

PROVINCE OF THE WESTERN CAPE

**WESTERN CAPE
COMMISSIONER FOR
CHILDREN BILL**

(As agreed to by the Standing Committee on the Premier and Constitutional Matters)

(PREMIER)

[B 4B—2018]

PROVINSIE WES-KAAP

**WETSONTWERP OP DIE
WES-KAAPSE
KOMMISSARIS VIR KINDERS**

*(Soos goedgekeur deur die Staande Komitee oor die Premier en Grondwetlike
Aangeleenthede)*

(PREMIER)

[W 4B—2018]

IPHONDO LENTSHONA KOLONI

**UMTHETHO OSAYILWAYO
WOMKHOMISHINALA
WEZABANTWANA
WENTSHONA KOLONI**

*(Njengoko kuvunyelwene yiKomidi eSisigxiria kwiNkulumbuso kunye neMiba
yoMgaqi-siseko)*

(iNKULUMBUSO)

[B 4B—2018]

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BILL

To provide for the appointment of a Commissioner for Children in the province of the Western Cape; and to provide for matters incidental thereto.

WHEREAS there is a need to protect and promote the rights, needs and interests of children in the Province;

AND WHEREAS section 78 of the Constitution of the Western Cape, 1997, establishes the office of a provincial Commissioner for Children and provides that the Commissioner must assist the Western Cape Government in protecting and promoting the interests of children in the Province;

AND WHEREAS further legislation is necessary to provide for certain matters pertaining to that office;

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

CHAPTER 1 DEFINITIONS

Definitions 5

1. In this Act, unless the context indicates otherwise—
 - “**child**” means a person under the age of 18 years;
 - “**Commissioner**” means the Commissioner for Children established by section 78 of the Provincial Constitution;
 - “**Constitution**” means the Constitution of the Republic of South Africa, 1996; 10
 - “**organ of state**” means an organ of state as defined in section 239 of the Constitution;
 - “**Premier**” means the Premier of the Province;
 - “**Province**” means the province of the Western Cape;
 - “**Provincial Constitution**” means the Constitution of the Western Cape, 1997 15
(Act 1 of 1998);
 - “**provincial department**” means a department within the Province listed in Column 1 of Schedule 2 to the Public Service Act, 1994 (Proclamation 103 of 1994), and includes the Department of the Premier;
 - “**Provincial Parliament**” means the parliament of the Province; 20
 - “**standing committee**” means the standing committee of the Provincial Parliament whose assignment is or includes children’s affairs in the Province;
 - “**this Act**” includes any regulations issued in terms thereof.

CHAPTER 2
APPOINTMENT AND OFFICE OF COMMISSIONER

Appointment

2. (1) The Premier must appoint a person as Commissioner for a period of five years, which term is renewable once. 5
- (2) The standing committee must—
- (a) by means of notices in the media, in the official languages of the Province, call for nominations by the public of suitable persons to fill the position of Commissioner;
 - (b) publish in the media a list of the names of all nominations received, in the official languages of the Province, calling for objections from members of the public to any names appearing on the list of nominations; 10
 - (c) consider all nominations and objections received, prepare a shortlist of candidates, and invite every shortlisted person for an interview;
 - (d) forward copies of all the nominations and objections received to the Premier; 15
 - and
 - (e) table its recommendation for the appointment of a Commissioner in the Provincial Parliament for adoption.
- (3) If the Provincial Parliament adopts the recommendation of the standing committee, the Provincial Parliament must submit the recommendation to the Premier. 20
- (4) The Premier must, within 21 days of receiving the recommendation from the Provincial Parliament and after considering the nominations and objections provided by the standing committee—
- (a) appoint the person recommended by the Provincial Parliament as Commissioner; or 25
 - (b) refer the matter back to the Provincial Parliament for reconsideration and provide reasons for his or her decision.

Qualifications for appointment

3. (1) The Commissioner must be a South African citizen who—
- (a) is a fit and proper person; and 30
 - (b) has proven specialised knowledge of, or relevant professional experience or an academic record in, public policy, human rights or issues affecting children.
- (2) The Commissioner may not, after assumption of duties as Commissioner—
- (a) be a member of the national Parliament, a provincial legislature or a municipal council; 35
 - (b) be a member of a national, provincial or municipal public entity or statutory body;
 - (c) be in the service of any organ of state;
 - (d) hold any office in a political party; or 40
 - (e) hold any office that causes a conflict of interest.
- (3) A person may not be nominated for or appointed as the Commissioner if he or she—
- (a) has at any time been convicted of—
 - (i) an offence relating to dishonesty or violence; or 45
 - (ii) a sexual offence as defined in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007);
 - (b) is unsuitable to work with children as contemplated in the Children's Act, 2005 (Act 38 of 2005); or
 - (c) is an unrehabilitated insolvent. 50

Removal and suspension

4. (1) The Commissioner may be removed from office only on—
- (a) the grounds of misconduct, incapacity or incompetence;
 - (b) a finding and recommendation to that effect by the standing committee; and
 - (c) the adoption by the Provincial Parliament of a resolution calling for the Commissioner's removal from office. 55

- (2) The Premier—
- (a) may suspend the Commissioner from office at any time after the start of the proceedings of the standing committee regarding the Commissioner's removal from office; and
 - (b) must remove the Commissioner from office upon adoption by the Provincial Parliament of the resolution in terms of subsection (1)(c) calling for the Commissioner's removal from office. 5

Vacancy

5. (1) The position of Commissioner becomes vacant if—
- (a) the term of office of the Commissioner expires; or 10
 - (b) the Commissioner—
 - (i) dies;
 - (ii) tenders his or her written resignation 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; or 15
 - (iii) is removed from office as contemplated in section 4.
- (2) If the Commissioner is suspended as contemplated in section 4(2)(a) or a vacancy arises as contemplated in subsection (1), the Premier may appoint an acting Commissioner after consultation with the Provincial Parliament, until such time as the suspension is removed or a new Commissioner is appointed as contemplated in section 2(4)(a). 20
- (3) If a vacancy arises as contemplated in subsection (1), the procedure to appoint a Commissioner as contemplated in section 2(2) to (4) must be followed.
- (4) In the circumstances contemplated in subsection (3), the standing committee must call for nominations as contemplated in section 2(2)(a) within 30 days of the vacancy arising. 25

CHAPTER 3

POWERS AND DUTIES OF COMMISSIONER

Principles governing Commissioner's actions

6. In the exercise and performance of his or her powers and duties, the Commissioner must— 30
- (a) act independently, impartially and without fear, favour or prejudice;
 - (b) subject to section 231 of the Constitution, have regard to the principles and rights laid down in international treaties, conventions and agreements affecting children; 35
 - (c) have regard to the Constitution, other national legislation pertaining to children and the Provincial Constitution;
 - (d) strive to promote and protect the rights, needs and interests of children in all areas of society in the Province; and
 - (e) strive to ensure that children in the Province have access to the office of the Commissioner. 40

Monitoring

7. (1) The Commissioner must—
- (a) monitor the impact of services delivered by provincial organs of state on the rights, needs and interests of children; 45
 - (b) monitor the impact of provincial policy and provincial legislation on the rights, needs and interests of children; and
 - (c) establish provincial monitoring systems for the protection and promotion of the rights, needs and interests of children in the Province.
- (2) The monitoring systems contemplated in subsection (1)(c) must— 50
- (a) in particular be aimed at the rights, needs and interests of children with regard to health services, education, welfare services, recreation and amenities, and sport;
 - (b) provide for the collection of appropriate data and necessary information; and
 - (c) identify the patterns, causes and consequences of any negative effect on the rights, needs or interests of children, 55

to assess the promotion and protection of the rights, needs and interests of children by the Western Cape Government.

(3) The Commissioner must, after consultation with the relevant organs of state, establish mechanisms and procedures for the Commissioner to co-ordinate the matters contemplated in subsections (1) and (2). 5

(4) The Commissioner must strive to build co-operative relations with—

- (a) the heads of provincial departments, in order to monitor—
 - (i) the rights, needs and interests of children in the Province;
 - (ii) subject to section 231 of the Constitution, the implementation of international treaties, conventions and agreements affecting children; 10
 - (iii) the rights, needs and interests of children in home care, foster care, temporary safe care, and child and youth care centres;
 - (iv) the rights, needs and interests of children in hospitals, healthcare facilities and home-based community health programmes;
 - (v) the rights, needs and interests of children in schools and other 15 educational facilities;
 - (vi) access by children to recreation and sports facilities; and
 - (vii) provincial projects in aid of children;
- (b) the Regional Commissioner of Correctional Services in the Province, in order to monitor the availability and quality of recreational facilities and health 20 services, social development services and educational services for children in prison and children who are in official custody;
- (c) the Provincial Commissioner of the South African Police Service in the Province, in order to monitor the reported number of crimes committed by or against children to optimise co-operation between the South African Police 25 Service and provincial departments that deal with, affect or render a service to children who come into conflict with the law or against whom a crime has been committed;
- (d) the national department responsible for justice, in order to optimise co-operation between that department and provincial departments that deal 30 with, affect or render a service to—
 - (i) child victims of crime;
 - (ii) the office of the Family Advocate;
 - (iii) Family Courts;
 - (iv) Children's Courts; 35
 - (v) prosecutors dealing with children; and
 - (vi) criminal courts dealing with matters involving children;
- (e) organisations, institutions and agencies that deal with, affect or render a service to children in the Province, in order to monitor practices and promote 40 co-operation between provincial organs of state and such organisations, institutions and agencies on matters regarding the protection of the rights, needs and interests of children; and
- (f) relevant national departments, and municipalities in the Province, where appropriate, in order to monitor legislation, policy, practices and service 45 delivery that affect children.

Investigations

8. (1) The Commissioner may—

- (a) conduct or initiate investigations or enquiries regarding any matter falling within the scope of his or her powers or duties; and
- (b) make recommendations as contemplated in section 12 regarding those 50 investigations or enquiries.

(2) The Commissioner may receive, seek to resolve, and investigate complaints about services provided by provincial organs of state that affect the rights, needs or interests of children in the Province.

(3) Subject to this Act, the Commissioner must determine the procedure to be 55 followed in conducting an investigation or enquiry with due regard to the circumstances of each case.

(4) The Commissioner may carry out an investigation in a matter only if the Commissioner is satisfied on reasonable grounds that the investigation will not duplicate 60 the work of any other organ of state.

(5) The Commissioner may not carry out an investigation into a matter that is the subject of legal proceedings before a court or tribunal.

Research

- 9.** The Commissioner may—
- (a) conduct or initiate research— 5
 - (i) regarding any matter falling within the scope of his or her powers or duties; or
 - (ii) aimed at informing the development of policy or practices that are in the interests of children;
 - (b) facilitate co-operation with the public sector, private sector, civil society and academic institutions when identifying, undertaking and implementing research contemplated in paragraph (a); and 10
 - (c) provide for input from the public sector, private sector, civil society, academic institutions and members of the public, where applicable, when identifying, undertaking and implementing such research. 15

Education

- 10.** The Commissioner may develop and conduct information programmes to educate the public about, and foster public understanding and awareness of—
- (a) this Act;
 - (b) the Constitution, other national legislation pertaining to children and the Provincial Constitution; 20
 - (c) subject to section 231 of the Constitution, relevant international treaties, conventions and agreements affecting children;
 - (d) projects and programmes affecting children in the Province; and
 - (e) any other matter falling within the scope of the Commissioner's powers or duties. 25

Lobbying

- 11.** The Commissioner may—
- (a) lobby members or groups of members of the Provincial Parliament, national Parliament or a municipal council and make recommendations concerning— 30
 - (i) any system of family law;
 - (ii) any system of indigenous law, customs or practices; or
 - (iii) any existing or proposed legislation,
 that affects or is likely to affect the rights, needs or interests of children in the delivery of services by provincial organs of state; 35
 - (b) lobby any organ of state, organisation, institution or agency and make recommendations in respect of any existing or proposed policy or practice that affects or is likely to affect the rights, needs or interests of children;
 - (c) request co-operation and input from the public sector and private sector when lobbying for policy development or legislative review. 40

Advising and making recommendations

- 12.** (1) The Commissioner may advise and make recommendations to—
- (a) any organ of state whose policies, legislation or practices affect or is likely to affect the rights, needs or interests of children in the delivery of services by provincial organs of state; and 45
 - (b) any person or organ of state whose policies and practices pertaining to children have been monitored, investigated or researched by the Commissioner.
- (2) When the Commissioner makes a recommendation to any person or organ of state, that person or organ of state must, within a reasonable time stipulated by the Commissioner, report in writing to the Commissioner on their actions in response to the recommendation. 50

(3) Any person or provincial organ of state who, either wholly or in part, refuses or fails to implement a recommendation made by the Commissioner must, on request by the Commissioner, within a reasonable time stipulated by the Commissioner, furnish the Commissioner with written reasons for such refusal or failure.

Request for matters to be monitored, investigated or researched 5

13. (1) Any person may request the Commissioner to take up a matter for monitoring, investigation or research in terms of the powers conferred and duties imposed on the Commissioner by this Act.

(2) Subsection (1) does not affect the power of the Commissioner in terms of this Act to take up a matter for monitoring, investigation or research on his or her own initiative. 10

(3) A request in terms of subsection (1) 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 determined by the Commissioner.

(4) A request contemplated in subsection (3) must contain—

(a) the name and address of the person requesting or initiating the matter; 15

(b) reasons why the Commissioner should monitor, investigate or research the matter;

(c) a summary of the evidence supporting the belief that the matter should be monitored, investigated or researched, to the extent that such evidence is available; 20

(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

(f) a copy of the document or material referred to in paragraph (e), if available.

(5) The Commissioner may dispense with the requirements contemplated in subsection (4) if the request contemplated in subsection (3) is made by a child. 25

(6) In the circumstances contemplated in subsection (1), if the request is made by a child, the Commissioner must provide for child-friendly procedures.

(7) The decision to monitor, investigate or research a matter is entirely in the discretion of the Commissioner, subject to section 6. 30

Child participation

14. (1) The Commissioner must encourage the involvement of children in the work of the Commissioner.

(2) The Commissioner must take reasonable steps to—

(a) ensure that children are made aware of the powers and duties of the Commissioner; 35

(b) ensure that children are informed of the ways in which they may communicate and obtain a response from the Commissioner; and

(c) consult children and organisations that work with children on the work to be undertaken by the Commissioner. 40

(3) The Commissioner must develop and keep under review a strategy for involving children in the work of the Commissioner in accordance with this section.

