



PROVINCE OF THE EASTERN CAPE  
IPHONDO LEMPUMA KOLONI  
PROVINSIE OOS-KAAP

# Provincial Gazette Igazethi Yephondo Provinsiale Koerant

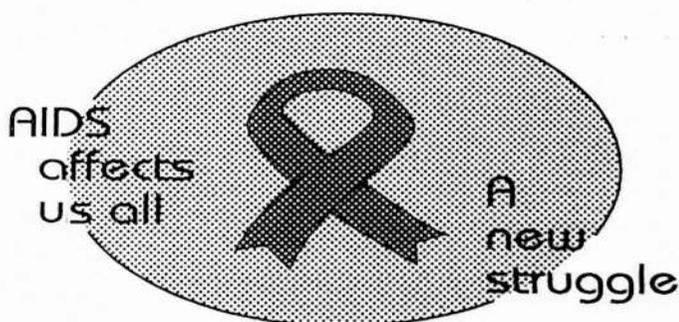
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Vol. 11

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**No. 1266**  
(Extraordinary)

**We all have the power to prevent AIDS**



**AIDS  
HELPLINE**

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DEPARTMENT OF HEALTH

**Prevention is the cure**



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**CONTENTS • INHOUD**

No.	PROVINCIAL NOTICES	Page No.	Gazette No.
1	Eastern Cape Schools Amendment Act (5/2004) (EC): For general information .....	3	1266
2	Exhumations Act (4/2004) (EC): For general information .....	8	1266
3	Museums Act (7/2004) (EC): For general information .....	15	1266

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# PROVINCIAL NOTICES

## PROVINCE OF THE EASTERN CAPE

No. 1

17 January 2005

### EASTERN CAPE SCHOOLS EDUCATION AMENDMENT ACT, 2004

It is hereby published for general information that the Premier of the Province of the Eastern Cape has assented to the above-mentioned Act.

## ACT NO 5 OF 2004 (EC) EASTERN CAPE SCHOOLS EDUCATION AMENDMENT ACT, 2004

## GENERAL EXPLANATORY NOTE

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

## ACT

To amend the Eastern Cape Schools Education Act, 1999; to rename the Eastern Cape Education and Training Council; to reflect the Provincial demarcation into districts; and to provide for matters incidental thereto.

(English text signed by the Premier)  
(Assented to on 15-12-2004)

## Amendment of Section 1 of Act 1 of 1999

1. Section 1 of the Eastern Cape Schools Education Act, 1999 (Act No. 1 of 1999), hereinafter referred to as the "principal Act", is hereby amended by -

- (a) the substitution for the definition of "Eastern Cape Education and Training Council" of the following definition:

"Eastern Cape Education [**and Training**] Advisory Council' means the Council established by section 12 and otherwise known as the Provincial Council;"

- (b) the substitution for the definition of "national party" of the following definition:

"national [**party**] policy means the national education policy determined by a competent authority within the jurisdiction of the national government;"

## ACT NO 5 OF 2004 (EC) EASTERN CAPE SCHOOLS EDUCATION AMENDMENT ACT, 2004

- (c) the substitution for the definition of "region" or "district" of the following definition:  
"['**region**' or] 'district means a [**region or**] district established in terms of section 13;"
- (d) the deletion of the definition of "[**regional director**]"; and
- (e) the substitution for the definition of "Treasury" of the following definition:  
"['**Treasury**' shall bear the meaning assigned thereto in section 1 of the **Provincial Exchequer Act, 1994 (Act No. 1 of 1994) (Eastern Cape)** 'Treasury' means the provincial treasury of the Province as defined in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999)"

**Amendment of section 12 of Act 1 of 1999**

2. Section 12 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- "(1) There is hereby established a provincial council to be known as the Eastern Cape Education [**and Training**] Advisory Council, which shall consist of -
- (a) the head of Department;
  - (b) two persons designated by the head of Department from his or her staff;
  - (c) two persons to represent each of the following institutions in the Province, respectively:
    - (i) universities;
    - (ii) technikons;
    - (iii) [**colleges of education**];
    - (iv) [**technical colleges**] further education and training institutions; and
    - (v) two representatives from learner organisations, who shall be nominated by the respective institutions in the prescribed manner;

## ACT NO 5 OF 2004 (EC) EASTERN CAPE SCHOOLS EDUCATION AMENDMENT ACT, 2004

- (d) two persons designated in the prescribed manner by the organized teaching profession;
- (e) **[two persons designated by the MEC out of nominations made in the prescribed manner by the governing bodies of public schools]** three representatives from religious organisations;
- (f) **[two persons representatives of independent schools design area a by the MEC out of organizations made in the prescribed manner by the independent schools registered with the Department]** two representatives from the business sector;
- (g) **[one person designated by the MEC out of the nominations made in the prescribed manner by the governing bodies of schools for specialized education]** two representatives from non-governmental organisations;
- (h) **[two persons representative of non-governmental organizations and learner organizations designated by the MEC; and]** two representatives from school governing bodies; and
- (i) **[two persons designated by the MEC out of nominations made in the prescribed manner by adult basic education and training as well as early childhood development providers.]**
- (j) two representatives from the community based organizations,  
who shall be nominated by the respective institutions in the prescribed manner;

**Substitution of section 13 of Act 1 of 1999**

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

**“Establishment of [regions and] districts of the Department**

13. The MEC may, after consultation with the Provincial Council, by notice in the Provincial Gazette -

- (a) divide the Province into districts, determine the boundaries thereof and establish **[regional or]** district councils in respect of each as provided in section 14; and

## ACT NO 5 OF 2004 (EC) EASTERN CAPE SCHOOLS EDUCATION AMENDMENT ACT, 2004

- (b) change the boundaries of, and should he or she deem it desirable dissolve such, councils and establish new councils with effect from a date mentioned in the notice”.

