



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

PROVINCE OF THE WESTERN CAPE

PROVINSIE WES-KAAP

IPHONDO LENTSHONA KOLONI

**Provincial Gazette
Extraordinary**

**Buitengewone
Provinsiale Koerant**

**Isongezelelo
kwiGazethi yePhondo**

7349

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Wednesday, 4 February 2015

Woensdag, 4 Februarie 2015

Lwesithathu, 4 Februwari 2015

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

Ibhaliswe ePosini njengePhephandaba

CONTENTS

INHOUD

IZIQUATHO

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

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

(*Iikopi zifumaneka kwigumbi M21, kwiSakhiwo seNdlu yoWiso Mthetho yePhondo, e7 Wale Street, eKapa 8001.)

PROVINCIAL NOTICE

PROVINSIALE KENNISGEWING

ISAZISO SEPHONDO

The following Bill is hereby published for general information:

Die volgende Wetsontwerp word hiermee vir algemene inligting gepubliseer:

Lo Mthetho uSayilwayo ulandelayo upapashawa apha ukunika ulwazi ngokubanzi:

Constitution of the Western Cape First Amendment Bill [B 4—2014]

Eerste Wysigingswetsontwerp op die Grondwet van die Wes-Kaap [W 4—2014]

UMthetho aSayilwayo woLungiso wokuQala woMgaqo-siseko weNtshona Koloni [B 4—2014]

P.N. 29/2015 4 February 2015

P.K. 29/2015 4 Februarie 2015

I.S. 29/2015 4 Februwari 2015

Any person or organization wishing to comment on the said Bill is requested to lodge such comment in writing before or on 4 March 2015—

Enige persoon of organisasie wat kommentaar oor die genoemde Wetsontwerp wens te lewer, word versoek om sodanige kommentaar skriftelik te lewer voor of op 4 Maart 2015—

Nabani na okanye nawuphi na umbutho onqwenela ukuphawula ngalo Mthetho uSayilwayo kuthethwa ngawo uyacelwa ukuba afake izimvo zakhe phambi okanye ngomhla wama-4 Matshi 2015—

(a) by posting it to—
The Secretary
Western Cape Provincial Parliament
(Attention: Mr M Sassman)
P.O. Box 648
Cape Town 8000

(a) deur dit te pos aan—
Die Sekretaris:
Wes-Kaapse Provinsiale Parlement
(Aandag: Mnr M Sassman)
Posbus 648
Kaapstad 8000

(a) ngokuposela ku—
uNobhala:
Ipalamente yePhondo leNtshona Koloni
(Iya ku: Mnu M Sassman)
P.O. Box 648
Ekapa 8000

(b) by e-mail to—
msassman@wcpp.gov.za; or

(b) deur dit te e-pos aan—
msassman@wcpp.gov.za; of

(b) nge-imeyile ku—
msassman@wcpp.gov.za; okanye

(c) by fax to—
Mr M Sassman
(021) 487-1685

(c) deur dit te faks aan—
Mnr M Sassman
(021) 487-1685

(c) ngefeksi ku—
Mnu M Sassman
(021) 487-1685

B Fakira
Secretary to Parliament

B. Fakira
Sekretaris van die Parlement

B. Fakira
uNobhala wePalamente

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

AMENDMENT BILL

To amend the Constitution of the Western Cape, 1997, so as to align it with the Constitution of the Republic of South Africa, 1996, with regard to the loss of membership of the Provincial Parliament, the calling and setting of dates for an election of the Provincial Parliament, the definition of a money Bill, provincial intervention in local government, the imposition of surcharges by the Provincial Parliament and the raising of loans by the Western Cape government; to amend the provisions regarding the Commissioner for the Environment and the Commissioner for Children; to substitute references to the President of the Constitutional Court; to effect certain textual changes and to provide for matters connected therewith.

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

Amendment of section 15 of Act 1 of 1998

1. Section 15 of the Constitution of the Western Cape, 1997 (the Provincial Constitution), is amended by the substitution for subsection (3) of the following subsection: 5

“(3) A person loses membership of the Provincial Parliament if that person—

(a) ceases to be eligible;

(b) resigns as a member; **[or]**

(c) is absent from the Provincial Parliament without permission in circumstances for which the rules and orders of the Provincial Parliament prescribe loss of membership; or

(d) ceases to be a member of the party that nominated that person as a member of the Provincial Parliament.”.

Amendment of section 17 of Act 1 of 1998

2. Section 17 of the Provincial Constitution is amended by the insertion of the following subsection after subsection (2): 15

“(2A) A proclamation calling and setting dates for an election may be issued before or after the expiry of the term of the Provincial Parliament.”.

Substitution of section 30 of Act 1 of 1998

3. The following section is substituted for section 30 of the Provincial Constitution:

“Money Bills

- 30.** (1) A Bill **[that]** is a money Bill if it—
- (a) appropriates money; **[or]** 5
 - (b) imposes provincial taxes, levies, **[or]** duties or surcharges **[is a money Bill]**;
 - (c) abolishes or reduces, or grants exemptions from, any provincial taxes, levies, duties or surcharges; or
 - (d) authorises direct charges against the Provincial Revenue Fund. 10
- (2) A money Bill may not deal with any other matter except—
- (a) a subordinate matter incidental to the appropriation of money; **[or]**
 - (b) the imposition, abolition or reduction of provincial taxes, levies, **[or]** duties or surcharges;
 - (c) the granting of exemption from provincial taxes, levies, duties or surcharges; or 15
 - (d) the authorisation of direct charges against the Provincial Revenue Fund.
- [(2)](3)** A provincial Act must provide for a procedure by which the Provincial Parliament may amend a money Bill.”. 20

Substitution of section 49 of Act 1 of 1998

4. The following section is substituted for section 49 of the Provincial Constitution:

“[Supervision of] Intervention in local government

- 49.** (1) When a municipality in the Western Cape cannot or does not fulfil an executive obligation in terms of the national Constitution, this Constitution or legislation, the Provincial Cabinet may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including—
- (a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations; **[and]** 30
 - (b) assuming responsibility for the relevant obligation in that municipality to the extent necessary to—
 - (i) **[to]** maintain essential national standards or meet established minimum standards for the rendering of a service;
 - (ii) **[to]** prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the Western Cape as a whole; or 35
 - (iii) **[to]** maintain economic unity; or
 - (c) dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step. 40
- (2) If the Provincial Cabinet intervenes in a municipality under subsection (1)(b)—
- [(a) the intervention must end unless it is approved by the national Cabinet member responsible for local government affairs within 14 days of the intervention;** 45
 - [(b)] (a)** it must submit a written notice of the intervention **[must be tabled in]** to—
 - (i) the national Cabinet member responsible for local government affairs;
 - (ii) the Provincial Parliament; and 50
 - (iii) **[in]** the National Council of Provinces, within 14 days **[of their respective first sittings]** after the intervention began; and

- [(c)] (b) the intervention must end [unless it is approved by the National Council of Provinces within 30 days of its first sitting after the intervention began] if—
- (i) the national Cabinet member responsible for local government affairs disapproves the intervention within 28 days after the intervention began or by the end of that period has not approved the intervention; or
 - (ii) the National Council of Provinces disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention.
- (3) If a Municipal Council is dissolved in terms of subsection (1)(c)—
- (a) the Provincial Cabinet must immediately submit a written notice of the dissolution to—
 - (i) the national Cabinet member responsible for local government affairs;
 - (ii) the Provincial Parliament; and
 - (iii) the National Council of Provinces; and
 - (b) the dissolution takes effect 14 days from the date of receipt of the notice by the National Council of Provinces unless set aside by that national Cabinet member or the National Council of Provinces before the expiry of those 14 days.
- (4) If a municipality cannot or does not fulfil an obligation in terms of the national Constitution or legislation to approve a budget or any revenue-raising measures necessary to give effect to the budget, the Provincial Cabinet must intervene by taking any appropriate steps to ensure that the budget or those revenue-raising measures are approved, including dissolving the Municipal Council and—
- (a) appointing an administrator until a newly elected Municipal Council has been declared elected; and
 - (b) approving a temporary budget or revenue-raising measures to provide for the continued functioning of the municipality.
- (5) If a municipality, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, the Provincial Cabinet must—
- (a) impose a recovery plan aimed at securing the municipality’s ability to meet its obligations to provide basic services or its financial commitments, which—
 - (i) is to be prepared in accordance with national legislation; and
 - (ii) binds the municipality in the exercise of its legislative and executive authority, but only to the extent necessary to solve the crisis in its financial affairs; and
 - (b) dissolve the Municipal Council, if the municipality cannot or does not approve legislative measures, including a budget or any revenue-raising measures, necessary to give effect to the recovery plan, and—
 - (i) appoint an administrator until a newly elected Municipal Council has been declared elected; and
 - (ii) approve a temporary budget or revenue-raising measures or any other measures giving effect to the recovery plan to provide for the continued functioning of the municipality.
- (6) If the Provincial Cabinet imposes a recovery plan in terms of subsection (5)(a) and the Municipal Council is not dissolved in terms of subsection (5)(b), the Provincial Cabinet must assume responsibility for the implementation of the recovery plan to the extent that the municipality cannot or does not otherwise implement the recovery plan.
- (7) If the Provincial Cabinet intervenes in a municipality in terms of subsection (4), (5) or (6), it must submit a written notice of the intervention to—
- (a) the national Cabinet member responsible for local government affairs;
 - (b) the Provincial Parliament; and
 - (c) the National Council of Provinces,
- within seven days after the intervention began.”.