Additional powers and duties

15. (1) To enable the Commissioner to exercise and perform the powers and duties contemplated in section 8, the Commissioner may— 45

(a) accompany any member of the South African Police Service when that member is exercising powers of search and seizure in respect of any matter regarding the interests and protection of children;

(b) subpoena any person or give notice to any person to appear before the Commissioner 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; 50

(c) administer an oath or affirmation to any person appearing as a witness before the Commissioner.

(2) The subpoena or notice contemplated in subsection (1)(b) must be signed and issued by the Commissioner, and served by the Commissioner or any other person 55

authorised by the Commissioner to do so, in the same manner as a subpoena or notice, as the case may be, for a witness in proceedings of the High Court.

(3) A person appearing before the Commissioner may be assisted by a legal representative at his or her own cost.

(4) Any evidence or answer given or statement made by a person appearing before the Commissioner pursuant to a subpoena or notice contemplated in subsection (1)(b) may not be used against that person in any court, except in criminal proceedings where that person is tried for perjury or an offence contemplated in section 26(c)(iv) or (v).

Reporting

16. (1) The Commissioner must— 10

(a) report annually to the Provincial Parliament—

(i) in accordance with section 79(2)(a) of the Provincial Constitution; and

(ii) on the activities of the office of the Commissioner, the performance of its functions and the achievement of its objectives; and 15

(b) disseminate and report on the information derived from investigations, monitoring and research to the Premier and other relevant provincial organs of state in a way that, in the opinion of the Commissioner, would assist the Western Cape Government to protect and promote the rights, needs and interests of children. 20

(2) The Commissioner may submit a special report to the Provincial Parliament at any other time on any matter regarding the implementation of this Act that, in the opinion of the Commissioner, should not be deferred until the submission of the annual report.

Functioning of Commissioner

17. (1) Other provincial organs of state must assist and protect the Commissioner to ensure the independence, impartiality, dignity and effectiveness of the office of the Commissioner. 25

(2) No person or organ of state may interfere with or obstruct the functioning of the Commissioner or his or her staff.

Access to information and institutions 30

18. (1) Subject to the Promotion of Access to Information Act, 2000 (Act 2 of 2000), and the Protection of Personal Information Act, 2013 (Act 4 of 2013), all persons or organs of state that deal with, affect or render a service to children must, at the Commissioner's request, provide information regarding any matter falling within the scope of the Commissioner's powers or duties. 35

(2) All organs of state that deal with, affect or render a service to children must allow the Commissioner access to their premises for the purposes of carrying out any function of the Commissioner in terms of this Act.

(3) If the access contemplated in subsection (2) is to school premises, the Commissioner must exercise his or her powers and perform his or her duties in a manner that is the least disruptive to school activities and mindful of a child's right to education. 40

CHAPTER 4

ADMINISTRATION OF OFFICE OF COMMISSIONER

Staff

19. (1) The Director-General of the Province, or another official acting under delegated authority, must appoint, in terms of the Public Service Act, 1994, the staff members required for the exercise or performance of the powers and duties of the Commissioner. 45

(2) The staff members contemplated in subsection (1) must in the performance of their functions apply the principles contemplated in section 6. 50

Funding

20. The Provincial Parliament must appropriate funds within the Province's resources to enable the Commissioner to exercise his or her powers and perform his or her duties in terms of this Act.

Remuneration and conditions of appointment of Commissioner 5

21. The Premier, with the concurrence of the Provincial Minister responsible for finance, must determine the remuneration and other terms and conditions of appointment of the Commissioner, taking into account the available resources of the Province.

Donations 10

22. The office of the Commissioner may receive donations, subject to applicable financial prescripts.

CHAPTER 5**GENERAL PROVISIONS****Liability** 15

23. The Commissioner is not liable in respect of any reasonable action performed in good faith under any provision of this Act or the Provincial Constitution.

Delegation of powers and assignment of duties

24. (1) The Commissioner may delegate any of his or her powers or assign any of his or her duties in terms of this Act to a member of his or her staff. 20
- (2) A delegation or assignment contemplated in subsection (1)—
- (a) must be in writing;
 - (b) may be made subject to conditions;
 - (c) may be withdrawn or amended in writing by the Commissioner;
 - (d) does not prevent the Commissioner from exercising that power or performing that duty; and 25
 - (e) does not divest the Commissioner of the responsibility regarding the exercise of the delegated power or the performance of the assigned duty.

Regulations

25. The Premier, after consultation with the standing committee, may make regulations regarding any matter that he or she considers necessary in order to achieve the objectives of this Act. 30

Offences and penalties

26. Any person who—
- (a) fails to report in writing to the Commissioner on his or her actions in response to a recommendation by the Commissioner, as contemplated in section 12(2); 35
 - (b) fails to furnish the Commissioner with written reasons for his or her refusal or failure to implement the Commissioner's recommendations, as contemplated in section 12(3);
 - (c) has been duly subpoenaed or given notice in terms of section 15(1)(b) and who— 40
 - (i) fails to appear before the Commissioner at the time and place stipulated in the subpoena or notice;
 - (ii) fails or refuses to produce any book, report, document or object specified in the subpoena or notice; 45
 - (iii) when called upon to do so under section 15(1)(c), refuses to be sworn in or to make an affirmation;
 - (iv) fails to answer fully and satisfactorily all questions put to him or her by the Commissioner; or

- (v) gives evidence or provides information that is false or misleading knowing that it is false or misleading;
- (d) contravenes section 17(2); or
- (e) fails or refuses to furnish information or an explanation regarding a request for information by the Commissioner, as contemplated in section 18(1), or furnishes information that is false and misleading knowing that it is false and misleading, 5

is guilty of an offence and liable on conviction to a fine or imprisonment not exceeding twelve months.

Short title and commencement

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27. This Act is called the Western Cape Commissioner for Children Act, 2019, and comes into operation on a date set by the Premier by proclamation in the *Provincial Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE WESTERN CAPE
COMMISSIONER FOR CHILDREN BILL**

1. OBJECTS OF BILL

The Constitution of the Western Cape, 1997 (Act 1 of 1998) (the Provincial Constitution), provides for the establishment of a Commissioner for Children (the Commissioner) and envisages the passing of provincial legislation to regulate the powers of the Commissioner. The Western Cape Commissioner for Children Bill, 2018 (the Bill), provides for the appointment process of the Commissioner in the Province of the Western Cape (the Province). Furthermore, the Bill provides for the powers, functions and duties of the Commissioner enabling him or her to meet the constitutional mandate provided for in section 79 of the Provincial Constitution to monitor, investigate, research, educate, lobby, advise and report on matters pertaining to children. The Bill also provides for the administration of the office of the Commissioner.

2. BACKGROUND

A Commissioner for Children is established by section 78(1) of the Provincial Constitution. The Commissioner must assist the Western Cape Government in protecting and promoting the interests of children in the Western Cape, in particular as regards—

- (a) health services;
- (b) education;
- (c) welfare services;
- (d) recreation and amenities; and
- (e) sport.

3. CONTENTS OF BILL

- 3.1 **Clause 1** provides for the definition section of the Bill.
- 3.2 **Clause 2** provides for the appointment of the Commissioner for a five-year term, renewable once. The appointment is made on recommendation by the Provincial Parliament.
- 3.3 **Clause 3** provides for the qualifications for appointment of the Commissioner.
- 3.4 **Clause 4** provides for the removal and suspension of the Commissioner upon recommendation by the Provincial Parliament.
- 3.5 **Clause 5** provides for the filling of a vacancy in the office of the Commissioner. The Premier may appoint an acting Commissioner after consultation with the Provincial Parliament.
- 3.6 **Clause 6** provides for the principles that govern the Commissioner in the exercise and performance of his or her powers and functions.
- 3.7 **Clause 7** provides for the monitoring function of the Commissioner. The Commissioner must establish monitoring systems to monitor the impact of service delivery, provincial policy and provincial legislation on the rights, needs and interests of children. Furthermore, the Commissioner is required to build co-operative relations with the heads of the provincial departments as well as with the Regional Commissioner of Correctional Services in the Province, the Provincial Commissioner of the South African Police Service in the Province, the Department of Justice and Constitutional Development, organisations, institutions and agencies that render a service to children, and relevant national departments and municipalities in the Province regarding legislation, policy, practices and service delivery that affect children, in order to monitor the rights, needs and interests of children.

- 3.8 **Clause 8** provides for the Commissioner to conduct or initiate investigations or enquiries with regard to any matter falling within the scope of his or her functions, and to make recommendations pursuant to the investigations or enquiries. The Commissioner may receive, seek to resolve and investigate complaints about services provided by provincial organs of state that affect the rights, needs or interests of children. The procedure to be followed in conducting an investigation or enquiry must be determined by the Commissioner.
- 3.9 **Clause 9** provides for the Commissioner to conduct and initiate research with regard to any matter falling within the scope of his or her functions and to facilitate co-operation with the public sector, private sector, civil society and academic institutions with regard to research.
- 3.10 **Clause 10** provides for the Commissioner to educate the public about various legislative and other instruments that promote the rights, needs and interests of children.
- 3.11 **Clause 11** provides for the Commissioner to lobby the Provincial Parliament, national Parliament or a municipal council and make recommendations concerning existing or proposed legislation that affects or is likely to affect the rights, needs or interests of children. Furthermore, the Commissioner may lobby any organ of state, organisation, institution or agency and make recommendations concerning existing or proposed policy or practices that affect or are likely to affect the rights, needs or interests of children.
- 3.12 **Clause 12** provides for the Commissioner to advise and make recommendations to any person or organ of state in the Province whose policies and practices relating to children have been monitored, investigated or researched by the Commissioner. When the Commissioner makes a recommendation to any person or organ of state, that person or organ of state must report in writing to the Commissioner on their actions in response to the recommendation.
- 3.13 **Clause 13** provides for the process that must be followed when a request is made for a matter to be monitored, investigated or researched by the Commissioner.
- 3.14 **Clause 14** provides for the involvement of children in the work of the Commissioner.
- 3.15 **Clause 15** provides for additional powers and duties of the Commissioner. The Commissioner may accompany the South African Police Service when the latter exercises powers of search and seizure in respect of any matter relating to the interests and protection of children, subpoena any person or give notice to any person to appear before him or her and administer an oath or affirmation to any person appearing as a witness before the Commissioner.
- 3.16 **Clause 16** provides for the duties of the Commissioner to report annually to the Provincial Parliament, to report on the information derived from investigations, monitoring and research to the Premier and relevant provincial organs of state, and to submit special reports to the Provincial Parliament at any other time.
- 3.17 **Clause 17** provides that provincial organs of state must assist and protect the Commissioner and that no person or organ of state may interfere with or obstruct the functioning of the Commissioner.
- 3.18 **Clause 18** provides that all persons, or organs of state that render a service to children, must, at the Commissioner's request, provide any information to the Commissioner that falls within the scope of the Commissioner's functions. All organs of state that render a service to children must allow the Commissioner

access to their premises for the purpose of carrying out a function of the Commissioner.

- 3.19 **Clause 19** provides that the administrative functions of the office of the Commissioner are performed by staff members appointed by the Director-General of the Province in terms of the Public Service Act, 1994 (Proclamation 103 of 1994).
- 3.20 **Clause 20** provides that the Provincial Parliament must appropriate funds to enable the Commissioner to perform his or her functions.
- 3.21 **Clause 21** provides for the remuneration and conditions of appointment of the Commissioner.
- 3.22 **Clause 22** provides that the office of the Commissioner may receive donations subject to applicable financial prescripts.
- 3.23 **Clause 23** provides that the Commissioner is not liable in respect of any reasonable action performed in good faith under the provisions of the Act or the Provincial Constitution.
- 3.24 **Clause 24** provides for the delegation of powers and assignment of duties by the Commissioner.
- 3.25 **Clause 25** provides for the Premier to make any regulations in order to achieve the objectives of the Act.
- 3.26 **Clause 26** provides for offences and penalties for the contravention of various provisions of the Act.
- 3.27 **Clause 27** provides for the short title of the Act.

4. CONSULTATION

In the compilation of this Bill, the following role players were consulted:

- (a) Department of the Premier: Legal Services; and
- (b) Department of the Premier: Policy and Strategy.

The Bill was also published in the *Provincial Gazette* for public comment.

5. PERSONNEL IMPLICATIONS

The office of the Commissioner for Children will be located in the Department of the Premier. The Commissioner will require a support structure to carry out his or her functions. An organisation-development process will determine the support structure. The staff will be appointed in terms of the Public Service Act, 1994, by the Director-General or another official acting under delegated authority.

6. FINANCIAL IMPLICATIONS

Expenditure of the office of the Commissioner for Children will be funded as part of the budgetary processes of the Western Cape Government. The office of the Commissioner for Children is permitted to receive donations.

7. LEGISLATIVE COMPETENCE

The Premier of the Western Cape is satisfied that all the provisions in the Bill fall within the Province's legislative competence.

WETSONTWERP

Om voorsiening te maak vir die aanstelling van 'n Kommissaris vir Kinders in die provinsie van die Wes-Kaap; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

NADEMAAL daar 'n behoefte is om die regte, behoeftes en belange van kinders in die Provinsie te beskerm en te bevorder;

EN NADEMAAL artikel 78 van die Grondwet van die Wes-Kaap, 1997, die amp van 'n provinsiale Kommissaris vir Kinders instel en voorsiening maak dat die Kommissaris die Wes-Kaapse Regering moet bystaan by die beskerming en bevordering van die belange van kinders in die Provinsie;

EN NADEMAAL verdere wetgewing benodig word om vir sekere aangeleenthede rakende daardie amp voorsiening te maak;

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

HOOFSTUK 1

WOORDOMSKRYWING

Woordomskrywing

5

- In hierdie Wet, tensy dit uit die samehang anders blyk, beteken—
 - “**Grondwet**” die Grondwet van die Republiek van Suid-Afrika, 1996;
 - “**hierdie Wet**” ook enige regulasies uitgereik ingevolge daarvan;
 - “**kind**” iemand onder die ouderdom van 18 jaar;
 - “**Kommissaris**” die Kommissaris vir Kinders ingestel by artikel 78 van die 10
Provinsiale Grondwet;
 - “**Premier**” die Premier van die Provinsie;
 - “**provinsiale departement**” 'n departement van die Provinsie soos gelys in 15
Kolom 1 van Bylae 2 by die Staatsdienswet, 1994 (Proklamasie 103 van 1994), en ook die Departement van die Premier;
 - “**Provinsiale Grondwet**” die Grondwet van die Wes-Kaap, 1997 (Wet 1 van 1998);
 - “**Provinsiale Parlement**” die parlement van die Provinsie;
 - “**Provinsie**” die provinsie van die Wes-Kaap;
 - “**staande komitee**” die staande komitee van die Provinsiale Parlement wie se 20
opdrag kinderaangeleenthede in die Provinsie insluit;
 - “**staatsorgaan**” 'n staatsorgaan soos omskryf in artikel 239 van die Grondwet.

