominations so received in the media and call for objections from members of the public in three languages of the Province to any names appearing on the list of nominations. 5

(4) The committee must consider all nominations and objections so received and may invite any nominated person for an interview.

(5) The committee must nominate one person who, in the view of the committee, is a fit and proper person to be appointed Commissioner. 10

(6) The Provincial Parliament must recommend the nominated person to the Premier after it has approved the nominee by a resolution adopted by a majority of the votes cast.

(7) The Premier must, within 14 days of receiving the recommendation from the Provincial Parliament, appoint as Commissioner a person duly nominated by the committee and approved by the Provincial Parliament. 15

Qualifications for appointment

3. (1) The Commissioner must be a South African citizen who—

- (a) is a fit and proper person; and
- (b) has proven specialised knowledge of, or relevant professional experience or a substantial academic recording, children's issues. 20

(2) In addition to the requirements in subsection (1), the Commissioner may not, after assumption of duties as Commissioner—

- (a) be a member of the National or Provincial Parliament, or of a municipal council, or of a national or provincial statutory body, or be in the service of any organ of state, or 25
- (b) hold any office for profit, or engage in any occupation for reward outside the duties of the office of Commissioner.

Oath or affirmation

4. Before commencement of duties, a Commissioner must take an oath or make a solemn affirmation that he or she will independently and impartially exercise the powers and perform the functions of the office of Commissioner without fear, favour or prejudice. 30

Removal and suspension

5. (1) The Premier may remove a Commissioner from office only on— 35

- (a) the grounds of misconduct, incapacity or incompetence;
- (b) a finding to that effect by a committee composed of those parties represented in the Provincial Parliament which wish to participate; and
- (c) the adoption by the Provincial Parliament of a resolution by a majority of the votes cast calling for the Commissioner's removal from office. 40

(2) The Premier—

- (a) may suspend a Commissioner from office at any time after the start of the proceedings of a committee of the Provincial Parliament which has to decide about that person's removal from office; and
- (b) must remove a Commissioner from office on the recommendation of the Provincial Parliament after its adoption of the resolution calling for that person's removal. 45

Vacancy in office of Commissioner

6. (1) The Premier may allow a Commissioner to vacate his or her office before the expiration of the five-year term of appointment— 50

- (a) on account of continued ill health that prevents the Commissioner from properly carrying out his or her functions or duties; or
- (b) at the Commissioner's request, provided that the request is in writing and is addressed to the Premier at least three calendar months before the date on which the Commissioner wishes to vacate office, unless the Premier allows a shorter period in a specific case. 55

- (2) A vacancy in the office of Commissioner arises if the Commissioner—
- (a) dies, or
 - (b) resigns in terms of subsection (1)(b).

Principles governing Commissioner for Children

7. In the exercise or performance of his or her powers and functions, the Commissioner must—
- (a) have regard to the principles laid down in the United Nations Convention on the Rights of the Child, the African Charter on the Rights of the Child, 1990, and any other international treaties, conventions or agreements affecting children which have been ratified by the President; 10
 - (b) strive to promote the rights, needs and best interests of children in all areas of society in the Western Cape;
 - (c) ensure that the interests of children in the Western Cape are given full consideration by public and private authorities, individuals and organisations; and 15
 - (d) promote awareness of legislation affecting children in the Western Cape by providing sufficient information concerning children's interests and rights to the public and the private sectors.

CHAPTER 3

FUNCTIONS AND DUTIES 20

Monitoring

8. The Commissioner must—
- (a) require the Heads of the Provincial Departments of Social Services, Health, Education, and Sport and Recreation to maintain a close liaison with the Commissioner in order to monitor— 25
 - (i) provincial projects intended to enhance public awareness of issues relating to the rights of children contained in section 23 (1) of the Constitution;
 - (ii) the implementation of the UN Convention on the Rights of the Child, 1989, the African Charter on the Rights of the Child, 1990, and any other 30 international treaties, conventions or agreements affecting children which have been ratified by the President;
 - (iii) the rights, needs and interests of children in home care, foster care and child and youth care centres;
 - (iv) provincial projects launched in aid of children in various circumstances; 35
 - (v) public hospitals and health care facilities in regard to the treatment of children; and
 - (vi) public and private schools;
 - (b) maintain close liaison with the Commissioner for Correctional Services in the province of Western Cape to monitor the availability of health, social welfare 40 and educational services and recreational facilities for children in prison and other children who are in official custody;
 - (c) maintain close liaison with the Commissioner for Police Services in the province of Western Cape to monitor the reported number of crimes committed by and against children, and to optimise co-operation between the 45 South African Police Service and provincial departments which deal with or render a service to children who come into conflict with the law;
 - (d) maintain close liaison with the Regional Head of the Department of Justice in the province of Western Cape to optimise co-operation between the Department of Justice and provincial departments that deal with or render a 50 service to—
 - (i) child victims of crime;
 - (ii) the office of the Family Advocate;
 - (iii) the Family Courts;
 - (iv) Children's Court Commissioners; 55
 - (v) prosecutors dealing with children; and

- (vi) criminal courts dealing with all matters involving children in conflict with the law;
- (e) maintain close liaison with private organisations, institutions and agencies that work with children in the province of Western Cape to monitor common practices and promote co-operation between provincial organs of state and the public sector on matters relating to the protection of the rights and interests of children. 5

Investigations

- 9.** (1) A Commissioner may conduct or initiate investigations and enquiries with regard to any matter falling within the scope of his or her functions. 10
- (2) A Commissioner must conduct an audit of all existing or proposed legislation affecting or likely to affect the rights and interests of children in the province of Western Cape at the commencement of this Act.

Research

- 10.** (1) A Commissioner may conductor initiate research— 15
- (a) with regard to any matter falling within the scope of his or her functions; and
 - (b) aimed at informing the development of policy or practice that is in the best interests of the child.
- (2) A Commissioner may facilitate co-operation with and provide for input from the public sector and academic institutions with regard to identifying, undertaking and implementing research. 20

Education

- 11.** A Commissioner may conduct and develop information programmes to educate the public about and foster public understanding and awareness of—
- (a) this Act; 25
 - (b) the United Nations Convention on the Rights of the Child, 1989;
 - (c) the African Charter on the Rights of the Child, 1990;
 - (d) section 28(1) of the Constitution;
 - (e) other relevant international conventions; and
 - (f) any other matter falling within the scope of his or her functions. 30

Lobbying

- 12.** A Commissioner may—
- (a) lobby the Provincial or National Parliament and make recommendations concerning— 35
 - (i) any existing or proposed act of Parliament;
 - (ii) any system of personal and family law custom;
 - (iii) any system of indigenous law customs or practice; or
 - (iv) any other law that affects or is likely to affect the rights of children as stipulated in the Constitution; and
 - (b) invite co-operation and input from the public and private sectors when deciding to lobby for legislative review. 40

Advising

- 13.** A Commissioner must advise and make recommendations to any person or organ of state in the province of Western Cape whose policies and practices relating to children have been monitored, investigated or researched by the Commissioner. 45

Application for matters to be taken up for monitoring, investigation or research

- 14.** (1) Any person may request the Commissioner to take up a matter for monitoring, investigation or research in terms of the powers and functions conferred in terms of this Act.

- (2) The Commissioner may of his or her own initiative take up a matter for investigation in terms of the powers and functions conferred in terms of this Act, or at the request of any person.
- (3) All applications for a matter to be taken up by the Commissioner for monitoring, investigation or research must as far as possible be in writing and in the format provided for by the office of the Commissioner. 5
- (4) The application must contain the following information:
- (a) the names and addresses of the persons initiating the matter;
 - (b) an explanation as to why the Commissioner should monitor, investigate or research the matter; 10
 - (c) a summary of the evidence supporting the belief that the matter should be monitored, investigated or researched;
 - (d) the names and addresses of persons or organs of state alleged to be involved, to the extent that such information is available;
 - (e) a description of any document or material that should be considered ; and 15
 - (f) a copy of the document referred to in paragraph (e).
- (5) An application for a matter to be monitored, investigated or researched must be sworn or solemnly affirmed before a Commissioner of Oaths.
- (6) The decision to monitor, investigate or research a matter is entirely in the discretion of the Commissioner. 20
- (7) If an application deals with a specific child and the application does not come from the child itself, the Commissioner may not deal with the case without the permission of the relevant child.
- (8) If the child's age so indicates, the permission of the legal guardian must also be obtained, although this will not preclude the Commissioner from monitoring, investigating or researching if the relevant permission has not been obtained. 25
- (9) If the Commissioner decides that a matter may be monitored, investigated or researched, this must be concluded within 120 days of receiving the application, or the Commissioner must give a written estimate to the applicant of the time required to complete it. 30
- (10) If the Commissioner decides that a matter is to be rejected, written notification as such, together with reasons, must be given to the applicant within 30 days of receiving the application.
- (11) A rejection by the Commissioner cannot be appealed.