Amendment of section 59 of Act 1 of 1998

5. Section 59 of the Provincial Constitution is amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:
 “(b) flat-rate surcharges on **[the tax bases of]** any tax, levy or duty that is imposed by national legislation, other than **[the tax bases of]** on corporate income tax, value-added tax, rates on property or customs duties.”. 5

Substitution of section 63 of Act 1 of 1998

6. The following section is substituted for section 63 of the Provincial Constitution:
 “**Loans** 10
 63. The Western Cape government may raise loans for capital or current expenditure, in accordance with **[conditions determined by]** national legislation, but loans for current expenditure—
 (a) may be raised only when necessary for bridging purposes during a fiscal year; **and** 15
 (b) **must be repaid within 12 months**.”.

Substitution of section 71 of Act 1 of 1998

7. The following section is substituted for section 71 of the Provincial Constitution:
 “**Establishment of and principles governing Commissioner for Environment**
 71. (1) **[There is]** Provincial legislation may establish a provincial Commissioner for the Environment to exercise the powers and perform the functions contemplated in sections 72 and 74. 20
 (2) **[In]** The provincial legislation must provide for—
 (a) **[the exercise of his or her powers and functions]** the Commissioner **[must]** to ensure the conservation of the environment in the Western Cape, and **[must]** to give attention to the need to balance the goals of environmental conservation and sustainable development in the exercise of his or her powers and the performance of his or her functions.; 25
 (3) **The** (b) the Commissioner **[is]** to be independent, **[and]** subject only to the national Constitution, this Constitution and the law, and **[must]** to be impartial and **[must]** to exercise the powers and perform the functions of the office of Commissioner without fear, favour or prejudice.; 30
 (4) **Other** (c) other provincial organs of state **[must]** to assist and protect the Commissioner to ensure the independence, impartiality, dignity and effectiveness of the office of Commissioner.; 35
 (5) **No person or provincial organ of state may interfere with**
 (d) the functioning of the Commissioner without the interference of any person or provincial organ of state; and 40
 (e) the regulation of the procedure for the appointment, suspension and removal from office of the Commissioner under sections 75, 76 and 77.”.

Amendment of section 75 of Act 1 of 1998

8. Section 75 of the Provincial Constitution is amended by the substitution for the words preceding paragraph (a) of subsection (2) of the following words: 45
 “[**The**] If a Commissioner is established under section 71(1), the Premier must appoint as the Commissioner a person—”.

Substitution of section 78 of Act 1 of 1998

9. The following section is substituted for section 78 of the Provincial Constitution:

“Establishment of and principles governing Commissioner for Children

- 78.** (1) [There is] Provincial legislation may establish a provincial Commissioner for Children to exercise the powers and perform the functions set out in subsection (2) and section 79. 5
- (2) The provincial legislation must provide for the Commissioner [must] to assist the Western Cape government in protecting and promoting the interests of children in the Western Cape, in particular as regards—
- (a) health services; 10
 - (b) education;
 - (c) welfare services;
 - (d) recreation and amenities; and
 - (e) sport.
- (3) The provincial legislation must regulate the procedure for the appointment, suspension and removal from office of the Commissioner under section 80.” 15

Substitution of expressions in Act 1 of 1998

- 10.** The Provincial Constitution is amended—
- (a) by the substitution for the expression “President of the Constitutional Court”, 20
wherever it appears, of the expression “Chief Justice”; and
 - (b) by the substitution in the isiXhosa text for the expressions “kwisi Bhulu”,
“sisiBhulu”, “kwesiBhulu” and “isiBhulu”, wherever it appears, of the
expressions “kwisiAfrikansi”, “sisiAfrikansi”, “kwesiAfrikansi” and
“isiAfrikansi”, respectively. 25

Short title

- 11.** This Act is called the Constitution of the Western Cape First Amendment Act, 2015.

MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION OF THE WESTERN CAPE FIRST AMENDMENT BILL, 2015

1. BACKGROUND

Alignment with the Constitution

Various amendments have been effected to the Constitution of the Republic of South Africa, 1996 (the Constitution). These amendments have not been incorporated in the Constitution of the Western Cape, 1997 (Act 1 of 1998) (the Provincial Constitution).

The Provincial Constitution provides that it should not be interpreted as conferring any legislative or executive authority on the Western Cape Provincial Government that is inconsistent with the Constitution. It is proposed that the Provincial Constitution be amended to align it with the Constitution in order to avoid any inconsistencies and difficulties with interpretation.

Commissioners

Sections 71 and 78 of the Provincial Constitution establish the positions of Commissioner for the Environment and Commissioner for Children. The appointment of the Commissioner for the Environment and the Commissioner for Children is an obligation imposed by the Provincial Constitution, which is binding on the provincial legislature and executive in terms of sections 104(3) and 125(6)(b) of the Constitution, and sections 9(2) and 35(3) of the Provincial Constitution.

The positions of Commissioner for the Environment and Commissioner for Children are vacant and have never been filled.

Since the commencement of the Provincial Constitution various pieces of national legislation that establish authorities and structures for the protection of the environment have been passed. The national legislation includes the National Environmental Management Act, 1998 (Act 107 of 1998), the National Environmental Management: Biodiversity Act, 2004 (Act 10 of 2004), the National Environmental Management: Protected Areas Act, 2003 (Act 57 of 2003), the National Environmental Management: Waste Act, 2008 (Act 59 of 2008), and the National Environmental Management: Integrated Coastal Management Act, 2008 (Act 24 of 2008).

The Provincial Government is of the view that the filling of the vacancy of the Commissioner for the Environment is not desirable, because it would involve an overlap of roles and functions provided for in national legislation, and would consume scarce state resources. The Provincial Government is also of the view that national legislation and international conventions provide adequately for the protection of the environment.

Extensive legislative reform that establishes various structures and institutions providing for the safeguarding of children's rights has been implemented since the commencement of the Provincial Constitution. The legislative reform includes the passing of the Children's Act, 2005 (Act 38 of 2005), which has as its objective to provide protection and care for children and to provide structures and services for promoting and monitoring the well-being of children, and the Child Justice Act, 2008 (Act 75 of 2008), which reforms the criminal justice system to make provision for the protection of vulnerable children and children with special needs.

The Provincial Government is of the view that the filling of the vacancy of the Commissioner for Children is not desirable because of the limited powers of the Commissioner and the adequacy of the powers and functions assigned to other officials and authorities in terms of national legislation. The filling of this vacancy would also consume scarce state resources.

It is accordingly proposed that the Provincial Constitution be amended to provide for a discretion to establish the Commissioners. Effect could then be given to the establishment of the Commissioners when it is thought desirable to do so.

2. PURPOSE OF BILL

The purpose of the Bill is to—

- (a) amend the Provincial Constitution in order to align it with the amendments that have been effected to the Constitution; and
- (b) amend the provisions establishing the Commissioner for the Environment and the Commissioner for Children to provide for a discretion to establish the Commissioners by provincial legislation.

3. CONTENTS OF BILL

Clause 1

Clause 1 amends section 15 of the Provincial Constitution to reflect the amended section 106 of the Constitution, to provide for the loss of membership in the legislature if a member ceases to be a member of the party that nominated him or her. (Section 106 was amended by the Constitution Tenth Amendment Act of 2003 and the Constitution Fourteenth Amendment Act of 2008.)

Clause 2

Clause 2 amends section 17(2) of the Provincial Constitution to reflect the amended section 108 of the Constitution, which provides for the proclamation of election dates before or after the expiry of the term of a provincial legislature. (Section 108 was amended by the Constitution Fourth Amendment Act of 1999.)

Clause 3

Clause 3 amends section 30 of the Provincial Constitution to reflect the amended definition of “money Bill” in accordance with section 120 of the Constitution. (Section 120 was amended by the Constitution Seventh Amendment Act of 2001.)

Clause 4

Clause 4 amends section 49 of the Provincial Constitution to reflect the amended section 139 of the Constitution relating to provincial intervention in local government. (Section 139 was amended by the Constitution Eleventh Amendment Act of 2003.)

Clause 5

Clause 5 amends section 59 of the Provincial Constitution to reflect the amended section 228 of the Constitution in respect of the imposition of taxes by provinces. (Section 228 was amended by the Constitution Seventh Amendment Act of 2001.)

Clause 6

Clause 6 amends section 63 of the Provincial Constitution to reflect the amended section 230 of the Constitution in respect of the raising of loans by provinces. (Section 230 was amended in the Constitution Seventh Amendment Act of 2001.)

Clause 7

Clause 7 amends section 71 of the Provincial Constitution by providing that provincial legislation may establish a Commissioner for the Environment.

Clause 8

Clause 8 amends section 75 of the Provincial Constitution by providing that the Premier must appoint a person as Commissioner if the Commissioner is established by provincial legislation.

