



KWAZULU-NATAL PROVINCE
KWAZULU-NATAL PROVINSIE
ISIFUNDAZWE SA KWAZULU-NATALI

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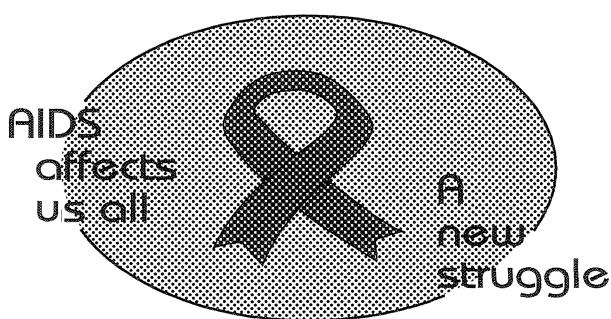
Vol. 7

PIETERMARITZBURG,

29 MAY 2013
29 MEI 2013
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No. 954

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DEPARTMENT OF HEALTH

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- 41 Publikasie van die KwaZulu-Natal Wetsontwerp op die Bevordering van Goeie Regering, 2013, ooreenkomsdig artikel 154(2) van die Grondwet van die Republiek van Suid-Afrika, 1996..... 96

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ISAZISO SIKAWONKE-WONKE

- 41 Ukushicilelwa koMthethosivivinyo wokuGqugquzela ukuBusa oKuhle waKwaZulu-Natali, 2013, ngokuhambisana nesigaba 154(2) soMthethosisekelo weRiphahulikhi yaseNingizimu Afrika, 1996..... 194

GENERAL NOTICE—ALGEMENE KENNISGEWING—ISAZISO SIKAWONKE-WONKE**No. 41****29 May 2013****OFFICE OF THE PREMIER****PUBLICATION OF THE KWAZULU-NATAL PROMOTION OF GOOD GOVERNANCE BILL,
2013, IN COMPLIANCE WITH SECTION 154(2) OF THE CONSTITUTION OF THE REPUBLIC
OF SOUTH AFRICA, 1996**

- 1.** In compliance with section 154(2) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), the **KwaZulu-Natal Promotion of Good Governance Bill, 2013**, is hereby published for public comment.

- 2.** Organised local government, municipalities and other interested parties are invited to submit comments on the proposed Bill, in writing, by no later than 30 days after the publication hereof, by –
 - (a) post to the Chief State Law Advisor, Private Bag X9037, Pietermaritzburg, 3200;
 - (b) hand to the 3rd floor, Moses Mabidha Building, 300 Langalibalele Street, Pietermaritzburg, Attention: Adv. J Wolmarans;
 - (c) facsimile to: (033) 394 4153; or
 - (d) e-mail to: jacques.wolmarans@kznpremier.gov.za.

Given under my Hand at Pietermaritzburg on this 22nd day of April, Two Thousand and Thirteen.

DR ZL MKIZE

Premier of the Province of KwaZulu-Natal

**KWAZULU-NATAL
PROMOTION OF GOOD GOVERNANCE BILL, 2013**

BILL

To promote and ensure good governance and co-operative government in the Province and, to that end, to –

- (a) further regulate intergovernmental relations and international contact involving the Province;**
- (b) regulate international records of understanding to which the Provincial Government is a signatory or participant;**
- (c) make provision for directive principles of Provincial Policy;**
- (d) to provide for the adoption of a Provincial Growth and Development Strategy and a Provincial Plan;**
- (e) further regulate good governance in the Provincial Administration;**
- (f) provide for the regular review and rationalisation of laws;**
- (g) provide for principles of consultative and participatory governance;**
- (h) provide for principles of monitoring and evaluation of Provincial Government performance;**
- (i) further regulate good governance and co-operative government in municipalities;**
- (j) provide for, and further regulate, the assignment and delegation of powers, duties and functions to municipalities;**
- (k) provide for the regular review and rationalisation of municipal by-laws;**
- (l) further regulate good governance and co-operative government in traditional leadership and institutions;**
- (m) provide for the adoption of a Citizen's Charter by the Provincial Government;**
- (n) provide for the establishment of the KwaZulu-Natal Office of the Ombudsman; and**
- (o) provide for the establishment of the KwaZulu-Natal Provincial Planning Commission,**

and to provide for matters connected therewith.

PREAMBLE

RECOGNISING THAT –

- (a) the Rule of Law is fundamental to South African law;**
- (b) the Rule of Law is a binding Founding Provision enshrined in the first chapter and first section of the Constitution;**
- (c) section 1(c) of the Constitution provides for the "supremacy of the Constitution and the Rule of Law";**

- (d) we live in a democracy based on principles of Constitutionalism and the Rule of Law;
- (e) we have gone some way towards the achievement of that ideal, but that great challenges still lie ahead;
- (f) the "Rule of Law" must be distinguished from the "rule of man"; and
- (g) complying with the Rule of Law means that there must be a legal basis or authority for the exercise of every power and the performance of every duty or function of an executive or administrative functionary or official, in other words, that everyone's rights and duties must be based on law, must be readily apparent from the law and not subject, or subject only in exceptional circumstances, to discretionary power;

IN COMPLIANCE WITH these principles of Constitutionalism and Rule of Law, the KwaZulu-Natal Provincial Government is, with the passage of this Act, attempting to establish the legal basis and the legal authority for good governance measures, programmes and structures in the Province;

BE IT THEREFORE ENACTED by the Provincial Legislature of the Province of KwaZulu-Natal, as follows:-

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CHAPTER 1 DEFINITIONS

Definitions

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

“**Batho Pele**” means improved service delivery in a people-centric public service culture inspiring public servants to demonstrate the **Batho Pele** “belief set”: “**We Belong, We Care, We Serve**”;

“**Batho Pele principles**” means a set of principles as adopted by the National Department of Public Service and Administration to inspire public servants to be service orientated, to strive for excellence in service delivery and to commit to continuous service delivery improvement;

“**Citizens’ Charter**” means the Citizens’ Charter referred to in Chapter 10 (sections 37 – 43);

“**Commission**” means the KwaZulu-Natal Provincial Planning Commission established in terms of section 67(1);

“**Commissioner**” means a Commissioner referred to in section 70(1);

“complaint”, for the purposes of Chapter 11 (sections 44 – 66), means a complaint relating to any service or issue which forms part of the core function of a department, municipality or public entity and would include complaints relating to service delivery, non-compliance with, or contravention of, the Citizens’ Charter, maladministration, corruption and fraud;

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

“department” means a provincial government department established in terms of section 7(2)(b) of the Public Service Act, 1994 (Proclamation No.103 of 1994), for the Province of KwaZulu-Natal and listed in Schedule 2 to the Public Service Act, 1994: Provided that, for the purposes of Chapter 11, where the Ombudsman has entered into a written arrangement with a national department that has regional offices in the Province as contemplated in section 5(2)(b) of the Public Service Act, 1994, “**department**” includes such national department to the extent that it operates within the Province;

“directive principles of Provincial Policy” means the directive principles of Provincial Policy referred to in section 11;

“Executive Council” means the Executive Council of the Province of KwaZulu-Natal as contemplated in section 132 of the Constitution;

“Gazette” means the official *Provincial Gazette* of the Province of KwaZulu-Natal;

“head of department” means the person appointed as Head of the relevant Department in terms of section 12 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

“Local House of Traditional Leaders” means a Local House of Traditional Leaders as defined in section 1(1) of the KwaZulu-Natal Traditional Leadership and Governance Act, 2005 (Act No. 5 of 2005);

“local sphere” means the local sphere of government referred to in section 40 of the Constitution;

“Member of the Executive Council responsible for Finance” means the Member of the Executive Council of the Province of KwaZulu-Natal responsible for Finance;

"municipal council" or **"council"** means a municipal council referred to in section 157(1) of the Constitution;

"municipality" means a municipality referred to in section 155 of the Constitution, and established by and under sections 11 and 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), read with sections 3, 4 and 5 of the KwaZulu-Natal Determination of Types of Municipality Act, 2000 (Act No. 7 of 2000), and **"district municipality"** and **"metropolitan municipality"** have a corresponding meaning;

"Office of the Ombudsman" means the KwaZulu-Natal Office of the Ombudsman established in terms of section 44(1);

"Ombudsman" means the person appointed as the KwaZulu-Natal Ombudsman in terms of section 46(1)(a);

"organised local government" means the KwaZulu-Natal Local Government Association being that organisation in the Province of KwaZulu-Natal recognised in terms of section 2(1) of the Organised Local Government Act, 1997 (Act No. 52 of 1997), as representing the majority of municipalities in the Province;

"Premier" means the Premier of the Province of KwaZulu-Natal referred to in section 125(1) of the Constitution;

"prescribed" means prescribed by regulation in terms of section 87(1), and **"prescribe"** has a corresponding meaning;

"Province" means the Province of KwaZulu-Natal referred to in section 103 of the Constitution, and **"provincial"** has a corresponding meaning;

"Provincial Government" means the Government of the Province of KwaZulu-Natal and, unless the context indicates otherwise, includes every department in the Provincial Government;

"Provincial Growth and Development Strategy" means the Provincial Growth and Development Strategy (PGDS) referred to in section 13;

"Provincial Hotline" means the service delivery and complaints call centre located within

the Office of the Premier of the Province;

“Provincial House of Traditional Leaders” means the Provincial House of Traditional Leaders as defined in section 1(1) of the KwaZulu-Natal Traditional Leadership and Governance Act, 2005 (Act No. 5 of 2005);

“Provincial Legislature” means the Legislature of the Province of KwaZulu-Natal referred to in section 105 of the Constitution and having the legislative authority for the Province as contemplated in section 104(1) of the Constitution;

“Provincial Plan” means the Provincial Plan referred to in section 19;

“provincial sphere of government” means the provincial sphere of government referred to in section 40 of the Constitution;

“public entity” means a **“provincial public entity”** –

- (a) as defined in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) established for the Province of KwaZulu-Natal; and
- (c) listed in Part C of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“Public Protector” means the state institution referred to in section 181(1)(a) of the Constitution and established by section 1A of the Public Protector Act, 1994 (Act No. 23 of 1994);

“regulations” means regulations made in terms of section 87(1);

“this Act” includes the regulations.

CHAPTER 2

OBJECTS OF ACT

Objects of Act

2. The objects of this Act are to –

- (a) promote and ensure good governance;

(b) identify and implement measures necessary to improve governance;
(c) provide for structures to effect good governance; and
(d) establish the legal basis and the legal authority for good governance measures, programmes and structures,
in the Province.

CHAPTER 3

INTERGOVERNMENTAL RELATIONS, INTERNATIONAL CONTACT, INTERNATIONAL AGREEMENTS, RECORDS OF UNDERSTANDING AND CO-OPERATION ARRANGEMENTS

Co-operative government

3. As part of the provincial sphere of government of the Republic of South Africa, the Provincial Government must –
- (a) act in accordance with the principles of co-operative government and intergovernmental relations set out in the Constitution in all its dealings with the National Government, the other provincial governments and the municipalities in the Province;
 - (b) participate in structures and institutions to promote and facilitate intergovernmental relations, established in terms of the Constitution; and
 - (c) make use of mechanisms and procedures for the settlement of intergovernmental disputes, established in terms of the Constitution.

Establishment of Premier's Intergovernmental Forum

- 4.(1) There is a Premier's intergovernmental forum, established in terms of section 16 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), to promote and facilitate intergovernmental relations between the Provincial Government and local government in the Province.
- (2) Sections 17, 18, 19 and 20 of the Intergovernmental Relations Framework Act, 2005, regulate the composition, role, meetings and reporting of the Premier's Intergovernmental Forum.

