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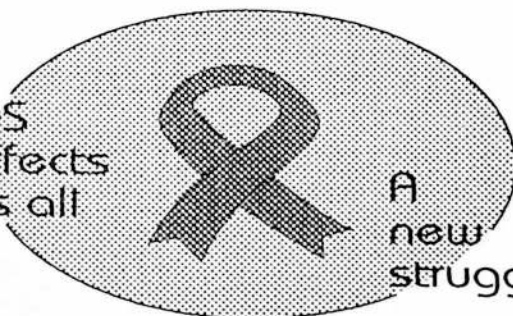
Vol. 12

BISHO/
KING WILLIAM'S TOWN, 7 OCTOBER 2005

No. 1440
(Extraordinary)

We all have the power to prevent AIDS

AIDS
affects
us all



A
new
struggle

**AIDS
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DEPARTMENT OF HEALTH

Prevention is the cure



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**THIS PROVINCIAL GAZETTE SUPERSEDES PROVINCIAL GAZETTE
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PROCLAMATION

by the Premier

No. 4, 2005

**COMMISSION OF INQUIRY INTO THE FINANCES OF THE PROVINCE OF THE EASTERN
CAPE**

I, **Nosimo Balindlela**, Premier of the Province of the Eastern Cape, acting in terms of section 1 of the Provincial Commissions Act (Eastern Cape), 1994 (Act No. 3 of 1994), hereby declare that the provisions of the Criminal Procedure Act 1977 (Act No. 51 of 1977) and the provisions of the Provincial Commission's Act (Eastern Cape), 1994 (Act No. 3 of 1994), are applicable *mutatis mutandis* to the Commission of Inquiry into the Finances of the Province of the Eastern Cape, and hereby make regulations as set out in the attached Schedule for the Commission.

(Signed)

NOSIMO BALINDLELA

PREMIER: PROVINCE OF THE EASTERN CAPE

SCHEDULE

1. In these regulations, unless the context indicates otherwise -

"Chairperson" means the Chairperson of the Commission;

"Commission" means the Commission of Inquiry into the Finances of the Province of the Eastern Cape;

"document" includes an electronic document, and any book, pamphlet, note, record, transcription, list, circular, plan, placard, poster, publication, drawing, photograph, picture, spreadsheet, report, invoice or receipt;

"inquiry" means the inquiry conducted by the Commission;

"member" means a member of the Commission;

"officer" means a person, whether in the fulltime service of the State or not, who has been appointed or designated to assist the Commission in the execution of its functions;

"premises" includes any land, building, structure, part of a building or structure, vehicle, conveyance, vessel or aircraft.



2. The proceedings of the Commission shall be recorded in the manner determined by the Chairperson.
3. (1) Any person appointed or designated to take down or record the proceedings of the Commission in shorthand or by mechanical means or to transcribe such proceedings which have been so taken down or recorded shall, at the outset, take an oath or make an affirmation in the following form:

"I, XY, declare under oath/affirm and declare-

 - (a) that I shall faithfully and to the best of my ability take down/record the proceedings of the Commission of Inquiry into the Finances of the Province of the Eastern Cape in shorthand/by mechanical means as ordered by the Chairperson of the Commission;
 - (b) that I shall transcribe fully and to the best of my ability any shorthand notes/mechanical record of the proceedings of the Commission made by me or by any other person."
- (2) No shorthand notes or mechanical record of the proceedings of the Commission shall be transcribed except by order of the Chairperson.
4. Every person employed or engaged in the execution of the functions of the Commission, shall -
 - (1) preserve and help in preserving secrecy with regard to any document of the Commission or any information that may come to his or her knowledge in the performance of his or her duties in connection with those functions;
 - (2) not communicate any such information to any person, nor allow or permit any person to have access to any document in the possession or custody of the Commission or any officer, except in the performance of his or her duties, or as authorized by the Chairperson, or by order of a competent court;
 - (3) upon his or her employment or engagement by the Commission, before the Chairperson, take an oath or make an affirmation of fidelity or secrecy in the following form:

"I, XY, declare under oath/affirm and declare that, except in so far as it is necessary in the performance of my duties in connection with the functions of the Commission of Inquiry into the Finances of the Province of the Eastern Cape, or as authorized by the Chairperson, or by order of a competent court, I shall not communicate to any person any information which may come to my knowledge in connection with the inquiry, or allow or permit any person to have access to any document in my possession or custody or in the possession or custody of the Commission or any officer."
5. No person shall communicate to any other person any information which may have come to his or her knowledge in connection with the inquiry of the Commission, or allow or permit any other person to have access to any document in the possession or custody of the Commission, except by order of a competent court, or in the exercise of a right or duty, or in the protection of a legitimate interest.