Clause 9

Clause 9 amends section 78 of the Provincial Constitution by providing that provincial legislation may establish a Commissioner for Children.

Clause 10

Clause 10 replaces the expression “President of the Constitutional Court” with the expression “Chief Justice” wherever it appears in the Provincial Constitution (following the Constitution Sixth Amendment Act of 2001), and certain expressions in the isiXhosa text of the Provincial Constitution.

4. CONSULTATION

A draft Amendment Bill was—

- (a) published in the *Provincial Gazette* and in three newspapers circulating in the Western Cape for public comment; and
- (b) sent per registered mail and per email to all municipalities in the Western Cape for their comment.

The following organisations and provincial departments were also consulted:

Provincial Treasury
Department of Environmental Affairs and Development Planning
Department of Social Development
Department of Cultural Affairs and Sport
Children’s organisations

5. FINANCIAL IMPLICATIONS

Administrative costs pertaining to the implementation of this legislation once enacted are envisaged to be minimal, and will be covered within current budgets.

6. LEGISLATIVE COMPETENCE

The Premier is satisfied that all the provisions of the Bill fall within the legislative competence of the Province.

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vetdruk tussen vierkantige hake dui skrapings uit bestaande verordenings aan.

_____ Woorde met 'n volstreep dui invoegings in bestaande verordenings aan.

WYSIGINGSWETSONTWERP

Tot wysiging van die Grondwet van die Wes-Kaap, 1997, ten einde dit in ooreenstemming te bring met die Grondwet van die Republiek van Suid-Afrika, 1996, ten opsigte van die verlies van lidmaatskap van die Provinsiale Parlement, die uitskryf en bepaling van datums vir 'n verkiesing van die Provinsiale Parlement, die omskrywing van 'n Geldwetsontwerp, provinsiale ingryping in plaaslike regering, die oplegging van bobelastings deur die Provinsiale Parlement en die aangaan van lenings deur die Wes-Kaapse regering; die bepalings ten opsigte van die Omgewingskommissaris en die Kommissaris vir Kinders te wysig; verwysings na die President van die Konstitusionele Hof te vervang; sekere veranderinge in die teks aan te bring; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

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

Wysiging van artikel 15 van Wet 1 van 1998

1. Artikel 15 van die Grondwet van die Wes-Kaap, 1997 (die Provinsiale Grondwet), word gewysig deur subartikel (3) deur die volgende subartikel te vervang: 5

“(3) 'n Persoon verloor lidmaatskap van die Provinsiale Parlement indien so 'n persoon—

 - (a) ophou om bevoeg te wees om 'n lid te wees;
 - (b) as lid bedank; **[of]**
 - (c) sonder toestemming van die Provinsiale Parlement afwesig is in 10

omstandighede waarvoor die reëls en orders van die Provinsiale Parlement verlies van lidmaatskap voorskryf; of
 - (d) ophou om 'n lid van die party te wees wat so 'n persoon as 'n lid van die 15

Provinsiale Parlement benoem het.”.

Wysiging van artikel 17 van Wet 1 van 1998

2. Artikel 17 van die Provinsiale Grondwet word gewysig deur die volgende subartikel na subartikel (2) in te voeg: 15

“(2A) 'n Proklamasie wat 'n verkiesing uitskryf en datums daarvoor bepaal, kan 20

uitgereik word vóór of ná die verstryking van die termyn van die Provinsiale Parlement.”.

Vervanging van artikel 30 van Wet 1 van 1998

3. Artikel 30 van die Provinsiale Grondwet word deur die volgende artikel vervang:

“Geldwetsontwerpe

30. (1) 'n Wetsontwerp [**wat**] is 'n Geldwetsontwerp indien dit—
- (a) geld bewillig; [**of**] 5
 - (b) provinsiale belastings, heffings, [**of**] regte of bobelastings oplê [, is 'n Geldwetsontwerp];
 - (c) enige provinsiale belastings, heffings, regte of bobelastings afskaf of verminder, of vrystelling daarvan verleen; of
 - (d) regstreekse laste teen die Provinsiale Inkomstefonds magtig. 10
- (2) 'n Geldwetsontwerp mag oor geen ander aangeleentheid handel nie, behalwe—
- (a) 'n ondergeskikte aangeleentheid wat verband hou met die bewilliging van geld; [**of**]
 - (b) die oplegging, afskaffing of vermindering van provinsiale belastings, heffings, [**of**] regte of bobelastings; 15
 - (c) die verlening van vrystelling van provinsiale belastings, heffings, regte of bobelastings; of
 - (d) die magtiging van regstreekse laste teen die Provinsiale Inkomstefonds. 20
- [(2)](3) 'n Provinsiale Wet moet voorsiening maak vir 'n prosedure waarvolgens die Provinsiale Parlement 'n Geldwetsontwerp kan wysig.’’.

Vervanging van artikel 49 van Wet 1 van 1998

4. Artikel 49 van die Provinsiale Grondwet word deur die volgende artikel vervang:

“[Toesig oor] Ingryping in plaaslike regering 25

49. (1) Wanneer 'n munisipaliteit in Wes-Kaap 'n uitvoerende verpligting ingevolge die nasionale Grondwet, hierdie Grondwet of wetgewing nie nakom of nie kan nakom nie, kan die Provinsiale Kabinet ingryp deur enige gepaste stappe te doen om te verseker dat daardie verpligting nagekom word, insluitende—
- (a) die uitreiking van 'n lasgewing aan die Munisipale Raad waarin die mate van die versuim om sy [**verpligting**] verpligtinge na te kom, beskryf word en stappe wat nodig is om sy verpligtinge na te kom, vermeld word; [**en**] 30
 - (b) die aanvaarding van verantwoordelikheid vir die betrokke verpligting in daardie munisipaliteit in die mate wat nodig is om— 35
 - (i) noodsaaklike nasionale standaarde te handhaaf of aan gevestigde minimum standaarde vir die lewering van 'n diens te voldoen;
 - (ii) te voorkom dat daardie Munisipale Raad onredelike stappe doen wat nadelig is vir die belange van 'n ander munisipaliteit of van Wes-Kaap as geheel; of 40
 - (iii) ekonomiese eenheid te handhaaf; of
 - (c) die ontbinding van die Munisipale Raad en aanstelling van 'n administrateur totdat 'n pas verkose Munisipale Raad verkose verklaar is, indien buitengewone omstandighede so 'n stap regverdig. 45
- (2) Indien die Provinsiale Kabinet kragtens subartikel (1)(b) in 'n munisipaliteit ingryp, moet—
- [(a) die ingryping beëindig word, tensy die lid van die Nasionale Kabinet wat vir plaaslike regeringsake verantwoordelik is, dit binne 14 dae vanaf die ingryping goedkeur; 50
 - (b)] (a) die Provinsiale Kabinet 'n skriftelike kennisgewing van die ingryping voorlê aan—
 - (i) die nasionale Kabinetslid wat vir plaaslike regeringsaangeleenthede verantwoordelik is;
 - (ii) [**in**] die Provinsiale Parlement; en 55
 - (iii) [**in**] die Nasionale Raad van Provinsies [**ter tafel gelê word**],