Other Provincial intergovernmental forums

5. The Premier may establish other Provincial intergovernmental forums referred to in section 21 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005).

Establishment of district intergovernmental forums

6.(1) There is a district intergovernmental forum for the area of jurisdiction of each district municipality in the Province, established in terms of section 24 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), to promote and facilitate intergovernmental relations between the district municipality and the local municipalities in the district.

(2) Sections 25, 26, 27 and 28 of the Intergovernmental Relations Framework Act, 2005, regulate the composition, role and meetings of the district intergovernmental forums.

Responsibility for co-ordinating intergovernmental relations

7. The Premier is, in terms of section 37 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), responsible for ensuring the co-ordination of intergovernmental relations within the Provincial Government with –

- (a) the National Government; and
- (b) local government in the Province,

in accordance with the provisions of the Intergovernmental Relations Framework Act, 2005.

Participation in National Council of Provinces

8. Delegates to the National Council of Provinces must take an active part in the Council in order to promote the interests of the Province and of the country as a whole in accordance with the principles of co-operative government and intergovernmental relations set out in the Constitution.

International contact

9. In any contact with –

- (a) the representatives;
- (b) governments;
- (c) organs of state and other public bodies;
- (d) organs of civil society;
- (e) private sector bodies; or

(f) individual citizens,
of foreign states, the Provincial Government must act in accordance with the Constitution, National legislation, the foreign policy of the National Government and any directive or guideline of the National Government.

International agreements, records of understanding and co-operation arrangements

10.(1) In terms of the Constitution, the negotiating and signing of international agreements is the responsibility of the National Executive.

(2) A record of understanding or a co-operation arrangement signed by, or on behalf of, the Provincial Government with any sub-national entity of a foreign state with a view to promoting mutual co-operation –

- (a) does not constitute an international agreement;
- (b) must contain provisions expressly recording that –
 - (i) the record of understanding or co-operation arrangement does not constitute an international agreement;
 - (ii) the participants to the record of understanding or co-operation arrangement are not, and do not, represent states or national governments; and
 - (iii) the record of understanding or co-operation arrangement does not bind the respective states or national governments,

in terms of international law;

- (c) must refer to –
 - (i) “participants” rather than “parties”;
 - (ii) “paragraphs” rather than “clauses”; and
 - (iii) “record of understanding” rather than –
 - (aa) “memorandum of understanding”;
 - (bb) “minute”; or
 - (cc) “agreement”; and
- (d) may not contain any binding term or condition setting out the rights, responsibilities, duties and functions of each participant, including specific financial terms and conditions and sanctions for non-performance or non-compliance;
- (e) must contain provisions to the effect that –
 - (i) the participants must inform their respective national governments of any envisaged mutual co-operation;
 - (ii) the participants must endeavour to use their best efforts to facilitate and promote the negotiation of specific agreements between their respective national

governments to give expression and effect to the envisaged mutual co-operation, subject to the current constitutional, legal, procedural and policy frameworks of their respective national governments; and

(iii) the respective national departments responsible for foreign policy and foreign affairs, and the respective national and provincial departments responsible for inter-governmental relations, must be informed of any envisaged agreement referred to in paragraph (ii) and must be given a reasonable opportunity to comment before finalisation and signature of any such agreement; and

(f) must be approved or ratified by the Executive Council.

(3) A record of understanding or co-operation arrangement –

(a) signed by, or on behalf of, the Provincial Government with any sub-national entity of a foreign state;

(b) either before or after the coming into operation of this Act; and

(c) which does not comply with subsection (2),

is null and void.

CHAPTER 4

DIRECTIVE PRINCIPLES OF PROVINCIAL POLICY, PROVINCIAL GROWTH AND DEVELOPMENT STRATEGY AND PROVINCIAL PLAN

Directive principles of Provincial Policy

11. The Provincial Government must adopt and implement policies to actively promote an open and democratic society based on human dignity, equality and freedom, including policies aimed at achieving the following –

(a) the promotion and maintenance of the welfare of the people of the Province;

(b) the promotion of transparency, public participation and consultation;

(c) the promotion of safety and security;

(d) the prevention of crime, maladministration, fraud and corruption and conflict of interest;

(e) the promotion of non-racialism;

(f) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination;

(g) the promotion of respect for the rights of cultural, religious and linguistic communities;

(h) the stimulation and promotion of economic, industrial and rural development;

(i) the creation of job opportunities and sustainable livelihoods;

(j) the promotion of a work ethic and increased productivity;

- (k) the promotion of moral regeneration;
- (l) the promotion of a market-oriented economy;
- (m) realising the right of access to –
 - (i) adequate housing;
 - (ii) basic health care services;
 - (iii) sufficient food and water;
 - (iv) social security, including appropriate social assistance for people who are unable to support themselves and their dependants;
 - (v) basic education; and
 - (vi) decent work and a sustainable livelihood; and
- (n) an environment in which all children –
 - (i) are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity;
 - (ii) are protected against exploitation, neglect, abuse and abandonment; and
 - (iii) receive basic education under a system of their parents' choice; and
- (o) land reform;
- (p) agrarian reform, the development of rural communities and the promotion of the welfare of rural workers;
- (q) a system of taxation and payment for services which is fair, transparent and accommodates the capacity of people to pay;
- (r) an environment in which all frail or older persons –
 - (i) have access to family care or appropriate alternative care when removed from the family environment;
 - (ii) are provided basic nutrition, shelter, basic health care services and social services; and
 - (iii) are protected from maltreatment, neglect, abuse, degradation or involuntary seclusion; and
- (s) the protection and conservation of the environment in the Province, including its unique *fauna* and *flora*, for the benefit of present and future generations;
- (t) the protection and conservation of the natural historical, cultural historical, archaeological and architectural heritage of the Province for the benefit of the present and future generations; and
- (u) the promotion and enhancement of the development of the youth.

Status of directive principles of Provincial Policy

12. The directive principles of Provincial Policy contained in section 11 are, subject to the Constitution, not legally enforceable by citizens against the Provincial Government, but guide and inform the Provincial Government in –

- (a) determining policy;
- (b) planning, including sector specific planning;
- (c) making and applying laws; and
- (d) implementing its programmes and activities.

Executive Council must adopt Provincial Growth and Development Strategy

13.(1) The Executive Council must –

- (a) negotiate, develop and adopt an integrated and sustainable Provincial Growth and Development Strategy (PGDS) for the Province; and
- (b) encourage, and create conditions for, public participation in the negotiation, development, implementation and review of the Provincial Growth and Development Strategy.

(2) The Provincial Growth and Development Strategy must –

- (a) be guided and informed by –
 - (i) the directive principles of Provincial Policy;
 - (ii) the Provincial Plan; and
 - (iii) the various currently applicable municipal Integrated Development Plans (IDPs) referred to in applicable National legislation pertaining to municipal systems and development (especially Chapter 5 (sections 23 – 37) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)); and
- (b) adequately address the relevant and applicable Millennium Development Goals (MDGs) and provincial priorities; and
- (c) contain an action plan with milestones and time-frames for the implementation of action items by departments in the Provincial Government.

Term, monitoring evaluation and review of Provincial Growth and Development Strategy

14. The Executive Council must –

- (a) determine the term of;
- (b) monitor the implementation of;
- (c) evaluate; and
- (d) review,

the Provincial Growth and Development Strategy.

Publication of Provincial Growth and Development Strategy

15.(1) After the adoption of the Provincial Growth and Development Strategy by the Executive Council the Premier must, within a reasonable time, publish the Provincial Growth and Development Strategy by notice in the *Gazette* for general information.

(2) The Provincial Growth and Development Strategy takes effect upon publication of the notice referred to in subsection (1).

(3) The Premier may, after approval by the Executive Council on behalf of the Provincial Government, by notice in the *Gazette* –

- (a) amend;
- (b) substitute; or
- (c) withdraw,

the Provincial Growth and Development Strategy.

Provincial Growth and Development Strategy must be given expression in departmental programmes, budgets and legislation

16. Members of the Executive Council must ensure that –

- (a) the Provincial Growth and Development Strategy generally, and specific action items referred to in section 13(2)(c), are given expression in departmental programmes, budgets and legislation; and
- (b) the individual performance agreements of the respective heads of department contain the milestones and time-frames for the implementation of action items referred to in section 13(2)(c) by the relevant department in the Provincial Government as deliverables or key performance areas against which the performance of the relevant head of department must be assessed.

Status of Provincial Growth and Development Strategy

17. The Provincial Growth and Development Strategy (PGDS) is, subject to the Constitution, not legally enforceable by citizens against the Provincial Government, but guides and informs the Provincial Government in –

- (a) determining policy;

- (b) planning, including sector specific planning;
- (c) making and applying laws; and
- (d) implementing its programmes and activities.

Transitional provisions in respect of Provincial Growth and Development Strategy

18.(1) Any currently applicable Provincial Growth and Development Strategy adopted before the date of the commencement of this Act is, subject to subsection (2), regarded as having been validly adopted in terms of the provisions of this Act.

- (2)(a) The process to review the Provincial Growth and Development Strategy referred to in subsection (1) must commence within 12 months after the date of commencement of this Act.
- (b) The Provincial Government must, within 36 months after the date of the commencement of this Act, adopt and publish a Provincial Growth and Development Strategy as contemplated in this Act.

Executive Council must consider and adopt Provincial Plan

19.(1) The Executive Council must –

- (a) consider a Provincial Plan submitted by the Commission and adopt the Provincial Plan with or without amendments; and
- (b) encourage, and create conditions for, public participation in the development, implementation and review of the Provincial Plan.

(2) The Provincial Plan must –

- (a) adequately address –
 - (i) the relevant and applicable Millennium Development Goals (MDGs) and Provincial priorities;
 - (ii) economic, industrial and rural development;
 - (iii) the maintenance and development of road, rail and ports infrastructure and networks;
 - (iv) agricultural development and food security;
 - (v) sustainable use of natural resources, including land and water;
 - (vi) the promotion and development of tourism;
 - (vii) public safety;
 - (viii) public transport; and
 - (ix) skills development; and

- (b) take cognisance of, and be informed by, the various currently applicable municipal Integrated Development Plans (IDPs) referred to in applicable National legislation pertaining to municipal systems and development; and
- (c) contain an action plan with milestones and time-frames for the implementation of action items by departments in the Provincial Government.

Term, monitoring evaluation and review of Provincial Plan

20. The Executive Council must –

- (a) determine the term of;
- (b) monitor the implementation of;
- (c) evaluate; and
- (d) review,

the Provincial Plan.

Publication of Provincial Plan

21.(1) After the adoption of the Provincial Plan by the Executive Council the Premier must, within a reasonable time, publish the Provincial Plan by notice in the *Gazette* for general information.

(2) The Provincial Plan takes effect upon publication of the notice referred to in subsection (1).

(3) The Premier may, after approval by the Executive Council on behalf of the Provincial Government, by notice in the *Gazette* –

- (a) amend;
- (b) substitute; or
- (c) withdraw,

the Provincial Plan.

Provincial Plan must be given expression in departmental programmes, budgets and legislation

22. Members of the Executive Council must ensure –

- (a) that the Provincial Plan generally, and specific action items referred to in section 19(2)(c), are given expression in departmental programmes, budgets and legislation; and
- (b) that the individual performance agreements of the respective heads of department contain the milestones and time-frames for the implementation of action items referred to

in section 19(2)(c) by the relevant department in the Provincial Government as deliverables or key performance areas against which the performance of the relevant head of department must be assessed.