HOOFSTUK 2

AANSTELLING EN AMP VAN KOMMISSARIS

Aanstelling

2. (1) Die Premier moet 'n persoon as Kommissaris aanstel vir 'n tydperk van vyf jaar, welke termyn eenmalig hernubaar is. 5
- (2) Die staande komitee moet—
- (a) deur middel van kennisgewings in die media, in die amptelike tale van die Provinsie, benoemings deur die publiek aanvra van geskikte persone om die betrekking van Kommissaris te vul;
 - (b) 'n lys van die name van alle benoemings ontvang in die media, in die amptelike tale van die Provinsie, publiseer, waarby besware van lede van die publiek aangevra word teen enige name wat op die lys benoemings verskyn; 10
 - (c) alle benoemings en besware ontvang, oorweeg, 'n kortlys van kandidate opstel en elke persoon op die kortlys vir 'n onderhoud nooi;
 - (d) afskrifte van alle benoemings en besware ontvang na die Premier aanstuur; en 15
 - (e) sy aanbeveling vir die aanstelling van 'n Kommissaris in die Provinsiale Parlement vir aanneming ter tafel lê.
- (3) Indien die Provinsiale Parlement die aanbeveling van die staande komitee aanneem, moet die Provinsiale Parlement die aanbeveling aan die Premier voorlê.
- (4) Die Premier moet, binne 21 dae vandat hy of sy die aanbeveling van die Provinsiale Parlement ontvang het en ná oorweging van die benoemings en besware wat die staande komitee verskaf het— 20
- (a) die persoon wat die Provinsiale Parlement aanbeveel het, as Kommissaris aanstel; of
 - (b) die aangeleentheid vir heroorweging na die Provinsiale Parlement terugverwys en redes vir sy of haar besluit verskaf. 25

Bevoegdheid vir aanstelling

3. (1) Die Kommissaris moet 'n Suid-Afrikaanse burger wees wat—
- (a) 'n geskikte en gepaste persoon is; en
 - (b) beskik oor bewese gespesialiseerde kennis van, of toepaslike professionele ondervinding of 'n akademiese rekord in, openbare beleid, menseregte en kwessies wat kinders raak. 30
- (2) Die Kommissaris mag nie, ná diensaanvaarding as Kommissaris—
- (a) 'n lid van die nasionale Parlement, 'n provinsiale wetgewer of 'n munisipale raad wees nie; 35
 - (b) 'n lid van 'n nasionale, provinsiale of munisipale openbare entiteit of statutêre liggaam wees nie;
 - (c) in diens van enige staatsorgaan wees nie;
 - (d) enige amp in 'n politieke party beklee nie; of
 - (e) enige amp beklee wat 'n belangebotsing veroorsaak nie. 40
- (3) 'n Persoon mag nie benoem word vir of aangestel word as die Kommissaris nie indien hy of sy—
- (a) te eniger tyd skuldig bevind is aan—
 - (i) 'n misdryf wat met oneerlikheid of geweld verband hou; of
 - (ii) 'n seksuele misdryf soos omskryf in artikel 1 van die Wysigingswet op die Strafwet (Seksuele Misdrywe en Verwante Aangeleenthede), 2007 (Wet 32 van 2007); 45
 - (b) ongeskik is om met kinders te werk soos beoog in die "Children's Act, 2005" (Wet 38 van 2005); of
 - (c) 'n ongerehabiliteerde insolvent is. 50

Verwydering en skorsing

4. (1) Die Kommissaris kan van sy of haar amp onthef word slegs—
- (a) op grond van wangedrag, onbevoegdheid of onbekwaamheid;
 - (b) by 'n bevinding en aanbeveling te dien effekte deur die staande komitee; en
 - (c) by aanneming deur die Provinsiale Parlement van 'n besluit wat die ontheffing van die Kommissaris van sy of haar amp eis. 55

- (2) Die Premier—
- (a) kan die Kommissaris uit sy of haar amp skors te eniger tyd ná die aanvang van die verrigtinge van die staande komitee betreffende die onthef van die Kommissaris van sy of haar amp; en
 - (b) moet die Kommissaris van sy of haar amp onthef by aanneming deur die Provinsiale Parlement van die besluit ingevolge subartikel (1)(c) wat die onthef van die Kommissaris van sy of haar amp eis. 5

Vakature

5. (1) Die amp van Kommissaris word vakant indien—
- (a) die ampstermyn van die Kommissaris verstryk; of 10
 - (b) die Kommissaris—
 - (i) sterf;
 - (ii) sy of haar skriftelike bedanking ten minste drie kalendermaande voor die datum waarop die Kommissaris die amp wil ontruim, indien, tensy die Premier in 'n bepaalde geval 'n korter tydperk toelaat; of 15
 - (iii) soos beoog in artikel 4 van die amp onthef word.
- (2) Indien die Kommissaris soos beoog in artikel 4(2)(a) geskors is of 'n vakature soos beoog in subartikel (1) ontstaan, kan die Premier ná oorleg met die Provinsiale Parlement, totdat die skorsing gelig word of 'n nuwe Kommissaris soos beoog in artikel 2(4)(a) aangestel word, 'n waarnemende Kommissaris aanstel. 20
- (3) Indien 'n vakature soos beoog in subartikel (1) ontstaan, moet die prosedure om 'n Kommissaris aan te stel soos beoog in artikel 2(2) tot (4) gevolg word.
- (4) Onder die omstandighede beoog in subartikel (3) moet die staande komitee, binne 30 dae vandat die vakature ontstaan het, soos beoog in artikel 2(2)(a) benoemings aanvra. 25

HOOFSTUK 3

BEVOEGDHEDE EN PLIGTE VAN KOMMISSARIS

Beginsels wat optrede van Kommissaris lei

6. By die uitoefening en verrigting van sy of haar bevoegdheede en pligte moet die Kommissaris— 30
- (a) onafhanklik, onpartydig en sonder vrees, begunstiging of vooroordeel handel;
 - (b) behoudens artikel 231 van die Grondwet, die beginsels en regte wat in internasionale verdrae, konvensies en ooreenkomste voorgeskryf word en kinders raak, in ag neem;
 - (c) die Grondwet, ander nasionale wetgewing betreffende kinders en die Provinsiale Grondwet in ag neem; 35
 - (d) streef om die regte, behoeftes en belange van kinders in alle gebiede van die samelewing in die Provinsie te bevorder en te beskerm; en
 - (e) streef om te verseker dat kinders in die Provinsie toegang tot die kantoor van die Kommissaris het. 40

Monitering

7. (1) Die Kommissaris moet—
- (a) die impak van dienste gelewer deur provinsiale staatsorgane op die regte, behoeftes en belange van kinders monitor;
 - (b) die impak van provinsiale beleid en provinsiale wetgewing op die regte, behoeftes en belange van kinders monitor; en 45
 - (c) provinsiale moniteringstelsels instel vir die beskerming en bevordering van die regte, behoeftes en belange van kinders in die Provinsie.
- (2) Die moniteringstelsels beoog in subartikel (1)(c) moet—
- (a) in die besonder gerig wees op die regte, behoeftes en belange van kinders met betrekking tot gesondheidsdienste, onderwys, welsynsdienste, ontspanning en geriewe, en sport; 50
 - (b) voorsiening maak vir die insameling van gepaste data en nodige inligting; en
 - (c) die patrone, oorsake en gevolge van enige negatiewe uitwerking op die regte, behoeftes of belange van kinders identifiseer, 55

ten einde die bevordering en beskerming deur die Wes-Kaapse Regering van die regte, behoeftes en belange van kinders te evalueer.

(3) Die Kommissaris moet, ná oorleg met tersaaklike staatsorgane, meganismes en prosedures instel vir die Kommissaris om die aangeleenthede beoog in subartikels (1) en (2) te koördineer. 5

(4) Die Kommissaris moet hom of haar beywer om samewerkende betrekkinge te bou met—

- (a) die hoofde van provinsiale departemente, om die volgende te monitor:
 - (i) die regte, behoeftes en belange van kinders in die Provinsie;
 - (ii) behoudens artikel 231 van die Grondwet, die uitvoering van internasionale verdrae, konvensies en ooreenkomste wat kinders raak;
 - (iii) die regte, behoeftes en belange van kinders in tuissorg, voogsorg, tydelike veilige sorg en kinder- en jeugsorgsentrusms;
 - (iv) die regte, behoeftes en belange van kinders in hospitale, gesondheidsorgfasiliteite en tuisgebaseerde gemeenskapsgesondheidsprogramme; 15
 - (v) die regte, behoeftes en belange van kinders in skole en ander onderwysfasiliteite;
 - (vi) toegang aan kinders tot ontspanning en sportgeriewe; en
 - (vii) provinsiale projekte ten bate van kinders; 20
- (b) die Streekskommissaris van Korrektiewe Dienste in die Provinsie, om die beskikbaarheid en gehalte van ontspanningsgeriewe en gesondheids-, maatskaplikeontwikkelings- en onderwysdienste vir kinders in die gevangenis en kinders in amptelike aanhouding te monitor;
- (c) die Provinsiale Kommissaris van die Suid-Afrikaanse Polisiediens in die Provinsie, om die aangemelde getal misdade wat deur of teen kinders gepleeg is, te monitor ten einde die samewerking te optimeer tussen die Suid-Afrikaanse Polisiediens en provinsiale departemente wat werk met kinders wat bots met die gereg of teen wie 'n misdaad gepleeg is, of wat 'n uitwerking het op sodanige kinders of wat 'n diens aan sodanige kinders lewer; 25 30
- (d) die nasionale departement verantwoordelik vir justisie, om die samewerking te optimeer tussen daardie departement en provinsiale departemente wat werk met, 'n uitwerking het op of 'n diens lewer aan—
 - (i) kinderslagoffers van misdaad;
 - (ii) die kantoor van die Gesinsadvokaat; 35
 - (iii) Gesinshowe;
 - (iv) Kinderhowe;
 - (v) aanklaers wat met kinders werk; en
 - (vi) strafhowe wat sake hanteer waarby kinders betrokke is;
- (e) organisasies, instellings en agentskappe wat werk met, 'n uitwerking het op of 'n diens lewer aan kinders in die Provinsie, om praktyk te monitor en samewerking tussen provinsiale staatsorgane en sodanige organisasies, instellings en agentskappe te bevorder ten opsigte van aangeleenthede wat met die beskerming van die regte, behoeftes en belange van kinders verband hou; en 45
- (f) tersaaklike nasionale departemente en munisipaliteite in die Provinsie, waar toepaslik, om wetgewing, beleid, praktyk en dienslewering wat kinders raak, te monitor.

Ondersoeke

8. (1) Die Kommissaris kan— 50

- (a) ten opsigte van enige aangeleentheid wat binne die bestek van sy of haar bevoegdhede of pligte val, ondersoeke doen of begin of navraag doen; en
- (b) aanbevelings soos beoog in artikel 12 betreffende daardie ondersoeke of navrae maak.

(2) Die Kommissaris kan klagtes oor dienste wat deur provinsiale staatsorgane gelewer is wat die regte, behoeftes of belange van kinders in die Provinsie raak, ontvang, probeer oplos en ondersoek. 55

(3) Behoudens hierdie Wet bepaal die Kommissaris, met behoorlike inagneming van die omstandighede van elke geval, die prosedure wat gevolg moet word wanneer ondersoek of navraag gedoen word. 60

(4) Die Kommissaris kan 'n ondersoek na 'n aangeleentheid uitvoer slegs indien die Kommissaris op redelike gronde oortuig is dat die ondersoek nie die werk van enige ander staatsorgaan sal dupliseer nie.

(5) Die Kommissaris mag nie 'n ondersoek uitvoer oor enige aangeleentheid wat die onderwerp van regsverrigtinge voor 'n hof of tribunaal is nie. 5

Navorsing

9. Die Kommissaris kan—

- (a) navorsing doen of inisieer—
 - (i) ten opsigte van enige aangeleentheid wat binne die bestek van sy of haar bevoegdhede of pligte val; of 10
 - (ii) wat ten doel het om ten grondslag te lê aan die ontwikkeling van beleid of praktyk wat in die belang van kinders is;
- (b) by die identifisering, onderneming en uitvoering van navorsing beoog in paragraaf (a), samewerking met die openbare en privaat sektor, burgerlike samelewing en akademiese instellings vergemaklik; en 15
- (c) by die identifisering, onderneming en uitvoering van sodanige navorsing, voorsiening maak vir insette van die openbare en privaat sektor, burgerlike samelewing, akademiese instellings en lede van die publiek, waar van toepassing.