Additional powers and functions 35

- 15.** To enable the Commissioner to exercise and perform the powers and functions conferred in terms of this Act, the Commissioner may, subject to the Constitution—
- (a) enter any property in the Province, with prior written notice to the owner or tenant concerned;
 - (b) direct any person to submit a sworn affidavit or affirmed statement; 40
 - (c) subpoena any person or give notice to any person to appear before him or her to give evidence, or to produce any book, report, document or object in his or her possession or under his or her control at the time and place stipulated in the subpoena or notice;
 - (d) administer an oath or affirmation to any person appearing as a witness; 45 provided that—
 - (i) the subpoena or notice contemplated in paragraph (c) must be signed and issued by the Commissioner and served by the Commissioner or any other person authorised by the Commissioner to do so, in the same manner as a subpoena or notice, as the case may be, for a witness at a trial 50 in the High Court;
 - (ii) any person appearing before the Commissioner may be assisted by a legal representative at his or her own cost;
 - (e) appoint such persons as may be necessary for the performance of the functions of the office of Commissioner, on such terms and conditions of service as determined in consultation with the Premier, the responsible Minister and the Provincial Minister of Finance; and 55
 - (f) attend the meetings of any committee of the Provincial Parliament and address such committees on matters relating to children.

Duties

- 16.** The Commissioner—
- (a) must report annually to the Provincial Parliament;
 - (b) must submit any recommendations made to any person or organ of state concurrently to the Provincial Parliament; 5
 - (c) may submit a special report to the Provincial Parliament at any other time on any matter relating to this Act which, in the opinion of the Commissioner, should not be deferred until the annual report; and
 - (d) must make all reports and recommendations available to the public.

Liability 10

17. The Commissioner or any person appointed by him or her is not liable in respect of anything done in good faith under any provisions of this Act or the Provincial Constitution.

CHAPTER 4**OBLIGATIONS OF ORGANS OF STATE AND ACCESS TO INFORMATION AND INSTITUTIONS** 15**Obligations**

- 18.** (1) All organs of state must assist and protect the Commissioner and ensure the independence, impartiality, dignity and effectiveness of the office of Commissioner.
- (2) No person or any organ of state may interfere with the functioning of the Commissioner or his or her staff, or obstruct the functioning of the Commissioner or his or her staff. 20
- (3) When the Commissioner makes recommendations to any person or organ of state, that person or organ of state must report in writing to the Commissioner on his or her or its actions in response to those recommendations within a reasonable time stipulated by the Commissioner. 25
- (4) Any person or organ of state who or which, either wholly or in part, refuses or fails to implement the Commissioner's recommendations must, upon request, furnish the Commissioner with written reasons for such refusal or failure within a reasonable time stipulated by the Commissioner. 30

Access to information and institutions

- 19.** (1) Organs of state and public and private institutions for children must, at the Commissioner's request, provide information with regard to any matter falling within the scope of the Commissioner's functions.
- (2) All public and private institutions for children must allow the Commissioner access to their premises for the purpose of carrying out any function or duty contemplated in Chapter 3 of this Act. 35

CHAPTER 5**OFFICE OF COMMISSIONER****Administrative** 40

20. The administrative functions of the office of the Commissioner will be performed by officers in the service of the Provincial Administration: Western Cape.

Budget

21. The Provincial Parliament must vote adequate funds within the Province's resources to enable the Commissioner to perform his or her functions in terms of this Act. 45

Accounting authority

22. The Commissioner is the accounting authority who has the responsibilities and who must perform the duties as stipulated in Chapter 6 of the Public Finance Management Act of 1999, and any directions, regulations or instructions issued in terms of this Act. 5

Remuneration of Commissioner

23. (1) The remuneration and other terms and conditions of employment of the Commissioner must from time to time be determined by the Premier and the responsible Minister in consultation with the Provincial Minister of Finance, bearing in mind the available resources of the Province. 10

(2) The remuneration of the Commissioner may not be diminished during his or her term of office.

CHAPTER 6

DONATIONS

24. The office of the Commissioner may receive donations subject to Treasury 15 regulations and instructions.

CHAPTER 7

GENERAL PROVISIONS

Regulations

25. The Premier may make regulations regarding any matter which he or she 20 considers necessary in order to achieve the objectives of this Act.

Offences and penalties

26. Any person who—
- (a) contravenes or fails to comply with any provisions of this Act;
 - (b) obstructs a Commissioner in the performance of functions or duties 25 contemplated in this Act;
 - (c) refuses or fails to furnish information or an explanation in regard to a request for information from a Commissioner, or furnishes information that is false and misleading knowing that it is false and misleading,
- is guilty of an offence and liable to a fine not exceeding R10 000. 30

Short title and commencement

27. This Act is called the Commissioner for Children's Act and comes into operation upon a date set by the Premier by proclamation in the *Provincial Gazette*.

KONSEPWETSONTWERP OP DIE WES-KAAPSE KOMMISSARIS VIR KINDERS

Om voorsiening te maak vir die aanstelling van 'n Kommissaris vir Kinders in die provinsie Wes-Kaap; kwalifikasies vir ampsbekleding; bevoegdhede en funksies; finansiële bepalinge en rekenpligtigheid; en aangeleenthede wat daarmee in verband staan.

NADEMAAL artikel 78 van die Grondwet van die Wes-Kaap, 1997, die amp van Kommissaris vir Kinders instel;

EN NADEMAAL die noodsaaklikheid om die regte en beste belange van kinders te beskerm en te bevorder, erken word;

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

HOOFSTUK 1

Woordomsrywings

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—

“ die Grondwet ” die Grondwet van die Republiek van Suid-Afrika;	5
“ hierdie Wet ” ook enige regulasies wat ingevolge daarvan uitgevaardig word;	
“ kind ” ’n persoon onder die ouderdom van 18 jaar;	
“ Kommissaris ” ’n Kommissaris vir Kinders, ingestel kragtens artikel 78 van die Grondwet van die Wes-Kaap, 1997;	10
“ Premier ” die Premier van die provinsie Wes-Kaap;	
“ Provinsiale Grondwet ” die Grondwet van die Wes-Kaap, 1997;	
“ Provinsiale Minister ” die Provinsiale Minister van Finansies;	
“ Provinsiale Parlement ” die parlement van die provinsie Wes-Kaap;	
“ staatsorgaan ” ’n staatsorgaan soos omskryf in artikel 239 van die Grondwet;	15
“ verantwoordelike Minister ” die Provinsiale Minister wat vir maatskaplike dienste verantwoordelik is.	

HOOFSTUK 2

- | | |
|---|----|
| AANSTELLING, ONBEVOEGVERKLARING, AMPSONTHEFFING,
SKORSING, BESOLDIGING, EN BEGINSELS VAN TOEPASSING
OP KOMMISSARIS VIR KINDERS | 20 |
|---|----|

Aanstelling

2. (1) Die Premier moet ’n Kommissaris aanstel vir ’n tydperk van vyf jaar, wat een maal hernu kan word.