Status of Provincial Plan

23. The Provincial Plan is, subject to the Constitution, not legally enforceable by citizens against the Provincial Government, but guides and informs the Provincial Government in –

- (a) determining policy;
- (b) determining sector specific plans;
- (c) making and applying laws; and
- (d) implementing its programmes and activities.

CHAPTER 5

PROVINCIAL ADMINISTRATION

Head Office of Provincial Administration

24.(1) The Head Office of the Provincial Administration of the Provincial Government is Pietermaritzburg.

(2) For the purpose of ensuring effective and efficient service delivery, a responsible Member of the Executive Council may determine or direct that the head of a department in the Provincial Government establishes and maintains a satellite or regional office at any appropriate location within the Province.

Provincial public servants

25.(1) The Provincial Government is responsible for the recruitment, appointment, promotion, transfer and dismissal of members of the public service in the administration of the Province within the framework of uniform norms and standards applying to the public service.

(2)(a) The Provincial Government must ensure that all prospective candidates recruited for appointment in the public service in the administration of the Province are appropriately screened and vetted.

(b) Any prospective candidate short-listed for an interview must, immediately after the completion of the interview, complete and sign a declaration substantially in the format as set out in the Schedule to this Act.

(c) The Premier may, by notice in the *Gazette* and with effect from a date to be specified in such notice –

(i) amend; or

(ii) substitute,

the Schedule to this Act.

(3) The Provincial Government must promote, support and facilitate –

(a) increased productivity, service delivery and performance;

(b) training and skills development; and

(c) the professionalisation,

of the members of the public service in the administration of the Province.

Basic values and principles governing public administration

26.(1) Public administration in the Province must be governed by the democratic values and principles enshrined in the Constitution.

(2) The Provincial Government must, within its available resources, take appropriate steps aimed at the prevention and combating of –

(a) maladministration;

(b) fraud and corruption; and

(c) conflict of interest.

Departments in Provincial Government must review and rationalise laws

27.(1) A department in the Provincial Government must, within six months from the date of the coming into operation of this Act, and annually thereafter, review the provisions of every law which it administers with a view to –

(a) recommending to the responsible member of the Executive Council any amendment or repeal required or deemed appropriate to ensure that each provision in such law is consistent with –

(i) the Constitution;

(ii) any applicable national law, which would, in terms of sections 146 – 150 of the Constitution, be regarded as the prevailing legislation;

- (iii) National and Provincial Policy;
 - (iv) the Provincial Growth and Development Strategy; and
 - (v) the Provincial Plan; and
- (b) recommending to the responsible Member of the Executive Council any new law, whether principal or subordinate, within the Provincial legislative competence required or deemed appropriate to ensure the establishment of the requisite legal basis, authority and framework for current Provincial Policy consistent with –
- (i) the Constitution;
 - (ii) any applicable National law, which would, in terms of sections 146 – 150 of the Constitution, be regarded as the prevailing legislation;
 - (iii) National and Provincial Policy;
 - (iv) the Provincial Growth and Development Strategy; and
 - (v) the Provincial Plan; and
- (c) ensuring the technical harmonisation and rationalisation of the laws the department administers.

(2) Members of the Executive Council must ensure that the individual performance agreements of the respective heads of department contain the obligations of the relevant department referred to in subsection (1)(a), (b) and (c) as deliverables or key performance areas against which the performance of the relevant head of department must be assessed.

Provincial Government and each department in Provincial Government must establish official website

- 28.(1) The Provincial Government and each department in the Provincial Government must –
- (a) establish its own official website; and
 - (b) place on that official website any information required to be made public in terms of any law.
- (2) The Director-General and each head of department must maintain and regularly update the relevant official website.

CHAPTER 6

CONSULTATIVE AND PARTICIPATORY GOVERNANCE

Principles of consultative and participatory governance

- 29.(1)** The Provincial Government must, within its available resources –
- (a) develop a culture of governance that complements the executive branch of government with a system of open, consultative and participatory governance; and
 - (b) take appropriate steps to encourage and facilitate communication and consultation with, and participation by –
 - (i) the general public; and
 - (ii) identified stakeholders or sectors including, but not limited to –
 - (aa) business and commerce;
 - (bb) industry;
 - (cc) agriculture;
 - (dd) non-governmental organisations;
 - (ee) community-based organisations;
 - (ff) faith-based organisations;
 - (gg) cultural or traditional associations or bodies;
 - (hh) organs or formations of civil society;
 - (ii) civic organisations;
 - (jj) co-operatives;
 - (kk) development and aid agencies;
 - (ll) sporting associations or bodies representing the various sporting codes;
 - (mm) sector specific associations or bodies; and
 - (nn) professional associations or other professional bodies,

in the process of government in the Province.

- (2)** The Provincial Government may –

- (a) consult with; and
- (b) receive comment, representations, input and proposals (orally, in writing, in printed or electronic format) from,

the general public and any stakeholder or sector in respect of any matter related to –

- (i) government strategy;
- (ii) government policy;
- (iii) draft or existing legislation, where public, stakeholder or sector-specific consultation is not specifically required by law;

- (iv) accessibility to, and integration of, government services, programmes or functions;
- (v) implementation of government services, programmes or functions;
- (vi) evaluation of government services, programmes or functions; and
- (vii) evaluation of government performance.

(3) Where the Provincial Government invites written comment, representations, input or proposals on any matter, it must be stated in the invitation that any person who cannot write may go, during office hours, to a place where a member of staff attached to the Provincial Government named in the invitation, will assist with transcribing that person's comment, representation, input or proposal.

(4) The Provincial Government may convene and chair –

- (a) public meetings or hearings;
- (b) stakeholder or sector specific consultative sessions; and
- (c) report-back meetings or sessions.

(5)(a) The Provincial Government must give due notice of any public meeting or hearing through the media, including at least two local newspapers and at least one local radio broadcast.

(b) Any public meeting or hearing is open to the media.

(c) The Provincial Government must take reasonable steps to regulate public access to, and public conduct at, public meetings or hearings.

CHAPTER 7

MONITORING AND EVALUATION OF PROVINCIAL GOVERNMENT PERFORMANCE

Principles of monitoring and evaluation of Provincial Government performance

30. The Provincial Government must continuously monitor and critically evaluate its performance in the –

- (a) delivery of its services;
- (b) implementation of its programmes;
- (c) exercise of its powers;
- (d) performance of its functions; and
- (e) fulfilment of its duties and obligations.

CHAPTER 8
GOOD GOVERNANCE AND CO-OPERATIVE GOVERNMENT
IN MUNICIPALITIES

Principles of governance and co-operative government pertaining to municipalities

31.(1)(a) The local sphere of government in the Province consists of municipalities established in terms of the Constitution.

(b) Provincial legislation must determine the different types of municipality to be established in the Province, as defined by National legislation.

(2) Municipalities have –

(a) the powers, duties and functions contemplated in the Constitution, including the powers, duties and functions as determined and provided for in terms of an Act of Parliament or an Act of the Provincial Legislature; and

(b) any other power, duty or function assigned or delegated to municipalities generally, a specific municipality or a category or type of municipality in terms of the Constitution, an Act of Parliament or an Act of the Provincial Legislature.

(3) The ability or right of a municipality to exercise its powers or perform its functions may not be compromised or impeded.

(4) The Provincial Government, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.

(5) The Provincial Government must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 to the Constitution which necessarily relates to local government, if –

(a) that matter would most effectively be administered locally; and
(b) the municipality has the capacity to administer it.

(6) Draft Provincial legislation that affects the status, institutions, powers or functions of local government must be published for public comment before it is introduced in the Provincial Legislature, in a manner that allows organised local government, municipalities and other interested persons an opportunity to make representations with regard to the draft legislation.

(7) The Provincial Government must publish a municipal by-law in the *Gazette* upon request by the municipality.

(8) When a municipality in the Province cannot or does not fulfil an executive obligation in terms of legislation, the Executive Council may intervene by taking appropriate steps in terms of the Constitution or National legislation to ensure fulfilment of that obligation.

Assignment or delegation of powers, duties or functions to municipalities by Premier

32.(1) The Premier may –

- (a) by proclamation in the *Gazette*;
- (b) with the concurrence of a Member of the Executive Council responsible for any department in the Provincial Government; and
- (c) after consultation by the relevant Member of the Executive Council with –
 - (i) organised local government in the Province;
 - (ii) municipalities generally;
 - (iii) the specific municipality; or
 - (iv) the category or type of municipality,

as the case may be, assign or delegate any power, duty or function of that department, including any power, duty or function of the head or any officer or employee of that department, to municipalities generally, a specific municipality or a category or type of municipality.

(2) An assignment or delegation in terms of subsection (1) must be accompanied by –

- (a) the transfer of assets, including funds; and
- (b) the transfer, secondment or making available of personnel, as the case may be, relevant to the exercise of the power or the performance of the relevant duty or function, from the department to the relevant municipality.

(3) A department in the Provincial Government referred to in subsection (1) must generally assist a municipality referred to in that subsection in building capacity to enable that municipality to exercise or perform an assignment or delegation referred to this section.

(4) The Provincial Government, including any department within the Provincial Government or any officer or employee of any such department, may not exercise any assigned power or perform any assigned duty or function referred to in subsection (1) within the area of jurisdiction of the relevant municipality: Provided that this subsection does not apply to any officer or employee of the Provincial Government who has, in accordance with the applicable laws, been made available to,

seconded to or transferred to and placed in the service of, a municipality.

(5) A delegation in terms of subsection (1) does not prevent the exercise of the relevant power or the performance of the relevant duty or function by the department or any duly authorised officer or employee of the department.

Assignment of functions to municipal council by Member of Executive Council

33.(1) A Member of the Executive Council may assign any power or function that is to be exercised or performed by such Member of the Executive Council in terms of an Act of Parliament or an Act of the Provincial Legislature, to a municipal council.

(2) An assignment referred to in subsection (1) –

- (a) must be in terms of an agreement between the relevant Member of the Executive Council and the municipal council;
- (b) must be consistent with the Act in terms of which the relevant power or function is exercised or performed; and
- (c) takes effect upon proclamation by the Premier in the *Gazette*.

Municipalities must review and rationalise by-laws

34.(1) In accordance with section 15 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), a municipal council must, within six months from the date of the coming into operation of this Act, and annually thereafter, review the provisions of every by-law which the municipality administers with a view to –

- (a) the amendment or repeal required or deemed appropriate to ensure that each provision in such by-law is consistent with –
 - (i) the Constitution;
 - (ii) any applicable National law, which would, in terms of sections 146 – 150 of the Constitution, be regarded as the prevailing legislation;
 - (iii) Provincial legislation (principal and subordinate);
 - (iv) National and Provincial Policy;
 - (v) the Provincial Growth and Development Strategy;
 - (vi) the Provincial Plan; and
 - (vii) the relevant currently applicable municipal Integrated Development Plan (IDP) referred to in applicable National legislation pertaining to municipal systems and development; and

(b) ensuring the technical harmonisation and rationalisation of the by-laws.

(2) A municipal council must ensure that the individual performance agreement of the municipal manager contains the obligations referred to in subsection (1)(a) and (b) as deliverables or key performance areas against which the performance of the municipal manager must be assessed.

Power of residents of municipality to decide matters at public meeting

35.(1) For the purpose of discussing and deciding on any matter affecting the interests of a municipality or the interests of the residents of a municipality, the mayor of a municipality –

(a) may, when so requested in writing, by –

- (i) not less than one-third of the total number of councillors determined for that municipality;
- (ii) not fewer than one per cent of the total number of residents who are enrolled as voters of that municipality; or
- (iii) 50 such residents who are enrolled as voters of that municipality,

whichever is the greater number; and

(b) must, when so directed –

- (i) by resolution of the municipal council; or
- (ii) in writing by that Member of the Executive Council responsible for Local Government,

by notice published in at least two local daily newspapers circulating in the area of jurisdiction of the municipality, convene a meeting of the residents who are enrolled as voters of the municipality on a day and at a time specified in such notice: Provided that the date of the meeting is not less than three working days after the date of publication of the notice: Provided, further, that the notice must give an indication of the matter or matters to be placed before, or discussed at, the meeting.