- binne 14 dae [**vanaf hul onderskeie eerste sittings**] nadat die ingryping 'n aanvang geneem het; en
- [(c)] (b) die ingryping beëindig word[, **tensy die Nasionale Raad van Provinsies dit binne 30 dae vanaf sy eerste sitting nadat die ingryping begin het, goedkeur**] indien— 5
- (i) die nasionale Kabinetslid wat vir plaaslike regeeringsaangeleenthede verantwoordelik is die ingryping afkeur binne 28 dae nadat die ingryping 'n aanvang geneem het of teen die einde van daardie tydperk die ingryping nie goedgekeur het nie; of
 - (ii) die Nasionale Raad van Provinsies die ingryping afkeur binne 180 dae nadat die ingryping 'n aanvang geneem het of teen die einde van daardie tydperk die ingryping nie goedgekeur het nie. 10
- (3) Indien 'n Munisipale Raad ingevolge subartikel (1)(c) ontbind word—
- (a) moet die Provinsiale Kabinet onmiddellik 'n skriftelike kennisgewing van die ontbinding voorlê aan— 15
 - (i) die nasionale Kabinetslid wat vir plaaslike regeeringsaangeleenthede verantwoordelik is;
 - (ii) die Provinsiale Parlement; en
 - (iii) die Nasionale Raad van Provinsies; en
 - (b) neem die ontbinding 'n aanvang 14 dae vanaf die datum van ontvangs van die kennisgewing deur die Nasionale Raad van Provinsies tensy tersyde gestel deur daardie nasionale Kabinetslid of die Nasionale Raad van Provinsies voor die verstryking van daardie 14 dae. 20
- (4) Indien 'n munisipaliteit 'n verpligting ingevolge die nasionale Grondwet of wetgewing om 'n begroting of inkomste-genererende maatreëls goed te keur wat nodig is om aan die begroting gevolg te gee nie kan nakom nie of dit nie nakom nie, moet die Provinsiale Kabinet ingryp deur enige gepaste stappe te doen om te verseker dat die begroting of daardie inkomste-genererende maatreëls goedgekeur word, met inbegrip van die ontbinding van die Munisipale Raad en— 25
- (a) die aanstelling van 'n administrateur totdat 'n pas verkose Munisipale Raad verkose verklaar is; en
 - (b) die goedkeuring van 'n voorlopige begroting of inkomste-genererende maatreëls om vir die voortgesette funksionering van die munisipaliteit voorsiening te maak. 30
- (5) Indien 'n munisipaliteit, as gevolg van 'n krisis in sy finansiële sake, in ernstige of volgehoue wesenlike versuim is van sy verpligtinge om basiese dienste te verskaf of om sy finansiële ondernemings na te kom, of erken dat hy nie in staat is om sy verpligtinge of finansiële ondernemings na te kom nie, moet die Provinsiale Kabinet— 35
- (a) 'n herstelplan voorskryf wat daarop gerig is om die munisipaliteit se vermoë om sy verpligtinge om basiese dienste te verskaf of sy finansiële ondernemings na te kom, te verseker, wat—
 - (i) voorberei moet word ooreenkomstig nasionale wetgewing; en
 - (ii) die munisipaliteit in die uitoefening van sy wetgewende en uitvoerende gesag bind, maar slegs in die mate wat nodig is om die krisis in sy finansiële sake op te los; en
 - (b) die Munisipale Raad ontbind indien die munisipaliteit wetgewende maatreëls, met inbegrip van 'n begroting of enige inkomste-genererende maatreëls, wat nodig is om aan die herstelplan gevolg te gee nie kan goedkeur nie of dit nie goedkeur nie, en— 40
 - (i) 'n administrateur aanstel totdat 'n pas verkose Munisipale Raad verkose verklaar is; en
 - (ii) 'n voorlopige begroting of inkomste-genererende maatreëls of enige ander maatreëls wat aan die herstelplan gevolg gee, goedgekeur om vir die voortgesette funksionering van die munisipaliteit voorsiening te maak. 45
- (6) Indien die Provinsiale Kabinet 'n herstelplan ingevolge subartikel (5)(a) voorskryf en die Munisipale Raad nie ingevolge subartikel (5)(b) ontbind word nie, moet die Provinsiale Kabinet verantwoordelikheid aanvaar vir die uitvoer van die herstelplan in die mate wat die munisipaliteit die herstelplan nie andersins kan uitvoer nie of dit nie uitvoer nie. 50

- (7) Indien die Provinsiale Kabinet ingevolge subartikel (4), (5) of (6) in 'n munisipaliteit ingryp, moet hy 'n skriftelike kennisgewing van die ingryping voorlê aan—
- (a) die nasionale Kabinetslid wat vir plaaslike regeringsaangeleenthede verantwoordelik is; 5
- (b) die Provinsiale Parlement; en
- (c) die Nasionale Raad van Provinsies, binne sewe dae nadat die ingryping 'n aanvang geneem het.’’.

Wysiging van artikel 59 van Wet 1 van 1998

5. Artikel 59 van die Provinsiale Grondwet word gewysig deur paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang: 10
- “(b) uniforme bobelasting hef op **[die belastingbasisse van]** enige belasting, heffing of reg wat deur nasionale wetgewing opgelê word, uitgesonderd **[die belastingbasisse van]** op korporatiewe inkomstebelasting, belasting op toegevoegde waarde, eiendomsbelasting of doeaneregte.’’ 15

Vervanging van artikel 63 van Wet 1 van 1998

6. Artikel 63 van die Provinsiale Grondwet word deur die volgende artikel vervang:

“Lenings

63. Die Wes-Kaapse regering kan lenings vir kapitaaluitgawes of lopende uitgawes ooreenkomstig **[voorwaardes wat deur]** nasionale wetgewing **[bepaal word,]** aangaan, maar lenings vir lopende uitgawes— 20
- (a) kan slegs aangegaan word wanneer dit gedurende 'n belastingjaar oorbruggingsdoeleindes nodig is; en
- (b) **moet binne 12 maande terugbetaal word**.’’.

Vervanging van artikel 71 van Wet 1 van 1998

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7. Artikel 71 van die Provinsiale Grondwet word deur die volgende artikel vervang:

“Instelling en bepalende beginsels van Omgewingskommissaris

71. (1) **[Daar is]** Provinsiale wetgewing kan 'n provinsiale Omgewingskommissaris instel om die bevoegdhede uit te oefen en funksies te verrig wat in artikels 72 en 74 beoog word. 30
- (2) Die provinsiale wetgewing moet voorsiening maak vir—
- (a) die Kommissaris **[moet]** om by die uitoefening van sy of haar bevoegdhede en die verrigting van sy of haar funksies die bewaring van die omgewing in Wes-Kaap te verseker en **[moet]** aandag te skenk aan die noodsaaklikheid daarvan om die ewewig tussen die doelstellings van omgewingsbewaring en volhoubare ontwikkeling te bewaar[.]; 35
- [(3) Die]** (b) die Kommissaris **[is]** om onafhanklik, **[en is]** slegs onderworpe aan die nasionale Grondwet, hierdie Grondwet en die reg, en **[moet]** onpartydig te wees en **[moet]** sonder vrees, begunstiging of vooroordeel **[sy of haar]** die bevoegdhede en funksies van die amp van Kommissaris [uitoefen] uit te oefen en **[sy of haar funksies]** te verrig[.]; 40
- [(4) Ander]** (c) ander provinsiale staatsorgane **[moet]** om die Kommissaris **[bystaan]** by te staan en te beskerm ten einde die onafhanklikheid, onpartydigheid, waardigheid en doeltreffendheid van die amp van **[die]** Kommissaris te verseker[.]; 45
- [(5) Geen persoon of provinsiale staatsorgaan mag in]**
- (d) die werksaamhede van die Kommissaris [inneng nie] sonder die inneming van enige persoon of provinsiale staatsorgaan; en 50
- (e) die reëling van die prosedure vir die aanstelling, skorsing en ontheffing van die Kommissaris van sy of haar amp kragtens artikels 75, 76 en 77.’’.

Wysiging van artikel 75 van Wet 1 van 1998

8. Artikel 75 van die Provinsiale Grondwet word gewysig deur die woorde wat paragraaf (a) van subartikel (2) voorafgaan, deur die volgende woorde te vervang:
 “[Die] Indien ’n Kommissaris kragtens artikel 71(1) ingestel word, moet die Premier [moet as Kommissaris] ’n persoon as Kommissaris aanstel wat—”. 5

Vervanging van artikel 78 van Wet 1 van 1998

9. Artikel 78 van die Provinsiale Grondwet word deur die volgende artikel vervang:

“Instelling en bepalende beginsels van Kommissaris vir Kinders

78. (1) [Daar is] Provinsiale wetgewing kan ’n provinsiale Kommissaris vir Kinders instel om die bevoegdhede uit te oefen en die funksies te verrig wat in subartikel (2) en artikel 79 uiteengesit is. 10
- (2) Die provinsiale wetgewing moet voorsiening maak vir die Kommissaris [moet] om die Wes-Kaapse regering [bystaan] by te staan met die beskerming, en die bevordering van die belange, van kinders in Wes-Kaap, in die besonder met betrekking tot— 15
- (a) gesondheidsdienste;
- (b) onderwys;
- (c) welsynsdienste;
- (d) ontspanning en geriewe; en
- (e) sport. 20
- (3) Die provinsiale wetgewing moet die prosedure reël vir die aanstelling, skorsing en die onthefing van die Kommissaris van sy of haar amp kragtens artikel 80.”.

Vervanging van uitdrukkings in Wet 1 van 1998

10. Die Provinsiale Grondwet word gewysig— 25
- (a) deur die uitdrukking “President van die Konstitusionele Hof”, waar dit ook al voorkom, deur die uitdrukking “Hoofregter” te vervang; en
- (b) deur in die isiXhosa-tekste die uitdrukkings “kwisi Bhulu”, “sisiBhulu”, “kwesiBhulu” en “isiBhulu” waar dit ook al voorkom, onderskeidelik deur die uitdrukkings “kwisiAfrikansi”, “sisiAfrikansi”, “kwesiAfrikansi” en “isiAfrikansi” te vervang. 30

Kort titel

11. Hierdie Wet heet die Eerste Wysigingswet op die Grondwet van die Wes-Kaap, 2015.

MEMORANDUM OOR DIE OOGMERKE VAN DIE EERSTE WYSIGINGSWETSONTWERP OP DIE GRONDWET VAN DIE WES-KAAP, 2015

1. AGTERGROND

Ooreenstemming met die Grondwet

Verskeie wysigings is reeds aangebring aan die Grondwet van die Republiek van Suid-Afrika, 1996 (die Grondwet). Dié wysigings is nog nie opgeneem in die Grondwet van die Wes-Kaap, 1997 (Wet 1 van 1998) (die Provinsiale Grondwet), nie.