- (2) 'n Komitee bestaande uit alle partye wat in die Provinsiale Parlement verteenwoordig is en besluit om deel te neem, moet by wyse van kennisgewings in die media in al drie amptelike tale van die Provinsie benoemings van die burgerlike samelewing vra vir name van geskikte persone om die posisie van Kommissaris te vul.
- (3) Die komitee moet die name van alle benoemings wat aldus ontvang is, in die media publiseer, en besware teen enige name wat op die lys benoemings verskyn, in drie tale van die Provinsie van lede van die publiek vra. 5
- (4) Die komitee moet alle benoemings en besware wat aldus ontvang is, oorweeg, en kan enige benoemde persoon vir 'n onderhoud nooi.
- (5) Die komitee moet een persoon benoem wat, na die oordeel van die komitee, 'n 10 geskikte en gepaste persoon is om as Kommissaris aangestel te word.
- (6) Die Provinsiale Parlement moet die benoemde persoon by die Premier aanbeveel nadat dié parlement die benoemde persoon goedgekeur het by 'n besluit wat deur 'n meerderheid van die uitgebragte stemme aangeneem is.
- (7) Die Premier moet binne 14 dae vanaf ontvangs van die Provinsiale Parlement se 15 aanbeveling 'n persoon, behoorlik deur die komitee benoem en deur die Provinsiale Parlement goedgekeur, aanstel as Kommissaris.

Kwalifikasies vir aanstelling

3. (1) Die Kommissaris moet 'n Suid-Afrikaanse burger wees wat—
- (a) 'n geskikte en gepaste persoon is, en 20
- (b) beskik oor bewese gespesialiseerde kennis, of tersaaklike professionele ondervinding, of 'n aansienlike akademiese rekord, ten opsigte van kwessies wat met kinders te make het.
- (2) Benewens die vereistes in subartikel (1) mag die Kommissaris ná aansaanvaarding as Kommissaris nie— 25
- (a) 'n lid van die Nasionale of Provinsiale Parlement, of 'n munisipale raad, of 'n nasionale of provinsiale statutêre liggaam, of in diens van enige staatsorgaan, wees nie, of
- (b) enige besoldigde amp beklee of teen vergoeding enige beroep beoefen wat buite die pligte van die amp van Kommissaris val nie. 30

Eed of plegtige verklaring

4. Voor die aanvang van pligte, moet die Kommissaris 'n eed aflê of plegtige verklaring doen dat hy of sy sonder vrees, begunstiging of vooroordeel die bevoegdhede en funksies van die amp van Kommissaris onafhanklik en onpartydig sal uitoefen en verrig. 35

Ampsontheffing en skorsing

5. (1) Die Premier kan 'n Kommissaris van sy of haar amp onthef slegs op grond van—
- (a) wangedrag, onvermoë of onbevoegdheid;
- (b) 'n bevinding te dien effekte deur 'n komitee bestaande uit daardie partye wat 40 in die Provinsiale Parlement verteenwoordig is en wil deelneem, en
- (c) 'n besluit van die Provinsiale Parlement wat aangeneem is met 'n meerderheid van die uitgebragte stemme, wat vra dat die Kommissaris van sy of haar amp onthef word.
- (2) Die Premier— 45
- (a) kan 'n Kommissaris in sy of haar amp skors te eniger tyd na die aanvang van die verrigtinge van 'n komitee van die Provinsiale Parlement wat oor daardie persoon se ontheffing van sy of haar amp moet besluit, en
- (b) moet 'n Kommissaris van sy of haar amp onthef by aanname deur die 50 Provinsiale Parlement van die besluit wat vra dat die Kommissaris van die amp onthef word.

Vakature in amp van Kommissaris

6. (1) Die Premier kan 'n Kommissaris toelaat om sy of haar amp voor die verstryking van die aanstellingstermyn van vyf jaar te ontruim—

- (a) op grond van voortdurende swak gesondheid wat die Kommissaris verhoed om sy of haar funksies of pligte behoorlik te verrig; of
 - (b) op versoek van die Kommissaris, mits die versoek skriftelik is en tot die Premier gerig word minstens drie kalendermaande voor die datum waarop die Kommissaris sy of haar amp wil ontruim, tensy die Premier 'n korter tydperk in 'n bepaalde geval toelaat. 5
- (2) 'n Vakature in die amp van Kommissaris ontstaan wanneer die Kommissaris—
- (a) te sterwe kom; of
 - (b) ingevolge subartikel (1)(b) bedank.

Beginsels van toepassing op Kommissaris vir Kinders 10

7. Die Kommissaris moet by die uitoefening of verrigting van sy of haar bevoegdhede of funksies—

- (a) ag slaan op die beginsels wat voorgeskryf is in die Verenigde Nasies se Konvensie vir die Regte van die Kind, die Afrika Handves vir Kinderregte, 1990, en enige ander internasionale verdrae, konvensies of ooreenkomste wat kinders raak en wat deur die President bekragtig is; en 15
- (b) daarna streef om die regte, behoeftes en beste belange van kinders op alle terreine van die samelewing in die Wes-Kaap te bevorder;
- (c) toesien dat die belange van kinders in die Wes-Kaap ten volle in ag geneem word deur openbare en private owerhede, individue en organisasies; en 20
- (d) bewustheid van wetgewing in die Wes-Kaap wat kinders raak, bevorder deur voldoende inligting oor kinders se belange en regte aan die publiek en die private sektor beskikbaar te stel.

HOOFSTUK 3

FUNKSIES EN PLIGTE 25

Monitering

8. Die Kommissaris moet—

- (a) van die Hoofde van die Provinsiale Departemente van Maatskaplike Dienste, Gesondheid, Onderwys, en Sport en Ontspanning verlang om in noue skakeling met die Kommissaris te bly ten einde die volgende te moniteer: 30
 - (i) provinsiale projekte wat daarop gemik is om die openbare bewustheid van kwessies rakende die regte van kinders, soos vervat in artikel 23(1) van die Grondwet, te verskerp;
 - (ii) die implementering van die VN se Konvensie vir die Regte van die Kind, 1989, die Afrika Handves vir Kinderregte, 1990, en enige ander internasionale verdrae, konvensies of ooreenkomste wat kinders raak en wat deur die President bekragtig is; 35
 - (iii) die regte, behoeftes en belange van kinders in tuissorg, pleegsorg en kinder- en jeugsorgsentrums;
 - (iv) provinsiale projekte geloods om kinders in verskeie omstandighede te help; 40
 - (v) openbare hospitale en gesondheidsorgfasiliteite met betrekking tot die behandeling van kinders; en
 - (vi) openbare skole en private skole;
- (b) in noue skakeling met die Kommissaris vir Korrektiewe Dienste in die provinsie Wes-Kaap bly om die beskikbaarheid van gesondheids-, maatskaplike- en opvoedkundige dienste en ontspanningsgeriewe vir kinders in gevangnisse en ander kinders wat in amptelike aanhouding is, te moniteer; 45
- (c) in noue skakeling met die Kommissaris vir Polisie dienste in die provinsie Wes-Kaap bly om die getal kriminele dade wat deur en teen kinders gepleeg is en gerapporteer is, te moniteer, en om optimale samewerking te verkry tussen die Suid-Afrikaanse Polisie diens en provinsiale departemente wat te make het met of 'n diens lewer aan kinders wat met die gereg bots; 50
- (d) in noue skakeling met die Streekhoof van die Departement van Justisie in die provinsie Wes-Kaap bly om optimale samewerking te verkry tussen die Departement van Justisie en provinsiale departemente wat te make het met of 'n diens lewer aan— 55

- (i) kinderslagoffers van kriminele dade;
- (ii) die kantoor van die Gesinsadvokaat;
- (iii) die Gesinshowe;
- (iv) Kommissaris van die Kinderhof;
- (v) aanklaers wat met kinders werk; en 5
- (vi) kriminele howe wat te make het met alle sake waarby kinders wat met die wet gebots het, betrokke is;
- (e) in noue skakeling bly met private organisasies, instellings en agentskappe wat in die provinsie Wes-Kaap met kinders werk, om algemene praktyke te monitor en samewerking tussen provinsiale staatsorgane en die openbare sektor in sake rakende die beskerming van die regte en belange van kinders te bevorder. 10

Ondersoeke

9. (1) 'n Kommissaris kan ondersoek en navrae doen of inisier in enige saak wat binne die bestek van sy of haar funksies val. 15
- (2) 'n Kommissaris moet 'n oudit uitvoer van alle bestaande of voorgestelde wetgewing wat by die inwerkingtrede van hierdie Wet die regte en belange van kinders in die provinsie Wes-Kaap raak of waarskynlik sal raak.