Opvoeding 20

10. Die Kommissaris kan inligtingsprogramme ontwikkel en hou om die publiek op te voed en begrip en bewustheid by die publiek te kweek van—

- (a) hierdie Wet;
- (b) die Grondwet, ander nasionale wetgewing betreffende kinders en die Provinsiale Grondwet; 25
- (c) behoudens artikel 231 van die Grondwet, tersaaklike internasionale verdrae, konvensies en ooreenkomste wat kinders raak;
- (d) projekte en programme wat kinders in die Provinsie raak; en
- (e) enige ander aangeleentheid wat binne die bestek van die Kommissaris se bevoegdhede of pligte val. 30

Steunwerwing

11. Die Kommissaris kan—

- (a) steun by lede of groepe lede van die Provinsiale Parlement, nasionale Parlement of 'n munisipale raad werf en aanbevelings maak betreffende— 35
 - (i) enige stelsel van gesinsreg;
 - (ii) enige stelsel van inheemse reg, gebruike of praktyk; of
 - (iii) enige bestaande of voorgestelde wetgewing, wat by die lewering van dienste deur provinsiale staatsorgane die regte, behoeftes of belange van kinders raak of waarskynlik sal raak;
- (b) steun by enige staatsorgaan, organisasie, instelling of agentskap werf en aanbevelings maak ten opsigte van enige bestaande of voorgestelde beleid of praktyk wat die regte, behoeftes of belange van kinders raak of waarskynlik sal raak; 40
- (c) samewerking en insette van die openbare en privaat sektor aanvra wanneer steun vir beleidsontwikkeling of die hersiening van wetgewing gewerf word. 45

Raad gee en aanbevelings maak

12. (1) Die Kommissaris kan raad gee en aanbevelings maak aan—

- (a) enige staatsorgaan wie se beleid, wetgewing of praktyk by die lewering van dienste deur provinsiale staatsorgane die regte, behoeftes of belange van kinders raak of waarskynlik sal raak; en 50
- (b) enige persoon of staatsorgaan wie se beleid en praktyk ten opsigte van kinders deur die Kommissaris gemonitor, ondersoek of nagevors is.

(2) Wanneer die Kommissaris aan enige persoon of staatsorgaan 'n aanbeveling maak, moet daardie persoon of staatsorgaan, binne 'n redelike tydperk vermeld deur die Kommissaris, skriftelik aan die Kommissaris verslag doen van sy optrede in reaksie op die aanbeveling.

(3) Enige persoon of provinsiale staatsorgaan wat, hetsy in die geheel of gedeeltelik, weier of versuim om 'n aanbeveling gemaak deur die Kommissaris uit te voer, moet, op versoek van die Kommissaris, binne 'n redelike tydperk vermeld deur die Kommissaris, skriftelike redes vir sodanige weiering of versuim aan die Kommissaris verskaf. 5

Versoeke dat aangeleenthede gemonitor, ondersoek of nagevors word

13. (1) Enigiemand kan die Kommissaris versoek om 'n aangeleentheid vir monitering, ondersoek of navorsing op te neem ingevolge die bevoegdhede en pligte aan die Kommissaris verleen en opgelê by hierdie Wet. 10

(2) Subartikel (1) raak nie die bevoegdheid van die Kommissaris ingevolge hierdie Wet om uit eie beweging 'n aangeleentheid vir monitering, ondersoek of navorsing op te neem nie. 15

(3) 'n Versoek ingevolge subartikel (1) dat 'n aangeleentheid vir monitering, ondersoek of navorsing deur die Kommissaris opgeneem word, moet, so ver as moontlik, op skrif en in die formaat bepaal deur die Kommissaris wees.

(4) 'n Versoek beoog in subartikel (3) moet die volgende bevat:

(a) die naam en adres van die persoon wat die aangeleentheid versoek of aanvoer; 20

(b) redes waarom die Kommissaris die aangeleentheid behoort te monitor, ondersoek of na te vors;

(c) 'n samevatting van die bewys ter staving van die opvatting dat die aangeleentheid gemonitor, ondersoek of nagevors behoort te word, in die mate waarin sodanige bewys beskikbaar is; 25

(d) die name en adresse van persone of staatsorgane wat vermoedelik betrokke is, in die mate waarin sodanige inligting beskikbaar is;

(e) 'n beskrywing van enige dokument of materiaal wat oorweeg behoort te word; en

(f) 'n afskrif van die dokument of materiaal bedoel in paragraaf (e), indien 30 beskikbaar.

(5) Die Kommissaris kan van die vereistes beoog in subartikel (4) afsien indien die versoek beoog in subartikel (3) deur 'n kind gemaak word.

(6) Onder die omstandighede beoog in subartikel (1), indien die versoek deur 'n kind gemaak word, moet die Kommissaris voorsiening maak vir kindervriendelike 35 prosedures.

(7) Die besluit om 'n aangeleentheid te monitor, te ondersoek of na te vors berus volkome by die Kommissaris, behoudens artikel 6.

Kinderdeelname

14. (1) Die Kommissaris moet die betrokkenheid van kinders by die werk van die Kommissaris aanmoedig. 40

(2) Die Kommissaris moet redelike stappe doen om—

(a) toe te sien dat kinders bewus gemaak word van die bevoegdhede en pligte van die Kommissaris;

(b) toe te sien dat kinders ingelig word van die wyses waarop hulle met die Kommissaris kan kommunikeer en 'n antwoord van die Kommissaris kan kry; en 45

(c) kinders en organisasies wat met kinders werk, raadpleeg oor die werk wat die Kommissaris opneem.

(3) Die Kommissaris moet ooreenkomstig hierdie artikel 'n strategie ontwikkel en 50 onder hersiening hou om kinders by die werk van die Kommissaris te betrek.

Bykomende bevoegdhede en pligte

15. (1) Ten einde die Kommissaris in staat te stel om sy of haar bevoegdhede en pligte beoog in artikel 8 uit te oefen en te verrig, kan die Kommissaris—

(a) enige lid van die Suid-Afrikaanse Polisiediens vergesel wanneer daardie lid 55 bevoegdhede van deursoeking en beslaglegging uitoefen ten opsigte van

enige aangeleentheid wat met die belange en beskerming van kinders verband hou;

- (b) enige persoon as getuie dagvaar of kennis aan enige persoon gee om voor die Kommissaris te verskyn om te getuig, of om enige boek, verslag, dokument of voorwerp in sy of haar besit of onder sy of haar beheer te verskaf, op die tyd en plek vermeld in die dagvaarding of kennisgewing; 5
- (c) 'n eed of plegtige verklaring op enige persoon wat as 'n getuie voor die Kommissaris verskyn, oplê.

(2) Die dagvaarding of kennisgewing beoog in subartikel (1)(b) moet onderteken en uitgereik word deur die Kommissaris, en deur die Kommissaris of enige ander persoon wat deur die Kommissaris gemagtig is om dit te doen, beteken word, op dieselfde wyse as 'n dagvaarding om te getuig of kennisgewing, na gelang van die geval, vir 'n getuie by verrigtinge van die Hooggeregshof. 10

(3) 'n Persoon wat voor die Kommissaris verskyn, kan op sy of haar eie onkoste bygestaan word deur 'n regsvertegenwoordiger. 15

(4) Enige getuienis of antwoord gegee of verklaring afgelê deur 'n persoon wat voor die Kommissaris verskyn na aanleiding van 'n dagvaarding of kennisgewing beoog in subartikel (1)(b), mag nie teen daardie persoon in enige hof gebruik word nie, behalwe in strafregtelike verrigtinge waar daardie persoon vir meened of 'n misdryf beoog in artikel 26(c)(iv) of (v) verhoor word. 20

Verslagdoening

16. (1) Die Kommissaris moet—

- (a) jaarliks aan die Provinsiale Parlement verslag doen—
- (i) ooreenkomstig artikel 79(2)(a) van die Provinsiale Grondwet; en
 - (ii) oor die aktiwiteite, verrigting van die werksaamhede en bereiking van die doelwitte van die kantoor van die Kommissaris; en 25
- (b) aan die Premier en ander tersaaklike staatsorgane inligting afkomstig van ondersoeke, monitering en navorsing versprei en daarvoor verslag doen op 'n wyse wat, na die mening van die Kommissaris, die Wes-Kaapse Regering sal bystaan in die beskerming en bevordering van die regte, behoeftes en belange van kinders. 30

(2) Die Kommissaris kan op enige ander tyd 'n spesiale verslag aan die Provinsiale Parlement voorlê oor enige aangeleentheid wat met die uitvoering van hierdie Wet verband hou wat, na die mening van die Kommissaris, nie tot die voorlegging van die jaarverslag uitgestel behoort te word nie. 35

Werking van Kommissaris

17. (1) Ander provinsiale staatsorgane moet die Kommissaris bystaan en beskerm om die onafhanklikheid, onpartydigheid, waardigheid en doeltreffendheid van die kantoor van die Kommissaris te verseker.

(2) Geen persoon of staatsorgaan mag by die werking van die Kommissaris of sy of haar personeel inmeng of dit verhinder nie. 40

Toegang tot inligting en instellings

18. (1) Behoudens die Wet op Bevordering van Toegang tot Inligting, 2000 (Wet 2 van 2000), en die Wet op Beskerming van Persoonlike Inligting, 2013 (Wet 4 van 2013), moet alle persone of staatsorgane wat werk met of 'n diens lewer aan kinders of wat kinders raak, op versoek van die Kommissaris, inligting verstrek ten opsigte van enige aangeleentheid wat binne die bestek van die Kommissaris se bevoegdhede of pligte val. 45

(2) Alle staatsorgane wat werk met of 'n diens lewer aan kinders of wat kinders raak, moet die Kommissaris toegang gee tot hul perseel vir die doel om enige werksaamheid van die Kommissaris ingevolge hierdie Wet uit te voer. 50

(3) Indien die toegang beoog in subartikel (2) tot 'n skoolperseel is, moet die Kommissaris sy of haar bevoegdhede uitoefen en sy of haar pligte verrig op 'n wyse wat skoolaktiwiteite die minste ontwrig en die reg van 'n kind tot onderwys in ag neem.

HOOFSTUK 4

ADMINISTRASIE VAN KANTOOR VAN KOMMISSARIS

Personeel

19. (1) Die Direkteur-generaal van die Provinsie, of 'n ander beampte wat kragtens gedelegeerde bevoegdheid handel, moet ingevolge die Staatsdienswet, 1994, die personeellede aanstel wat vir die uitoefening of verrigting van die bevoegdhe en pligte van die Kommissaris benodig word. 5

(2) Die personeellede beoog in subartikel (1) moet by die verrigting van hul werksaamhede die beginsels beoog in artikel 6 toepas.

Finansiering

10

20. Die Provinsiale Parlement moet fondse binne die Provinsie se hulpbronne bewillig om die Kommissaris in staat te stel om sy of haar bevoegdhe en pligte ingevolge hierdie Wet uit te oefen en te verrig.

Vergoeding en aanstellingsvoorwaardes van Kommissaris

21. Die Premier, met die instemming van die Provinsiale Minister verantwoordelik vir finansies, moet die vergoeding en ander aanstellingsbepalings en -voorwaardes van die Kommissaris bepaal, met inagneming van die beskikbare hulpbronne van die Provinsie. 15

Skenkings

22. Die kantoor van die Kommissaris kan, behoudens toepaslike finansiële voorskrifte, skenkings ontvang. 20

HOOFSTUK 5

ALGEMENE BEPALINGS

Aanspreeklikheid

23. Die Kommissaris is nie aanspreeklik ten opsigte van enige redelike handeling wat te goeder trou kragtens enige bepaling van hierdie Wet of die Provinsiale Grondwet verrig is nie. 25

Delegering van bevoegdhe en opdra van pligte

24. (1) Die Kommissaris kan enige van sy of haar bevoegdhe of pligte ingevolge hierdie Wet aan 'n lid van sy of haar personeel delegeer of opdra. 30

(2) 'n Delegasie of opdrag beoog in subartikel (1)—

- (a) moet op skrif wees;
- (b) kan behoudens voorwaardes gemaak word;
- (c) kan skriftelik deur die Kommissaris ingetrek of gewysig word;
- (d) verhinder nie die Kommissaris om daardie bevoegdhe uit te oefen of daardie plig te verrig nie; en 35
- (e) onthef nie die Kommissaris van die verantwoordelikheid ten opsigte van die uitoefening van die gedelegeerde bevoegdhe of die verrigting van die opgedraagde plig nie.

Regulasies

40

25. Die Premier, ná oorleg met die staande komitee, kan regulasies maak rakende enige aangeleentheid wat hy of sy nodig ag om die doelwitte van hierdie Wet te bereik.

Misdrywe en strawwe**26. Enigiemand wat—**

- (a) versuim om skriftelik aan die Kommissaris verslag te doen van sy of haar optrede in reaksie op 'n aanbeveling deur die Kommissaris, soos beoog in artikel 12(2); 5
- (b) versuim om skriftelike redes te verstrek vir sy of haar weiering of versuim om die Kommissaris se aanbevelings uit te voer, soos beoog in artikel 12(3);
- (c) ingevolge artikel 15(1)(b) regmatig gedagvaar is om te getuig of kennis gegee is en wat—
 - (i) versuim om voor die Kommissaris te verskyn op die tyd en plek 10
vermeld in die dagvaarding of kennisgewing;
 - (ii) versuim of weier om enige boek, verslag, dokument of voorwerp
vermeld in die dagvaarding of kennisgewing te verskaf;
 - (iii) weier om op versoek kragtens artikel 15(1)(c) 'n eed of plegtige
verklaring af te lê; 15
 - (iv) versuim om alle vrae wat deur die Kommissaris aan hom of haar gestel
word, volledig en bevredigend te beantwoord; of
 - (v) getuienis lewer of inligting verskaf wat onwaar of misleidend is met
die wete dat dit onwaar of misleidend is;
- (d) artikel 17(2) oortree; of 20
- (e) versuim of weier om inligting of 'n verduideliking te verskaf ten opsigte van
'n versoek om inligting deur die Kommissaris, soos beoog in artikel 18(1), of
inligting verskaf wat onwaar en misleidend is met die wete dat dit onwaar en
misleidend is, 25

is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete of 25
gevangenisstraf van hoogstens twaalf maande.

Kort titel en inwerkingtreding

27. Hierdie Wet heet die Wet op die Wes-Kaapse Kommissaris vir Kinders, 2019, en tree in werking op 'n datum bepaal deur die Premier by proklamasie in die *Provinsiale Koerant*. 30

MEMORANDUM OOR DIE OOGMERKE VAN DIE WETSONTWERP OP DIE WES-KAAPSE KOMMISSARIS VIR KINDERS

1. OOGMERKE VAN WETSONTWERP

Die Grondwet van die Wes-Kaap, 1997 (Wet 1 van 1998) (die Provinsiale Grondwet), maak voorsiening vir die instelling van 'n Kommissaris vir Kinders (die Kommissaris) en beoog die aanname van provinsiale wetgewing om die bevoegdhede van die Kommissaris te reguleer. Die Wetsontwerp op die Wes-Kaapse Kommissaris vir Kinders, 2018 (die Wetsontwerp), maak voorsiening vir die aanstellingsproses van die Kommissaris in die Provinsie Wes-Kaap (die Provinsie). Verder maak die Wetsontwerp voorsiening vir die bevoegdhede, funksies en pligte van die Kommissaris wat hom of haar in staat stel om die grondwetlike mandaat na te kom waarvoor daar in artikel 79 van die Provinsiale Grondwet voorsiening gemaak word, te wete om aangeleenthede rakende kinders te monitor, te ondersoek, na te vors, mense daarvoor op te voed, daarvoor steun te werf, raad daarvoor te gee en verslag daarvoor te doen. Die Wetsontwerp maak ook voorsiening vir die administrasie van die kantoor van die Kommissaris.