Die Provinsiale Grondwet bepaal dat dit nie uitgelê moet word as sou dit enige wetgewende of uitvoerende gesag wat onbestaanbaar met die Grondwet is, aan die Wes-Kaapse Provinsiale Regering opdra nie. Daar word voorgestel dat die Provinsiale Grondwet gewysig word om dit in ooreenstemming met die Grondwet te bring ten einde enige teenstrydighede en uitlegprobleme te vermy.

Kommissaris

Artikels 71 en 78 van die Provinsiale Grondwet stel die posisies van Omgewingskommissaris en Kommissaris vir Kinders in. Die aanstelling van die Omgewingskommissaris en die Kommissaris vir Kinders is 'n verpligting opgelê deur die Provinsiale Grondwet, wat bindend is op die provinsiale wetgewer en uitvoerende gesag ingevolge artikels 104(3) en 125(6)(b) van die Grondwet, en artikels 9(2) en 35(3) van die Provinsiale Grondwet.

Die posisies van Omgewingskommissaris en Kommissaris vir Kinders is vakant en is nog nooit gevul nie.

Sedert die inwerkingtreding van die Provinsiale Grondwet is verskeie stukke nasionale wetgewing aangeneem wat owerhede, gesagsliggame en strukture vir die beskerming van die omgewing instel. Dié nasionale wetgewing sluit in die Wet op Nasionale Omgewingsbestuur, 1998 (Wet 107 van 1998), die "National Environmental Management: Biodiversity Act, 2004" (Wet 10 van 2004), die "National Environmental Management: Protected Areas Act, 2003" (Wet 57 van 2003), die "National Environmental Management: Waste Act, 2008" (Wet 59 van 2008), en die "National Environmental Management: Integrated Coastal Management Act, 2008" (Wet 24 van 2008).

Die Provinsiale Regering is van mening dat die vul van die vakature van Omgewingskommissaris nie wenslik is nie, aangesien dit tot 'n oorvleueling van rolle en funksies waarvoor in nasionale wetgewing voorsiening gemaak word, sal lei en skaars staatshulpbronne sal dreineer. Die Provinsiale Regering is ook van mening dat nasionale wetgewing en internasionale ooreenkomste voldoende vir die beskerming van die omgewing voorsiening maak.

Uitgebreide wetgewingshervorming wat verskeie strukture en instellings vestig wat vir die beveiliging van kinderregte voorsiening maak, is sedert die inwerkingtreding van die Provinsiale Grondwet geïmplementeer. Dié wetgewingshervorming sluit in die aanneem van die "Children's Act, 2005" (Wet 38 van 2005), wat die oogmerk het om beskerming en versorging aan kinders te verskaf en strukture en dienste vir die bevordering en monitering van die welsyn van kinders te verskaf, en die "Child Justice Act, 2008" (Wet 75 van 2008), wat die strafregstelsel hervorm ten einde voorsiening te maak vir die beskerming van kwesbare kinders en kinders met spesiale behoeftes.

Die Provinsiale Regering is van mening dat die vul van die vakature van die Kommissaris vir Kinders nie wenslik is nie weens die beperkte bevoegdhede van die Kommissaris en die toereikendheid van die bevoegdhede en funksies wat ingevolge nasionale wetgewing aan ander amptenare en owerhede toegewys word. Die vul van hierdie vakature sal ook skaars staatshulpbronne dreineer.

Daar word gevolglik voorgestel dat die Provinsiale Grondwet gewysig word om voorsiening te maak vir 'n diskresie om die Kommissaris in te stel. Gevolg kan dan

gegee word aan die instelling van die Kommissarisse wanneer daar geoordeel word dat dit wenslik is om dit te doen.

2. DOEL VAN WETSONTWERP

Die doel van die Wetsontwerp is om—

- (a) die Provinsiale Grondwet te wysig ten einde dit in ooreenstemming te bring met die wysigings wat aan die Grondwet aangebring is; en
- (b) die bepalings te wysig wat die Omgewingskommissaris en die Kommissaris vir Kinders instel, ten einde voorsiening te maak vir 'n diskresie om die Kommissarisse deur provinsiale wetgewing in te stel.

3. INHOUD VAN WETSONTWERP

Klousule 1

Klousule 1 wysig artikel 15 van die Provinsiale Grondwet om die gewysigde artikel 106 van die Grondwet wat vir die verlies van lidmaatskap in die wetgewer voorsiening maak indien 'n lid ophou om lid van die party te wees wat hom of haar benoem het, te weerspieël. (Artikel 106 is gewysig by die Tiende Wysigingswet op die Grondwet van 2003 en die Veertiende Wysigingswet op die Grondwet van 2008.)

Klousule 2

Klousule 2 wysig artikel 17(2) van die Provinsiale Grondwet om die gewysigde artikel 108 van die Grondwet, wat vir die afkondiging van verkiesingsdatums vóór of ná die verstryking van die termyn van 'n provinsiale wetgewer voorsiening maak, te weerspieël. (Artikel 108 is gewysig by die Vierde Wysigingswet op die Grondwet van 1999.)

Klousule 3

Klousule 3 wysig artikel 30 van die Provinsiale Grondwet om, ooreenkomstig artikel 120 van die Grondwet, die gewysigde omskrywing van “Geldwetsontwerp” te weerspieël. (Artikel 120 is gewysig by die Sewende Wysigingswet op die Grondwet van 2001.)

Klousule 4

Klousule 4 wysig artikel 49 van die Provinsiale Grondwet om die gewysigde artikel 139 van die Grondwet, wat met provinsiale ingryping in plaaslike regering verband hou, te weerspieël. (Artikel 139 is gewysig by die Elfde Wysigingswet op die Grondwet van 2003.)

Klousule 5

Klousule 5 wysig artikel 59 van die Provinsiale Grondwet om die gewysigde artikel 228 van die Grondwet ten opsigte van die oplê van belastings deur provinsies te weerspieël. (Artikel 228 is gewysig by die Sewende Wysigingswet op die Grondwet van 2001.)

Klousule 6

Klousule 6 wysig artikel 63 van die Provinsiale Grondwet om die gewysigde artikel 230 van die Grondwet ten opsigte van die aangaan van lenings deur provinsies te weerspieël. (Artikel 230 is gewysig by die Sewende Wysigingswet op die Grondwet van 2001.)

Klousule 7

Klousule 7 wysig artikel 71 van die Provinsiale Grondwet deur te bepaal dat provinsiale wetgewing 'n Omgewingskommissaris kan instel.

Klousule 8

Klousule 8 wysig artikel 75 van die Provinsiale Grondwet deur te bepaal dat die Premier iemand as Kommissaris moet aanstel indien die Kommissaris by provinsiale wetgewing ingestel word.

Klousule 9

Klousule 9 wysig artikel 78 van die Provinsiale Grondwet deur te bepaal dat provinsiale wetgewing 'n Kommissaris vir Kinders kan instel.

Klousule 10

Klousule 10 vervang die uitdrukking “President van die Konstitusionele Hof” deur die uitdrukking “Hoofregter” waar dit ook al voorkom in die Provinsiale Grondwet (in navolging van die Sesde Wysigingswet op die Grondwet van 2001), en sekere uitdrukkings in die isiXhosa teks van die Provinsiale Grondwet.

4. OORLEGPLEGING

'n Konsepwetsontwerp is—

- (a) gepubliseer in die *Provinsiale Koerant* en drie plaaslike koerante wat in Wes-Kaap in omloop is; en
- (b) per geregistreerde pos en e-pos aan munisipaliteite vir hul kommentaar gestuur.

Die volgende organisasies en provinsiale departemente is ook geraadpleeg:

Provinsiale Tesourie

Departement van Omgewingsake en Ontwikkelingsbeplanning

Departement van Maatskaplike Ontwikkeling

Departement van Kultuursake en Sport

Kinderorganisasies

5. FINANSIËLE IMPLIKASIES

Daar word in die vooruitsig gestel dat die administratiewe koste rakende die implementering van hierdie wetgewing sodra dit verorden is, minimaal sal wees en binne bestaande begrotings gedek sal word.

6. WETGEWENDE BEVOEGDHEID

Die Premier is daarvan oortuig dat al die bepalings in die Wetsontwerp binne die wetgewende bevoegdheid van die Provinsie ressorteer.

AMAGQABANTSHINTSHI ACACISAYO:

- [] Amagama abhalwe ngqindilili akwizibiyeli ezisikweri abonisa okukhutshiweyo kwimithetho ekhoyo.
- _____ Amagama akrwelwe umgca ngaphantsi abonisa okuye kongezwa kwimithetho ekhoyo.

ULUNGISO LOMTHETHO OSAYILWAYO

Lwenza izilungiso kuMgaqo-siseko weNtshona Koloni, ka-1997, ukuze ungqamane noMgaqo-siseko weRiphabhlikhi yoMzantsi Afrika, ka-1996, ngokuphathelele kukulahlekelwa bubulungu kwiPalamente yePhondo, ukubizwa nokumiselwa kwemihla yonyulo lwePalamente yePhondo, ukuchazwa kweBhili yemali, ukungenelela kwephondo kurhulumente wengingqi, ukubekwa kweentlawulo ezongezelelweyo yiPalamente yePhondo nokufunwa kweemali-mboleko ngurhulumente wePhondo leNtshona Koloni; ukulungisa izibonelelo eziphathelene noMkhomishinala weNdalo eSingqongileyo noMkhomishinala wezabaNtwana; ukutshintsha iindawo ezibhekisela kuMongameli weNkundla yoMgaqo-siseko; ukaqalisa inguqulelo zombhalo ezitlule nokuchaza ngemiba enxibelelene noku.