Navorsing

10. (1) 'n Kommissaris kan navorsing doen of inisier— 20
- (a) met betrekking tot enige saak wat binne die bestek van sy of haar funksies val; en
 - (b) wat, by die ontwikkeling van 'n beleid of praktyk wat in die beste belange van die kind is, ten doel het om inhoud daaraan te verleen.
- (2) 'n Kommissaris kan samewerking fasiliteer met, en voorsiening maak vir insette deur, die openbare sektor en akademiese instellings ten opsigte van die identifisering, onderneming en implementering van navorsing. 25

Onderwys

11. 'n Kommissaris kan inligtingsprogramme implementeer en ontwikkel om die publiek op te voed oor en openbare begrip en bewustheid van die volgende aan te moedig: 30
- (a) hierdie Wet;
 - (b) die Verenigde Nasies se Konvensie vir die Regte van die Kind, 1989;
 - (c) die Afrika Handves vir Kinderregte, 1990;
 - (d) artikel 28(1) van die Grondwet; 35
 - (e) ander tersaaklike internasionale konvensies; en
 - (f) enige ander saak wat binne die bestek van sy of haar funksies val.

Steunwerwing

12. 'n Kommissaris kan—
- (a) steun in die Provinsiale of Nasionale Parlement werf en aanbevelings doen in verband met— 40
 - (i) enige bestaande of voorgestelde wet van die Parlement;
 - (ii) enige stelsel van persoonlike en familiegewoontes;
 - (iii) enige stelsel van inheemse regsgewoontes of -gebruike; of
 - (iv) enige ander reg wat die regte van kinders, soos in die Grondwet bepaal, raak of waarskynlik sal raak; en 45
 - (b) samewerking en insette van die openbare en private sektor vra wanneer besluit word om steun vir die hersiening van wetgewing te werf.

Advisering

13. 'n Kommissaris moet advies gee aan en aanbevelings doen by enige persoon of staatsorgaan in die provinsie Wes-Kaap wie se beleide en praktyke ten opsigte van kinders gemoniteer, ondersoek of nagevors word deur die Kommissaris. 50

Aansoek dat sake aanvaar word vir monitering, ondersoek of navorsing

14. (1) Enige persoon kan die Kommissaris versoek om 'n saak vir monitering, ondersoek of navorsing te aanvaar ingevolge die bevoegdhede en funksies wat ingevolge hierdie Wet verleen word.
- (2) Die Kommissaris kan op eie inisiatief 'n saak vir ondersoek aanvaar ingevolge die bevoegdhede en funksies wat ingevolge hierdie Wet verleen word. 5
- (3) Alle aansoeke dat die Kommissaris 'n saak vir monitering, ondersoek of navorsing moet aanvaar, moet sover moontlik skriftelik wees en in die formaat waarvoor die kantoor van die Kommissaris voorsiening maak.
- (4) Die aansoek moet die volgende inligting bevat: 10
- (a) die name en adresse van die persone wat die saak inisieer;
 - (b) 'n verduideliking waarom die Kommissaris die saak moet moniteer, ondersoek of navors;
 - (c) 'n opsomming van die bewyse ter staving van die mening dat die saak gemoniteer, ondersoek of nagevors moet word; 15
 - (d) die name en adresse van persone of staatsorgane wat na bewering betrokke is, vir sover sulke inligting beskikbaar is;
 - (e) 'n beskrywing van enige dokument of materiaal wat oorweeg moet word; en
 - (f) 'n kopie van die dokument in paragraaf (e) genoem.
- (5) 'n Eed of plegtige verklaring ten opsigte van 'n aansoek dat 'n saak gemoniteer, ondersoek of nagevors moet word, moet voor 'n Kommissaris van Ede afgelê of gedoen word. 20
- (6) Die Kommissaris kan geheel na goeddunke besluit of 'n saak gemoniteer, ondersoek of nagevors moet word.
- (7) Indien 'n aansoek met 'n spesifieke kind te make het en die aansoek nie van die kind self kom nie, mag die Kommissaris nie sonder die toestemming van die betrokke kind werk maak van die saak nie. 25
- (8) Indien die kind se ouderdom daarop dui, moet die toestemming van die wettige voog ook verkry word, alhoewel die nie-verkryging van die betrokke toestemming nie die Kommissaris verhoed om die saak te moniteer, te ondersoek of na te vors nie. 30
- (9) Indien die Kommissaris besluit dat 'n saak gemoniteer, ondersoek of nagevors kan word, moet dit binne 120 dae vanaf ontvangs van die aansoek afgehandel word, of anders moet die Kommissaris die aansoeker voorsien van 'n skriftelike raming van die tyd wat nodig is om dit te voltooi.
- (10) Indien die Kommissaris besluit dat 'n saak afgekeur moet word, moet die aansoeker binne 30 dae vanaf ontvangs van die aansoek voorsien word van 'n skriftelike meedeling te dien effekte, tesame met redes. 35
- (11) Daar kan nie teen 'n afkeuring deur die Kommissaris geappelleer word nie.

Bykomende bevoegdhede en funksies

15. Ten einde die Kommissaris in staat te stel om die bevoegdhede uit te oefen en die funksies te verrig wat ingevolge hierdie Wet verleen word, kan die Kommissaris, behoudens die Grondwet—
- (a) by skriftelike voorafkennisgewing aan die betrokke eienaar of huurder, enige eiendom in die Provinsie betree;
 - (b) enige persoon gelas om 'n beëdigde of bevestigde verklaring voor te lê; 45
 - (c) enige persoon as getuie dagvaar of aan enige persoon kennis gee om voor hom of haar te verskyn om getuienis te lewer, of om 'n boek, verslag, dokument of artikel in sy of haar besit of onder sy of haar beheer, voor te lê op die tyd en plek wat in die getuiedagvaarding of kennisgewing gestipuleer word;
 - (d) 'n eed of verklaring afneem van enige persoon wat as getuie verskyn; met dien verstande dat— 50
 - (i) die getuiedagvaarding of kennisgewing in paragraaf (c) beoog, deur die Kommissaris onderteken en uitgereik moet word en op dieselfde wyse as 'n dagvaarding of kennisgewing, na gelang van die geval, vir 'n getuie by 'n verhoor in die Hoë Hof deur die Kommissaris of enige ander persoon wat deur die Kommissaris daartoe gemagtig is, beteken moet word, en 55
 - (ii) enige persoon wat voor die Kommissaris verskyn, op eie koste deur 'n regsverteenvoerder, bygestaan kan word;

- (e) enige persone wat nodig is vir die verrigting van die funksies van die amp van Kommissaris, aanstel ooreenkomstig die bepalings en voorwaardes wat in oorleg met die Premier, die verantwoordelike Minister en die Provinsiale Minister van Finansies bepaal word; en
- (f) die vergaderings van enige komitee van die Provinsiale Parlement bywoon en dié komitees toespreek oor aangeleenthede wat met kinders verband hou. 5

Pligte

16. Die Kommissaris—

- (a) moet jaarliks aan die Provinsiale Parlement verslag doen;
- (b) moet enige aanbevelings wat by enige persoon of staatsorgaan gedoen is, 10 tegelykertyd aan die Provinsiale Parlement voorlê;
- (c) kan op enige ander tyd 'n spesiale verslag oor enige kwessie betreffende hierdie Wet wat na die Kommissaris se oordeel nie tot die jaarverslag uitgestel behoort te word nie, by die Provinsiale Parlement indien; en
- (d) moet alle verslae en aanbevelings aan die publiek beskikbaar stel. 15

Aanspreeklikheid

17. Die Kommissaris of enige persoon deur hom of haar aangestel, is nie aanspreeklik ten opsigte van enigiets wat te goeder trou kragtens enige bepalings van hierdie Wet of die Provinsiale Grondwet gedoen word nie.

HOOFSTUK 4 20

VERPLIGTINGE VAN STAATSORGANE EN TOEGANG TOT INLIGTING EN INSTELLINGS

Verpligtinge

18. (1) Alle staatsorgane moet die Kommissaris bystaan en beskerm en die onafhanklikheid, onpartydigheid, waardigheid en effektiwiteit van die amp van 25 Kommissaris verseker.

(2) Geen persoon of enige staatsorgaan mag in die funksionering van die Kommissaris of sy of haar personeel inmeng, of die funksionering van die Kommissaris of sy of haar personeel belemmer nie.