(2) Every meeting contemplated by subsection (1) is open to the media.

(3) The *quorum* at a meeting convened in terms of subsection (1) is 50 persons who are residents who are enrolled as voters of the municipality.

(4) The mayor must preside at the meeting and must cause all arrangements necessary for the proper conduct thereof to be made, including the taking of minutes of the proceedings thereof and to ensure that only residents who are enrolled as voters of the municipality take part therein: Provided that the mayor may permit an employee of the council or any other person to take part

in the proceedings for the purpose of giving information concerning any matter before the meeting.

(5)(a) All questions before the meeting are decided by a majority of the residents who are enrolled as voters and present.

(b) Voting is by a show of hands.

(c) The declaration by the mayor of the result of the voting and the recording thereof in the minutes of the meeting is conclusive proof of any decision taken on any question before the meeting.

(d) The mayor must forthwith submit the minutes of the meeting and every such decision to the municipal council for consideration.

(6) The municipal council must, within a reasonable time, consider every such decision and –

(a) may –

- (i) confirm;
- (ii) vary;
- (iii) amend; or
- (iv) set aside,

any such decision;

(b) must give reasons where it varies, amends or sets aside any such decision; and

(c) must, where it confirms any such decision, within a reasonable time carry out and give effect to that decision as if it were a resolution taken by the municipal council.

(7) All costs in connection with –

(a) a meeting held in terms of this section; and

(b) the carrying out and giving effect to a decision contemplated by subsection (6)(c),
must be borne by the municipality.

(8) For the purposes of this section –

(a) the words “resident” or “residents” bear the meaning assigned to them in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and

(b) the expression “enrolled as voters” means currently enrolled as voters on the municipality’s segment of the voters’ roll for the voting districts falling within the municipality as contemplated by section 5 of the Local Government: Municipal Electoral Act, 2000 (Act No. 27 of 2000), and the words “voter”, “voters’ roll” and “voting district” bear the meaning assigned to them in section 1 of that Act.

CHAPTER 9
GOOD GOVERNANCE AND CO-OPERATIVE GOVERNMENT
IN TRADITIONAL LEADERSHIP AND INSTITUTIONS

Recognition of traditional leadership and institutions

36.(1) The institution, status and role of traditional leadership according to customary law is recognised, subject to –

- (a) the Constitution; and
- (b) applicable National framework legislation pertaining to traditional leadership and governance.

(2) Provincial legislation must provide for –

- (a) the recognition of traditional communities;
- (b) the establishment and composition of traditional councils, including –
 - (i) their roles, powers, functions and duties; and
 - (ii) their relationship with municipalities; and
- (c) the recognition of traditional leadership and, subject to the Constitution and National legislation –
 - (i) the roles, powers, functions and duties of traditional leadership;
 - (ii) the relationship of traditional leadership with municipalities; and
 - (iii) the participation of traditional leadership in municipal councils; and
- (d) the establishment and composition of a Provincial House of Traditional Leaders, including the roles, powers, functions and duties of a Provincial House of Traditional Leaders; and
- (e) the establishment and composition of Local Houses of Traditional Leaders, including the roles, powers, functions and duties of Local Houses of Traditional Leaders.

CHAPTER 10
KWAZULU-NATAL CITIZENS' CHARTER

Adoption of Citizens' Charter

37. The Provincial Government must –

- (a) adopt a Citizens' Charter as a binding statement of intent issued by the Provincial Government and subscribed to by the Provincial Government and the citizens residing in the Province as a mechanism to be employed to inform citizens resident in the Province what

they may expect from the Provincial Government in relation to the level and standard of services offered or delivered by the Provincial Government; and

(b) encourage, and create conditions for, public participation in the negotiation, development, implementation and review of the Citizens' Charter.

Content of Citizens' Charter

38. The Citizens' Charter must –

- (a) be consistent with –
 - (i) the Constitution;
 - (ii) any applicable National law, which would, in terms of sections 146 – 150 of the Constitution, be regarded as the prevailing legislation;
 - (iii) Provincial legislation;
 - (iv) National and Provincial Policy;
 - (v) the Provincial Growth and Development Strategy; and
 - (vi) the Provincial Plan; and
- (b) apply to all public services offered or delivered by the Provincial Government;
- (c) be co-determined in consultation with, and participation by, the residents of the Province and the Provincial Government;
- (d) clearly reflect –
 - (i) the duties and obligations of the Provincial Government in respect of the level and standards of services offered or provided by the Provincial Government to residents of the Province; and
 - (ii) the rights and the responsibilities of residents of the Province; and
- (e) be published for public comment before it is adopted by the Executive Council on behalf of the Provincial Government, in a manner that allows organs of state, civil society and other interested persons an opportunity to make representations with regard to the draft Citizens' Charter.

Publication of Citizens' Charter

39.(1) After approval of the adoption of the Citizens' Charter by the Executive Council on behalf of the Provincial Government the Premier must, within a reasonable time, publish the Citizens' Charter by notice in the Gazette for general information.

(2) The Citizens' Charter takes effect upon publication of the notice referred to in subsection (1).

(3) The Premier may, by notice in the *Gazette* after consultation and publication for public comment referred to in paragraphs (c) and (e) of section 38 and after approval by the Executive Council on behalf of the Provincial Government –

- (a) amend;
- (b) substitute; or
- (c) withdraw,

the Citizens' Charter.

Term, monitoring, evaluation and review of Citizens' Charter

40. The Executive Council must –

- (a) determine the term of;
- (b) monitor the implementation of;
- (c) evaluate; and
- (d) review,

the Citizens' Charter.

Citizens' Charter must be given expression in departmental programmes, budgets and legislation

41. Members of the Executive Council must ensure –

- (a) that the Citizens' Charter generally, and specific departmental Service Delivery Improvement Plans, are given expression in departmental programmes, budgets and legislation; and
- (b) that the individual performance agreements of the respective heads of department contain the milestones and time-frames for the implementation of specific departmental Service Delivery Improvement Plans by the relevant department in the Provincial Government as deliverables or key performance areas against which the performance of the relevant head of department must be assessed.

Status of Citizens' Charter

42.(1) The Citizens' Charter is legally enforceable by citizens resident in the Province against the Provincial Government.

(2)(a) Citizens may lodge complaints relating to matters of non-compliance with, or a contravention of, the Citizens' Charter, with the Ombudsman for investigation.

(b) The Premier may promote and facilitate additional appropriate and affordable mechanisms of redress by citizens against the Provincial Government.

(3) For the purposes of this section, “**citizens**” includes any person resident or present in the Province for any period.

Transitional provisions in respect of Citizens’ Charter

43.(1) Any currently applicable Citizens’ Charter adopted before the date of the commencement of this Act is, subject to subsection (2), regarded as having been validly adopted in terms of the provisions of this Act.

(2)(a) The process to review the Citizens’ Charter referred to in subsection (1) must commence within three months after the date of commencement of this Act.

(b) The Provincial Government must, within 12 months after the date of the commencement of this Act, adopt and publish a Citizens’ Charter as contemplated in this Act.

CHAPTER 11

KWAZULU-NATAL PROVINCIAL OMBUDSMAN

Establishment of KwaZulu-Natal Office of Ombudsman

44.(1) There is hereby established the KwaZulu-Natal Office of the Ombudsman, hereinafter referred to as the Office of the Ombudsman.

(2) The Office of the Ombudsman is not a juristic person.

(3)(a) Operationally, and in terms of its budget and financial administration, the Office of the Ombudsman is placed within the Office of the Premier in the Provincial Government.

(b) The Director-General of the Provincial Government is the accounting officer of the Office of the Ombudsman.

Objects of Office of Ombudsman

45. The objects of the Office of the Ombudsman are to –

- (a) investigate complaints against departments, municipalities or public entities;
- (b) promote and enhance service delivery; and

(c) enhance the culture of compliance with –

(i) the *Batho Pele* principles; and

(ii) the Citizens' Charter,

by public servants in the Province.

Appointment of Ombudsman

46.(1)(a) The Premier must, after following a transparent advertising process, appoint the KwaZulu-Natal Ombudsman, hereinafter referred to as the Ombudsman.

(b) The Ombudsman must be a South African citizen who is a fit and proper person to hold such office, and who –

(i) is admitted as an advocate or an attorney of the High Court of South Africa and has, for a cumulative period of at least ten years after having been so admitted, practiced as an advocate or attorney;

(ii) is qualified to be admitted as an advocate or an attorney and has, for a cumulative period of at least of ten years after having so qualified, lectured in law at a tertiary institution;

(iii) has, for a cumulative period of at least ten years, specified knowledge of, or experience in, the administration of justice, public administration or public finance;

(iv) has, for a cumulative period of at least ten years, been a member of Parliament or a provincial legislature; or

(v) has acquired any combination of experience mentioned in subparagraphs (i) to (iv) for a cumulative period of at least ten years.

(2) The Ombudsman is appointed for a period not exceeding five years and may be re-appointed for one additional term of office not exceeding five years.

(3)(a) The appointment of the Ombudsman is subject to the conclusion of a written performance agreement entered into between that person and the Premier.

(b) The Premier and the Ombudsman may, in writing and by agreement, amend the performance agreement.

(c) The Ombudsman may not, unless authorized thereto in writing by the Premier, perform any remunerative work outside his or her official duties.

(4) The Premier may, despite the provisions of subsection (1)(a), utilise the services of a person seconded or transferred in accordance with the provisions of the Public Service Act, 1994 (Proclamation No.103 of 1994).

- (5)(a) The Ombudsman must be independent and impartial and must exercise and perform his or her powers, functions and duties subject only to the Constitution and the law.
- (b) The Ombudsman has the immunities and privileges assigned to him or her in terms of this chapter for the purpose of ensuring the independent and impartial exercise and performance of his or her powers and functions.
- (c) All departments, municipalities and public entities must accord such assistance as may be reasonably required for the protection of the independence, impartiality, dignity and effectiveness of the Ombudsman in the exercise and performance of his or her powers and functions.
- (d) The Ombudsman or any member of the Office of the Ombudsman is not liable in respect of anything done in good faith under any provision of this Act or the Constitution.

Powers, functions and duties of Ombudsman

47.(1) The Ombudsman must –

- (a) investigate any complaint that relates to a matter of –
- (i) service delivery;
 - (ii) non-compliance with, or contravention of, the Citizens' Charter;
 - (iii) maladministration;
 - (iv) corruption; or
 - (v) fraud,
- originating either before or after the commencement of this Act, by a department, municipality or public entity, and in respect of which a complaint has been lodged with the Ombudsman;
- (b) investigate, on his or her initiative or on receipt of a complaint, any alleged –
- (i) maladministration in connection with the affairs of government within the provincial or local sphere;
 - (ii) abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function;
 - (iii) improper or dishonest act or omission or corruption with respect to public money;
 - (iv) improper or unlawful enrichment, or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or omission in the public administration or in connection with the affairs of government within the provincial sphere or of a person performing a public function; or
 - (v) any act or omission by a person in the employ of government within the provincial sphere, local sphere or a person performing a public function, which results in unlawful or improper prejudice to any other person; and
- (c) establish and maintain formal links and relations with other departmental ombudsman

offices with a view to ensuring that –

- (i) there is alignment and synergy with regard to functioning of the respective ombudsman offices; and
- (ii) there is no duplication with regard to the activities of the respective ombudsman offices; and
- (d) coordinate the activities of all ombudsman offices in departments, municipalities and public entities in the Province;
- (e) manage the Provincial Hotline;
- (f) attend every Presidential and Provincial *Imbizo* held in the Province for purposes of first-hand gathering of information in respect of complaints or concerns of citizens in respect of service delivery by the Provincial Government; and
- (g) establish an office in each district and metropolitan municipality with a view to reaching out to the broader citizenry of the Province in terms of fulfilling his or her mandate.