NNGOKO KE iPalamente yePhondo leNtshona Koloni, IPHUMEZA UMTHETHO ngale ndlela ilandelayo:—

Izilungiso kwicandelo 15 loMthetho 1 ka-1998

1. Icandelo 15 loMgaqo-siseko weNtshona Koloni, wowe-1997 (uMgaqo-siseko wePhondo), lenziwa izilungiso ngokufakela eli candelwana lilandelayo endaweni yecandelwana (3): 5
 - (a) kuye kwenzeka ukuba angafaneleki;
 - (b) xa eziyekela ebulungwini;
 - (c) uye akabikho kwiPalamente yePhondo ngaphandle kwemvume phantsi kweemeko ekuchaziweyo ukuba umntu uyaphelwa bubulungu xa engekho kuzo; okanye 10
 - (d) uyayeka ukuba lilungu lombutho owamkethayo ukuba awumele kwiPalamente yePhondo.”.

Izilungiso kwicandelo 17 loMthetho 1 ka-1998

2. Icandelo 17 loMgaqo-siseko wePhondo lenziwa izilungiso ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (2): 15
 - (2A) Umpoposho obiza nobeka umhla wonyulo unokwenziwa ngaphambi okanye ngemva komhla wokuphela kwexesha lePalamente yePhondo.”.

Ukutshintshwa kwecandelo 30 loMthetho 1 ka-1998

3. Eli candelo lilandelayo liza kufakwa endaweni yecandelo 30 loMgaqo-siseko wePhondo:

“IiBhili zeMali

- | | |
|--|----|
| 30. (1) IBhili iyiBhili yemali ukuba— | 5 |
| (a) ihlahla imali; | |
| (b) ibeka iirhafu, imirhumo, imisebenzi okanye iintlawulo ezongezelelweyo zephondo; | |
| (c) itshitshisa okanye iphungula, okanye igunyazisa ukhululo kuyo nayiphi na irhafu okanye iintlawulo yePhondo; okanye | 10 |
| (d) igunyazisa ukutsalwa ngqo kweentlawulo kwiNgxowa yeMali yePhondo. | |
| (2) IBhili yezeMali akufuneki ukuba ibandakanye neminye imiba ngaphandle— | |
| (a) kwemiba ephathelele ekuhlahlweni kwemali eza kusetyenziswa; | 15 |
| (b) ekubekweni, ukubhangisa okanye ukuphungula iirhafu, imirhumo, imisebenzi okanye iintlawulo ezongezelelweyo zephondo; | |
| (c) kokugunyazisa ukungahlawuli iirhafu imirhumo, imisebenzi okanye iintlawulo ezongezelelweyo zephondo; okanye | |
| (d) kokugunyazisa iindleko ezingqalileyo nxamnye neNgxowa yeMali yePhondo. | 20 |
| [(2)](3) UMthetho wePhondo kufuneka ube nenkqubo enokuthi ihambe ngayo iPalamente yePhondo xa isenza izilungiso kwiBhili yezeMali.”. | |

Ukutshintshwa kwecandelo 49 loMthetho 1 ka-1998

4. Eli candelo lilandelayo liza kufakwa endaweni yecandelo 49 loMgaqo-siseko wePhondo: 25

“Ungenelelo kulawulo lorhulumente wengingqi

- | | |
|---|----|
| 49. (1) Xa umasipala othile apha kweli Phondo engawenzi kakuhle umsebenzi-wakhe wokulawula ngokoMgaqo-siseko welizwe, lo Mgaqo-siseko okanye ngokwemithetho, iKhabhinethi yePhondo isenokuthi ingenelele ngokuthi ithathe amanyathelo afanelekileyo okuqinisekisa ukuba lo misebenzi iyenziwa, manyathelo lawo anokubandakanya la alandelayo— | 30 |
| (a) ukukhupha ingcaciso eya kwiKhansile kaMasipala lowo echaza ngokupheleleyo indlela esilele ngayo ekwenzeni umsebenzi wayo, inike nezikhokelo kananjalo zokuba lo meko ingalungiswa njani na; | 35 |
| (b) ukuthathela kuyo uxanduva lokwenza lo msebenzi asilele kuwo umasipala lowo iluthwale kangangoko kuyimfuneko— | |
| (i) ukugcina imigangatho yesizwe eyimfuneko okanye ukukhawulelana nemigangatho efunekayo ekunikweni kweenkonzo; | 40 |
| (ii) ukuthintela iKhansile kaMasipala lowo ukuba ingathabathi amanyathelo angafanelekanga naya kuthi abeke esichengeni izinto ezichaphazela omnye umasipala okanye iNtshona Koloni iphela; okanye | |
| (iii) ukugcina umanyano kwinkalo yezoqoqosho; okanye | |
| (c) ukulitshitshisa elo Bhunga likaMasipala nokumisela umlawuli de kubhengezwe ukunyulwa kweBhunga likaMasipala elitsha, ukuba kukho iimeko ezizodwa ezifuna elo nyathelo. | 45 |
| (2) Ukuba ngaba iKhabhinethi yePhondo ngenelele kwimeko kamasipala othile ngokwalo mhlathana (1)(b)— | |
| (a) imele yenze isaziso esibhaliweyo sokungenelela— | 50 |
| (i) kwilungu leKhabhinethi yesizwe elisingathe imicimbi yoorhulumente bengingqi; | |
| (ii) kwiPalamente yePhondo; | |
| (iii) nakwiKhansile yeSizwe yaMaphondo, zingadlulanga iintsuku ezili-14 emva kokuqala kolo ngenelelo; kwaye | 55 |

- (b) kufuneka oko kungenelela kufikelele esiphelweni ukuba—
- (i) ilungu leKhabhinethi yesizwe elisingathe imicimbi yoorhulumente beengingqi alivumelani nongenelelo zingaphelanga iintsuku ezingama-28 emva kokuba ungenelelo luqalisile okanye ukuba ekupheleni kwelo xesha alikalwamkeli olo ngenelelo; okanye 5
- (ii) iBhunga leSizwe laMaphondo alivumelani nongenelelo zingaphelanga iintsuku ezili-180 emva kokuba luqalisile okanye ukuba ekupheleni kwelo xesha alikalwamkeli olo ngenelelo.
- (3) Ukuba iBhunga likaMasipala liyachithwa ngokwecandelwana (1)(c)— 10
- (a) iKhabhinethi yePhondo imele ukuba ngoko nangoko ithumele isaziso esibhaliweyo sokuchithwa kwalo—
- (i) kwilungu leKhabhinethi yelizwe elisingathe imicimbi yoorhulumente bengingqi; 15
- (ii) kwiPalamente yePhondo; 15
- (iii) nakwiBhunga leSizwe laMaphondo; kwaye
- (b) ukuchithwa kuya kusebenza emva kweentsuku ezili-14 ukusuka kumhla wokufunyanwa kwesaziso liBhunga leSizwe laMaphondo, ngaphandle kokuba ilungu leKhabhinethi yesizwe okanye iBhunga leSizwe laMaphondo lithi makungabi njalo ngaphambi kokuphela kwezo ntsuku zili-14. 20
- (4) Ukuba umasipala akakwazi okanye uyasilela ekufezekiseni uxanduva lwakhe ngokoMgaqo-siseko okanye ngokomthetho, lokwamkela ulwabiwo-mali okanye nawaphi na amanyathelo okwenza ingeniso afunekayo ekuphumezeni ulwabiwo-mali, iKhabhinethi yePhondo imele ukuba ingenelele ngokuthatha nawaphi na amanyathelo afanelekileyo ukuze iqinisekise ukuba ulwabiwo-mali okanye loo manyathelo okwenza ingeniso ayamkelwa, kuquka nokuchitha iBhunga likaMasipala kunye— 25
- (a) nokubeka umlawuli de kubhengezwe ukunyulwa kweBhunga likaMasipala elitsha; kunye 30
- (b) nokwamkela ulwabiwo-mali lwexeshana okanye amanyathelo okwenza ingeniso exeshana ukuze umasipala aqhube esebenza.
- (5) Ukuba umasipala, ngenxa yeengxaki zemali, uyaqhuba ngokungaziphumezi iimbopheleleko zakhe zokunikela ngeenkonzo eziphambili okanye akazifezi iimbopheleleko zakhe zemali, okanye uyavuma ukuba akakwazi ukuziphumeza iimbopheleleko zakhe okanye ukuhlawula, iKhabhinethi yePhondo imele ukuba— 35
- (a) ibeke isicwangciso sokulungisa loo ngxaki esinjongo yaso ikunceda loo masipala ukuba aphinde afezekise iimbopheleleko zakhe zokunikela ngeenkonzo eziphambili okanye zemali, sicwangciso eso— 40
- (i) esiya kuqulunqwa ngokungqamanayo nomthetho wesizwe; yaye
- (ii) siya kunyanzela umasipala ekusebenziseni igunya lakhe lowiso-mthetho nelolawulo, kodwa kube kangangoko kuyimfuneko ekusombululeni ingxaki yakhe kwimicimbi yemali; kwaye 45
- (b) ilichithe elo Bhunga likaMasipala, ukuba umasipala akakwazi okanye akawamkeli amanyathelo abekwa ngumthetho, aquka ulwabiwo-mali okanye nawaphi na amanyathelo afunekayo ukwenza ingeniso ukuze sibe nempumelelo isicwangciso sokulungisa, kwaye—
- (i) ibeke umlawuli de iBhunga likaMasipala elinyulwe ngokutsha libhengezwe; kwaye 50
- (ii) yamkele ulwabiwo-mali lwexeshana okanye amanyathelo okwenza ingeniso exeshana okanye nawaphi na amanyathelo okwenza isicwangciso sokulungisa sibe nempumelelo ekwenzeni ukuba umasipala aqhube esebenza. 55
- (6) Ukuba iKhabhinethi yePhondo ibeka isicwangciso sokulungisa ngokwecandelwana (5)(a) kwaye iBhunga likaMasipala alichithwa ngokwecandelwana 5(b), iKhabhinethi yePhondo imele ukuba ithathele kuyo uxanduva lokwenza ukuba isicwangciso sokulungisa sisebenze kwezo ndawo angakwaziyo okanye asilelayo kuzo ukusisebenzisa isicwangciso sokulungisa eso. 60