(3) Wanneer die Kommissaris aanbevelings by enige persoon of staatsorgaan doen, 30 moet daardie persoon of staatsorgaan binne 'n redelike tyd wat die Kommissaris stipuleer, skriftelik aan die Kommissaris verslag doen oor sy of haar optrede in reaksie op daardie aanbevelings.

(4) Enige persoon of staatsorgaan wat weier of versuim om die Kommissaris se 35 aanbevelings óf in die geheel óf gedeeltelik te implementeer, moet op versoek skriftelike redes vir die weiering of versuim aan die Kommissaris verstrek binne 'n redelike tyd wat die Kommissaris stipuleer.

Toegang tot inligting en instellings

19. (1) Staatsorgane en openbare en private instellings vir kinders moet op versoek van die Kommissaris inligting verstrek oor enige saak wat binne die bestek van die 40 Kommissaris se funksies val.

(2) Alle openbare en private instellings vir kinders moet toegang tot hul persele aan die Kommissaris verleen met die doel om enige funksie of plig in Hoofstuk 3 van hierdie Wet beoog, te verrig.

HOOFSTUK 5 45

KANTOOR VAN KOMMISSARIS

Administratief

20. Die administratiewe funksies van die kantoor van die Kommissaris sal deur beamptes in die diens van die Provinsiale Administrasie: Wes-Kaap verrig word.

Begroting

21. Die Provinsiale Parlement moet toereikende gelde binne die Provinsie se hulpbronne bewillig ten einde die Kommissaris in staat te stel om sy of haar funksies ingevolge hierdie Wet te verrig.

Rekenpligtige gesag

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22. Die Kommissaris is die rekenpligtige gesag wat die verantwoordelikhede het, en die pligte moet verrig, soos bepaal in Hoofstuk 6 van die Wet op Openbare Finansiële Bestuur van 1999, en enige voorskrifte, regulasies of opdragte ingevolge daardie Wet uitgereik.

Besoldiging van Kommissaris

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23. (1) Die besoldiging en ander bepalings en voorwaardes ten opsigte van die diens van die Kommissaris moet van tyd tot tyd deur die Premier en die verantwoordelike Minister in oorleg met die Provinsiale Minister van Finansies bepaal word, met inagneming van die beskikbare hulpbronne van die Provinsie.

(2) Die besoldiging van die Kommissaris mag nie verminder word tydens sy of haar ampstermyn nie.

HOOFSTUK 6**SKENKINGS**

24. Die kantoor van die Kommissaris kan skenkings behoudens Tesourie-regulasies en -opdragte ontvang.

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HOOFSTUK 7**ALGEMENE BEPALINGS****Regulasies**

25. Die Premier kan regulasies afkondig betreffende enige saak wat hy of sy nodig ag ten einde die doelwitte van hierdie Wet te bereik.

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Misdrywe en strawwe

26. Enige persoon wat—

(a) enige bepalings van hierdie Wet oortree of versuim om daaraan te voldoen;

(b) 'n Kommissaris hinder in die verrigting van funksies of pligte in hierdie Wet beoog;

(c) weier of versuim om inligting of 'n verduideliking te verstrek met betrekking tot 'n versoek om inligting van 'n Kommissaris, of inligting verstrek wat vals en misleidend is in die wete dat dit vals en misleidend is, is skuldig aan 'n misdryf en strafbaar met 'n boete van hoogstens R10 000.

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Kort titel en inwerkingtreding

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27. Hierdie Wet heet die Wet op die Kommissaris vir Kinders en tree in werking op 'n datum deur die Premier by proklamasie in die *Provinsiale Koerant* vasgestel.

UMTHETHO OYILWAYO WOMKOMISHINALA WABANTWANA WENTSHONA KOLONI

Ukulungiselela ukonyulwa koMkomishinala wabaNtwana wePhondo leNtshona Koloni; iimfanelo zomsebenzi ezifunekayo ukuze umntu onyulwe kwesi sikhundla; amagunya nemisebenzi yakhe; amalungiselelo emicimbi yemali noxanduva lokunikeza ingxelo; kunye nemiba ehambisana nezi zinto.

EKUBENI icandelo 78 loMgaqo-siseko weNtshona Koloni, 1997, liseka i-ofisi yoMkomishinala waBantwana;

NOKOKUBA EKUBENI iqondwa imfuneko yokukhusela nokukhuthaza amalungelo neemfuno eziphambili zabantwana;

KUNGOKO KE NGOKU iPalamente yePhondo leNtshona Koloni iyalela ngolu hlobo lulandelayo:—

ISAHLUKO 1

Inkcazelo

1. Kulo Mthetho, ngaphandle kokuba imeko ichaza ngolunye uhlobo—
 - “**umntwana**” uthetha umntu ongaphantsi kwe-18 leminyaka ubudala; 5
 - “**UMkomishinala**” uthetha uMkomishinala waBantwana osekwe phantsi kwecandelo 78 loMgaqo-siseko weNtshona Koloni, 1997;
 - “**ilungu lombuso**” lithetha ilungu lombuso njengoko lichaziwe kwicandelo 239 loMgaqo-siseko; 10
 - “**INkulumbuso**” ithetha iNkulumbuso yePhondo leNtshona Koloni;
 - “**UMgaqo-siseko wePhondo**” uthetha uMgaqo-siseko weNtshona Koloni, 1997;
 - “**UMphathiswa wePhondo**” uthetha uMphathiswa wezeMali wePhondo;
 - “**IPalamente yePhondo**” ithetha iPalamente yePhondo leNtshona Koloni;
 - “**UMphathiswa onoxanduva**” uthetha uMphathiswa wePhondo ojongene 15 nemicimbi yeeNkonzo zeNtlalo-Ntle;
 - “**UMgaqo-siseko**” uthetha uMgaqo-siseko weRiphabhliki yoMzantsi Afrika;
 - “**lo Mthetho**” uquka nayiphi na imigaqo ekhutshiweyo ngokwemiqathango yomthetho lo.

ISAHLUKO 2

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**UKWENYULWA, UKURHOXISWA ESIKHUNDLENI, UKUSUSWA
ESIKHUNDLENI, UKUNQUNYANYISWA ESIKHUNDLENI, UMVUZO
KUNYE NEMIQATHANGO AMISELWE YONA UMKOMISHINALA
WABANTWANA**

Ukwenyulwa

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2. (1) INkulumbuso kufuneka yonyule uMkomishinala oza kusebenza isithuba seminyaka emihlanu emisiweyo, enokuphinda onyulwe kube kanye emva koko.

(2) Ikomiti eyenziwa ngawo onke amaqela akhoyo kwiPalamente yePhondo, ethi igqibe ekubeni ithathe inxaxheba, kumele ngokufaka izaziso kumajelo eendaba, imeme uluntu ukuba lunyule okanye lufake iziphakamiso zamagama abantu abafanelekileyo abanokwenza lo msebenzi woMkomishinala, isebenzisa zontathu iilwimi ezisemthweni kwiPhondo. 5

(3) Ikomiti kufuneka ukuba ipapashe onke amagama abo bantu bonyuliweyo, ze imeme izimvo zoluntu ezichasa naliphi na igama kolo luhlu lwamagama aphakanyisiweyo, ngeelwimi zontathu zePhondo.

(4) Ikomiti kumele ukuba iwajonge onke loo magama aphakanyisiweyo kunye nezimvo eziwachasayo ezifunyenweyo, yaye isenokumema nawuphi na umntu owoonyuliweyo kudliwano-ndlebe. 10

(5) Ikomiti kumele ukuba yonyule umntu abe mnye, ngokoluvo lwayo embona ngathi ukulungele yaye wakufanela ukonyulwa njengoMkomishinala.

(6) IPalamente yePhondo kumele ukuba ixhase loo mntu wonyuliweyo kwiNkulumbuso, emva kokuba imamkele ngesigqibo esithathwe ngenxa yeevoti ezininzi azifumeneyo. 15

(7) INkulumbuso kumele ukuba ithi zingaphelanga iintsuku ezili-14 emva kokuba ifumene le nkxaso kwiPalamente yePhondo, yonyule uMkomishinala njengomntu otyunjwe yikomiti wamkelwa yiPalamente yePhondo.