6. The Chairperson may designate one or more knowledgeable persons to assist the Commission in the performance of some of its functions, in a capacity other than that of a member.
7. An officer, attorney or advocate designated by the Chairperson may be present at the hearing of evidence at the inquiry and may adduce evidence and arguments relating to the inquiry.
8. The Chairperson or an officer generally or specially authorized by the Chairperson shall administer an oath to, or accept an affirmation from, any witness appearing before the Commission.
9.
 - (1) If any person who gave or is giving evidence before the Commission, or who has been summoned to give evidence, so requests the Commission, the Chairperson may direct that no person shall in any manner whatsoever divulge his or her name or any information likely to reveal his or her identity.
 - (2) No person shall contravene any provision or a directive referred to in sub-regulation (1).
10. Any witness appearing before the Commission :-
 - (1) may, in the discretion of the Chairperson and in such manner as may be determined by the latter, be assisted by an advocate or an attorney;
 - (2) may be cross-examined by any person only if the Chairperson permits cross-examination by such person because the Chairperson deems it necessary or in the interest of the functioning of the Commission or in the interest of justice;
 - (3) shall not be entitled at the inquiry to refuse to answer any question upon the ground that the answer would tend to incriminate him or her.
11. Any incriminating answer or information directly obtained, or incriminating evidence directly derived from a witness contemplated in regulation 10, shall not be admissible as evidence in criminal proceedings in a court of law against the person concerned or the body corporate of which he or she is or was an officer, except in criminal proceedings where the person concerned is charged with an offence relating to:-
 - (1) the administering or taking of an oath or the administering or making of an affirmation;
 - (2) the giving of false evidence;
 - (3) the making of a false statement; or
 - (4) a failure to answer lawful questions fully and satisfactorily.
12. Whenever the Commission is satisfied upon evidence or information presented to it that the inquiry may adversely affect any existing, instituted or pending legal proceedings or any investigation instituted in terms of any law, evidence which is relevant to such legal proceedings or investigation shall be dealt with by the Commission in such a manner as not to affect adversely such legal proceedings or investigations.

13. (1) A judge of the High Court, a regional court magistrate or a magistrate may issue a warrant to enter and search any premises that are within the jurisdiction of that judge or magistrate, if, from information on oath or affirmation, there are reasonable grounds to believe that a document or article is on or is likely to be on those premises, or anything connected to the inquiry is in the possession of, or under the control of, a person who is on or in those premises.
- (2) A warrant to enter and search may be issued at any time and must specifically:-
- (a) identify the premises that may be entered and searched; and
 - (b) authorise an officer, duly assisted by a police officer to:
 - (i) enter upon or into those premises;
 - (ii) search those premises;
 - (iii) search any person on those premises if there are reasonable grounds for believing that the person has personal possession of an article or document that has a bearing on or is relevant to the inquiry;
 - (iv) examine any article or document that is on or in those premises that has a bearing on or is relevant to the inquiry;
 - (v) request information about any article or document from the owner of, or person in control of, the premises or from any person who has control of the article or document, or from any other person who may have the information;
 - (vi) take extracts from, or make copies of, any book or document that is on or in the premises that has a bearing on or is relevant to the inquiry;
 - (vii) use any computer system on the premises, or require assistance of any person on the premises to use that computer system, to:-
 - (aa) search any data contained in or available to that computer system;
 - (bb) reproduce any record from that data; and
 - (cc) seize any output from that computer for examination and copying; and
 - (dd) attach and, if necessary, remove from the premises for examination and safekeeping, anything that has a bearing on or is relevant to the inquiry.
- (3) A warrant to enter and search is valid until one of the following events occurs:
- (a) The warrant is executed;
 - (b) The warrant is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;

- (c) The purpose for issuing it has lapsed; or
 - (d) The expiry of one month after the date it was issued.
- (4) A warrant to enter and search may be executed only during the day, unless the judge, regional court magistrate or magistrate who issued it, authorizes its execution at night, at a time that is reasonable in the circumstances.
- (5) A person authorised by warrant issued in terms of subsection (2) may enter and search premises named in that warrant.
- (6) Immediately before commencing with the execution of a warrant, a person executing that warrant must:-
- (a) if the owner, or person in control, of the premises to be searched is present-
 - (i) provide identification to that person and explain to that person the authority by which the warrant is being executed; and
 - (ii) hand a copy of the warrant to that person or to the person named in it; or
 - (b) if none of those persons is present, affix a copy of the warrant to the premises in a prominent and visible place.
14. No person shall, without the written permission of the Chairperson:-
- a) disseminate any document submitted to the Commission by any person in connection with the Inquiry or publish the contents or any portion of the contents of such document; or
 - b) peruse any document, including any statement, which is intended to be submitted to the Chairperson or intercept such document or statement while it is being taken forward to the Chairperson.
15. The Commission shall at any time refer to the appropriate Director of Public Prosecutions any evidence, information or document indicating that a crime has, or may have, been committed for further investigation and action,
16. No person shall, without the written permission of the Chairperson
- (a) disseminate any document submitted to the Commission by any person in connection with the inquiry or publish the contents or any portion of the contents of such document; or
 - (b) peruse any document , including any statement, which is destined to be submitted to the Chairperson or intercept such document or statement while it is being taken or forwarded to the Chairperson;
17. No person shall insult, disparage or belittle the Chairperson or any member or any officer of the Commission or prejudice, or influence the proceedings or findings, or anticipate the findings of the Commission.