(2) The Ombudsman may –

- (a) in his or her discretion, investigate any complaint that relates to a matter of –
 - (i) service delivery;
 - (ii) non-compliance with, or contravention of, the Citizens' Charter;
 - (iii) maladministration;
 - (iv) corruption; or
 - (v) fraud,

originating either before or after the commencement of this Act, by a department, municipality or public entity;

- (b) with the prior written approval of the Premier, enter into an agreement or arrangement in terms of which the Ombudsman may investigate complaints contemplated in paragraph (a) in respect of a National Government department that has regional offices in the Province;
- (c) issue a compliance order against a department, municipality or public entity if a complaint against such department, municipality or public entity is not attended to within reasonable time;
- (d) make recommendations to the Provincial Government, the Premier, the Executive Council or the Provincial Legislature, on issues of promoting and enhancing service delivery in the Province;
- (e) enter into agreements with any person with expert knowledge in a particular field, so as to assist or advise the Ombudsman in connection with any matter relating to his or her objects, powers, functions and duties; and
- (f) generally, do everything necessary to achieve the objects of this Chapter.

Lodging of complaints with Ombudsman

48.(1) Any person who has a complaint against a department, municipality or public entity, may lodge such complaint with the Ombudsman.

(2) A complaint referred to in subsection (1) may be lodged orally or in writing.

(3) Where a complaint is made orally to the Ombudsman, the Ombudsman may reduce the complaint to writing or at any time require the complainant to reduce the complaint to writing and, where the Ombudsman makes such a request, withhold investigating the complaint further, until the complainant reduces the complaint to writing.

(4) A complaint may be –

- (a) a single complaint, which is an individual submission from a single complainant, concerning a particular complaint or request;
- (b) an association complaint, which is an individual submission from an association or single petitioner mandated by an association to submit that complaint, concerning a particular complaint or request;
- (c) a collective complaint, which is a collection of signatures from a number of complainants, concerning a particular complaint or request;
- (d) a mass or group complaint, which is made up of individual or group submissions from a number of complainants, concerning the same or substantially similar complaints or requests; or
- (e) anonymous.

(5) A complaint may be submitted by a person acting –

- (a) in his or her own interest;
- (b) in the interest of another person who is not in a position, for whatever reason, to submit a complaint in his, her or its own name;
- (c) as a member, or in the interest, of a group or class of persons; or
- (d) in the public interest.

(6) A complaint may, subject to subsection (7), address any matter –

- (a) within the legislative authority of the Province contemplated in section 104 of the Constitution;
- (b) within the Executive Authority of the Province contemplated in section 125 of the Constitution;

- (c) assigned or transferred to a Member of the Executive Council in terms of sections 128, 132(2), 137 or 138 of the Constitution; or
- (d) relating to the Provincial supervision of and intervention in local government contemplated in section 139 of the Constitution.

(7) The Ombudsman must refuse to consider a complaint –

- (a) falling outside the scope of matters contemplated in subsection (6);
- (b) concerning a matter pending in a court of law or other tribunal or forum contemplated in the Constitution;
- (c) in connection with the conviction and sentencing by a criminal court of law of a person to a period of imprisonment; or
- (d) addressing a matter, which falls within the scope of a commission of inquiry, established in terms of the KwaZulu-Natal Commissions Act, 1999 (Act No. 3 of 1999).

(8) The Ombudsman may refuse to consider a complaint which –

- (a) is illegible;
- (b) subject to subsection (3), does not state the correct name and contact details of the complainant and, where applicable, the name of the association or group on whose behalf the complaint has been submitted;
- (c) where required to be in writing in terms of subsection (3), has not been signed by the complainant, except in the case of a complainant who is unable to write and –
 - (i) who has made a mark on the complaint as a symbol of his or her authority to submit the complaint; and
 - (ii) that mark was made in the presence of two witnesses who are able to write and who, by signing that complaint, certifies that the mark is that of the complainant;
- (d) addresses a matter previously considered by the Ombudsman, except if that complaint contains new information that may materially impact on the outcome of the consideration of the matter;
- (e) contains defamatory statements or improper language; or
- (f) if applicable, addresses a matter that the complainant has not yet brought to the attention of the relevant authority within a department, municipality or public entity, or if the complainant has brought it to the attention of the relevant authority, the relevant authority has not, in the opinion of the Ombudsman, been afforded reasonable time to consider the matter.

Preliminary enquiries by Ombudsman

49. Where a complaint has been made to the Ombudsman against a department, municipality or public entity, the Ombudsman may make preliminary enquiries with the head of the department, the municipal manager of the municipality or the Chief Executive Officer of the public entity concerned with a view to informally and expeditiously resolve the matter.

Investigation by Ombudsman

50.(1) The Ombudsman must, before commencing with an investigation in terms of this chapter, inform the head of the department, the municipal manager of the municipality or the Chief Executive Officer of the public entity, as the case may be, of the complaint and that such complaint is to be investigated.

(2) The Ombudsman may, prior to investigating a complaint, give a department, municipality or public entity a specific period within which to address the complaint.

(3) The format and the procedure to be followed in conducting any investigation must be determined by the Ombudsman with due regard to the circumstances of each case: Provided that all investigations in terms of this chapter must be conducted in private and confidentially.

(4) The Ombudsman may, for the purposes of conducting an investigation in terms of this chapter, obtain information from such persons and make such inquiries, as he or she considers appropriate, having due regard to any allegation, fact or circumstance.

(5) It is not necessary for the complainant or any other person to be afforded an opportunity to appear before the Ombudsman or any other person in connection with an investigation by the Ombudsman: Provided the Ombudsman may not make a report in respect of an investigation in terms of this chapter in which he or she sets out opinions that are, either expressly or impliedly, critical of a department, municipality or public entity, or person unless, before completing the investigation, he or she has –

- (a) if the opinions relate to a department, municipality or public entity, afforded the department, municipality or public entity to which the investigation relates an opportunity to appear before him or her and to make submissions, either orally or in writing, in relation to the matter; or
- (b) if the opinions relate to a person, afforded that person an opportunity to appear before him or her and to make such submissions, either orally or in writing, in relation to the matter.

Discussion of investigation with responsible Member of Executive Council or mayor of municipality

51. The Ombudsman may, either before or after the completion of an investigation in terms of this chapter, discuss any matter relevant to the investigation with –

- (a) the Member of the Executive Council responsible for the department, municipality or public entity concerned;
- (b) any other Member of the Executive Council concerned with the matter; or
- (c) the mayor of a municipality.

Breach of duty or misconduct by employee of department, municipality or public entity

52.(1) Where the Ombudsman is of the opinion, either before or after completing an investigation in terms of this chapter, that there is *prima facie* evidence that an employee of a department, municipality or public entity, has committed a breach of duty or misconduct, the Ombudsman must bring the supporting evidence to the notice of –

- (a) if the person is the head of department, the Chief Executive Officer or municipal manager, the Member of the Executive Council responsible for the department, municipality or public entity concerned; or
- (b) if the person is an employee of a department, municipality or public entity but not the head of department, Chief Executive Officer or municipal manager, the head of department, Chief Executive Officer or municipal manager.

(2) Where the Ombudsman is of the opinion, either before or after completing an investigation in terms of this chapter, that the facts disclose the commission of an offence by any person, he or she must bring the matter to the notice of the relevant law enforcement agency or, where appropriate, the Public Protector, to continue with the investigation.

Publication of findings and tabling of reports by Ombudsman

53.(1) The Ombudsman may, subject to the provisions of subsection (3), in the manner he or she deems fit, make known to any relevant person any finding, point of view or recommendation in respect of a matter investigated by him or her.

(2)(a) The Ombudsman must, through the Premier, submit an annual report in writing on the activities of his or her office to the Provincial Legislature.

(b) The Ombudsman may, at any time, submit a report to the Executive Council on the findings of a particular investigation if –

- (i) he or she deems it necessary;
- (ii) he or she deems it in the public interest;
- (iii) it requires the urgent attention of, or an intervention by, the Executive Council;
- (iv) he or she is requested to do so by the Executive Council; or
- (v) he or she is requested to do so by the Premier.

(3) The findings of an investigation by the Ombudsman must, when he or she considers it appropriate, but as soon as is reasonably possible, be made available to the complainant and any person implicated thereby.

(4) The Ombudsman must furnish the Public Protector with a monthly report –

- (a) listing and describing the complaints received and being dealt with by the Ombudsman;
- (b) noting progress with each complaint;
- (c) listing complaints that have been finalised and disposed of by the Ombudsman;
and
- (d) containing the findings of the Ombudsman in relation to complaints finalised and disposed of by the Ombudsman.

(5) The Ombudsman must request the Public Protector to provide a monthly report describing the complaints pertaining to the Province –

- (a) being dealt with by the Public Protector;
- (b) noting progress with each complaint;
- (c) listing complaints that have been finalised and disposed of by the Public Protector;
and
- (d) containing the findings of the Public Protector in relation to complaints finalised and disposed of by the Public Protector.

Power of Ombudsman to request information

- 54.(1)(a) For the purposes of conducting an investigation, the Ombudsman may direct any person to submit an affidavit or affirmed declaration or to appear before him or her to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on the matter being investigated, and may question such person.
- (b) The Ombudsman, or any person duly authorised thereto by him or her, may request an explanation from any person whom he or she reasonably suspects of having information which has a bearing on a matter being or to be investigated.

(2) A directive referred to in subsection (1)(a) must be by way of a subpoena containing particulars of the matter in connection with which the person subpoenaed is required to –

- (a) submit an affidavit or affirmed declaration;
- (b) appear before the Ombudsman;
- (c) give evidence; or
- (d) produce any document in his or her possession or under his or her control,

and such subpoena must be signed by the Ombudsman and served on the person subpoenaed either by a registered letter sent through the post or by delivery by a person authorised thereto by the Ombudsman.

(3) The Ombudsman may require any person appearing as a witness before him or her under subsection (1) to give evidence under oath or on affirmation.

(4) The Ombudsman or any person authorised by him or her in writing may administer an oath to, or accept an affirmation from, any person contemplated in subsection (1) and such person enjoys the same privilege as a witness testifying in a criminal proceeding before a division of the High Court of South Africa.

(5) Any person appearing before the Ombudsman by virtue of the provisions of subsection (1) may be assisted at such examination by an advocate or an attorney and is entitled to peruse such of the documents or records referred to in subsection (1) as may be reasonably necessary to refresh his or her memory.

(6) The Ombudsman may, with reasonable prior notice and during office hours, enter, or authorise another person to enter, any building or premises to make such investigation or enquiry as he or she may deem necessary and seize anything on those premises which, in his or her opinion, has a bearing on the purpose of an investigation.

(7) If it appears to the Ombudsman during the course of an investigation that any person is being implicated in the matter being inquired into, the Ombudsman must afford such person an opportunity to be heard in connection therewith by means of the giving of evidence, and such person or his or her legal representative is entitled, through the Ombudsman, to question other witnesses determined by the Ombudsman, who have appeared before the Ombudsman in terms of this section.