**Amendment of section 14 of Act 1 of 1999**

4. Section 14 of the principal Act is hereby amended by the deletion of the words [“**regional and**”].

**Short title**

5. This Act is called the Eastern Cape Schools Education Amendment Act, 2004.

**PROVINCE OF THE EASTERN CAPE**

No. 2

17 January 2005

**EXHUMATIONS ACT, 2004 (EASTERN CAPE)**

It is hereby published for general information that the Premier of the Province of the Eastern Cape has assented to the above-mentioned Act.

ACT NO 4 OF 2004 (EC) EXHUMATIONS ACT, 2004 (EASTERN CAPE)

## ACT

To consolidate laws relating to the exhumations in the Province; to prohibit desecration, destruction and damaging of graves, cemeteries and of receptacles containing bodies; to regulate the exhumation, disturbance, removal and re-interment of bodies, and to provide for matters incidental thereto.

*(English text signed by the Premier)  
(Assented to on 15-12-2004)*

**BE IT ENACTED** by the Legislature of the Province of the Eastern Cape as follows:-

### *Definitions*

1. In this Act, unless the context otherwise indicates –

**“body”** means the dead body of a human being and includes the body of a still-born child and any human remains;

**“cemetery”** means any land, whether public or private, containing one or more graves;

**“department”** means the department responsible for health in the Province;

**“gazette”** means the Provincial Gazette;

**“grave”** includes –

- (a) any place, whether wholly or partly above or below the level of the ground and whether public or private, in which a body is permanently interred or intended to be permanently interred, whether in a coffin or other receptacle or not, and
- (b) any monument, tombstone, cross, inscription, rail, fence, chain, erection or other structure or whatsoever nature forming part of or appurtenant to a grave.

**“MEC”** means the member of the Executive Council responsible for health in the Province;

## ACT NO 4 OF 2004 (EC) EXHUMATIONS ACT, 2004 (EASTERN CAPE)

**"Province"** means the Province of the Eastern Cape established in terms of section 103 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

**"municipality"** means a municipality as defined in the Municipal Structures Act, 1998 (Act No. of 1998);

**"next-of-kin"** for the purposes of section 3, means –

- (a) the surviving spouse of the deceased;
- (b) failing such spouse, an adult child of the deceased;
- (c) failing such child, a parent of the deceased;
- (d) failing such parent, an adult brother or sister of the deceased; or
- (e) failing such brother or sister, the nearest available adult relative of the deceased;

**"spouse"** means a person's spouse, a partner in a customary union according to indigenous law or partner in a relationship in which the parties live together in a manner resembling a marital partnership or customary union; and

**"this Act"** means this Act and the Regulations made there under.

***Desecration, destruction, or damaging of grave***

2. No person may exhume desecrate, destroy or damage or cause to be desecrated, destroyed or damaged any grave in a cemetery or any coffin or other receptacle containing a body which has not been interred.

***Control over exhumation of bodies***

3. (1) Subject to the provisions of this Act and any other law relating to the disposal of bodies, no person may exhume, disturb or re-inter any body in a cemetery, or cause or permit it to be exhumed, disturbed, removed or re-interred –
  - (a) without the prior written approval of the MEC; and

## ACT NO 4 OF 2004 (EC) EXHUMATIONS ACT, 2004 (EASTERN CAPE)

- (b) on such conditions as may be imposed by the MEC or by any medical practitioner appointed by him or her, provided that the preceding provisions of this subsection must not apply where any such body is exhumed, disturbed, removed or re-interred in consequence of, or in the course of or for the purposes of the interment of another body by or on behalf or with the permission of the person or institution having the control and management of such cemetery.
- (2) Any person who wants to obtain the written approval contemplated in subsection (1)(a) must make written application thereof and must –
- (a) in such application –
- (i) state where the body which is to be exhumed, disturbed, removed or re-interred is interred and if and where such body is proposed to be re-interred;
  - (ii) state the reasons for the proposed exhumation, disturbed, removal or re-interment, and
  - (iii) specify the methods proposed to be adopted and the precautions proposed to be taken to prevent any danger to health; and
- (b) together with such application –
- (i) submit a medical certificate stating the date and cause of death or a certified copy of such a certificate;
  - (ii) submit the written approval of –
    - (aa) the municipality in whose area of jurisdiction the body concerned is interred and is proposed to be re-interred; and
    - (bb) the cemetery authority or other person in charge of the cemeteries in which the body concerned is interred and is proposed to be re-interred;