- (7) Ukuba iKhabhinethi yePhondo iyangenelela kumasipala ngokwecandelwana (4), (5) okanye (6), imele ukuba ingenise isaziso esibhaliweyo sokungenelela kwayo—
- (a) kwilungu leKhabhinethi yesizwe elijongene nemiba yoorhulumente bengingqi; 5
- (b) kwiPalamente yePhondo;
- (c) nakwiBhunga leSizwe laMaphondo, zingaphelanga iintsuku ezisixhenxe emva kokuba ungenelelo luqalisile.”.

Izilungiso kwicandelo 59 loMthetho 1 ka-1998

5. Icandelo 59 loMgaqo-siseko wePhondo lenziwa izilungiso ngokufakelwa kwalo mhlathi ulandelayo endaweni yomhlathi (b) wecandelwana (1): 10
- “(b) iintlawulo ezongeziweyo ezilinganayo ezithiwa chatha kuyo nayiphi na irhafu, umrhumo okanye intlawulo eyongeziweyo ezibekwe yimithetho karhulumente wesizwe, ezingaphandle kweerhafu kwingeniso zemveliso noshishino, nevethi neentlawulo ezihlawulelwa imihlaba okanye izinto ezingena zivela kwamanye amazwe.” 15

Ukutshintshwa kwecandelo 63 loMthetho 1 ka-1998

6. Eli candelo lilandelayo lifakwa endaweni yecandelo 63 loMgaqo-siseko wePhondo:
- “**Timali-mboleko** 20
63. Urhulumente weNtshona Koloni usenokuthi ehamba ngemithetho karhulumente wesizwe, kodwa ke iimboleko ezenzelwa ukujongana neendleko zangoku kufuneka zenziwe kuphela xa kukho imfuneko yokuba kuvalwe izikhewu kuloo nyaka-mali.”

Ukutshintshwa kwecandelo 71 loMthetho 1 ka-1998

7. Eli candelo lilandelayo lifakwa endaweni yecandelo 71 loMgaqo-siseko wePhondo:
- “**Ukusekwa kunye nemigaqo yokulawula uMkhomishinala weNdalo esiNgqongileyo**
71. (1) Umthetho wephondo unokumisela uMkhomishinala weNdalo eSingqongileyo ukuze asebenzise amagunya kwaye enze imisebenzi echazwe kwicandelo lama-72 nelama-74. 30
- (2) Umthetho wephondo umele ulungiselele-
- (a) ukuba uMkhomishinala aqinisekise ulondolozo lwendalo apha eNtshona Koloni, kwaye anike ingqwalasela imfuno yokhuseleko lwendalo kunye neyokuqhutywa kophuhliso xa esebenzisa amagunya akhe okanye imisebenzi yakhe; 35
- (b) uMkhomishinala umele azimele, ulawulwa kuphela nguMgaqo-siseko wesizwe, ngulo Mgaqo-siseko nangumthetho, kwaye makangabi nadolo kwaye namagunya akhe makawasebenzise ngaphandle komkhethe noloyiko, ngokunjalo naxa esenza imisebenzi yakhe; 40
- (c) ezinye izigqeba zikarhulumente wephondo mazimncedise zimkhusele uMkhomishinala khona ukuze kuqinisekise ukuba uhlala ezimele, engenadolo, enesidima kunjalo nje enempumelelo; 45
- (d) nokusebenza noMkhomishinala ngaphandle kokungenelela nawo nawaphi umntu okanye icandelo likaRhulumente wePhondo; kunye 45
- (e) nokulawulwa kwenkqubo yokuqeshwa, ukunqunyanyiswa noku-gxothwa koMkhomishinala ngokwecandelo 75, 76 nelama-77.”.

Izilungiso kwicandelo 75 loMthetho 1 ka-1998

8. Icandelo 75 loMgaqo-siseko wePhondo lenziwa izilungiso ngokufakwa kwala magama alandelayo endaweni yamagama aphambi komhlathi (a) wecandelwana (2):
 “Ukuba uMkhomishinala uyabekwa phantsi kwecandelo 71(1), iNkulumbuso kufuneka ibeke uMkhomishinala ongumntu-” 5

Ukutshintshwa kwecandelo 78 loMthetho 1 ka-1998

9. Eli candelo lilandelayo lifakwa endaweni yecandelo 78 loMgaqo-siseko wePhondo:

“Ukusekwa kunye nemigaqo yokulawula uMkhomishinala wezabaNtwana

78. (1) Umthetho wephondo unokuseka uMkhomishinala wezabaNtwana wephondo ukuze asebenzise amagunya kwaye enze imisebenzi echazwe kwicandelwana (2) nakwicandelo 79. 10
- (2) Umthetho wephondo umele ukuba ulungiselele ukuba uMkhomishinala lo makancedisane norhulumente weNtshona Koloni ekukhuseleni nasekukhuthazeni izinto ezilungileyo ebantwaneni apha eNtshona Koloni, ngakumbi ngokuphathelele— 15
- (a) kwiinkonzo zempilo;
- (b) kwimfundo;
- (c) kwiinkonzo zentlalontle;
- (d) kwizibonelelo zolonwabo; 20
- (e) nakwimidlalo.
- (3) Umthetho wephondo umele ukuba ulawule inkqubo yokuqeshwa, yoku-nqunyanyiswa nokugxothwa koMkhomishinala ngokwecandelo 80.”.

Ukutshintshwa kwamabinzana kuMthetho 1 ka-1998

10. UMgaqo-siseko wePhondo wenziwa izilungiso— 25
- (a) ngokufakwa kwebinzana elithi “iJaji eyiNtloko” endaweni yebinzana elithi “uMongameli weNkundla yoMgaqo-siseko”, naphi na apho livela khona;
- (b) nokufakwa kwegama elithi “kwisiAfrikansi”, “sisiAfrikansi”, “kwesiAfrikansi” nelithi “isiAfrikansi”, endaweni yelithi “kwisi Bhulu”, “sisiBhulu”, “kwesiBhulu” nelithi “isiBhulu” kwinguqulelo yesiXhosa 30 ngokwahlukeneyo.

Isihloko esifutshane

11. Lo Mthetho ubizwa ngokuthi nguMthetho oWenza iZilungiso zokuQala kuMgaqo-siseko weNtshona Koloni, ka-2015.

**IMEMORANDAM ENGEENJONGO ZOMGAQO-SISEKO
WOMTHETHO-SIHLOMELO OSAYILWAYO WOKUQALA
WENTSHONA KOLONI, 2015**

1. IMVELAPHI

Ukungqanyaniswa noMgaqo-siseko

UMgaqo-siseko weRiphabhlikhi yoMzantsi Afrika, wonyaka ka-1996, (uMgaqo-siseko) uye wahlaziywa ngeendlela ngeendlela. Ezi zilungiso azikafakwa kuMgaqo-siseko weNtshona Koloni, wonyaka ka-1997 (uMthetho 1 ka-1998), (uMgaqo-siseko wePhondo).

UMgaqo-siseko wePhondo uthi awufanele utolikwe njengomela naliphi na igunya lowiso-mthetho okanye lesigqeba kuRhulumente wePhondo laseNtshona Koloni elingqubana noMgaqo-siseko. Kwenziwa isiphakamiso sokuba uMgaqo-siseko wePhondo uhlaziywe ukuze unqamane noMgaqo-siseko ukuze kuphetshwe nakuphi na ukuphikisana neengxaki zokuwutolika.