2. AGTERGROND

'n Kommissaris vir Kinders is by artikel 78(1) van die Provinsiale Grondwet ingestel. Die Kommissaris moet die Wes-Kaapse Regering bystaan om die belange van kinders in die Wes-Kaap te beskerm en te bevorder, veral ten opsigte van—

- (a) gesondheidsdienste;
- (b) onderwys;
- (c) welsynsdiens;
- (d) ontspanning en geriewe; en
- (e) sport.

3. INHOUD VAN WETSONTWERP

- 3.1 **Klousule 1** maak voorsiening vir die uitleggedeelte van die Wetsontwerp.
- 3.2 **Klousule 2** maak voorsiening vir die aanstelling van die Kommissaris vir 'n vyfjaartermyn, wat eenmalig hernubaar is. Die aanstelling word gemaak op aanbeveling van die Provinsiale Parlement.
- 3.3 **Klousule 3** maak voorsiening vir die bevoegdheid vir aanstelling van die Kommissaris.
- 3.4 **Klousule 4** maak voorsiening vir die verwydering en skorsing van die Kommissaris op aanbeveling van die Provinsiale Parlement.
- 3.5 **Klousule 5** maak voorsiening vir die vul van 'n vakature in die amp van die Kommissaris. Die Premier mag ná oorleg met die Provinsiale Parlement 'n waarnemende Kommissaris aanstel.
- 3.6 **Klousule 6** maak voorsiening vir die beginsels wat die Kommissaris lei by die uitoefening en verrigting van sy of haar bevoegdhede en funksies.
- 3.7 **Klousule 7** maak voorsiening vir die moniteringsfunksie van die Kommissaris. Die Kommissaris moet moniteringstelsels instel om die impak van dienslewering, provinsiale beleid en provinsiale wetgewing op die regte, behoeftes en belange van kinders te monitor. Dit word verder van die Kommissaris vereis om samewerkende betrekkinge met die houe van die provinsiale departemente te bou, asook met die Streekskommissaris van Korrektiewe Dienste in die Provinsie, die Provinsiale Kommissaris van die Suid-Afrikaanse Polisie in die Provinsie, die Departement van Justisie en Grondwetlike Ontwikkeling, organisasies, instellings en agentskappe wat 'n diens aan kinders lewer, en tersaaklike nasionale departemente en munisipaliteite in die Provinsie oor wetgewing, beleid, praktyk en

dienslewering wat kinders raak, ten einde die regte, behoeftes en belange van kinders te monitor.

- 3.8 **Klousule 8** maak voorsiening vir die Kommissaris om ondersoeke te doen of te begin of navraag te doen ten opsigte van enige aangeleentheid wat binne die bestek van sy of haar funksies val, en om aanbevelings te maak ten opsigte van die ondersoeke of navrae. Die Kommissaris mag klagtes oor dienste verskaf deur provinsiale staatsorgane wat die regte, behoeftes of belange van kinders raak, ontvang, probeer oplos en ondersoek. Die Kommissaris moet die prosedure wat gevolg moet word by die doen van ondersoeke en navrae, bepaal.
- 3.9 **Klousule 9** maak voorsiening vir die Kommissaris om navorsing te doen en te begin ten opsigte van enige aangeleentheid wat binne die bestek van sy of haar funksies val en om ten opsigte van navorsing samewerking met die openbare en privaat sektor, die burgerlike samelewing en akademiese instellings te vergemaklik.
- 3.10 **Klousule 10** maak voorsiening vir die Kommissaris om die publiek op te voed oor verskeie wetgewende en ander instrumente wat die regte, behoeftes en belange van kinders bevorder.
- 3.11 **Klousule 11** maak voorsiening vir die Kommissaris om steun te werf by die Provinsiale Parlement, nasionale Parlement of 'n munisipale raad en aanbevelings te maak oor bestaande of voorgestelde wetgewing wat die regte, behoeftes of belange van kinders raak of waarskynlik sal raak. Verder kan die Kommissaris steun werf by enige staatsorgaan, organisasie, instelling of agentskap en aanbevelings maak oor bestaande of voorgestelde beleid of praktyk wat die regte, behoeftes of belange van kinders raak of waarskynlik sal raak.
- 3.12 **Klousule 12** maak voorsiening vir die Kommissaris om raad te gee en aanbevelings te maak aan enige persoon of staatsorgaan in die Provinsie wie se beleid en praktyk met betrekking tot kinders deur die Kommissaris gemonitor, ondersoek of nagevors word. Wanneer die Kommissaris 'n aanbeveling aan enige persoon of staatsorgaan maak, moet daardie persoon of staatsorgaan skriftelik verslag doen aan die Kommissaris oor hul optrede in reaksie op die aanbeveling.
- 3.13 **Klousule 13** maak voorsiening vir die proses wat gevolg moet word wanneer daar versoek word dat 'n aangeleentheid deur die Kommissaris gemonitor, ondersoek of nagevors word.
- 3.14 **Klousule 14** maak voorsiening vir die betrokkenheid van kinders by die werk van die Kommissaris.
- 3.15 **Klousule 15** maak voorsiening vir bykomende bevoegdhede en pligte van die Kommissaris. Die Kommissaris mag die Suid-Afrikaanse Polisie diens vergesel wanneer bevoegdhede van deursoeking en beslaglegging uitgeoefen word ten opsigte van enige aangeleentheid wat verband hou met die belange en beskerming van kinders, mag enigiemand dagvaar om te getuig of aan enigiemand kennis gee om voor hom of haar te verskyn en enigiemand wat as 'n getuie voor die Kommissaris verskyn, 'n eed of plegtige verklaring oplê.
- 3.16 **Klousule 16** maak voorsiening vir die pligte van die Kommissaris om jaarliks aan die Provinsiale Parlement verslag te doen, om oor die inligting afkomstig van ondersoeke, monitering en navorsing verslag te doen aan die Premier en tersaaklike provinsiale staatsorgane en om op enige ander tyd spesiale verslae aan die Provinsiale Parlement voor te lê.
- 3.17 **Klousule 17** bepaal dat staatsorgane die Kommissaris moet bystaan en beskerm en dat geen persoon of staatsorgaan by die funksionering van die Kommissaris mag inmeng of dit verhinder nie.

- 3.18 **Klousule 18** bepaal dat alle persone, of staatsorgane wat 'n diens aan kinders lewer, op die versoek van die Kommissaris enige inligting wat binne die bestek van die Kommissaris se funksies val, aan die Kommissaris moet verstrek. Alle staatsorgane wat 'n diens aan kinders lewer, moet toelaat dat die Kommissaris, met die doel om 'n funksie te verrig, toegang tot hul perseel het.
- 3.19 **Klousule 19** bepaal dat die administratiewe funksies van die kantoor van die Kommissaris verrig word deur personeellede wat deur die Direkteur-generaal van die Provinsie ingevolge die Staatsdienswet, 1994 (Proklamasie 103 van 1994), aangestel word.
- 3.20 **Klousule 20** bepaal dat die Provinsiale Parlement fondse moet bewillig om die Kommissaris in staat te stel om sy of haar funksies te verrig.
- 3.21 **Klousule 21** maak voorsiening vir die vergoeding en aanstellingsvoorwaardes van die Kommissaris.
- 3.22 **Klousule 22** bepaal dat die Kommissaris skenkings behoudens toepaslike finansiële voorskrifte mag ontvang.
- 3.23 **Klousule 23** bepaal dat die Kommissaris nie aanspreeklik is ten opsigte van enige redelike handeling wat te goeder trou kragtens die bepalings van die Wet of die Provinsiale Grondwet verrig is nie.
- 3.24 **Klousule 24** maak voorsiening vir die delegering van bevoegdheide en die opdra van pligte deur die Kommissaris.
- 3.25 **Klousule 25** maak voorsiening vir die Premier om enige regulasies te maak om die doelwitte van die Wet te bereik.
- 3.26 **Klousule 26** maak voorsiening vir misdrywe en strawwe vir 'n oortreding van verskeie bepalings van die Wet.
- 3.27 **Klousule 27** maak voorsiening vir die kort titel van die Wet.

4. OORLEGPLEGING

Die volgende rolspelers is by die opstel van hierdie Wetsontwerp geraadpleeg:

- (a) Departement van die Premier: Regsdienste; en
- (b) Departement van die Premier: Beleid en Strategie.

Die Konsepwetsontwerp is ook in die *Provinsiale Koerant* vir openbare kommentaar gepubliseer.

5. PERSONEELIMPLIKASIES

Die kantoor van die Kommissaris vir Kinders sal in die Departement van die Premier gesetel wees. Die Kommissaris sal 'n ondersteuningstruktuur benodig om sy of haar funksies te verrig. 'n Organisasie-ontwikkelingsproses sal die ondersteuningstruktuur bepaal. Die personeel sal ingevolge die Staatsdienswet, 1994, aangestel word deur die Direkteur-Generaal of 'n ander beamppte wat onder gedelegeerde bevoegdheid handel.

6. FINANSIËLE IMPLIKASIES

Uitgawes van die kantoor van die Kommissaris vir Kinders sal gefinansier word as 'n deel van die begrotingsprosesse van die Wes-Kaapse Regering. Die kantoor van die Kommissaris vir Kinders word toegelaat om skenkings te ontvang.

7. WETGEWENDE BEVOEGDHEID

Die Premier van die Wes-Kaap is oortuig dat al die bepalings in die Wetsontwerp onder die wetgewende bevoegdheid van die Provinsie ressorteer.

UMTHETHO OSAYILWAYO

Wenzelwa ukubonelela ngokuqeshwa koMkhomishinala wabaNtwana kwiphondo leNtshona Koloni; nangokubonelela ngemiba yeziganeko.

NJENGOKO kukho isidingo sokukhusela nokukhuthaza amalungelo, izidingo neemfuno zabantwana kweli Phondo;

NANJENGOKO icandelo 78 loMgaqo-siseko weNtshona Koloni, 1997, lisungula iofisi yoMkhomishinala wabaNtwana wephondo kwaye kubonelelwe ukuba uMkhomishinala makancedise uRhulumente weNtshona Koloni ekukhuseleni nasekukhuthazeni imidla yabantwana kwiPhondo;

NANJENGOKO udingeka umthetho obanzi ukuze ubonelele ngemiba ethile ephathelene nalo ofisi;

NGAKO OKO KE KUWISWA UMTHETHO yiPalamente yeNtshona Koloni, ngolu hlobo lulandelayo:—

ISAHLUKO 1

INKCAZO-MAGAMA

Inkcazo-magama	5
1. Kulo Mthetho, ngaphandle kokuba umxholo uthetha enye into—	
“umntwana” uthetha umntu oneminyaka engaphantsi kweli-18 ubudala;	
“UMkhomishinala” uthetha uMkhomishinala wabaNtwana osungulwe licandelo 78 loMgaqo-siseko wePhondo;	
“Umgqosiseko” uthetha uMgaqosiseko weRiphabhlikhi yoMzantsi Afrika, 1996;	10
“iarhente yombuso” ithetha iarhente yombuso njengoko kuchaziwe kwicandelo 239 loMgaqo-siseko;	
“iNkulumbuso” ithetha iNkulumbuso yePhondo;	
“IPhondo” lithetha iphondo leNtshona Koloni;	15
“UMgaqo-siseko wePhondo” uthetha uMgaqo-siseko weNtshona Koloni, 1997 (uMthetho 1 ka-1998);	
“isebe lephondo” lithetha isebe elikwiPhondo elidweliswe kuMqolo 1 weShe-dyuli 2 kuMthetho weeNkonzo zoLuntu (Public Service Act, 1994) (uMpoposho 103 ka-1994), kwaye kuquka iSebe leNkulumbuso;	20
“IPalamente yePhondo” ithetha ipalamente yePhondo;	
“ikomiti elawulayo” ithetha ikomiti elawulayo yePalamente yePhondo emsebenzi wayo ikukujongana okanye uquka imicimbi yabantwana kweli Phondo;	
“lo Mthetho” uquka nayiphi na imigaqo ekhutshwe phantsi kwalo Mthetho.	

ISAHLUKO 2
UQESHO NEOFISI YOMKHOMISHINALA

Uqesho

2. (1) INkulumbuso imele iqeshe umntu njengoMkhomishinala kangangexesha leminyaka emihlanu, elixesha elihlaziywa kubekanye. 5
- (2) Ikomiti elawulayo imele—
- (a) ngokwenza izaziso kumajel' eendaba, ezingeelwimi ezisemthethweni zePhondo, enze isimemo sotyumbo kuluntu ukuze kufumaneke abantu abafanelekileyo kwisikhundla sokuba nguMkhomishinala;
- (b) ipapashe ngeelwimi ezisemthethweni zePhondo kumajelo eendaba uluhlu lwamagama abo bonke abatyunjwa, imemelela ukufumana izichaso zoluntu ngalo naliphi na igama elikuluhlu lotyumbo; 10
- (c) iqwalasele lonke utyumbo nezichaso ezifunyenweyo, ilungiselele ukuhluzwa kwabenzi zicelo, kwaye imemela kudliwanondlebe umntu otyunjiweyo;
- (d) idlulisele kwiNkulumbuso zonke iikopi zotyumbo nezichaso ezifunyenweyo; 15 kwaye
- (e) ithi thaca izincomo zayo zokuqeshwa koMkhomishinala kwiPalamente yePhondo zizokwamkelwa.
- (3) Ukuba iPalamente yePhondo iyasamkela isindululo sekomiti elawulayo, iPalamente yePhondo kufuneka isingenise isindululo kwiNkulumbuso. 20
- (4) INkulumbuso kufuneka, kwiintsuku ezingama-21 izifumene izincomo kwiPalamente yePhondo nasemva kokuqwalasela utyumbo nezichaso ezinikezelwe yikomiti elawulayo—
- (a) iqeshe umntu ondululwe yiPalamente yePhondo njengoMkhomishinala; okanye 25
- (b) iwubuyisele lo mba emva kwiPalamente yePhondo ukuze iphinde iwuqwalasele ize inikezele ngezizathu zokwenza oko.