## ACT NO 4 OF 2004 (EC) EXHUMATIONS ACT, 2004 (EASTERN CAPE)

- (iii) submit the written approval of –
    - (aa) the surviving spouse of the deceased person concerned;
    - (bb) if there is no such surviving spouse, an adult child of the deceased person concerned;
    - (cc) if there is no such adult child, a parent of the deceased person concerned;
    - (dd) if there is no such parent, an adult brother or sister of the deceased person concerned, or
    - (ee) if there is no such brother or sister, the nearest available adult relative of the deceased person concerned, and
  - (iv) where the cemetery in which the body concerned is interred or is proposed to be re-interred is owned by or under the control or management of a religious institution or is a cemetery in which the controlling institution of any particular religious group has a peculiar interest, submit the written approval of such religious institution or controlling institution.
- (3) Where any medical certificate or written approval contemplated by subsection (2) is not or cannot be obtained or is not granted, the written application contemplated by that subsection must be accompanied by -
- (a) full details of the efforts made to obtain such certificate or approval; and
  - (b) full reasons why the inability to obtain such certificate or approval should not preclude the grant of written approval in terms of subsection (1) (a).
- (4) Written approval in terms of subsection (1) (a) may be granted subject to such conditions as the MEC may deem necessary or desirable and the MEC may, before any such approval is acted upon –
- (a) vary any condition so imposed, and

## ACT NO 4 OF 2004 (EC) EXHUMATIONS ACT, 2004 (EASTERN CAPE)

(b) impose additional conditions in respect of such approval.

(5) The MEC may delegate any of his or her functions to an office in the Department.

***Offences and penalties***

4. Any person who contravenes any provision of this Act or who fails to comply with any condition imposed herein is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding 6 months or to both such fine and such imprisonment.

***Repeal of laws***

5. The laws listed in the Schedule hereto are repealed to the extent indicated in the third column of the Schedule.

***Short title***

6. This Act is called the Exhumations Act, 2004 (Eastern Cape).

## ACT NO 4 OF 2004 (EC) EXHUMATIONS ACT, 2004 (EASTERN CAPE)

## SCHEDULE

NUMBER AND YEAR	SHORT TITLE	EXTENT OF REPEAL
No. 12 of 1980	Exhumations Ordinance	The whole
No. 13 of 1981	Exhumations Act (Transkei)	The whole
No. 10 of 1982	Exhumations Act (Ciskei)	The whole

PROVINCE OF THE EASTERN CAPE

No. 3

17 January 2005

MUSEUMS ACT, 2004 (EASTERN CAPE)

It is hereby published for general information that the Premier of the Province of the Eastern Cape has assented to the above-mentioned Act.

To provide for the establishment of the Eastern Cape Museums Council; to provide for the establishment and management of Province-aided and community museums; and to provide for matters incidental thereto.

BE IT ENACTED by the Legislature of the Province of the Eastern Cape as follows:

CHAPTER 1

DEFINITIONS

1. In this Act, unless the context indicates otherwise -
"collection" means a collection of specimens or objects acquired by or in the possession of the Council for purposes of conservation, research, exhibition or education or display;
"Council" means the Eastern Cape Museums Council established by section 2;
"community museum" means a museum which has been declared in terms of section 18;
"Department" means the Department responsible for the administration of museums within the Province;
"District Municipality" means a district municipality as defined in section 1 of the Local Government Municipal Structures Act, 1998 (Act No. 117 of 1998).

ACT NO 7 OF 2004 (EC) MUSEUMS ACT, 2004 (EASTERN CAPE)

**ACT**

**To provide for the establishment of the Eastern Cape Museums Council; to provide for the establishment and management of Province-aided and community museums; and to provide for matters incidental thereto.**

*(English text signed by the Premier)  
(Assented to on 15-12-2004)*

**BE IT ENACTED** by the Legislature of the Province of the Eastern Cape as follows:-

**CHAPTER 1****DEFINITIONS****Definitions**

1. (1) In this Act, unless the context indicates otherwise -

“**accessions register**” means a written record in which all items forming part of a collection are recorded;

“**Chief Executive Officer**” means a person employed by the Council as head of administration of the Council in terms of Sections 8 and 9.

“**collection**” means a collection of specimens or objects acquired by or in the possession of the Council for purposes of conservation, research, exhibition or education for the public;

“**Council**” means the Eastern Cape Museums Council established by section 2;

“**community museum**” means a museum which has been declared in terms of section 28;

“**Department**” means the Department responsible for the administration of museum matters in the Province;

“**District Municipality**” means a district municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

## ACT NO 7 OF 2004 (EC) MUSEUMS ACT, 2004 (EASTERN CAPE)

“**employee**” means a person in the services of the Council or who has been appointed to a non-establishment post in a temporary capacity in terms of section 24;

“**Gazette**” means the Provincial *Gazette* of the Province;

“**Head of Department**” means the administrative head and accounting officer of the Department responsible for museum matters in the Province;

“**management committee**” means a governance structure of a province-aided or community museum

“**Manager**” means the head of the museum and accounting officer responsible for a Province-aided museum appointed on the staff establishment by the Department and the most senior representative of the Department in the museum;