(8) Any person who refuses or fails to comply with a direction under subsection (1), or who refuses to answer any question put to him or her under that subsection, or who gives to such

question an answer which, to his or her knowledge is false, or refuses to take the oath or to make an affirmation at the request of the Ombudsman in terms of subsection (3), is guilty of an offence.

(9) The Ombudsman may, if he or she decides to conduct an investigation in terms of this chapter, at any time prior to or during such an investigation, request any person in the service of the State or performing a public function to assist the Ombudsman, under the supervision and control of the Ombudsman, in the performance of his or her functions.

(10) The Ombudsman or any member of his or her staff is competent, but not compellable, to answer questions in any proceedings in or before a court of law or any institution or body established by or under any law, in connection with any information which, in the course of his or her investigation, has come to his or her knowledge.

(11) Recourse to, or the exercise or performance of any powers and functions of, the Ombudsman does not oust the jurisdiction of a court of law to hear any matter or cause whatsoever.

Discretion of Ombudsman not to investigate certain complaints

55.(1) The Ombudsman may decide not to investigate a complaint if, in his or her considered opinion –

- (a) the complaint is frivolous or vexatious or was not made in good faith;
- (b) the complainant does not have a sufficient interest in the subject matter of the complaint; or
- (c) an investigation, or further investigation, of the action, is not warranted having regard to all the allegations, facts and circumstances.

(2) The Ombudsman may decide not to investigate a complaint if the matter being complained about has not first been raised by the complainant with the department, municipality or public entity concerned.

(3) Where a person who makes a complaint to the Ombudsman has complained to the department, municipality or public entity, the Ombudsman may, in his or her discretion, decide not to investigate the action unless or until the complainant informs the Ombudsman that –

- (a) no redress has been granted; or

(b) redress has been granted but the redress is not, in the opinion of the complainant, adequate.

(4) If a complaint falls within the provisions of subsection (3) and the Ombudsman is of the opinion –

(a) if no redress has been granted, that a reasonable period has elapsed in which redress could have been granted; or

(b) if redress has been granted, that the redress was not reasonably adequate, the Ombudsman must investigate the complaint.

(5) Where a complainant has exercised, or exercises, a right to review by a court or by a tribunal, the Ombudsman may not investigate the complaint, or continue to investigate, as the case may be, unless the Ombudsman is of the opinion that there are special circumstances or reasons justifying the investigation of the complaint.

(6) Where the Ombudsman is of the opinion that a complainant has a right to review by a court or by a tribunal but has not exercised that right, the Ombudsman may decide not to investigate the complaint, if he or she is of the opinion that, having due regard to all the relevant facts and circumstances, it would be reasonable for the complainant to exercise that right.

(7) Where, before the Ombudsman commences, or after the Ombudsman has commenced, investigating a complaint, he or she is of the opinion that adequate provision is made for review of the act or omission resulting in the complaint, the Ombudsman may decide not to investigate the act or omission if –

(a) the act or omission has been, is being or is to be reviewed at the request of the complainant; or

(b) the Ombudsman is satisfied that the complainant is entitled to cause the act or omission to be reviewed and it would be reasonable for the complainant to cause it to be so reviewed.

Staff of Office of Ombudsman

56.(1) The Director-General of the Province must designate such persons, employed by the Provincial Government in terms of the Public Service Act, 1994 (Proclamation No.103 of 1994), as may be reasonably necessary, to assist the Ombudsman –

(a) in exercising the powers, performing the duties and fulfilling the functions in terms of this chapter; and

(b) with the secretarial and administrative work incidental to the exercise of the powers, the performance of the duties and the fulfilment of the functions.

(2) The Ombudsman may, despite subsection (3)(b), utilise the services of persons seconded or transferred in accordance with the provisions of the Public Service Act, 1994.

(3) A member of staff of the Office of the Ombudsman must –

- (a) serve impartially and independently and perform his or her functions in good faith and without fear, favour, bias or prejudice; and
- (b) serve in a full-time capacity to the exclusion of any other duty or obligation arising out of any other employment or occupation or the holding of any other office.

(4) A member of staff of the Office of the Ombudsman must, within 14 days of being appointed, submit to the Ombudsman a written statement in which it is declared whether or not that member of staff has any direct or indirect interest, financially or otherwise, that –

- (a) may constitute a conflict of interest in respect of his or her powers, duties or functions as a member of staff of the Office of the Ombudsman; or
- (b) could reasonably be expected to compromise the Office of the Ombudsman in the performance of its powers, duties and functions.

(5) If any member of staff of the Office of the Ombudsman subsequently acquires an interest contemplated in subsection (4), he or she must, within seven days, declare that to the Ombudsman, in writing.

(6) The Ombudsman must keep and maintain a register of the interests of members of staff of the Office of the Ombudsman disclosed in terms of this section and must update that register annually.

(7) The provisions of subsections (3) – (6) apply, with the necessary changes, to a person seconded or transferred to the Office of the Ombudsman in terms of subsection (2).

Disqualification from being appointed as Ombudsman

57. A person is disqualified from being appointed as Ombudsman or from remaining in the position of Ombudsman, by reason that he or she –

- (a) is or becomes an un-rehabilitated insolvent;
- (b) is or has been declared by a competent court to be of unsound mind;

- (c) is directly or indirectly interested in any contract with the Office of the Ombudsman and fails to declare his or her interest and the nature thereof in the manner required by this chapter;
- (d) is a person under curatorship;
- (e) has at any time been removed from an office of trust on account of misconduct involving theft or fraud, and has not been reinstated to such office of trust; or
- (f) has been convicted and sentenced to a term of imprisonment without the option of a fine, except that the Premier may, upon receipt of an affidavit disclosing full details of an offence by such person, condone a conviction in a manner that is consistent with section 106(1)(e) of the Constitution: Provided that a disqualification in terms of this subsection ends five years after the sentence has been completed.

Declaration of financial or other interests of Ombudsman

58.(1) A person who has been appointed as the Ombudsman in terms of section 46 must, within 14 days of being appointed, submit to the Premier a written statement in which it is declared whether or not he or she has any direct or indirect interest, financially or otherwise, that –

- (a) may constitute a conflict of interest in respect of his or her powers, duties or functions as Ombudsman; or
- (b) could reasonably be expected to compromise the Ombudsman in the performance of his or her powers, duties and functions.

(2) If the Ombudsman subsequently acquires an interest contemplated in subsection (1), he or she must, within seven days, declare that to the Premier in writing.

(3) The Premier must keep and maintain a register of the interests of the Ombudsman disclosed in terms of this section and must update that register annually.

(4) Any failure on the part of the Ombudsman to disclose his or her interest as contemplated in subsections (1) and (2) constitutes justifiable reason for the termination of his or her appointment in terms of section 60(2).

Temporary suspension of Ombudsman

59. The Premier may, after consultation with the Executive Council, suspend the Ombudsman in accordance with applicable employment and labour law whilst the Premier is investigating allegations which, if found to be correct, may result in the Ombudsman's appointment being

terminated in terms of section 60(2).

Resignation and removal from office of Ombudsman

60.(1) The Ombudsman vacates office –

- (a) if he or she becomes subject to a disqualification contemplated in section 57;
- (b) by giving not less than 30 days written notice to the Premier: Provided that the Premier may waive the resignation notice; or
- (c) upon having been removed from office in terms of subsection (2).

(2) The Premier may, in consultation with the Executive Council, for justifiable and cogent reasons, terminate the Ombudsman's employment in accordance with applicable employment and labour law.

Security of confidential information held by Ombudsman

61.(1) Subject to the Constitution and the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), no person may disclose any information submitted to the Ombudsman in connection with any complaint, unless –

- (a) he or she is ordered to do so by a court of law; or
- (b) the person who made the complaint consents thereto in writing.

(2) No person may disclose any information kept in the register contemplated in sections 56(6) and 58(3) unless such disclosure is –

- (a) in terms of any law that compels or authorises such disclosure;
- (b) materially necessary for the proper functioning of the Office of the Ombudsman; or
- (c) made for purposes of monitoring, evaluating, investigating or considering any activity relating to the Office of the Ombudsman, or any member of staff of the Office of the Ombudsman.

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence.

Use of name of Office of Ombudsman

62.(1) No person may, without the prior written authorisation of the Ombudsman, in any way represent or make use of the name, acronym, logos, designs or material used or owned by the Office of the Ombudsman.

(2) No person may falsely claim to be acting on behalf of the Ombudsman or his or her Office.

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence.

Delegation by Ombudsman

63.(1) The Ombudsman may delegate to a member of staff of the Office of the Ombudsman contemplated in section 56(1)(a) any power or duty conferred or imposed on the Ombudsman by this chapter.

(2) Any power or duty delegated in terms of subsection (1) must be exercised or performed subject to such conditions as the Ombudsman considers necessary.

(3) A delegation referred to in subsection (1) –

- (a) must be in writing;
- (b) does not prohibit the Ombudsman from exercising that power or performing that duty; and
- (c) may, at any time, be withdrawn or amended in writing by the Ombudsman.

General offences for purposes of Chapter 11

64.(1) The Ombudsman, a member of staff of the Office of the Ombudsman, an adviser, agent or any other person engaged, employed or acting on behalf of the Office of the Ombudsman is guilty of an offence if he or she directly or indirectly accepts any bribe and or receives any unauthorised fee or reward from any person in connection with anything done or offered by the Office of the Ombudsman.

(2) Any person is guilty of an offence if he or she, in respect of or in connection with anything done or offered by the Office of the Ombudsman, bribes or attempts to bribe or corruptly influence or attempts to corruptly influence the Ombudsman, a member of staff, an adviser, agent or any other person engaged, employed by, or acting on behalf of, the Office of the Ombudsman.

(3) Any person who falsely claims that he or she is authorised to charge or collect fees, donations or contributions on behalf of, or by direction of, the Office of the Ombudsman is guilty of an offence.

(4) Any person who contravenes or fails to comply with the provisions of this chapter or any regulation pertaining to matters pertaining to this chapter is guilty of an offence.

Penalties for purposes of Chapter 11

65. Any person convicted of an offence in terms of this Chapter is liable to a fine or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

Transitional arrangements in respect of Ombudsman

66.(1) The Office of the Ombudsman is the legal successor to the Office of the Ombudsman established administratively in the Office of the Premier prior to the date of the commencement of this Act.

(2) The person who, on the day before the date of the commencement of this Act, was administratively appointed or designated as the Ombudsman, continues as the Ombudsman and is regarded as having been appointed in terms of section 46 of this Act with effect from the date of the coming into operation of this Act.

(3) A person who, on the day before the date of the commencement of this Act, was a member of staff of the Office of the Ombudsman is regarded as having been designated in terms of section 56(1) of this Act with the retention of all rights and benefits.

CHAPTER 12
KWAZULU-NATAL PROVINCIAL PLANNING COMMISSION

Establishment of KwaZulu-Natal Provincial Planning Commission

67.(1) There is hereby established a commission for the Province, to be known as the KwaZulu-Natal Provincial Planning Commission.

(2) The Commission is not a juristic person.

(3)(a) Operationally, and in terms of its budget and financial administration, the Commission is placed within the Office of the Premier in the Provincial Government.

(b) The Director-General of the Provincial Government is the accounting officer of the Commission.

Objects of Commission

68. The objects of the Commission are to –

- (a) promote and facilitate strategic planning, strategic direction and policy planning in the Province;
- (b) develop macro policy in the Province; and
- (c) ensure alignment of macro policy in the Province with macro policy determined nationally,

in accordance with the directive principles of Provincial Policy contained in section 11.