Okufunekayo ukuze aqeshwe

3. (1) UMkhomishinala kumele abe ngummi waseMzantsi Afrika—
- (a) osempilweni nofanelekileyo; kwaye 30
- (b) udume ngokuba nolwazi olukhethekileyo, okanye unamava obuchule ahambelana nalo msebenzi okanye iinkcukacha zakhe zemfundo, kumgaqonkqubo woluntu, kumalungelo wabantu nakwimiba echaphazela abantwana.
- (2) UMkhomishinala akanako, emva kokuqalisa ukusebenza njengoMkhomishinala— 35
- (a) ukuba lilungu lePalamente kazwelonke, lendlu yowisomthetho yephondo okanye lebhunga likamasipala;
- (b) abe lilungu leziko lirhulumente kuzwelonke, kwiphondo kumasipala okanye isigqeba esisekwe ngokomthetho; 40
- (c) asebenzele naliphi na iziko lombuso;
- (d) abe kuyo nayiphi na iofisi kwiqela lezopolitiko; okanye
- (e) ukubamba i-ofisi okubangela ingozi yedolo.
- (3) Umntu akanakutyunjwa okanye aqeshwe njengoMkhomishinala ukuba yena— 45
- (a) ukhe ngathuba lithile wagwetyelwa—
- (i) ityala elinxulumene nokungathembeki okanye ubundlobongela; okanye
- (ii) ityala lezesondo njengoko kuchaziwe kwicandelo 1 loMthetho woLwaphulomthetho (aMatyala ezeSondo neMiba eNxulumene noko) uMthetho woLungiso, 2007 (uMthetho 32 ka-2007); 50
- (b) akafanelekanga ukusebenza nabantwana njengoko kucingeleka kuMthetho waBantwana, 2005 (uMthetho 38 ka-2005); okanye
- (c) ubhangiswe kangankuba akalungiseki.

Ukususwa nokurhoxiswa

4. (1) UMkhomishinala angasuswa eofisini kuphela— 55
- (a) phantsi kwemeko yokuziphatha kakubi, yokungawumeli okanye yokungakwazi ukuwenz' umsebenzi;

- (b) phantsi kweziphumo nezindululo ezisetyenziwa yikomiti elawulayo; kunye
 (c) nolwamkelo lweziphakamiso olwenziwe yiPalamente yePhondo zokuba uMkhomishinala makasuswe eofisini.
- (2) INkulumbuso—
- (a) ingamrhoxisa uMkhomishinala eofisini nanini na emva kokuqala kokuhlala kwekomiti elawulayo ngokubhekiselele ekususweni koMkhomishinala eofisini; kwaye 5
- (b) imele imsuse uMkhomishinala eofisini kwakamkelwa isiphakamiso yiPalamente yePhondo ngokwecandelwana (1)(c) esifuna kususwe uMkhomishinala eofisini. 10

Isithuba

5. (1) Isithuba esikwiofisi yoMkhomishinala sivela ukuba—
- (a) ixesha lokuba seofisini koMkhomishinala liyaphela; okanye
 (b) UMkhomishinala— 15
- (i) uyasweleka;
- (ii) ufaka incwadi yokuyeka emsebenzini kwiinyanga ezintathu noko phambi komhla anqwenela ngawo ukuphuma eofisini uMkhomishinala, ngaphandle kokuba iNkulumbuso iyalivumela ixesha elifutshane kwimeko ethile; okanye 20
- (iii) uyasuswa eofisini njengoko kuchaziwe kwicandelwana 4. 20
- (2) Ukuba uMkhomishinala urhoxisiwe njengoko kuchaziwe kwicandelo 4(2)(a) okanye kuvela isithuba njengoko kuchaziwe kwicandelwana (1) iNkulumbuso ingaqesha ibambela Mkhomishinala emva kokucebisana nePalamente yePhondo de lube luyasuswa urhoxiso okanye kuqeshwe uMkhomishinala omtsha njengoko kuchaziwe kwicandelo 2(4)(a). 25
- (3) Ukuba isithuba siyavela njengoko kuchaziwe kwicandelwana (1) inkqubo yokuqesha uMkhomishinala njengoko kuchaziwe kwicandelo 2(2) ukuya kwele-(4) imele ilandelwe.
- (4) Kwiimeko ezichazwe kwicandelwana (3), ikomiti elawulayo ifanele ibize utyumbo njengoko kuchaziwe kwicandelo 2(2)(a) kwiintsuku ezingama-30 zokuvela kwesithuba. 30

ISIAHLUKO 3

AMAGUNYA NEMISEBENZI YOMKHOMISHINALA

Imithethosiseko elawula izenzo zoMkhomishinala

6. Ekusebenziseni amandla nasekwenzeni umsebenzi wakhe, uMkhomishinala ufanele— 35
- (a) enze umsebenzi ngokuzimeleyo, angabinacala kwaye angoyiki, angakheth' icala okanye angaqal' agwebe;
- (b) ngokuxhomekeke kwicandelo 231 loMgaqosiseko, athathele ingqalelo imithethosiseko namalungelo achazwe kwizivumelwano zehlabathi, kwiingqu- 40 ngquthela nakwizivumelwano ezichaphazela abantwana;
- (c) uthobela uMgaqo-siseko, omnye umthetho kazwelonke omalunga nabantwana kunye noMgaqo-siseko wePhondo;
- (d) azame ukukhuthaza kwaye akhusele amalungelo, iimfuno kunye neminqweno yabantwana mbambo zone ezinabahlali kweli Phondo; kwaye 45
- (e) azamele ukuqinisekisa ukuba abantwana kwiPhondo bayakwazi ukufikelela kwiofisi yoMkhomishinala.

Ukubek' iliso

7. (1) UMkhomishinala kufuneka—
- (a) abek' esweni impembelelo yokunikezelwa kweenkonzo ngamaqumrhu orhulumente wephondo ngokwamalungelo, izidingo kunye neemfuno zabantwana; 50
- (b) abek' esweni impembelelo yomgaqonkqubo wephondo kunye nomthetho wephondo ongamalungelo, izidingo neemfuno zabantwana; kwaye
- (c) asungule inkqubo yephondo yokubek' iliso ukukhusela nokukhuthaza amalungelo, izidingo neemfuno zabantwana kwiPhondo. 55

- (2) Iinkqubo zokubek' iliso ezichazwe kwicandelwana (1)(c) zifanele—
- (a) zijolise ngokungqalileyo kumalungelo, kwizidingo nakwiimfuno zabantwana ngokubhekiselele kwiinkonzo zezempilo, zemfundo, kwiinkonzo zobuntlalontle, kwezolonwabo, kunye nezemidlalo;
 - (b) zibonelele ngoqokelelo lwedata echanekileyo nangeenkukacha ezifanelekileyo; kunye 5
 - (c) nokwalatha imikhwa, izizathu kunye neziphumo zaso nasiphi na isiphumo esingalunganga kumalungelo, kwizidingo nakwiimfuno zabantwana, ukuhlola ukukhuthazwa nokukhuselwa kwamalungelo, izidingo neemfuno zabantwana nguRhulumente weNtshona Koloni. 10
- (3) UMkhomishinala ufanele, emva kokucebisana namaqumrhu afanelekileyo karhulumente, asungule iindlela neenkqubo ukuze uMkhomishinala alungelelanise imiba echazwe kwicandelwana (1) no-(2).
- (4) UMkhomishinala azamele ukwakha ubudlelwane—
- (a) neentloko zamasebe ephondo ukuze akwazi ukubek' iliso— 15
 - (i) kumalungelo, kwizidingo nakwiimfuno zabantwana kweli Phondo; ngokuxhomekeke kwicandelo 231 loMgaqosiseko;
 - (ii) ekuzalisekiswa kwezimbambathiso zehlabathi, iingqungquthela kunye nezivumelwano ezichaphazela abantwana;
 - (iii) amalungelo, izidingo neemfuno zabantwana abakumaziko onakekelo lwasekhaya, unakekelo lomntwana omamkele njengowakho, unakekelo lokhuseleko lwethutyana, ngokunjalo namaziko onakekelo lwabantwana nolutsha; 20
 - (iv) amalungelo, izidingo neemfuno zabantwana ezibhedlele nakumaziko onakekelo lwezempilo nakwiinkqubo zezempilo ezisekelwe kumakhaya oluntu; 25
 - (v) amalungelo, izidingo neemfuno zabantwana ezikolweni; nakwamanye amaziko emfundo;
 - (vi) ukufikelela kwabantwana kumaziko ezolonwabo, inkcubeko nemidlalo; kunye 30
 - (vii) neprojekthi zephondo ezimeselwe ukunceda abantwana;
 - (b) uMkhomishinala weNgingqi weeNkonzo zoLuleko kwiPhondo ukuze abek' iliso kubukho nakubulunga bezempilo, kuphuhliso lwentlalo kunye namaziko olonwabo enzelwe abantwana etilongweni kunye nabantwana nabase-luvalweni; 35
 - (c) uMkhomishinala wePhondo weeNkonzo zamaPolisa kwiPhondo ukuze abek' iliso inani elixeliweyo lolwaphulo-mthetho olwenziwe ngabantwana okanye ebantwaneni ukubeka phambili intsebenziswano phakathi kweeNkonzo zamaPolisa oMzantsi Afrika kunye namasebe ephondo aqubisana nabantwana okanye anikezelela ngeenkono zawo ebantwaneni abagxalatheleka kulwaphu-mthetho okanye abo babe ngamaxhoba olwaphulo-mthetho; 40
 - (d) isebe likazwelonke elijongene nezobulungisa ukubeka phambili intsebenziswano phakathi kwela sebe namasebe ephondo aqubisana okanye anikezela ngeenkono—
 - (i) kubantwana abangamaxhoba olwaphulo-mthetho; 45
 - (ii) kwiofisi yeGqwetha leeNtsapho;
 - (iii) iNkundla yeeNtsapho;
 - (iv) iiNkundla zabaNtwana;
 - (v) abatshutshisi abaqubisana nabantwana; kunye
 - (vi) neenkundla zamatyala olwaphulomthetho eziqubisana nemiba ebandakanya abantwana; 50
 - (e) imibutho, amaziko neearhente eziqubisana, ezichaphazela okanye ezinikezela ngeenkono ebantwaneni kwiPhondo ukubek' iliso kwimisebenzi kwaye akhuthaze intsebenziswano phakathi kwamaziko karhulumente wephondo kunye nemibutho, amaziko neearhente kwimiba enxulumene nokhuseleko lwamalungelo, izidingo neemfuno zabantwana; kwaye 55
 - (f) namasebe kazwelonke afanelekileyo kunye nooMasipala kwiPhondo, apho kufanelekileyo, ukubek' iliso kumthetho, kumgaqonkqubo, kwimisebenzi nasekunikezelweni kweenkonzo ezichaphazela abantwana.

Uphengululo

8. (1) UMkhomishinala—

- (a) angenza okanye angaqalisa imibuzo yophengululo ngokubhekiselele kuwo nawuphi na umba ophantsi koxanduva lwamagunya okanye imisebenzi; kwaye 5
- (b) angenza izindululo njengoko kuchaziwe kwicandelo 12 ekuqhubeni olo phengululo okanye imibuzo.

(2) UMkhomishinala angafumana, afune ukusombulula, kwaye aphande izikhalazo ezimalunga neenkonzelo ezinikezelwe ngamaqumrhu ephondo ezichaphazela amalungelo, izidingo neemfuno zabantwana kwiPhondo. 10

(3) Ngokuxhomekeke kulo Mthetho, inkqubo eza kulandelwa ekuqhubeni uphengululo okanye imibuzo imele ichazwe nguMkhomishinala eqwalasele imeko yomba ngamanye.

(4) UMkhomishinala angenza uphengululo ngomba othile kuphela ukuba uMkhomishinala wanelisekile kangangoko ukuba uphengululo olo alusayi kuthatha/ kukopa umsebenzi oqhutywe lilo nalo naliphi na iqumrhu lombuso. 15

(5) UMkhomishinala akanakulwenza uphengululo kumba osele uphethwe uxoxwa ezinkundleni zamatyala.

Uphando

9. UMkhomishinala—

- (a) angaqhuba okanye aqalise uphando— 20
- (i) ngokubhekiselele kuwo nawuphi na umba ophantsi koxanduva lwamagunya okanye imisebenzi; okanye
- (ii) ajolise ekwaziseni ngenkqubela yomgaqo-nkqubo okanye okwenziwayo okubonisa umdla kwiimfuno zabantwana; 25
- (b) alungiselele intsebenziswano namacandelo karhulumente, awabucala, nawokuhlala ngokunjalo nawemfundo ngokubhekiselele ekwalatheni, nasekuqhubeni uzalisekiso lophando oluchazwe kumhlathi (a); kwaye
- (c) abonelele ngezimvo kumacandelo oluntu, awabucala, awoluntu, nawamaziko emfundo ngokunjalo nakubantu jikelele, apho kuyimfuneko khona, ngokubhekiselele ekolatheni, ekwenzeni nasekuzalisekiseni olo phando. 30

Imfundo

10. UMkhomishinala angaqhuba kwaye avelise iinkqubo zokunik'ulwazi ukufundisa uluntu malunga nalo, aze akhuthaze ukwazi nokuqonda koluntu malunga—

- (a) nalo Mthetho; 35
- (b) uMgaqo-siseko, omnye umthetho kazwelonke omalunga nabantwana kunye noMgaqo-siseko wePhondo;
- (c) ngokuxhomekeke kwicandelo 231 loMgaqosiseko, kwizimbambathiso zehlabathi ezifanelekileyo, iingqungquthela zehlabathi, nezivumelwano ezichaphazela abantwana; 40
- (d) iiprojekthi neenkqubo ezichaphazela abantwana kwiPhondo; kunye
- (e) nawo nawuphi na umba ohambelana namagunya okanye uxanduva oMkhomishinala.