“**MEC**” means the Member of the Executive Council responsible for museums in the Province;

“**museum**” refers to an institution collecting, storing, conserving, researching and exhibiting artefacts or natural science specimens for the public benefit and may include any snake park, oceanarium or any institution where live animals are kept for exhibition or display and any vacant land associated with any museum, snake park, oceanarium or any such institution, and on which there are features, whether natural or artificial, of public interest or on which a collection is kept;

“**non-establishment post**” means a post, other than a post of the staff establishment, in a museum, to which the management committee may appoint a person in terms of section 24;

“**official**” means a person in the employment of the Department in terms of the Public Service Act, 1994( Proclamation No. 103 of 1994),

“**prescribed**” means prescribed by regulation;

“**Province**” means the Province of the Eastern Cape established by section 103 of the Constitution;

ACT NO 7 OF 2004 (EC) MUSEUMS ACT, 2004 (EASTERN CAPE)

**“Province-aided museum”** means a museum declared in terms of section 12 of this Act;

**“staff establishment”** means the staff establishment of a Province-aided museum as determined in section 11; and

**“subscriber”** means a person who annually subscribes to the funds of a Province-aided museum an amount fixed by the management committee of the museum concerned.

## CHAPTER 2

### EASTERN CAPE MUSEUMS COUNCIL AND PROVINCE-AIDED MUSEUMS

#### Establishment of Eastern Cape Museums Council

2. (1) There is hereby established the Eastern Cape Museums Council which is a juristic person.

(2) The Council must be constituted by not less than eleven and not more than fifteen members appointed by the MEC in accordance with principles of transparency and representativity, and must include -

- (a) two persons appointed by reason of their special knowledge of matters concerning museums;
- (b) one official who must be in charge of Museums in the Department;
- (c) one person who has experience in financial matters; and
- (d) one person from each district municipal area and the metropolitan area in which the particular museum is located, representing museum interests.

## ACT NO 7 OF 2004 (EC) MUSEUMS ACT, 2004 (EASTERN CAPE)

- (3) Members of the Council must be appointed for a period of five years or such shorter period as the MEC may determine at the time of the member's appointment.
- (4) A member whose term of office has expired is eligible for reappointment for one additional term.
- (5) No remuneration may be paid to members of the Council.
- (6) Members must only be paid such travel and accommodation allowance at such rate as determined by the MEC in consultation with the MEC for Finance, for expenses incurred by them in the course of the performance of their functions.

**Designation of Chairperson and Deputy Chairperson of Council**

3. The Council will, at its first official meeting, nominate two members of the Council as the Chairperson and Deputy-Chairperson of Council for consideration, approval and appointment by the MEC.

**Vacation of office by members of the Council**

4. An appointed member must vacate office if he or she –
  - (a) resigns in writing;
  - (b) has been absent without leave of the Chairperson of the Council for three consecutive meetings;
  - (c) has been convicted of an offence and sentenced to imprisonment without the option of a fine or to a fine exceeding R100-00 or such higher amount as may be prescribed;
  - (d) is an unrehabilitated insolvent;
  - (e) is found to be of unsound mind by a competent court,
  - (f) has been discharged by the MEC on the grounds of misconduct and/or incapacity.

## ACT NO 7 OF 2004 (EC) MUSEUMS ACT, 2004 (EASTERN CAPE)

**Disqualification for membership of Council**

5. No person must be eligible for appointment to the Council if –
- (a) he or she is not a South African citizen unless the MEC has authorized such appointment or election; and
  - (b) within the preceding five years he or she has been convicted of an offence and sentenced to imprisonment without the option of a fine.

**Meetings, Quorum and Decisions of the Council**

6. (1) The Council must hold an ordinary meeting at least quarterly, and the copy of the minutes of every such meeting must be forwarded to the Head of Department within 30 days of the meeting at which minutes were approved.
- (2) If no ordinary meeting of the Council is held during any period of six months, the MEC may dissolve the Council and a new Council be constituted in terms of section 2(2).
- (3) The Chairperson of the Council or a person delegated by him/her in writing may call a special Council meeting whenever it is necessary.
- (4) The quorum for a meeting of the Council must be half the number of Council members plus one.
- (5) The decisions of the Council are valid if taken by a simple majority of members present at the meeting, and in the event of equality of votes on any matter the person presiding at the meeting in question shall have a casting vote in addition to the person's deliberative vote.

**Powers and Functions of Council**

7. (1) The primary powers and functions of the Council in relation to Province-aided museums are in respect of management and control of the finances of the museums, as required by Chapter 6 of the Public Finance Management Act, ( Act 1 of 1999).

## ACT NO 7 OF 2004 (EC) MUSEUMS ACT, 2004 (EASTERN CAPE)

(2) In addition to the powers and functions referred to in subsection (1), the Council must enjoy the following powers and functions.