Imfanelo zengqesho

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3. (1) uMkomishinala kufuneka ukuba abe ngummi waseMzantsi Afrika—

(a) ongumntu osempilweni nongenazingxaki, yaye

(b) nothi abe ubonakalise ulwazi olukhethekileyo okanye unamava awafumene ngobungcali bakhe, okanye uneziqinisekiso zemfundo ezithe xhaxhe ngemicimbi enxulumene nabantwana. 25

(2) Ukongeza kwezi mfuno zikwicandelwana (1), uMkomishinala akavumelanga ukuba angathi emva kokuqalisa umsebenzi wakhe wokuba nguMkomishinala—

(a) abe lilungu lePalamente kaZwelonke okanye eyePhondo, okanye abe lilungu lebhunga loomasipala okanye iqumrhu elimiselweyo ngomthetho likwaZwelonke okanye lePhondo, okanye asebenzele naliphi na ilungu lombuso, okanye 30

(b) abe nesikhundla enza kuso ingeniso, okanye enze nawuphi na umsebenzi ongaphandle kwalowo wokuba nguMkomishinala esebenzela inzuzo okanye intlawulo.

Isifungo okanye ukuqinisekiswa

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4. Phambi kokuba aqalise umsebenzi wakhe, uMkomishinala kumele enze isifungo okanye enze isiqinisekiso sokunyaniseka sokuba uza kuwenza umsebenzi wakhe ngokuzimela nangokungakhethi buso, asebenzise amagunya akhe esikhundla sokuba nguMkomishinala ngaphandle koloyiko, ngaphandle kokukhetha nokungakhathaleli amalungelo abanye abantu. 40

Ukususwa nokunqunyanyiswa esikhundleni

5. (1) INkulumbuso inako ukumsusa uMkomishinala esikhundleni kuphela ukuba ngaba—

(a) uthethe waziphatha kakubi, akasebenza kakuhle okanye akenza izinto ngendlela efanelekileyo; 45

(b) xa kuthe kwafunyaniswa oku yikomiti eyenziwe ngaloo maqela amelwe kwiPalamente yePhondo athe aba nomnqweno wokuthabatha inxaxheba; nokuba

(c) ithe iPalamente yePhondo yathabatha isigqibo ngevoti yesininzi sokuba uMkomishinala makasuswe esikhundleni sakhe. 50

(2) INkulumbuso—

(a) Inakho ukunqumamisa uMkomishinala emsebenzini nanini na emva kokuqala kweenkqubo zekomiti yePalamente yePhondo zokususa loo mntu; yaye

(b) Kumele ukuba imsuse uMkomishinala emsebenzini ngokwengcebiso yePalamente yePhondo emva kokuba isamkele isigqibo sokuba lo mntu makasuswe. 55

Isithuba somsebenzi kwi-ofisi yoMkomishinala

- 6.** (1) INkulumbuso isenakho ukuvumela ukuba uMkomishinala asishiye isihlalo sakhe phambi kokuba liphele ixesha elimisiweyo leminyaka emihlanu—
- (a) ukuba ngaba impilo yakhe ayintlanga kangangokuba imthintele uMkomishinala ukuba akwazi ukwenza umsebenzi wakhe ngendlela eyiyo; okanye 5
 - (b) xa ethe wazicelela ngokwakhe uMkomishinala, kodwa eso sicelo kufuneka ukuba sibhalwe phantsi sibhekiswe kwiNkulumbuso ubuncinane kwisithuba seenyanga ezintathu phambi koloo suku anqwenela ukuyeka ngalo uMkomishinala, ngaphandle kokuba iNkulumbuso iyavuma ukuba eloo xesha lingacuthwa kwimeko ethile. 10
- (2) Isithuba somsebenzi kwi-ofisi yoMkomishinala sibakho ukuba ngaba uMkomishinala—
- (a) uthe wasweleka, okanye
 - (b) warhoxa ngokwecandelwana 1(b).

Imiqathango ayimiselweyo uMkomishinala waBantwana 15

- 7.** Ekuphumezeni kwakhe amagunya akhe kunye nomsebenzi wakhe, uMkomishinala kufuneka—
- (a) athathele ingqalelo imiqathango emiselwe yiNqungquthela yeZizwe ezimanyeneyo ngamalungelo omtwana, i-United Nations Convention on the Rights of the Child ukutsho oko; iTshatha yaseAfrika yamalungelo omtwana ka-1990, i African Charter on the Rights of the Child ka-1990 ngamanye amazwi; izivumelwano zamazwe ngamazwe; iingqungquthela okanye izivumelwano ezamkelwe nguMongameli ezichaphazela abantwana; 20
 - (b) azame ukuphuhlisa amalungelo, izidingo kunye neemfuno eziphambili zabantwana kwimimandla yonke yoluntu lwase Ntshona Koloni; 25
 - (c) aqinisekise ukuba iimfuno zabantwana beNtshona Koloni zithathelwa ingqalelo epheleleyo kurhulumente kunye nangaqumrhu angaxhaswa ngurhulumente; abantu bonke kunye nemibutho; aze aphinde 30
 - (d) anyuse izinga lokwazisa imithetho echaphazela abantwana kwiNtshona Koloni, ngokuthi anikeze ulwazi olwaneleyo ngokunxulumene neemfuno zabantwana namalungelo abo kurhulumente nakumaqela angaxhaswa ngurhulumente.

ISIAHLUKO 3**IMISEBENZI****Ukubeka iliso 35**

- 8.** UMkomishinala umele ukuba—
- (a) ayalele ukuba iiNtloko zamaSebe ePhondo kwiNkonzo yezeNtlalo-Ntle, elezeMpilo, elezeMfundo, kunye nelezeMidlalo nezoLonwabo abe nonxibelelwano olukhulu noMkomishinala ukuze kubekwe iliso—
 - (i) kwiiprojekthi zePhondo zokunyusa ulwazi loluntu lwemicimbi enxulumene namalungelo abantwana aqulathwe kwicandelo 23 (1) loMgaqo-siseko; 40
 - (ii) ukuphunyezwa kwe-UN Convention on the Rights of the Child, 1989, i-African Charter on the Rights of the Child 1990, kunye naziphi na izivumelwano zamazwe ngamazwe, iingqungquthela okanye izivumelwano ezamkelwe nguMongameli nezithi zichaphazele abantwana; 45
 - (iii) amalungelo, izidingo neemfuno zabantwana abagcinwa kumakhaya okugcina abantwana, abo baselugcinweni lwabazali abangengengobabo, kunye namaziko neendawo zokugcina abantwana zasekuhlaleni;
 - (iv) iiprojekthi ezimiselwe ngokusesikweni kwiPhondo ngenjongo yokunceda abantwana abakwiimeko ezohlukileyo; 50
 - (v) izibhedlele zikawonke-wonke kunye namaziko ezempilo ajongene nokuphiliswa kwabantwana; kunye
 - (vi) nezikolo zikawonke-wonke nezo zingaxhaswayo ngemali ngu-Rhulumente; 55

- (b) anxibelelane noMkomishinala wePhondo weeNkonzo zamaZiko oLuleko ukuze kubekwe esweni ukufumaneka kweenkonzo zempilo, ezeNtlalontle yoluntu, neendawo zokonwabisa abantwana ezintolongweni kunye nabanye abantwana abaselugcinweni lomthetho;
- (c) anxibelelane noMkomishinala weeNkonzo zamaPolisa kwiPhondo leNtshona Koloni ukuze babeke iliso kumanani engexelo yolwaphulo-mthetho olunxulumene nabantwana, kwanoku optimise intsebenziswano phakathi kweNkonzo yamaPolisa oMzantsi Afrika kuney namaSebe asebenza okanye anikeza inkonzo kuba bantwana abathi bazifumane betenxile emthethweni; 5
- (d) anxibelelane neNtloko yeSithili yeSebe lezoBulungisa kwiPhondo leNtshona Koloni ukuze afumane eyona yentsebenziswano iyiyo phakathi kweSebe lezoBulungisa kunye namaSebe akumaPhondo asebenza okanye anikeza inkonzo ku— 10
- (i) bantwana abangamaxhoba olwaphulo-mthetho;
- (ii) kwi-ofisi yeGqwetha lweeNtsapho (Family Advocate); 15
- (iii) kwiiNkundla zeeNtsapho (Family Courts);
- (iv) kuBakomishinala beenkundla zaBantwana;
- (v) abaTshutshisi abasebenza ngabantwana; kunye
- (vi) neenkundla zamatyala ezisebenza ngayo yonke imicimbi ebandakanya abantwana abophule umthetho; 20
- (e) anxibelelane nemibutho engaxhaswayo ngurhulumente, amaziko kunye namagosa asebenza nabantwana kwiPhondo laseNtshona Koloni ukuze kubekwe iliso kwizinto ezifanayo abazenzayo kwanokuba kunyuswe intsebenziswano phakathi kwamalungu ombuso kwiPhondo kunye namaqela karhulumente ngemicimbi ephathelele kukhuselo lwamalungelo neemfuno zabantwana. 25