Ukuphemelela

11. UMkhomishinala—

- (a) angaphemelela amalungu okanye amaqela amalungu ePalamente yePhondo, iPalamente kaZwelonke okanye ibhunga likamasipala aze enze izindululo ezinxulumene—
- (i) nayo nayiphi na inkqubo yomthetho weentsapho;
- (ii) nayo nayiphi na inkqubo yomthetho wemveli, amasiko okanye izithethe; okanye 50
- (iii) nawo nawuphi umthetho okhoyo okanye ondululiweyo ochaphazela amalungelo, izidingo neemfuno zabantwana ekunikezelweni ngeenkonzelo ngamaqumrhu ombuso wephondo;

- (b) angaphembelela naliphi na iqumrhu lombuso, iziko okanye iarhente aze enze izindululo ngokubhekiselele kuwo nawuphi na umgaqonkqubo okhoyo okanye umsebenzi ochaphazela okanye osenokuchaphazela amalungelo, izidingo neemfuno zabantwana;
- (c) angacela intsebenziswano negalelo kuluntu nakumacandelo oluntu 5
nawabucala xa ephembelela ukuhlaziywa kophuhliso lomgaqonkqubo okanye lomthetho.

Ukucebisa

12. (1) UMkhomishinala angacebisa enze izindululo—

- (a) nakweliphi na iqumrhu lombuso elinemigaqonkqubo okanye imisebenzi 10
echaphazela okanye esenokuchaphazela amalungelo, izidingo neemfuno zabantwana ekunikezelweni kweenkonzo ngamaqumrhu ombuso wephondo; kunye
- (b) nakubani na okanye kwiqumrhu lombuso elinomgaqonkqubo nemisebenzi 15
enxulumene nabantwana ebekwe iliso, yaphengululwa okanye yaphandwa nguMkhomishinala.

(2) Xa uMkhomishinala esenza izindululo nakubani na okanye iqumrhu lombuso, loo mntu lowo okanye eloo qumrhu kufuneka, ngexesha elifanelekileyo elichazwe nguMkhomishinala, enze ingxelo ebhaliweyo emalunga nezenzo zabo ukuphendula kwizindululo. 20

(3) Nabani na okanye naliphi na iqumrhu lombuso, elithi lale ngokupheleleyo okanye nje ngenxalenye yalo, okanye lisilele ukuzalisekisa izindululo zoMkhomishinala kufuneka, ngokwesicelo soMkhomishinala, anike uMkhomishinala izizathu ezibhaliweyo ezimalunga nokuba kutheni esala okanye esilela.

Isicelo semiba emayibekwe iliso, iphengululwe okanye iphandwe 25

13. (1) Nawuphi na umntu ocelwe nguMkhomishinala ukuba athabathele umba kuphononongo, uphando lwasemthethweni okanye uphando ngokwemigaqo yamagunya anikezelweyo nemisebenzi enyanzelwe kuMkhomishinala ngulo Mthetho.

(2) Icandelwana (1) aliwasebenzisi amandla oMkhomishinala ngokoMthetho uku- 30
thathela kuye umba wokubeka iliso, wokuphengulula okanye wokuphanda ngokwakhe.

(3) Isicelo ngokwecandelwana (1) somba omawuthathelwe ingqalelo nguMkho-
mishinala ukwenzela ukub' iliso, uphando, kangangoko kunokwenzeka, simele sibhalwe kwaye sibengefomathi echazwe nguMkhomishinala.

(4) Isicelo esichazwe kwicandelwana (3) kufuneka siqulathe—

- (a) amagama needilesi zomntu owenza isicelo okanye sokuba lo mba 35
mawuqwalaselwe;
- (b) izizathu zokuba kutheni uMkhomishinala kumele abek' iliso, aphengulule okanye aphande umba;
- (c) isishwankathelo sobungqina inkolelo yokuba umba kufanele ubekwe iliso, 40
uphengululwe okanye uphandwe kangangokuba ubungqina obunjalo buya-
fumaneka;
- (d) amagama needilesi zabantu okanye weearhente zombuso ekurhaneleka ukuba ziyabandakanyeka, kangangokuba ezo nkucukacha ziyafumaneka;
- (e) inkcazelo yalo naluphi na uxwebhu okanye into ekumele ithathelwe 45
ingqalelo; kunye
- (f) nekopi yoxwebhu okanye into ekubhekiselwa kulo kumhlathi (e).

(5) UMkhomishinala angazaba kunye neemfuno ezichazwe kwicandelwana (4) ukuba isicelo ezichazwe kwicandelwana (3) senziwe ngumntwana.

(6) Kwiimeko ezichazwe kwicandelwana (1), ukuba isicelo senziwa ngumntwana, uMkhomishinala kufuneka anikezele ngeenkqubo ezihambelana nabantwana. 50

(7) Isigqibo zokubek' iliso, sokuphengulula okanye sokuphanda umba sixhomekeke ngokupheleleyo kuMkhomishinala ngokuxhomekeke kwicandelo 6.

Ukuthath' inxaxheba komntwana

14. (1) UMkhomishinala kufuneka ekhuthaze ukubandakanyeka kwabantwana kumsebenzi woMkhomishinala. 55

- (2) UMkhomishinala kufuneka athathe amanyathelo afanelekileyo—
- (a) ukuqinisekisa ukuba abantwana bayaziswa ngamagunya nemisebenzi yoMkhomishinala;
 - (b) ukuqinisekisa ukuba abantwana bayaziswa ngeendlela abanokunxibelelana ngazo kwaye bafumane impendulo kuMkhomishinala; kwaye 5
 - (c) acebisane nabantwana ngokunjalo nemibutho esebenza ngabantwana malunga nomsebenzi owenziwa nguMkhomishinala.
- (3) UMkhomishinala ufanele avelise iqhinga lokubandakanya abantwana kumsebenzi woMkhomishinala kwaye ahlale elihlaziya ngokweli candelo.

Amagunya nemisebenzi eyongezelekileyo 10

- 15.** (1) Kukwenza uMkhomishinala akwazi ukwenza imisebenzi nokusebenzisa amagunya achaziweyo acingeleka kwicandelo 8, uMkhomishinala—
- (a) angakhapha naliphi na ilungu leNkonzo yamaPolisa oMzantsi Afrika xa elo lungu lisebenzisa amagunya akhe okukhangela nokuthatha ngokubhekiselele kuwo nawuphi umba onxulumene neemfuno nokhuseleko lwabantwana; 15
 - (b) angakhuphel' umsila wengwe nabani na ukuba avele phambi koMkhomishinala azokunika ubungqina, okanye aveze nayiphi na incwadi, ingxelo, uxwebhu okanye into anayo okanye ayilawulayo, ngeloo xesha nakwindawo echazwe kukumsila wengwe okanye kwisaziso; 20
 - (c) angaqhuba isifungo okanye ubungqina bakhe nabani na ovela njengengqina phambi koMkhomishinala.
- (2) Umsila wengwe okanye isaziso ochazwe kwicandelwana (1)(b) imele sityikitywe nguMkhomishinala size sinikezelwe nguMkhomishinala okanye nabani na ogunyaziswe nguMkhomishinala ukube enze njalo, ngendlela enye naleyo yomsila wengwe okanye yesaziso, ngokwemeko yelo xesha, ukwenzela ingqina elisematyaleni kwiNkundla ePhakamileyo. 25
- (3) Umntu ovela phambi koMkhomishinala angancediswa ngummeli wezomthetho ngendleko eziphuma epokotheveni yakhe loo mntu.
- (4) Nabuphina ubungqina okanye impendulo enikezelweyo okanye ingxelo eyenziweyo ngumntu ovele phambi koMkhomishinala kulandela umsila wengwe okanye isaziso esicingeleka kwicandelwana (1)(b) akunakusetyenziswa ngakula mntu enkundleni, ngaphandle kwakwiinkqubo zolwaphulo-mthetho apho loo mntu emangalelwe ukuxoka phantsi kwesifungo okanye ityala elicingeleka kwicandelo 26(c)(iv) okanye (v). 30

Ukunik' ingxelo 35

- 16.** (1) UMkhomishinala kufanele—
- (a) anike ingxelo yonyaka kwiPalamente yePhondo
 - (i) ngokuhambelana necandelo 79(2)(a) loMgaqosiseko wePhondo; kwaye
 - (ii) kwimisebenzi yeofisi yoMkhomishinala, ukusebenza kwemisebenzi yayo kunye nokuphunyelelwa kweenjongo zayo; kunye 40
 - (b) nokusasazwa nokunik' ingxelo ngeenkukacha eziphuma kuphengululo, kubekoliso nakuphando kwiNkulumbuso nakwezinye iiarhente ezifanelekileyo zombuso ngendlela apho uluvo loMkhomishinala, lunomkumnceda ngayo uRhulumente weNtshona Koloni ukukhusela nokukhuthaza amalungelo, izidingo neemfuno zabantwana. 45
- (2) UMkhomishinala angangenisa ingxelo ekhethekileyo kwiPalamente yePhondo nangeliphi na elinye ixesha, engomba onxulumene nokuzalisekiswa kwalo Mthetho, ngokuluvo loMkhomishinala, ayimelanga kuthotyelwa ide ikhutshwe ingxelo yonyaka.

Ukusebenza koMkhomishinala 50

- 17.** (1) Amanye amaqumrhu ombuso wephondo kufuneka ancedise kwaye akhusele uMkhomishinala ukuqinisekisa ukuzimela geqe, ukungakheth' icala, isidima nokuba nefuthe kweofisi yoMkhomishinala.
- (2) Akukho mntu okanye naliphi na iqumrhu lombuso elinokungenelela okanye lithintele ukusebenza koMkhomishinala okanye komsebenzi wakhe. 55

Ufikelelo kwiinkcukahca nakumaziko

18. (1) Ngokuxhomekeke kumthetho oyi*Promotion of Access to Information Act, 2000* (uMthetho 2 ka-2000), nakumthetho oyi*Protection of Personal Information Act, 2013* (uMthetho 4 ka-2013), bonke abantu okanye amaqumrhu ombuso ajongene, achaphazela okanye abonelela ngeenkonzozawo kubantwana kufuneka, ngokwesicelo soMkhomishinala enikezele ngeenkukacha ezibhekiselele nakowuphi umba ophantsi kwamagunya okanye imisebenzi yoMkhomishinala. 5

(2) Onke amaqumrhu ombuso ajongene, achaphazela okanye abonelela ngeenkonzozawo kubantwana kufuneka amvumele uMkhomishinala afikelele kumasango awo ngenjongo yokuqhuba umsebenzi woMkhomishinala ngokwalo Mthetho. 10

(3) Ukuba ufikelelo oluchazwe kwicandelwana (2) ngumhlaba wesikolo, uMkhomishinala ufanele ukusebenzisa amagunya akhe nokuqhuba uxanduva lwakhe ngendlela engayiphazamisi kakhulu imisebenzi yesikolo kwaye abeke phambili engqondweni yakhe ilungelo lokufunda komntwana.

ISAHLUKO 4

15

ULAWULO LWEOFISI YOMKHOMISHINALA**Abasebenzi**

19. (1) Umlawuli-Jikelele wePhondo, okanye elinye igosa elisebenza phantsi kwesiganyaziso esiyalelweyo, maliqeshe, ngokwemigaqo yoMthetho weNkonzo yoLuntu, 1994, amalungu esitafu afunelwa umsebenzi wamagunya nemisebenzi yoMkhomishinala. 20

(2) Amalungu esitafu acingeleka kwicandelwana (1) makathi ekuqhubeni imisebenzi yawo asebenzise imigaqo ecingelwa kwicandelo 6.

Inkxaso-mali

20. IPalamente yePhondo ifanele inikezele ngenkxaso-mali ekwizibonelelo zePhondo ukwenzela ukuba uMkhomishinala akwazi ukusebenzisa amagunya akhe nokuqhuba imisebenzi yakhe ngokwalo Mthetho. 25

Umvuzo kunye nemiqathango yokuqeshwa koMkhomishinala

21. INkulumbuso, ngokucebisana noMphathiswa wePhondo onoxanduva lwezemali kufuneka afumanise umvuzo neminye imimiselo nemiqathango yengqesho yoMkhomishinala, ethathela ingqalelo izibonelelo ezikhoyo zePhondo. 30

Iminikelo

22. Iofisi yoMkhomishinala ingafumana iminikelo, ngokuxhomekeke kwimiyalelo nemiqathango yezemali.

ISAHLUKO 5

35

AMALUNGISELELO JIKELELE**Uxanduva**

23. UMkhomishinala akanaxanduva ngokubhekiselele kuyo nantoni na eyenzelwe okulungileyo phantsi kwalo Mthetho okanye koMgaqosiseko wePhondo.

Ulwabiwo lwamagunya nokunikwa imisebenzi 40

24. (1) UMkhomishinala angawaba nawaphi na amagunya eofisi yakhe okanye anikezele ngawo nawuphi umsebenzi wakhe ngokoMthetho kwilungu labasebenzi bakhe.

(2) Ulwabiwo okanye unikomsebenzi oluchazwe kwicandelwana (1)—

(a) kufuneka lubhalwe; 45

(b) lungenziwa lube nemiqathango;

(c) lungarhoxiswa okanye lulungiswe ngokubhaliweyo nguMkhomishinala;

- (d) alumthinteli uMkhomishinala ekusebenziseni amagunya nasekwenzeni imisebenzi yakho; kwaye
- (e) kwaye ayimhluthi uMkhomishinala uxanduva lwakhe ngokubhekiselele ekusebenziseni amagunya okanye ekwenzeni umsebenzi wakhe awunikiweyo. 5

Imigaqo

25. INkulumbuso, emva kokubonisana nekomiti esisigxina, ingenza imigaqo ebhekiselele nakowuphi na umba awuthatha ngokuba ubalulekile ukuze kuphunyelelwe iinjongo zalo Mthetho.