- (a) to administer the museums declared by the MEC as Province-aided museums;
- (b) to advise the MEC on policy formulation for museums;
- (c) to decide upon a theme or themes in consultation with the MEC, for a museum and to conduct and manage a museum with a view to the development of such theme or themes;
- (d) submit to the MEC quarterly reports of its activities and the conduct of the museum together with financial statements;
- (e) to distribute funds received from the Department to Province-aided museums as subsidies;
- (f) in consultation with the MEC, to raise loans necessary to fulfill their mandate in terms of the provisions of this Act,
- (g) generally to ensure that the purposes and objectives of the declared Province-aided museums are carried out to the highest professional and ethical standards;
- (h) to determine, subject to the provisions of this Act and with the approval of the MEC, the objects of the declared Province-aided museum;
- (i) to appoint staff necessary for the performance of the functions of the Council; subject to the formal approval of the MEC
- (j) in consultation with the Head of Department, to appoint staff necessary for the performance of the functions of each Province-aided museum;

## ACT NO 7 OF 2004 (EC) MUSEUMS ACT, 2004 (EASTERN CAPE)

- (k) appoint a chairperson and deputy chairperson for every management committee of a Province-aided museum, on the basis of nominations received from the management committee of the museum concerned; and
- (l) exercise a supervisory role over management committees of Province-aided museums.
- (m) To develop museum strategic plans and ensure that annual plans and reports are compiled and submitted to MEC

**Appointment of Chief Executive Officer**

8. (1) The Council must with the approval of the MEC appoint a Chief Executive Officer who must be an *ex officio* member of the Council but such a person must not be entitled to vote.
- (2) The person appointed as the Chief Executive Officer –
- (a) must have appropriate qualifications and experience for such appointment;
  - (b) is employed subject to the terms and conditions of employment determined by the Council with the concurrence of the MEC; and

**Responsibilities of Chief Executive Officer**

9. (1) The Chief Executive Officer is the head of the administration of the Council.
- (2) As head of the administration, the Executive Officer is responsible for –
- (a) implementing the policies and carrying out the decisions of the Council;
  - (b) the formation and development of an efficient administration;

## ACT NO 7 OF 2004 (EC) MUSEUMS ACT, 2004 (EASTERN CAPE)

- (c) the organization, control and management of the staff; and
- (d) the exercise of any of the powers of the Council –
  - (i) assigned to the Chief Executive Officer in terms of this Act; or
  - (ii) delegated to the Chief Executive Officer in terms of section 34.

**Appointment of Acting Chief Executive Officer**

10. (1) Whenever the Chief Executive Officer is for any reason absent or unable to carry out the functions of office, or whenever there is a vacancy in the office of the Chief Executive Officer, the Council may appoint another employee of the Council as acting Executive Officer.

**Employment of staff –**

11. (1) The Chief Executive Officer –
- (a) within the financial limits set by the Council and with the concurrence of the Council, must determine a staff establishment necessary for the work of the Council; and
  - (b) may, with the concurrence of the Council, appoint persons with in posts on the staff establishment.
- (2) An employee of the Council is employed subject to the terms and conditions of employment determined by the Chief Executive Officer with the concurrence of the Council.
- (3) (a) A person in the service of another organ of state may be seconded to the Council by agreement between the Chief Executive Officer and such organ of state.
- (b) Persons seconded to the Council perform their functions under the supervision of the Chief Executive Officer.

## ACT NO 7 OF 2004 (EC) MUSEUMS ACT, 2004 (EASTERN CAPE)

(4) A person in the service of the Council may, with the consent of that person, be seconded to another organ of state by agreement between the Chief Executive Officer and such organ of state.

**Declaration of a Province-aided museum**

12. (1) The governing body or owner of any museum may apply to the MEC to declare such a museum to be a Province-aided museum, and must in such application furnish the MEC with full particulars as prescribed.

(2) The MEC may, after consideration of any application in terms of subsection (1), cause an inspection of the museum concerned to be made and require the applicant to furnish such further information in respect of the museum which may be deemed necessary.

(3) If the MEC is of the opinion that the prescribed criteria have been met, he or she may by notice in the *Gazette* declare such a museum to be a Province-aided museum and, in consultation with the applicant, assign to the museum an appropriate name.

(4) The MEC may, in consultation with the Council, alter the name assigned to any Province-aided museum under subsection (3) or any such name, which has been altered in terms of this subsection.

(5) The MEC must determine whether the museum is to be classified as a Province-aided museum on the basis of the museum programs, scope of collections, buildings, staffing structure and any such criteria the Department may determine.

(6) Upon approval by the MEC of an application to declare a museum as a Province-aided museum, the ownership of collections and assets of such a museum will be vested in the Council.

**Province – aided museums to be under the management and control of the Management Committee**

13. (1) A province- aided museum must be under the management and control of a Management Committee.

## ACT NO 7 OF 2004 (EC) MUSEUMS ACT, 2004 (EASTERN CAPE)

- (2) The Management Committee must operate within the policy framework for museums as determined by the MEC.

**Succession**

14. The Council must, for all intents and purposes be deemed to be the successor in title to any Board of Trustees, management committee, governing body or owner in whom the management and control of the museum vested prior to the commencement of this Act and –
- (a) the ownership of all movable and immovable property and other assets of such managing body must vest in the Council;
  - (b) all moneys payable to or recoverable by such managing body must be payable to or recoverable by the Management Committee concerned, on behalf of the Council; and
  - (c) all other rights, privileges, liabilities and obligations of such managing body must devolve upon and vest in the Council.