Uphando

9. (1) UMkomishinala unakho ukwenza uphando okanye asungule uphando nemibuzo edibaniselana nawo nawuphi na umcimbi ochaphazela umsebenzi wakhe.
- (2) UMkomishinala kumele enze uphicotho lwalo lonke uwiso-mthetho olusetyenziswayo okanye olucetywayo ekuqaleni kwalo Mthetho, oluthi luchaphazele okanye lube lusenokuchaphazela amalungelo okanye iimfuno zabantwana kwiPhondo laseNtshona Koloni. 30

Ukuphonononga

10. (1) UMkomishinala unakho ukwenza, okanye asungule uphononongo— 35
- (a) ngokuphathelele nawo nawuphi umcimbi ophantsi kwemida yomsebenzi wakhe;
- (b) nojoliswe ekubeni uphuhlise umgaqo-nkqubo okanye inkqubo eyiyeyona ithabathela kuyo iimfuno zomntwana.
- (2) UMkomishinala unakho ukuququzelela intsebenziswano anikeze nezimvo ezivela kumaqela karhulumente namaziko emfundo, ezijongene nokuchonga, ukuqalisa nokufezekisa uphononongo. 40

Imfundo

11. UMkomishinala angenza yaye aphuhlise iinkqubo zolwazi ukuze afundise, akhuthaze ukuqonda nolwazi loluntu ngale miba— 45
- (a) lo Mthetho;
- (b) i-United Nations Convention on the Rights of the Child, ka-1989;
- (c) i-African Charter on the Rights of the Child, ka-1990;
- (d) icandelo 28(1) loMgaqo-siseko;
- (e) naziphi na iingqungquthela zamazwe ngamazwe ezinxulumene noku, nawo 50
- (f) nawuphi na omnye umcimbi ochaphazela imisebenzi yakhe nophantsi kwemida yakhe.

Ukuphembelela amalungu ePalamante

12. UMkomishinala unakho ukuba—

- (a) aphembelele amalungu ePalamente kaZwelonke okanye yePhondo aze anikeze nengcebiso malunga—
- (i) nawo nawuphi na uMthetho wasePalemanete osele ukho okanye ocetywayo;
 - (ii) nayiphi na inkqubo yomthetho wezithethe zabantu kunye neentsapho; 5
 - (iii) nayiphi na inkqubo yezithethe neenkqubo zomthetho wemveli; okanye
 - (iv) nawuphi na omnye umthetho ochaphazela okanye osenokuchaphazela amalungelo abantwana njengoko ebhaliwe kuMgaqo-siseko.
- (b) acele intsebenziswano nezimvo zamaqela karhulumente nalawo angaxhaswa ngurhulumente xa egqiba ekubeni aphembelele iPalamente ukuba iphengululele uwiso-mthetho. 10

Ukucebisa

13. UMkomishinala kumele anikeze ingcebiso nakuye nawuphi na umntu okanye ilungu lombuso kwiPhondo leNtshona Koloni, elinomgaqo-nkqubo onxulumene nabantwana obekwe elisweni, ophandwayo okanye ophononongwayo nguMkomishinala. 15

Ukufakwa kwezicelo kwemicimbi efanelwe ukubekwa iliso, ukuphandwa okanye kwenziwe uphengululo kuyo

14. (1) Nabani na unakho ukucela uMkomishinala ukuba abeke iliso nakowuphi na umba, enze uphando okanye aphengulule loo mcimbi ngokwamagunya nemisebenzi yalo Mthetho. 20

(2) UMkomishinala unakho naye ukuzithathela ngokwakhe amanyathelo okuqala ophando lwawo nawuphi na umba ngokwamagunya nemisebenzi yalo Mthetho, okanye xa eceliwe ukuba akwenze oko nangubani na.

(3) Zonke izicelo ezifakiweyo zemicimbi efuna ukuba uMkhomishinala ayiqwalasele ngokuyibeka iliso, ayiphande okanye ayiphonononge kufuneka kuzanywe kangangoko ukuba ibhalwe phantsi ngendlela efumaneka kwi-ofisi yoMkomishinala. 25

(4) Isicelo kufuneka siqulathe oku kulandelayo—

- (a) amagama kunye nedilesi/iidilesi zomntu/abantu abafaka isicelo somcimbi lowo; 30
- (b) inkcazelo yokuba kutheni uMkomishinala kufuneka ebeke iliso, enze uphando okanye aphonononge umba lowo;
- (c) isishwankathelo sobungqina obuxhasa inkolo yokuba imeko leyo kumele ukuba ibekwe iliso, iphandwe okanye iphononongwe;
- (d) amagama needilesi zabantu okanye amalungu ombuso ekubangwa ukuba ayachaphazeleka, kangangoko kunako ukufumaneka kobu bungqina; 35
- (e) inkcazelo ngalo naluphi uxwebhu okanye okubhaliweyo ekumele ukuba kuthathelwe ingqalelo, kunye
- (f) ikopi yoxwebhu ekuthethwa ngalo kumhlathi (e).

(5) Isicelo somcimbi ekufuneka ubekwe iliso, uphandwe okanye uphononongwe kumele ukuba sifungelwe okanye siqinisekiswa phambi koMkomishinala oFungisayo. 40

(6) Isigqibo sokubeka iliso, sokwenza uphando okanye uphononongo kumba othile sixhomekeke ngokupheleleyo kwingqiqo yoMkomishinala.

(7) Ukuba ngaba isicelo sibhekisele kumntwana othile yaye eso isicelo asiveli kuloo mntwana buqu, uMkomishinala akanakusebenza ngeso sehlo engafumenanga mvume yomntwana lowo uchaphazelekayo. 45

(8) Ukuba ngaba ubudala bomntwana bubonakalisa kanjalo, kumelwe ukuba kufunyanwe imvume yomgcini wakhe wasemthethweni, nangona oku kungenakumnqanda uMkomishinala ukuba abele iliso, enze uphando okanye uphononongo ukuba ngaba imvume leyo ifunekayo ayifumanekanga. 50

(9) Ukuba ngaba uMkomishinala uthatha isigqibo sokuba umcimbi ungabekwa iliso, kwezwe uphando ngawo okanye uphonononwe, oku kumele ukuba kuqukunjelwe zingekapheli iintsuku ezili-120 sifunyenwe isicelo eso, okanye uMkomishinala kufuneka anikeze uthelekelelo olubhaliweyo lwexesha elifunekayo lokuba ugqitywe.

(10) Ukuba ngaba uMkomishinala ugqiba ekubeni awale okanye awukhabe umcimbi lowo, kumele ukuba azise kanjalo ngokubhala phantsi, achaze izizathu ezibangela ukuba awale kulowo ufake isicelo zingaphelanga iintsuku ezingamashumi amathathu zokufumana isicelo eso. 55

(11) Umcimbi okhatyiweyo okanye ongavunywanga nguMkomishinala awunako ukuba ungabhenelwa.