18. No person shall, except in so far as may be necessary in the execution of the terms of reference of the Commission, publish or furnish to any other person the report of the Commission or a copy or part thereof or information about the consideration of evidence or deliberations thereon by the Commission until the Premier of the Province of the Eastern Cape has published such report for general information or has tabled it before the Provincial Legislature, whichever takes place first.
19. The proceedings and procedures of the Commission shall be prescribed and be determined in the manner decided by the Chairperson.
20. Any person who:-
 - (a) hinders or obstructs the Chairperson, or any officer in the exercise of any power referred to in regulation 13; or
 - (b) contravenes a provision of regulation 5, 9(2), or 18, or
 - (c) contravenes a provision of regulation 17, shall be guilty of an offence and liable on conviction:-
 - (i) in the case of an offence referred to in paragraph (a) or (b), to a fine not exceeding R2 000 or to imprisonment for a period not exceeding 6 months, or to both such fine and imprisonment; and
 - (ii) in the case of an offence referred to in paragraph (c), to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months, or to both such fine and imprisonment

PROVINCIAL NOTICE

No. 39

7 October 2005

APPOINTMENT OF COMMISSION OF INQUIRY INTO FINANCES OF THE EASTERN CAPE PROVINCIAL ADMINISTRATION

I, Nosimo Balindlela, Premier of the Province of the Eastern Cape, acting in terms of section 127(2) (e) of the Constitution of the Republic of South Africa, 1996 (Act No, 108 of 1996), hereby:-

- (1) Appoint Judge Rajarithinam Pillay as Chairperson, and Mzimtsha Vizia Nkonki and Noluyolo Nonkwelo as members of the Commission of Inquiry into the Finances of the Eastern Cape Provincial Administration;
- (2) Determine that:-
 - (a) The terms of reference of the Commission are to inquire into, make findings and recommendations and report to me on the systems and norms used by the Eastern Cape Provincial Treasury for budget determination and budgetary allocations to Provincial Departments and on the monitoring tools, systems and practices of the Provincial Treasury, Provincial Departments and public entities that exist and those that should be put in place to:-
 - (aa) find out the causes of over-expenditure by Provincial Departments and provincial public entities which received financial support or assistance from the Eastern Cape Provincial Administration from 10 May 1994 to 31 March 2004;

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- (bb) prevent the recurrence of over-expenditure in the future; and
 - (cc) identify the measures taken by Provincial Departments to prevent over-expenditure.
3. Further determine that, in its inquiry, findings, recommendations and report, and in furtherance of the aims and objects set forth in paragraph 2 above, the Commission shall seek to establish:-
- (i) The cause/s of and/or reasons for over-spending by Provincial Departments, particularly the Departments of Education and Social Development and public entities, including in this regard, contraventions of the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999) and the identity of the individuals or officials in the Administration, who are or were responsible for such contraventions;
 - (ii) The identity and details of Provincial property, movable and immovable and assets, including funds and investments and how they have been acquired, utilised and managed by Provincial Departments and the aforementioned public entities since 1994;

- (iii) The details of financial transfers of the Provincial Treasury, all Provincial Departments, and such public entities;
- (iv) The procurement processes that are in place within Provincial Departments and aforementioned public entities and whether there are or have been any non-disclosures of conflicts of interest in procurement in any Department or such public entity since 1994 and what steps, if any should be taken in regard thereto;
- (v) Whether there are or have been any incidents of fraud or corruption in procurement in any Provincial department and such public entities since 1994 and:-
 - (aa) how they were dealt with;
 - (bb) whether they were resolved;
 - (cc) the steps that should have been taken and must be taken in respect of those that were not resolved;
- (vi) Whether current cases of fraud and corruption that are being investigated are being reported to the Premier and the Executive Council in terms of the law;

- (vii) The reasons why the Provincial Departments and such public entities did not act upon the Auditor-General's recommendations and forensic reports;
 - (viii) Whether the Joint Anti-Corruption Task Team (JACTT) is obliged to report to the Premier;
 - (ix) Whether any reports to the Commission by any person or referred to it by any institution pertain to such matters as are contemplated in paragraphs 2 to 3(viii) above and to deal therewith accordingly;
 - (x) Such matters as are contemplated in paragraphs 2 to 3(viii) above which took place between 10 May 1994 and 31 March 2004.
- (4) The Commission shall, in the execution of its responsibilities and tasks, have regard to the provisions of the regulations published under the Proclamation issued by me in respect of the Commission in terms of section 1 of the Provincial Commissions Act, 1994 (Act No .3 of 1994).
- (5) The Commission shall formulate and submit to me interim reports from time to time at such intervals as it may deem fit or at my request; and

- (6) Determine that the duration of the Commission shall be until 31st March 2006 commencing on the 8th of April 2005.
- (7) Invite any person wishing to submit either oral or written evidence to the Commission and to write to, or telephone:

THE SECRETARY

COMMISSION OF INQUIRY INTO THE FINANCES
OF THE EASTERN CAPE PROVINCIAL ADMINISTRATION
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Nosimo Balindlela

NOSIMO BALINDLELA

PREMIER: PROVINCE OF THE EASTERN CAPE