**Constitution of management committee**

15. (1) Subject to this section, a management committee of a province-aided museum must consist of-
- (a) three members appointed by the Council in consultation with the MEC in the prescribed manner from public nominations;
  - (b) one member appointed by the Council in consultation with the MEC from nominations received from the local authority in which that particular museum is located;
  - (c) one member appointed by the MEC from nominations received from the district municipality in whose area of jurisdiction the museum is partially or wholly located;
  - (d) two members elected by subscribers;
  - (e) the head of the museum; and
  - (f) one member elected by the staff of the museum concerned.

## ACT NO 7 OF 2004 (EC) MUSEUMS ACT, 2004 (EASTERN CAPE)

- (2) The Council may, in addition to the members of a management committee appointed in terms of subsection (1), appoint any person as a member of any management committee by reason of any special services rendered to the museum concerned by such person or by any organization represented by such person or for any other adequate reason.

**Tenure of office of management committee members**

16. (1) The terms of office of a member of a management committee appointed by the Council must not be more than five years, except in the case of a management committee member elected in terms of section 15 (1) (d), in which case such a management committee member will hold office until the next election of a subscriber's representative at a meeting held in terms of section 20.
- (2) Members of a management committee must vacate office under the same conditions as contemplated in section 4.
- (3) The Council may, after consultation with the management committee, remove a member of a management committee if, in the opinion of the Council there are sound reasons for doing so.
- (4) Any management committee member whose term of office has expired, other than for reasons set out in subsection (2) or (3), may be eligible for re-appointment or re-election for one additional term.

**Vacancies on management committee and filling thereof**

17. (1) A vacancy of an appointed or elected member may be filled by the appointment or election of a successor by the person or body responsible for the appointment or election of the original member whose position has become vacant.
- (2) The Council is not obliged to fill vacancies in the office of a member appointed in terms of section 15 (2).
- (3) Any member of a management committee who has been appointed or elected in terms of subsection (1) must hold office for the un-expired period of office of his or her predecessor.
- (4) No person must be eligible for appointment or election to a management committee if:-

## ACT NO 7 OF 2004 (EC) MUSEUMS ACT, 2004 (EASTERN CAPE)

- (a) he or she is not a South African citizen unless the MEC has authorized such appointment or election; and
- (b) within the preceding five years he or she has been convicted of an offence and sentenced to imprisonment without the option of a fine.

**Powers and functions of a management committee**

18. (1) The management committee shall ensure that the staff of a Province-aided museum concerned carries out the following powers and functions:
- (a) to receive, hold, conserve, restore and safeguard all movable and immovable property acquired by it or in its possession for the purposes of the museum on behalf of the Council;
  - (b) to exhibit or display for the benefit of the public such specimens, other objects or collections as it may consider suitable;
  - (c) to keep proper records of the assets of the declared Province-aided museum;
  - (d) to maintain an accessions register;
  - (e) to implement a theme as approved by the MEC for its museum and to conduct and manage the museum with a view to the development of such theme;
  - (f) to determine, subject to the approval of the Council, the normal hours of opening and conditions subject to which members of the public may visit the museum or part thereof, and the charges for admission;
  - (g) to promote the interests of the museum generally and to ensure community involvement in the museum concerned;
  - (h) ensure that a museum strategic plan and that annual action plans and reports are compiled for submission to the Council;
  - (i) submit to the Council quarterly reports of its activities and the conduct of the museum together with financial statements; and

## ACT NO 7 OF 2004 (EC) MUSEUMS ACT, 2004 (EASTERN CAPE)

(j) generally to carry out the purposes and objectives of the museum to the highest professional and ethical standards.

(2) A management committee must also raise funds or cause funds to be raised and may accept any donation or bequest of any moneys or of any movable or immovable property made to it or its museum, provided that no management committee must without the approval of-

(a) the Council in consultation with the Head of Department, purchase, hire, sell, let, exchange or otherwise alienate in any manner or encumber any immovable property, or

(b) the Council in consultation with the Head of Department sell, exchange or otherwise alienate any specimen, object, collection or other movable property recorded in its accessions register.

(3) Each management Committee must, not less than once per year, cause a meeting to be held of itself and the museum staff to review plans and finances and incorporate such agreed upon decisions which are reached in the museum's strategic plan and implementation strategy.

(4) A management committee may appoint such committees and sub-committees as it may deem necessary or desirable and any such committee or sub-committee must exercise such powers and perform such duties and functions as the management committee may delegate to it or as may be prescribed.

**Ordinary meetings of a management committee**

19.(1) A management committee must hold an ordinary meeting at least quarterly and a copy of the minutes of every such meeting must be forwarded to the Council within thirty days of the meeting at which minutes were approved.

(2) If no ordinary meeting of a management committee is held during any period of six months, the Council, in consultation with the MEC, may dissolve the management committee concerned and a new management committee be constituted in terms of section 15.

## ACT NO 7 OF 2004 (EC) MUSEUMS ACT, 2004 (EASTERN CAPE)

- (3) The quorum for a meeting of a management committee must be half the number of members of the management committee present at the meeting plus one and decisions are taken by simple majority with the person presiding having both casting and deliberative vote.