Amatyala nezohlwayo 10

26. Nabani na—

- (a) osilelayo ukunik' ingxelo ebhaliweyo kuMkhomishinala ngemisebenzi yakhe ukuphendula kwizindululo zoMkhomishinala, njengoko kuchaziwe kwi candelo 12(2);
- (b) uyasilela ukunika uMkhomishinala izizathu ezibhaliweyo ngokwala okanye ngokusilela ukuzalisekisa izindululo zoMkhomishinala, njengoko kuchaziwe kwicandelo 12(3); 15
- (c) owakhe wakhutshelwa umsila wengwe okanye wanikwa isaziso ngokwecandelo 15(1)(b) kwaye owathi—
 - (i) wasilela ukuvela phambi koMkhomishinala ngexesha elalichazwe kumsila wengwe okanye kwisaziso; 20
 - (ii) wasilela okanye wala ukuveza nayiphi na incwadi, ingxelo, uxwebhu okanye nayo nayiphi into echazwe kumsila wengwe okanye kwisaziso;
 - (iii) wabizelwa ukwenza oko ngokwecandelo 15(1)(c), wala ukufungiswa okanye ukwenza isiqinisekiso; 25
 - (iv) wasilela ukuphendula ngokupheleleyo nangokwanelisayo yonke imibuzo ayibuzwayo nguMkhomishinala; okanye
 - (v) wanikezela ngobungqina okanye ngeenkukacha zobuxoki okanye ezilahlekisayo esazi ukuba zibubuxoki okanye ziyalahlekisa; 30
- (d) wakhabana necandelo 17(2); okanye
- (e) wala okanye wasilela ukunikezela ngeenkukacha okanye ngenkcazelo ngokubhekiselele kwiinkukacha ezisuka kuMkhomishinala; njengoko kuchaziwe kwicandelo 18(1), okanye wanikezela ngobungqina okanye ngeenkukacha zobuxoki okanye ezilahlekisayo esazi ukuba zibubuxoki okanye ziyalahlekisa, unetyala lolwaphulomthetho kwaye angagwetywa afumane isohlwayo okanye ukugwetyelwa emjiva okungagqithanga kwiinyanga ezilishumi elinambini. 35

Isihloko esifutshane nokuqala kokusebenza kwaso

27. Lo Mthetho ubizwa ngokuba nguMthetho woMkhomishinala wezabaNtwana weNtshona Koloni, 2019, kwaye uza kusebenza ngomhla omiselwe yiNkulumbuso kwisibhengezo kwi*Gazethi yePhondo*. 40

IMEMORANDAMU YEENJONGO ZOMTHETHO OSAYILWAYO WOMKHOMISHINALA WABANTWANA WENTSHONA KOLONI

1. IINJONGO ZOMTHETHO OSAYILWAYO

UMgaqosiseko weNtshona Koloni, 1997, (uMthetho 1 ka-1998)(UMgaqosiseko wePhondo) uchaza ngokusungulwa koMkhomishinala wabaNtwana (UMkhomishinala) kwaye ufuna ukuphumeza umthetho wephondo ukulawula amagunya oMkhomishinala. UMthetho oSayilwayo woMkhomishinala wabaNtwana weNtshona Koloni, 2018 (uMthetho oSayilwayo) wenzelwe ukuqesha uMkhomishinala wabaNtwana (uMkhomishinala) kwiPhondo leNtshona Koloni. Ngaphezulu, loMthetho oSayilwayo ubonelela ngamandl' olawulo, imisebenzi noxanduva loMkhomishinala emenza akwazi ukwenza nokuphumeza umsebenzi wakhe awuyalelwe ngumgaqosiseko kwicandelo 79 loMgaqo-siseko wePhondo ukuze abek' iliso, ahlole, enze uphando, afundise, aphembelele, acebise kwaye enike ingxelo ngemiba echaphazela abantwana. Kwakhona uMthetho oSayilwayo uza kubonelela ngolawulo lweofisi yoMkhomishinala.

2. IMVELAPHI

UMkhomishinala wabaNtwana usungulwa licandelo 78(1) loMgaqo-siseko wePhondo. UMkhomishinala kufunekaancedise uRhulumente weNtshona Koloni ekukhuseleni iimfuno zabantwana eNtshona Koloni, ingakumbi ngokubhekiselele—

- (a) kwiinkonzo zezempilo;
- (b) kwimfundo;
- (c) kwiinkonzo zempilo-ntle;
- (d) ekuzonwabiseni nakubummandi; kunye
- (e) nezemidlalo.

3. OKUQULATHWE NGUMTHETHO OSAYILWAYO

- 3.1 **Isolotya 1** lichaza ngecandelo lenkcazelo loMthetho oSayilwayo.
- 3.2 **Isolotya 2** lichaza ngokuqeshwa koMkhomishinala ixesha elingangeminyaka emihlanu (5), elixesha elihlaziywa kubekanye. Uqesho lwenziwa ngokwezindululo ezenziwe yiPalamente yePhondo.
- 3.3 **Isolotya 3** lichaza ngeziqinisekiso zemfundo ukuze aqeshwe uMkhomishinala.
- 3.4 **Isolotya 4** lichaza ngokususwa nangokurhoxiswa koMkhomishinala ngokwezindululo ezenziwe yiPalamente yePhondo.
- 3.5 **Isolotya 5** lichaza ngokugcwaliswa kwesithuba kwiofisi yoMkhomishinala. INkulumbuso ingaqesha ibambela Mkhomishinala emva kokucebisana nePalamente yePhondo.
- 3.6 **Isolotya 6** lichaza nemithetho-siseko elawula uMkhomishinala ekwenzeni nasekuphumezeni amandl' olawulo nemisebenzi yakhe.
- 3.7 **Isolotya 7** lichaza ngemisebenzi yokubek' iliso yoMkhomishinala. UMkhomishinala kufuneka asungule inkqubo yokubek' iliso ukuze abek' iliso impembelelo yokunikezelwa kweenkonzo, kumgaqonkqubo wephondo nakumthetho wephondo kumalungelo, kwizidingo nakwiimfuno zabantwana. Ngaphezulu, uMkhomishinala kufuneka akhe intsebenziswano yakhe neentloko zamasebe ahlukeneyo ngokunjalo neyoMkhomishinala weeNkonzo zoLuleko kwiPhondo, neyoMkhomishinala wePhondo weeNkonzo zamaPolisa kwiPhondo, neyeSebe lezoBulungisa, amaziko amaqela abucala ngokunjalo nee-arhente ezibonelela ngeenkonzo ebantwaneni, kunye nama-sebe kazwelonke ahambelana noku kunye noomasipala kwiPhondo ngokubhekiselele kwimithetho, kumgaqonkqubo, kwimisebenzi

naasekunikezelweni ngeenkonzo ezichaphazela abantwana, ukuze kubekwe esweni amalungelo, izidingo neemfuno zabantwana.

- 3.8 **Isoloty 8** lichaza uMkhomishinala ukuba aqhube okanye aqalise uphando okanye afake nemibuzo ngokubhekiselele kuwo nawuphi na umba ophantsi kwemisebenzi yakhe, kunye nokwenza izindululo zokwenza uphengululo okanye imibuzo. UMkhomishinala angafumana, afune ukusombulula kwaye aphande izikhalazo ezingeenkonzo ezinikwe ngamaqumrhu ombuso wephondo achaphazela amalungelo, izidingo neemfuno zabantwana. Inkqubo emayilandelwe ekuqhubeni uphengululo okanye imibuzo ifanele ichazwe nguMkhomishinala.
- 3.9 **Isoloty 9** lichaza uMkhomishinala ukuba aqhube okanye aqalise uphando afake nemibuzo ngokubhekiselele kuwo nawuphi na umba ophantsi kwemisebenzi yakhe kwaye ekhokele intsebenziswano namacendelo karhulumente, awabucala, awoluntu ngokunjalo nawamaziko ezemfundo ngokubhekiselele kuphando.
- 3.10 **Isoloty 10** lichaza uMkhomishinala ukuba afundise uluntu malunga nemithetho eyahlukeneyo nangezinye izixhobo zokukhuthaza amalungelo, izidingo neemfuno zabantwana.
- 3.11 **Isoloty 11** lichaza uMkhomishinala ukuba aphembelele iPalamente yePhondo, iPalamente kaZwelonke okanye ibhunga likamasipala kwaye enze izindululo ezibhekiselele kumthetho okhoyo okanye ondululiweyo ochaphazela okanye osenokuchaphazela amalungelo, izidingo neemfuno zabantwana. Ngaphezu koko, uMkhomishinala angagaya nalo naliphi na iqumrhu lombuso, umbutho, iziko okanye iarhente aze enze izindululo ngokuphathelele nomgaqonkqubo okhoyo okanye ondululiweyo okanye imisebenzi echaphazela okanye esenokuchaphazela amalungelo, izidingo okanye iimfuno zabantwana.
- 3.12 **Isoloty 12** lichaza uMkhomishinala ukuba acebise kwaye enze izindululo nakubani na okanye nakweliphi na iqumrhu lombuso kwiPhondo elinemigaqo-nkqubo nemisebenzi enxulumene nabantwana ehloliweyo, ebekwe iliso okanye ephandiweyo nguMkhomishinala. Xa uMkhomishinala esenza izindululo nakubani na okanye nakweliphi na iqumrhu lombuso kufuneka anike ingxelo ebhaliweyo kuMkhomishinala ngezenzo zabo ukuphendula kwizindululo.
- 3.13 **Isoloty 13** lichaza ngenkqubo efanele ilandelwe xa kwenziwa isicelo sokubekw' iliso, sokuhlolwa okanye sokuphandwa nguMkhomishinala.
- 3.14 **Isoloty 14** lichaza ngobandakanyeko lwabantwana kumsebenzi woMkhomishinala.
- 3.15 **Isoloty 15** lichaza ngamandl' olawulo nemisebenzi eyongeziweyo yoMkhomishinala. UMkhomishinala angahamba nabeNkonzo zamaPolisa oMzantsi Afrika xa esebenzisa amandl' olawulo wakhe xa egqogqa kwaye ethimba ngokubhekiselele kuwo nawuphi na umba onxulumene neemfuno nokhuselo lwabantwana, anika umsila wengwe okanye isaziso nabani na ukuba avele phambi kwakhe, aqhube isifungo okanye ubungqina phambi koMkhomishinala.
- 3.16 **Isoloty 16** lichaza imisebenzi yoMkhomishinala yokwenza ingxelo rhoqo ngonyaka kwiPalamente yePhondo, ukunik' iNkulumbuso namanye amaqumrhu afanelekileyo ombuso wephondo ingxelo ngeenkukacha ezivela kuphengululo, kubeko liso nakuphando, nokungenisa iingxelo ezikhethekileyo kwiPalamente yePhondo nanina na.
- 3.17 **Isoloty 17** lichaza ukuba amaqumrhu ombuso afanele ancedise kwaye akhusele uMkhomishinala kwaye akukho mntu okanye qumrhu lambuso ekumele lingenelele okanye lithintele kwimisebenzi yoMkhomishinala.

- 3.18 **Isolotya 18** lichaza ukuba bonke abantu, okanye amaqumrhu ombuso abonelela ngeenkondo ebantwaneni afanele, ngokwesicelo soMkhomishinala, anikezele ngazo naziphi na iinkcukacha kuMkhomishinala eziphantsi komsebenzi woMkhomishinala. Onke amaqumrhu ombuso abonelela ngeenkondo ebantwaneni afanele amvumele uMkhomishinala ukuba afikelele kwizakhiwo zawo ukwenzela ukuba enze umsebenzi wakhe wokuba nguMkhomishinala.
- 3.19 **Isolotya 19** lichaza ukuba imisebenzi yolawulo yeofisi yoMkhomishinala yenziwa ngabasebenzi abaqeshwe nguMlawuli Jikelele wePhondo ngokoMthetho weeNkonzo zoLuntu (*Public Service Act, 1994*, UMPoposho 103 ka-1994).
- 3.20 **Isolotya 20** lichaza ukuba iPalamente yePhondo ingahlahl' imali yengxowamali ukwenzela ukuba uMkhomishinala akwazi ukwenza imisebenzi yakhe.
- 3.21 **Isolotya 21** lichaza ngomrhulo nangemiqathango yokonyulwa koMkhomishinala.
- 3.22 **Isolotya 22** lichaza ukuba iofisi yoMkhomishinala ingafumana inkxaso-mali ngokuxhomekeke kokufunekayo ngokwezemali.
- 3.23 **Isolotya 23** lichaza ukuba uMkhomishinala unoxanduva ngokubhekiselele kwisenzo esifanelekileyo esenziwa ngenjongo elungileyo phantsi koMthetho okanye phantsi koMgaqosiseko wePhondo.
- 3.24 **Isolotya 24** lichaza ukwabiwa kwamagunya nokunikwa kwemisebenzi nguMkhomishinala.
- 3.25 **Isolotya 25** lichaza iNkulumbuso ukuba yenze nayiphi na imithetho ukuze kuphunyezwe iinjongo zoMthetho.
- 3.26 **Isolotya 26** lichaza ulwaphulo-mthetho nezohlwayo zokophula nakuphi na okulungiselelwe nguMthetho.
- 3.27 **Isolotya 27** lichaza ngesihloko esifutshane soMthetho.

4. EKUBONISWENE NABO

Ekusungulweni kolu Qulunqo loMthetho oSayilwayo, kucetyiswene nala mahla-kani alandelayo:

- (a) ISebe leNkulumbuso: IiNkonzo zezoMthetho; kunye
 (b) neSebe leNkulumbuso: UMgaqo-nkqubo neQhinga lokusebenza.

Nalo uQulunqo loMthetho oSayilwayo lwapapashelwa ukufumana izimvo kwi*Gazethi yePhondo*.

5. ABASEBENZI ABADINGEKAYO

Iofisi yoMkhomishinala wabaNtwana iza kuba kwiSebe leNkulumbuso. UMkhomishinala uza kufuna inkxaso ukuze akwazi ukwenza imisebenzi yakhe. Inkqubo yophuhliso yesebe yiyo eza kufumanisa ubume benkqubo emayisetyenziswe. Kuza kuqeshwa abasebenzi ngokomthetho iPublic Service Act, 1994, beqeshwa nguMlawuli Jikelele okanye lelinye igosa eligunyaziswe ukuba limbambele uMlawuli Jikelele.

6. IMALI EDINGEKAYO

Inkcitho yeofisi yoMkhomishinala wabaNtwana iza kuxhaswa ngemali nje-ngenxalenye yenkqubo yohlahlomali yoRhulumente weNtshona Koloni. Iofisi yoMkhomishinala wabaNtwana ivumelekile ukuba iyifumane inkxasomali.

7. AMAGUNYA OKWENZA UMTHETHO

INkulumbuso yeNtshona Koloni yanelisekile ukuba zonke izimiso ezikolu Qulunqo loMthetho oSayilwayo zingena phantsi kwamagunya okwenza umthetho wePhondo.