Powers, duties and functions of Commission

69.(1) The Commission must –

- (a) assess the –
 - (i) physical;
 - (ii) material;
 - (iii) financial; and
 - (iv) human,resources of the Province;
- (b) formulate the Provincial Plan referred to in section 18, for submission to the Executive Council for consideration, for the most effective, efficient, balanced and sustainable utilisation of the resources referred to in paragraph (a);
- (c) encourage, and create conditions for, public participation in the development, implementation and review of the Provincial Plan;
- (d) determine the priorities, define the phases with time-frames and make proposals for the allocation of resources for the implementation of the Provincial Plan;
- (e) identify factors constraining –
 - (i) the economic, industrial and rural development of the Province; and
 - (ii) the successful implementation of the Provincial Plan; and
- (f) determine the nature of the procedures, systems and interventions required or appropriate for –
 - (i) the stimulation and promotion of the economic, industrial and rural development of the Province; and
 - (ii) the successful implementation of the Provincial Plan; and
- (g) regularly monitor and appraise progress and impact in relation to –
 - (i) the stimulation and promotion of the economic, industrial and rural development of the Province; and
 - (ii) the successful implementation of the Provincial Plan; and

- (h) promote and facilitate strategic planning, strategic direction and policy planning in the Province to ensure, amongst others, that integrated and sector specific strategies, policies and plans are developed and implemented to give effect to the Provincial Plan;
- (i) develop macro policy in the Province;
- (j) ensure alignment of macro policy in the Province with macro policy determined nationally;
- (k) conduct research and development in all areas of strategic planning and policy planning;
- (l) in consultation with the Premier, establish a formal relationship and formal liaison mechanisms with the National Planning Commission in the Office of the Presidency;
- (m) establish a formal relationship and formal liaison and co-ordination mechanisms with the line function branch and line function components in the Office of the Premier responsible for –
 - (i) macro policy development, formulation and co-ordination;
 - (ii) monitoring and evaluation; and
 - (iii) business intelligence and Geographical Information Systems (GIS), commonly known as the "Provincial Nerve Centre"; and
- (n) compile a database of, and provide information with regard to –
 - (i) Provincial Policy; and
 - (ii) Provincial Strategic Planning; and
- (o) advise the Provincial Government, the Premier and the Executive Council on –
 - (i) the stimulation and promotion of the economic, industrial and rural development of the Province;
 - (ii) the development and implementation of the Provincial Plan;
 - (iii) the Provincial Growth and Development Strategy (PGDS) referred to in section 13;
 - (iv) the Citizens' Charter referred to in section 37;
 - (v) strategic and policy matters;
 - (vi) draft or proposed Provincial legislation, including subordinate legislation (regulations); and
 - (vii) the review and rationalisation of Provincial laws and municipal by-laws referred to in sections 27 and 34, respectively; and
- (p) report to the Executive Council quarterly, or as frequently as may be determined by the Executive Council, on the achievement by the Commission of its objects, the exercise of its powers, the performance of its duties and the fulfilment of its functions, in terms of this Act.

(2) In order to promote uniformity and co-operation by all organs of state in the provincial and local spheres of government on matters related to Provincial Strategic Direction, Provincial Policy and the interpretation and implementation of the Provincial Plan and to ensure, amongst others, that integrated and sector specific strategies, policies and plans are developed and implemented to give effect to the Provincial Plan, the Commission must, at least once a year, convene meetings between organs of state in the provincial and local spheres, including –

- (a) Provincial departments, Provincial Government components or agencies;
- (b) municipalities;
- (c) Provincial public entities;
- (d) Provincial Government business enterprises;
- (e) the Provincial House of Traditional Leaders; and
- (f) Local Houses of Traditional Leaders.

(3) The Commission may –

- (a) make recommendations to the Provincial Government, the Premier, the Executive Council or the Provincial Legislature, on –
 - (i) the stimulation and promotion of the economic, industrial and rural development of the Province;
 - (ii) the development and implementation of the Provincial Plan;
 - (iii) the Provincial Growth and Development Strategy (PGDS) referred to in section 13;
 - (iv) the Citizens' Charter referred to in section 37;
 - (v) strategic and policy matters;
 - (vi) draft or proposed Provincial legislation (including regulations); and
 - (vii) the review and rationalisation of Provincial laws and municipal by-laws referred to in sections 27 and 34, respectively; and
- (b) make recommendations to Members of the Executive Council and Departments in the Provincial Government of KwaZulu-Natal on strategic and policy matters, including departmental policy and legislation, including subordinate legislation (regulations);
- (c) liaise with and, in consultation with the Executive Council, make recommendations to –
 - (i) business;
 - (ii) non-governmental organisations;
 - (iii) community-based organisations;
 - (iv) faith-based organisations;
 - (v) organs or formations of civil society;
 - (vi) civic organisations;
 - (vii) co-operatives;

- (viii) sector specific associations or bodies; and
- (ix) professional associations or other professional bodies,
- in respect of any matter related to strategy, policy and the implementation of the Provincial Plan and the Provincial Growth and Development Strategy (PGDS); and
- (d) liaise with, and in consultation with the Executive Council –
- (i) make recommendations to any structure or body referred to in items (aa) – (ff) of subparagraph (ii) below; and
 - (ii) after consultation with the relevant structure or body referred to in items (aa) – (ff) below, issue guidelines or directives, to –
 - (aa) Provincial departments, Provincial Government components or agencies;
 - (bb) municipalities;
 - (cc) Provincial public entities;
 - (dd) Provincial Government business enterprises;
 - (ee) the Provincial House of Traditional Leaders; and
 - (ff) Local Houses of Traditional Leaders,
- in respect of any matter related to strategy, policy and the implementation of the Provincial Plan and the Provincial Growth and Development Strategy (PGDS);
- (e) enter into agreements with any person with expert knowledge in a particular field, so as to assist or advise the Commission in connection with any matter relating to its objects, powers, duties and functions;
- (f) adopt and register –
- (i) a logo; or
 - (ii) a badge as defined in, and in terms of, the Heraldry Act, 1962 (Act No. 18 of 1962); and
- (g) design, establish and maintain a website;
- (h) design and adopt –
- (i) a letterhead which, subject to the Heraldry Act, 1962, and other applicable heraldic principles, must incorporate the Provincial Coat of Arms; and
 - (ii) other stationery; and
- (i) hold conferences, workshops and meetings;
- (j) attend conferences, workshops and meetings of similar bodies, both nationally and internationally; and
- (k) generally, do everything necessary to achieve its objects.
- (4) The Commission has no direct role or line function in respect of physical, spatial or geographical planning which, traditionally, is the preserve of the Member of the Executive Council responsible for Local Government.

(5) The functional areas and terms “*Regional Planning and Development*” in Part A of Schedule 4, and “*Provincial Planning*” in Part A of Schedule 5, to the Constitution, refer to planning in the physical, spatial and geographical senses, traditionally regarded as functional areas of the Member of the Executive Council responsible for Local Government.

Composition of Commission

70.(1) The Commission consists of –

- (a) one full-time Commissioner; and
 - (b) at least five, but not more than eight, part-time Commissioners, appointed by the Premier.
- (2) The Commissioners referred to in subsection (1) must be fit and proper persons to serve the best interests of the Province, collectively possessing appropriate knowledge, experience and skills in the fields of strategic planning and policy planning and formulation.
- (3) The Premier must designate –
- (a) the full-time Commissioner referred to in subsection (1)(a) as the Chairperson of the Commission; and
 - (b) one part-time Commissioner referred to in subsection (1)(b) as the Deputy Chairperson of the Commission.
- (4) The Chairperson of the Commission referred to in subsection (3)(a) must –
- (a) facilitate liaison between the Premier and the Commission; and
 - (b) report to the Premier from time to time regarding matters which are considered relevant.
- (5) The Premier must cause the names of the Commissioners referred to in subsection (1) and appointed to the Commission to be published in the *Gazette* and in at least two newspapers circulating in the Province, immediately after such persons have been notified, in writing, of their appointment to the Commission.
- (6) The Premier must, within two months after the appointment of the Commissioners referred to in subsection (1), inform the Executive Council and the relevant Portfolio Committee of the names of the Commissioners including the term of their appointment.
- (7) This section applies, with the necessary changes, to the filling of a vacancy on the

Commission.

Term of office and reappointment of Commissioners

71. Commissioners hold office for a period of five years or such lesser period as the Premier may determine and are eligible for re-appointment at the expiry of such period: Provided that no Commissioner may be re-appointed after having served on the Commission for a continuous period of 10 years.

Vacancies, removal and resignation from office of Commissioners

72.(1) The Premier may, after having afforded a Commissioner the opportunity to state his or her case, at any time terminate the term of office of such Commissioner if, in the opinion of the Premier, there are justifiable and cogent reasons for doing so.

(2) A Commissioner may resign by giving not less than 30 days written notice to the Premier: Provided that the Premier may waive the resignation notice.

(3) Whenever a vacancy occurs on the Commission, the Premier must, subject to section 70, appoint a person to fill such vacancy for the unexpired portion of the period of appointment of the Commissioner in whose place such person is appointed.

Temporary suspension of Commissioner

73. The Premier may suspend a Commissioner whilst the Premier is investigating allegations which, if found to be correct, may result in the Commissioner's appointment being terminated in terms of section 72(1).

Meetings and procedures at meetings of Commission

74.(1) The first meeting of the Commission must be held on a date and at a time and venue determined by the Premier, whereafter all future meetings must be as determined by the Chairperson: Provided that the Commission must meet at least five times in any given financial year.

(2) The *quorum* for a meeting of the Commission is a majority of the members of the Commission.

(3) The proceedings at a meeting of the Commission must, subject to the provisions of this section, be determined by the Chairperson including the right to decide that any matter under discussion may be withdrawn before it is put to the vote.

(4) The Chairperson must preside at all meetings of the Commission: Provided that in his or her absence the Deputy Chairperson must preside and, in the event that neither the Chairperson nor the Deputy Chairperson is present at a meeting of the Commission, the Commissioners then present may elect, from their own number, a person to act as Chairperson for the duration of that particular meeting.

(5) A decision of the Commission must be taken by a majority of the votes of the Commissioners present at a meeting and, in the event of an equality of votes on any matter; the Chairperson has a casting vote in addition to his or her deliberative vote.

(6) The Commission must keep minutes of its meetings.

(7) No decision of the Commission is invalid merely by reason of a vacancy in the Commission: Provided that the decision is taken by the required majority of the Commissioners then present and entitled to sit as Commissioners.

(8) The Chairperson, or a majority of the Commission, may call an extraordinary meeting of the Commission in which event the provisions of this section apply with the necessary changes.

Recusal of Commissioner from meetings and proceedings of Commission

75.(1) A Commissioner must recuse himself or herself from a matter being investigated, considered or voted upon by the Commission if one or more of the following occur –

- (a) if he or she has a direct or indirect interest in the matter; or
- (b) if there is a possibility that a direct or indirect interest in the matter might arise.

(2) If, at any stage during the course of any proceedings before the Commission, it appears that a Commissioner who is present at that meeting has or may have an interest contemplated in subsection (1), such Commissioner must forthwith disclose the nature of his or her interest and leave the meeting.

(3) Any disclosure made in terms of subsection (1) must be recorded in the minutes of the meeting in question.

(4) If it subsequently emerges that the Commission took a decision on a matter in respect of which a Commissioner has failed to disclose an interest contemplated in subsection (1) of this section, such decision by the Commission is invalid.

(5) For the purposes of this section “**indirect interest**” includes, but is not limited to, an interest held by any Commissioner’s –

- (a) business partner, associate or employer, other than the State;
- (b) spouse, partner in a customary marriage, or person with whom such member cohabits or lives as though they are married; or
- (c) child, parent or sibling.