**Annual general meeting of subscribers**

20. (1) Every management committee must cause a general meeting of subscribers to be held not later than the end of the month of June in each year at which-
- (a) the report and statements contemplated in section 18(1)(j) must be read and, if necessary, discussed, and
  - (b) the members of the management committee contemplated in section 15(1)(d) may be elected if necessary.

- (2) Every subscriber must be given notice of the annual general meeting referred to in subsection (1) by letter sent to him or her by ordinary post at least fourteen days before the date of such meeting.

**Special general meeting of subscribers**

21. (1) The chairperson of the management committee must –
- (a) if required to do so by a petition signed by not less than ten subscribers, in good standing, specifying the purpose of the meeting; or
  - (b) if requested to do so by the Council,

convene a special general meeting of subscribers on a date not later than twenty-one days after the date of receipt of the petition referred in subsection (1)(a) or after the date of the request referred to in subsection (1)(b), as the case may be.

- (2) The provisions of section 20(2) must also apply in the case of a special general meeting contemplated in subsection (1).

## ACT NO 7 OF 2004 (EC) MUSEUMS ACT, 2004 (EASTERN CAPE)

**Chairperson at annual and special general meeting of subscribers**

22. The chairperson or in his absence, the deputy chairperson of the management committee must preside at any annual or special general meeting referred to in sections 20 and 21 respectively, and if both are absent from any such meeting the subscribers present at such meeting must elect any other subscriber present at the meeting to preside at such meeting.

**Staff establishment, conditions of service, salaries and allowances**

23. (1) The Council, in consultation with the MEC, must determine the staff establishment of a Province-aided museum and the grading of posts on such establishment in terms of the prevailing labour laws, norms and standards and must make provision on such establishment for a post of manager of the museum concerned.
- (2) The conditions of employment of staff on the staff establishment in a museum must be determined by the Council in consultation with the Head of Department and no management committee must alter or amend these conditions of employment.
- (3) The salaries and allowances of staff appointed in terms of subsections (1) and (2) must be remunerated from monies appropriated by the Legislature to the annual budget of the Department for this purpose.
- (4) Subject to the provisions of section 24, no management committee must appoint or engage any staff in excess of the staff establishment determined for the museum.

**Appointment of staff in a non-establishment posts**

24. A management committee may, subject to the provisions of this Act, employ any person at its own cost, with the approval of the Council, additional to the staff establishment of the museum, in a temporary capacity if such employment is necessary –
- (i) due to illness or absence of the incumbent of a post; or

## ACT NO 7 OF 2004 (EC) MUSEUMS ACT, 2004 (EASTERN CAPE)

- (ii) to provide for the performance of work for which staff is not ordinarily maintained on a permanent basis; or
- (iii) when such vacant posts cannot be readily filled by the Council.

**Subsidies**

25. (1) There must be paid by the Council, from moneys appropriated by the Legislature for the purpose, to each management committee of a Province-aided museum, an annual subsidy as the MEC may generally or specifically determine.
- (2) There may be paid by the Department, from moneys appropriated by the Legislature for that purpose, to a management committee of a Province-aided museum a special project funding for which such museum submits detailed and motivated requests;
- (3) The amount of any subsidy paid to a management committee under subsection (1) and (2) must be used exclusively for the purposes for which it is granted.
- (4) In order to obtain any subsidy payable in terms of this section a management committee must submit in such manner and by such date as the Council may direct, to the Council, estimates of the subsidisable expenditure of the museum concerned for the following year.
- (5) On receipt of such estimates as referred to in subsection (4) the Council, in consultation with the MEC, must determine the approved subsidisable expenditure of the management committee on the estimates of expenditure submitted and subsidy in terms of subsection (1) must be paid on such approved subsidisable expenditure.
- (6) Nothing in this section must be construed so as to preclude a management committee from spending more than its approved subsidisable expenditure in connection with the museum concerned, but any such expenditure in excess of the approved subsidisable expenditure must be from self-generated funds.

## ACT NO 7 OF 2004 (EC) MUSEUMS ACT, 2004 (EASTERN CAPE)

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## ACT NO 7 OF 2004 (EC) MUSEUMS ACT, 2004 (EASTERN CAPE)

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- (3) The amount of any subsidy paid to a management committee under subsection (1) and (2) must be used exclusively for the purposes for which it is granted.
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- (6) Nothing in this section must be construed so as to preclude a management committee from spending more than its approved subsidisable expenditure in connection with the museum concerned, but any such expenditure in excess of the approved subsidisable expenditure must be from self-generated funds.

ACT NO 7 OF 2004 (EC) MUSEUMS ACT, 2004 (EASTERN CAPE)

### **Receipt, management and accounting of finances and assets by the Council**

26. (1) All moneys received by the Council must be accounted for in the prescribed manner and must be managed in terms of Chapter 6 of the Public Finance Management Act, 1999 (Act No.1 of 1999).
- (2) All moneys held by the Council or a management committee of Province-aided museum and not immediately required by it in connection with the exercise and performance of its powers, duties and functions must be deposited by the Council or such management committee with a bank registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

### **Audit of accounts**

27. (1) The accounts of the Council and management committees must be made up in the prescribed manner and must be audited by the office of the Auditor-General, in terms of Section 58 (1)(a) of the Public Finance Management Act, 1999 (Act No.1 of 1999).
- (2) Copies of the audited accounts must be forwarded to the MEC in terms of Section 61 of the Public Finances Management Act, 1999 (Act No.1 of 1999).