Amagunya nemisebenzi eyongezelelweyo

- 15.** Ukuze uMkomishinala akwazi ukusebenzisa amagunya akwazi nokwenza umsebenzi awunikwe ngulo Mthetho, uMkomishinala unakho ukuba phantsi koMgaqo-siseko— 5
- (a) angene nakwawaphi amasango endawo ekwiPhondo, engafumananga mvume ibhaliweyo ngaphambili yokwenza oko kumnikazi wayo okanye umntu oyiqeshayo;
- (b) ayalele nabani na ukuba afake ingxelo efungelweyo okanye eqinisekisiweyo; 10
- (c) Akhuphe isamani okanye abizele enkundleni nabani na okanye ayalele ngesaziso ukuba loo mntu avele phambi kwakhe ukuze aze kunika ubungqina, okanye avelise nayiphi incwadi, ingxelo okanye uxwebhu okanye into eselugcinweni lwakhe okanye ayilawulayo ngelo xesha nendawo kumyalelo wokucela enkundleni okanye kwisaziso; 15
- (d) Afungise okanye aqinisekise nabani na olingqina, kodwa kumele ukuba—
- (i) isamani okanye umyalelo wokubizelwa enkundleni ochazwe kumhlathi (c) umele ukuba utyikitywe yaye ube ukhutshwe nguMkomishinala wanikezwa nguMkomishinala okanye nabani na ogunyaziswe nguMkomishinala ukuba akwenze oko, ngendlela efanayo nomyalelo wokubizela ingqina enkundleni okanye isaziso sesamani, nokuba yeyiphi kwezi indlela zokubizela ingqina etyaleni kwiNkundla ePhakamileyo, 20
- (ii) nabani na ovela phambi koMkomishinala angancediswa ngummeli womthetho amhlawulela ngokwakhe; 25
- (e) onyule abantu abafunekayo ukuze i-ofisi yoMkomishinala isebenze kakuhle, ngezizigqibo neemeko zengqesho ezimiselwe ngokubonisana neNkulumbuso, uMphathiswa onoxanduva kunye noMphathiswa wezeMali wePhondo, aze
- (f) aye kwiintlanganiso zayo nayiphi na ikomiti yePalamente yePhondo enze inthetho kwezi komiti ngemicimbi enxulumene nabantwana. 30

Imisebenzi

- 16.** Umkomishinala—
- (a) umele ukuba enze ingxelo kwiPalamente yePhondo qho ngonyaka;
- (b) umele ukuba anikeze iingcebiso athe wazenza nakomphi na umntu okanye ilungu lombuso ngaxeshanye kwiPalamente yePhondo; 35
- (c) unakho ukuba angenza ingxelo ekhethekileyo kwiPalamente yePhondo nanini na, ngawo nawuphi umcimbi onxulumene nalo Mthetho, ongenakulindiswa de kube lixesha lokunikezwa kwengxelo yonyaka, ngokubona kwakhe, yaye
- (d) kufuneka ukuba zonke iingxelo neengcebiso zakhe zifumaneke kuluntu.

Ubutyala 40

17. UMkomishinala okanye nabani na owonyulwe nguye akanabutyala nangantoni na athe wayenza ngokunyanisekileyo nangentliziyo entle phantsi kwemimiselo yalo Mthetho okanye uMgaqo-siseko wePhondo.

ISAHLUKO 4

IMFANELO ZAMALUNGU OMBUSO KUNYE NOKUFIKELELA KOLWAZI NAMAZIKO 45

Iimfanelo

- 18.** (1) Onke amalungu ombuso kumele ukuba ancedise yaye akhusele uMkomishinala, aqinisekise ukuba i-ofisi yoMkomishinala isebenza ngokuzimela, ayikhethi buso, yaye yenza izinto ngendlela enesidima nesebenzayo. 50
- (2) Akukho mntu okanye lungu lombuso linakho ukuba lingenelele kumsebenzi woMkomishinala, okanye lowo wabantu abamsebenzelayo, okanye lithintele ukusebenza koMkomishinala, okanye abo bamsebenzelayo.

(3) Xa uMkomishinala enikeza ingcebiso nakubani na okanye ilungu lombuso, loo mntu okanye eloo lungu lombuso, kumele ukuba lenze ingxelo ebhaliweyo kuMkomishinala ngezenzo zalo eziyimpindulo kuloo ngecebiso, ngethuba elamkelekileyo elithe lasekwa nguMkomishinala.

(4) Nabani na okanye naliphi ilungu lombuso elithi lingavumi ukuphumeza iingcebiso okanye lingaphumeleli ukuphumeza iingcebiso zoMkomishinala kumele ukuba linike uMkomishinala izizathu ezibhalwe phantsi zokuba lingavumi ukwenza oko, ngethuba elamkelekileyo elithe lasekwa nguMkomishinala. 5

Ukufikeleleka kolwazi namaziko

19. (1) Amalungu ombuso kunye namaziko karhulumente nalawo angaxhaswa ngurhulumente asebenza ngabantwana kufuneka ukuba, ngokucelwa nguMkomishinala, anikeze ngolwazi olumalunga nawo nawuphi na umcimbi onxulumene nemisebenzi yoMkomishinala. 10

(2) Onke amaziko karhulumente nalawo angaxhaswa ngurhulumente angawabantwana kufuneka ukuba amvumele uMkomishinala ukuba akwazi ukungena kwiindawo akuzo ngenjongo yokuphumeza nawuphi umsebenzi wakhe ekubhekiswe kuwo kwisahluko 3 salo Mthetho. 15

ISAPHLUKO 5

I-OFISI YOMKOMISHINALA

Imisebenzi yolawulo 20

20. Imisebenzi yolawulo ye-ofisi yoMkomishinala iyakwenziwa ngamagosa akwiNkonzo yoLawulo kwiPhondo leNtshona Koloni.

Uhlahlo lwabiwo-mali

21. IPalamente yePhondo kumele ukuba ibeke ecaleni imali eyaneleyo kwizibonelelo zePhondo ukuze uMkomishinala azokukwazi ukwenza umsebenzi wakhe njengoko kumiselwe kulo Mthetho. 25

Ukunikezwa kwengxelo

22. UMkomishinala nguye onoxanduva lokunikeza ingxelo, ikwaluxanduva lwakhe ukuba enze umsebenzi ngokwesahluko 6 soMthetho iPublic Finance Management Act 1999, nazo naziphi na izikhokelo, imigaqo okanye imiyalelo ekhutshwe ngulo Mthetho. 30

Umvuzo woMkomishinala

23. (1) Umvuzo neminye imiba enxulumene nomvuzo nokuqeshwa koMkomishinala kufuneka ukuba imana ijongwa ethubeni yiNkulumbuso kunye noMphathiswa onoloxanduva, ebonisana noMphathiswa wezemali wePhondo, bethathela ingqalelo izibonelelo ezikhoyo kwiPhondo. 35

(2) Umvuzo woMkomishinala awunako ukuncitshiswa ngethuba esaqhubeka nomsebenzi wakhe, ukutsho oko, ixesha elimiselweyo lokusebenza kwakhe.

ISAPHLUKO 6

IMINIKELO

24. I-ofisi yoMkomishinala inakho ukwamkela iminikelo kodwa ikwenze oku ngokwemigaqo ebekwe licandelo lolawulo-mali. 40

ISAHLUKO 7**AMALUNGISELELO JIKELELE****Imigaqo**

25. INkulumbuso inako ukubeka imigaqo enxulumene nomcimbi awubona kuyimfuneko ukwenza oko kuwo ukuze kuphunyezwe iinjongo zalo Mthetho. 5

Izityholo nezohlwayo

- 26.** Nabani na—
- (a) othe wophula okanye akakwazi ukuba athobele okuqulathwe ngulo Mthetho;
 - (b) othintela uMkomishinala ekwenzeni umsebenzi wakhe okanye ukwenziwa kwemisebenzi emiselwe kulo Mthetho; 10
 - (c) owalayo okanye angaphumeleli ukunikeza ulwazi analo okanye inkcazelo malunga nesicelo solwazi esenziwe nguMkomishinala, okanye anikeze ingxelo engenabunyani netenxileyo, uya kufunyanwa enetyala afumane isohlwayo esingadlulanga kuma-R10 000.

Itayitile emfutshane nesiqalo sokusebenza koMthetho 15

27. Lo Mthetho ubizwa ngokuba nguMthetho woMkomishinala waBantwana (Commissioner for Children's Act) yaye uya kuqala ukusebenza ngomhla oya kuthi ubekwe yiNkulumbuso ngesaziso *kwiPhepha loMbuso wePhondo (Provincial Gazette)*.

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