Abakhomishinala

ICandelo lama-71 nelama-78 loMgaqo-siseko wePhondo lithetha ngokusekwa kwesikhundla soMkhomishinala wokuSingqongileyo noMkhomishinala wabaNtwana. Ukumiselwa koMkhomishinala wokuSingqongileyo noMkhomishinala wabaNtwana yimbopheleleko ebekwe nguMgaqo-siseko wePhondo, esisinyanzelo kwipalamente yephondo nakwisigqeba ngokwecandelo le-104(3) nele-125(6)(b) loMgaqo-siseko, necandelo le-9(2) nelama-35(3) loMgaqo-siseko wePhondo.

Isikhundla soMkhomishinala wokuSingqongileyo nesoMkhomishinala wabaNtwana azinamntu kwaye akukaze kuqeshwe mntu kuzo.

Ukususela ekuqalisweni koMgaqo-siseko wePhondo iinxalenye ezahlukeneyo zomthetho welizwe eziseka igunya namasebe okukhusela imeko-bume ziye zapasiswa. Umthetho welizwe uquka uMthetho woLawulo lokuSingqongileyo kuZwelonke, ka-1998 (uMthetho 107 ka-1998), uLawulo lokuSingqongileyo kuZwelonke: uMthetho wokwaHluka kwendalo, ka-2004 (uMthetho 10 ka-2004), uLawulo lokuSingqongileyo kuZwelonke: uMthetho weeNdawo eziKhuselweyo, ka-2003 (uMthetho 57 ka-2003), uLawulo lokuSingqongileyo kuZwelonke: uMthetho weNkunkuma, ka-2008 (uMthetho 59 ka-2008) noLawulo lokuSingqongileyo kuZwelonke: uMthetho woLawulo lwamaNxweme oHlanganisiweyo, ka-2008, (uMthetho 24 ka-2008).

URhulumente wePhondo uvakalelwa ukuba ukuqeshwa koMkhomishinala wokuSingqongileyo akufuneki, kuba kuya kubandakanya ukungqubana kweembopheleleko nemisebenzi echazwe kumthetho welizwe, ibe kuya kutya imali karhulumente esele ishukuxekile kakade. URhulumente wePhondo ukwavakalelwa ukuba umthetho welizwe nezivumelwano zamazwe ngamazwe zikukhusela ngokwaneleyo okusingqongileyo.

Iye yahlaziywa kakhulu imithetho eseka amasebe namaziko ahlukeneyo akhusela amalungelo abantwana ukususela oko kwaqalisa uMgaqo-siseko wePhondo. Ukuhlaziywa kwemithetho kuquka ukupasiswa koMthetho wabaNtwana (uMthetho 38 ka-2005) enjongo ikukukhusela nokunyamekela abantwana nokuseka amasebe neenkonzo ezikhuthaza nezihlola impilo-ntle yabantwana, noMthetho weeNkonzo zobuLungisa kubaNtwana, (uMthetho 75 ka-2008) ohlaziya inkqubo yeenkundla zomthetho ukuze ilungiselele ukukhusela abantwana abahlelekileyo nabantwana abaneemfuno ezikhethekileyo.

URhulumente wePhondo uvakalelwa ukuba ukuqeshwa koMkhomishinala wabaNtwana akufuneki kuba asikelwe umda amagunya oMkhomishinala kwaye amanye amagosa nabasemagunyeni banikwe amagunya nemisebenzi eyaneleyo ngokomthetho welizwe. Ukuqeshwa komntu oza kungena kwesi sikhundla kuya kudla imali karhulumente esele ishukuxekile.

Ngoko senza isiphakamiso sokuba uMgaqo-siseko wePhondo uhlaziywe ukuze uchaze ubulumko bokuba nabaKomishinala. Ngoko ukumiselwa kwabaKhomishinala kuya kwenziwa xa kucingwa ukuba kuyafuneka ukwenjenjalo.

2. INJONGO YEBHILI

Injongo yeBhili kukuhlaziya—

- (a) uMgaqo-siseko wePhondo ukuze ungqamane nohlaziyo olwenziwe kuMgaqo-siseko; kunye
- (b) nemfuneko yokubekwa koMkhomishinala wokuSingqongileyo noMkhomishinala wabaNtwana ukuze kuchazwe ubulumko bokubeka abaNtwanishinala ngomthetho wephondo.

3. IZIQULATHO ZEBHILI

Isolotya 1

Isolotya 1 lihlaziya icandelo 15 loMgaqo-siseko wePhondo ukuze libonise icandelo 106 elihlaziyiweyo loMgaqo-siseko ukuze licacise ngokulahlekelwa lilungu lepalamente, ukuba ilungu liyayeka ukuba lilungu lombutho olikhethileyo ukuba liwumele. (iCandelo 106 lahlaziywa nguMthetho woHlaziyo lweShumi loMgaqo-siseko, ka-2003 noMthetho woHlaziyo lweShumi Elinesine loMgaqo-siseko, ka-2008).

Isolotya 2

Isolotya 2 lihlaziya icandelo 17(2) loMgaqo-siseko wePhondo ukuze libonise icandelo 108 elihlaziyiweyo loMgaqo-siseko, elithi kufanele kuchazwe imihla yonyulo ngaphambi okanye ngemva kokuphelelwa kwepalamente yephondo. (uMthetho woHlaziyo Lwesine loMgaqo-siseko, ka-1999).

Isolotya 3

Isolotya 3 lihlaziya icandelo 30 loMgaqo-siseko wePhondo ukuze ubonise ingcaciso ehlahlaziyiweyo “yeBhili yeMali” ngokwecandelo 120 loMgaqo-siseko. (iCandelo 120 lahlaziywa nguMthetho woHlaziyo Lwesixhenxe loMgaqo-siseko, ka-2001).

Isolotya 4

Isolotya 4 lihlaziya icandelo 49 loMgaqo-siseko wePhondo ukuze ubonise icandelo 139 elihlaziyiweyo loMgaqo-siseko eliphathelele ukungenelela kwephondo kurhulumente wengingqi. (iCandelo 130 lahlaziywa nguMthetho woHlaziyo lweShumi Elinanye loMgaqo-siseko, wonyaka wama-2003).

Isolotya 5

Isolotya 5 lihlaziya icandelo 59 loMgaqo-siseko wePhondo ukuze ubonise icandelo 228 elihlaziyiweyo loMgaqo-siseko ngokuphathelile ekufakweni kweerhafu ngamaphondo. (iCandelo 228 lahlaziywa nguMthetho woHlaziyo Lwesixhenxe loMgaqo-siseko, wonyaka wama-2001).

Isolotya 6

Isolotya 6 lihlaziya icandelo 63 loMgaqo-siseko wePhondo ukuze ubonise icandelo 230 elihlaziyiweyo loMgaqo-siseko ngokuphathelile ekufuneni kwamaphondo imalimbaleko. (iCandelo 230 lahlaziywa nguMthetho woHlaziyo Lwesixhenxe loMgaqo-siseko, wonyaka wama-2001).

Isolotya 7

Isolotya 8 lihlaziya icandelo 71 loMgaqo-siseko wePhondo ukuze lithi umthetho wephondo unako ukubeka uMkhomishinala wokuSingqongileyo.

Isoloty 8

Isoloty 8 lihlaziya icandelo 75 loMgaqo-siseko wePhondo ngokuthi iNkulumbuso imele imisele oza kuba nguMkhomishinala, ukuba uMkhomishinala ubekwa ngomthetho wephondo.

Isoloty 9

Isoloty 9 lihlaziya icandelo 78 loMgaqo-siseko wePhondo ngokuthi umthetho wephondo unako ukubeka uMkhomishinala wabaNtwana.

Isoloty 10

Isoloty 10 lisusa ibinzana elithi “uMongameli weNkundla yoMgaqo-siseko” lifake elithi “iJaji eyiNtloko” naphi na apho livela khona kuMgaqo-siseko wePhondo. (uMthetho woHlaziyo Lwesithandathu loMgaqo-siseko, ka-2001), kunye neentetho ezithile kumbhalo woMgaqo-siseko wePhondo wesiXhosa.

4. UTHETHWANO

Umthetho-sihlomelo oSayilwayo—

- (a) wapapshwa kwiGazethi yePhondo nakumaphephandaba amathathu eNtshona Koloni ukwenzela izigxeko-ncomo zoluntu; kwaye
- (b) wathunyelwa njengeposi ebhalisiweyo nange-imeyili kubo bonke oomasipala eNtshona Koloni ukuze benze ezabo izigxeko-ncomo.

Nawo la masebe ephondo alandelayo kwaqhagamshelwana nawo:

I-Ofisi kaNondyebo wePhondo

ISEbe leMicimbi yokuSingqongileyo nokuCetywa koPhuhliso

ISEbe loPhuhliso loLuntu

Isebe leMicimbi yeNkcubeko neMidlalo

Imibutho yabantwana

5. IMALI EFUNEKAYO

Iindleko zolawulo eziphathelele ekuzalisekiseni kwalo mthetho wakuba upasisiwe zibonakala ziza kuba ncinane, kwaye ziya kuhlawulwa kulwabiwo-mali olumiyo.

6. UMGANGATHO WOKUSEBENZA KOMTHETHO

INkulumbuso yanelisekile ukuba zonke izinto ezichazwe kule Bhili ziyahambisana nomgangatho wokusebenza komthetho kweli Phondo.