## **CHAPTER 3**

### **COMMUNITY MUSEUMS**

#### **Declaration of a museum to be a community museum**

28. (1) Members of a community may apply in writing to the MEC for the establishment of a community museum.
- (2) The management committee, governing body, council in control or owner of any museum other than a Province-aided museum may apply in writing to the MEC to declare such museum a community museum.
- (3) Upon receipt of any application in terms of subsection (1) or (2) as the case may be, the MEC may, in consultation with the Council, cause an inspection of a facility or museum to be made in terms of prescribed

## ACT NO 7 OF 2004 (EC) MUSEUMS ACT, 2004 (EASTERN CAPE)

criteria and may require the applicant to furnish such additional information as may be deemed necessary or desirable.

(4) If the MEC is of the opinion that such museum will, if it is established or declared to be a community museum, serve the educational and cultural needs of the general public or of a particular community, he or she may by proclamation declare such a museum to be a community museum.

**Community Museum to be under management, control and direction of a management committee**

29. (1) A community museum must be under the management, control and direction of a management committee consisting of such members as determined by the community.
- (2) The tenure of office, vacancies on a management committee of a community museum, filling thereof and disqualification for membership of management committee must be as prescribed.

**Financial assistance to community museums**

30. (1) The Department may provide a grant to a community museum from monies appropriated by the Legislature.
- (2) Such financial assistance as referred to in subsection (1) will be determined by the Department upon receipt of an application from the community museum concerned, which includes a statement of income and expenditure and budget estimates for the following year and will be provided on the basis of a contract entered into between the Department and the museum concerned.

## ACT NO 7 OF 2004 (EC) MUSEUMS ACT, 2004 (EASTERN CAPE)

**CHAPTER 4****GENERAL AND SUPPLEMENTARY****Regulations**

31. The MEC may by notice in the *Gazette* make regulations in respect of any matter which he or she is empowered to prescribe in terms of this Act.

**Community museum may be established as a Province-aided museum.**

32. Any management committee of a community museum may apply to become a Province-aided museum, in which case the procedure in section 12 must be followed.

**Dissolution of Province-aided museum and Council**

33. (1) The MEC may, in consultation with or on the application of the Council, by proclamation in the *Gazette*, and with effect from a date specified in such proclamation, dissolve a Province-aided museum.
- (2) All assets, liabilities and obligations of a Province-aided museum which has been dissolved in terms of subsection (1) must be disposed of and met in such a manner as the MEC may, in consultation with the Council, direct and the services of members of staff on the official establishment must be dealt with as prescribed.
- (3) The MEC may, by proclamation in the *Gazette*, and with effect from the date specified in such proclamation, dissolve the Council referred to in Section 2, if there are reasonable grounds to do so.

**Delegation of powers and functions**

34. (1) The MEC may delegate any power or function conferred on him or her in terms of this Act to the Council or Head of Department, as the case may be, other than the power to make regulations or to issue proclamations.
- (2) The Head of Department may delegate to the official in charge of museums in the Department any power, duty or function conferred or

## ACT NO 7 OF 2004 (EC) MUSEUMS ACT, 2004 (EASTERN CAPE)

imposed on him or her by this Act, other than the power to authorize the alienation of items from a collection in a museum.

- (3) The Council may delegate any of its powers or duties to
  - (a) a member of the Council;
  - (b) a staff member of the museum concerned
- (4) The delegation referred to in sub-section (3) must be in writing and not be in contravention of Chapter 6 of the PFMA

**Repeal and savings**

35. (1) Subject to the provisions of subsections (2) and (3), the Museums Ordinance, 1975 (Ordinance No. 8 of 1975), and the Transkei Museums Act, 1978 (Act No. 24 of 1978), are hereby repealed.
  - (2) Any museum declared in terms of legislation repealed by subsection (1) is deemed to have been declared a Province-aided museum in terms of section 12.
  - (3) Any board of trustees established or constituted, any member of such board appointed or elected under the legislation repealed in subsection (1) must continue to exist or to be appointed or elected until members of the Council are appointed in terms of section 2.
  - (3) The staff establishment of any museum and the grading of posts on such establishment, the scales of salaries, wages and allowances fixed, any investments made, any loan raised, any proclamation issued, appointment or determination made, approval granted and any act performed or anything done under legislation repealed by subsection (1), prior to the commencement of this Act is deemed to have been, determined, fixed, made, raised, issued, granted, performed or done under the corresponding provision of this Act.

ACT NO 7 OF 2004 (EC) MUSEUMS ACT, 2004 (EASTERN CAPE)

(4) The transfer of staff in the museums to the employ of Council will be dealt with in the Regulations.

**Short title**

36. This Act is called the Museums Act, 2004 (Eastern Cape).