Remuneration of Commissioners

76.(1)(a) Subject to subsections (1)(b) and (2)(a), a Commissioner may be paid such remuneration and allowances as may be determined by the Premier in consultation with the Member of the Executive Council responsible for Finance.

(b) A Commissioner who receives remuneration, allowances or other benefits by virtue of his or her office, position, post or employment in –

- (i) the National Government;
- (ii) a provincial government;
- (iii) a municipality; or
- (iv) a corporation, body or institution in which the National or a Provincial Government has a controlling interest,

and who continues to receive such remuneration, allowances or other benefits while serving as a Commissioner, may only receive remuneration and allowances referred to in paragraph (a) to the extent required to place such Commissioner in the financial position he or she would have been were it not for such office, position, post or employment.

(c) Different remuneration and allowances may be determined for the following categories of Commissioners –

- (i) the full-time Commissioner and Chairperson; and
- (ii) the part-time Commissioners.

(2)(a) A Commissioner may, in respect of his or her functions as a Commissioner, receive reimbursement for reasonable actual subsistence and travelling expenses necessitated by the actual attendance of a meeting of the Commission.

(b) The Member of the Executive Council responsible for Finance must determine procedures, including control measures, for the management, handling and processing of claims for

subsistence and traveling expenses contemplated in paragraph (a).

Establishment of committees to assist Commission

- 77.(1)** The Commission may establish committees consisting of one or more of its members to –
- (a) assist the Commission in the performance of any of the powers, duties or functions of the Commission contemplated in section 69; or
 - (b) enquire or conduct research into any matter falling within the mandate of the Commission in terms of this Act.
- (2)** When establishing a committee contemplated in subsection (1), the Commission must –
- (a) determine the terms of reference of such committee including, but not limited to, whether or not such committee ceases to exist once it has completed the task or tasks allocated to it by the Commission;
 - (b) appoint a Chairperson of such committee who must be a member of the Commission; and
 - (c) determine whether or not such committee may co-opt persons who are not members of the Commission and, if so, on what terms and conditions.
- (3)** The Commission may, at any time, terminate the existence of a committee or any mandate given to a committee, irrespective of whether or not such committee has completed the task or tasks allocated to it by the Commission.

Co-opting of persons to Commission or committees of Commission

- 78.(1)** The Commission may, if it is of the opinion that a particular person is able to assist it in regard to any of its powers, duties or functions, co-opt such person for that purpose to the Commission or to a committee of the Commission for such period as the Commission may determine.
- (2)** A person co-opted in terms of subsection (1) is not entitled to vote at any meeting of the Commission or a committee of the Commission.
- (3)(a)** A person co-opted in terms of subsection (1) may be paid such remuneration and allowances as may be determined by the Premier in consultation with the Member of the Executive Council responsible for Finance.
- (b)** Any such person co-opted who receives remuneration, allowances or other benefits by virtue

of his or her office, position, post or employment in –

- (i) the National Government;
- (ii) a provincial government;
- (iii) a municipality; or
- (iv) a corporation, body or institution in which the National or a Provincial government has a controlling interest,

and who continues to receive such remuneration, allowances or other benefits while serving as a co-opted member of the Commission or of a committee of the Commission, may only receive remuneration and allowances referred to in paragraph (a) to the extent required to place such person in the financial position he or she would have been were it not for such office, position, post or employment.

(4)(a) A person co-opted in terms of subsection (1) may, in respect of his or her functions as a co-opted member of the Commission or of a committee of the Commission, receive reimbursement for reasonable actual subsistence and travelling expenses necessitated by the actual attendance of a meeting of the Commission or of a committee of the Commission, as the case may be.

(b) The Member of the Executive Council responsible for Finance must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and traveling expenses contemplated in paragraph (a).

Staff of Commission

79.(1) The Director-General of the Province must designate such persons, employed by the Provincial Government in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), as may be reasonably necessary, to assist the Commission –

- (a) in exercising its powers, performing its duties and fulfilling its functions in terms of this Act; and
- (b) with the secretarial and administrative work incidental to the exercise of its powers, the performance of its duties and the fulfilment of its functions.

(2) The Commission may utilise the services of persons seconded or transferred in accordance with the provisions of the Public Service Act, 1994.

Security of confidential information held by Commission

80.(1) Subject to the Constitution and the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), no person may disclose any information submitted to the Commission in connection with any legal brief or instruction, unless –

- (a) he or she is ordered to do so by a court of law; or
- (b) the person who gave such brief or instruction consents thereto in writing.

(2) Any person who contravenes subsection (1) is guilty of an offence.

Disestablishment of Commission

81. The Commission may only be disestablished in terms of an Act of the Provincial Legislature.

Use of name of Commission

82.(1) No person may, without the prior written authorisation of the Commission, in any way represent or make use of the name, acronym, logos, designs or material used or owned by the Commission.

(2) No person may falsely claim to be acting on behalf of the Commission.

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence.

Delegation by Commission

83.(1) The Commission may, by a special resolution, delegate to a member of staff contemplated in section 79, any power or duty conferred or imposed on the Commission by this Act.

(2) Any power or duty delegated in terms of subsection (1) must be exercised or performed subject to such conditions as the Commission considers necessary.

(3) A delegation referred to in subsection (1) –

- (a) must be in writing;
- (b) does not prohibit the Commission from exercising that power or performing that duty; and
- (c) may at any time be withdrawn or amended in writing by the Commission.

General offences for purposes of Chapter 12

84.(1) A Commissioner, a member of staff, an adviser, agent or any other person engaged, employed or acting on behalf of the Commission is guilty of an offence if he or she directly or indirectly accepts any bribe and/ or receives any unauthorised fee or reward from any person in connection with anything done or offered by the Commission.

(2) Any person is guilty of an offence if he or she, in respect of or in connection with anything done or offered by the Commission, bribes or attempts to bribe or corruptly influence or attempts to corruptly influence a Commissioner, a member of staff, an adviser, agent or any other person engaged, employed by, or acting on behalf of, the Commission.

(3) Any person who falsely claims that he or she is authorised to charge or collect fees, donations or contributions on behalf of, or by direction of, the Commission is guilty of an offence.

(4) Any person who contravenes or fails to comply with the provisions of this chapter or any regulation pertaining to this chapter is guilty of an offence.

Penalties for purposes of Chapter 12

85. Any person convicted of an offence in terms of this chapter is liable to a fine or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

Transitional arrangements in respect of Commission

86.(1) The Commission is the legal successor to the Provincial Planning Commission established administratively in the Office of the Premier prior to the date of the commencement of this Act.

(2) The persons who, on the day before the date of the commencement of this Act, were administratively appointed or designated as the full-time Commissioner and Chairperson and the other part-time Commissioners, continue as the Chairperson and Commissioners and are regarded as having been appointed in terms of section 70 of this Act with effect from the date of the coming into operation of this Act.

(3) A person who, on the day before the date of the commencement of this Act, was a member of staff of the Commission is regarded as having been designated in terms of section 79 of this Act with the retention of all rights and benefits.

CHAPTER 13

GENERAL PROVISIONS

Regulations

- 87.(1)** The Premier may, by notice in the *Gazette*, make regulations regarding any –
- (a) matter that may or must be prescribed in terms of this Act; or
 - (b) administrative or procedural matter necessary to give effect to the provisions of this Act: Provided that –
 - (i) regulations pertaining to matters relating to Chapter 11 (sections 44 – 66) of this Act must be made after consultation with the Ombudsman; and
 - (ii) regulations pertaining to matters relating to Chapter 12 (sections 67 – 86) of this Act must be made after consultation with the Commission.
- (2) The regulations may provide that any person contravening any regulation or failing to comply therewith is guilty of an offence and liable on conviction to a fine, or to imprisonment not exceeding five years.

Delegation by Premier

- 88.(1)** The Premier may delegate to the Director-General –
- (a) any power conferred on the Premier by this Act, except the power to –
 - (i) publish a notice;
 - (ii) make a proclamation; and
 - (iii) make regulations; or
 - (b) any duty imposed on the Premier by this Act, except any duty regarding the appointment, and termination of office, of –
 - (i) the Ombudsman contemplated in sections 46 and 60(2); and
 - (ii) the Chairperson or the Commissioners contemplated in sections 70 and 72(1).
- (2) Any power or duty delegated in terms of subsection (1) must be exercised or performed subject to such conditions as the Premier considers necessary.
- (3) A delegation in terms of subsection (1) –
- (a) must be in writing;
 - (b) does not prevent the Premier from exercising that power or performing that duty; and
 - (c) may at any time be withdrawn or amended in writing by the Premier.

Short title

89. This Act is called the KwaZulu-Natal Promotion of Good Governance Act, 2013.

SCHEDULE

Declaration by short-listed candidate (Section 25(2)(b))

DECLARATION BY SHORT-LISTED CANDIDATE

INSTRUCTIONS:

- 1. Each short-listed CANDIDATE attending the Interview MUST, immediately after the interview –**
 - (a) complete this DECLARATION fully in respect of each question (by drawing a cross on either the "Yes" or "No" in the appropriate box relating to the question);**
 - (b) initial each page of this DECLARATION;**
 - (c) sign the last page of this DECLARATION; and**
 - (d) receive a signed copy of this DECLARATION.**
- 2. Where written details are required, the CANDIDATE must submit these to the Panel within five days of the date of the Interview. If the CANDIDATE fails to submit such written details to the Panel within the stated period of five days, such failure or omission on the part of the CANDIDATE may result in the Panel recommending that the CANDIDATE is not suitable for appointment regardless of the outcome of the Interview.**
- 3. If the CANDIDATE is ultimately employed and it is subsequently found that the CANDIDATE provided a false or deceptive answer to any question referred to below, such dishonesty or deception constitutes fraud and a breach of trust in the relationship between the employer and employee and may be used as a basis for the institution of disciplinary proceedings which could lead to a dismissal or any other appropriate sanction in terms of the Disciplinary Code and Procedures for the Public Service.**
- 4. The CANDIDATE must, within five days of the date of the Interview, submit to the Panel a written declaration of any business, commercial or financial interest or activity undertaken by the CANDIDATE for financial gain that may raise a possible conflict of interest with the employment of the candidate in the Public Service, generally, or specifically within the relevant employer department.**

CANDIDATE	POST	INTERVIEW DATE
Name:
I.D. Number:	

1. Have you ever been found guilty of any criminal offence?

Yes	No
-----	----

If so, full written details pertaining to the facts and circumstances and the decision of the court must be submitted to the Panel within five days of the date of the interview.

2. Are you currently –

- (a) *facing*; or
 - (b) *subject to*,
- any criminal charge?**

Yes	No
-----	----

If so, full written details pertaining to the facts and circumstances in respect of the criminal charge must be submitted to the Panel within five days of the date of the interview.

3. Have you ever been found guilty of misconduct by your current or any previous employer?

Yes	No
-----	----

If so, full written details pertaining to the facts and circumstances and the decision of the chairperson/ presiding officer of the disciplinary enquiry/ hearing must be submitted to the Panel within five days of the date of the interview.

4. Are you currently –

- (a) under suspension;

(b) facing disciplinary action; or
 (c) subject to disciplinary action,
 with your current employer?

Yes	No
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If so, full written details pertaining to the facts and circumstances in respect of the suspension or disciplinary action must be submitted to the Panel within five days of the date of the interview.

5. Have you ever been dismissed from employment for –

- (a) a criminal offence;
- (b) misconduct relating to –
 - (i) insubordination;
 - (ii) maladministration;
 - (iii) theft;
 - (iv) fraud; or
 - (v) corruption; or
- (c) any other charge, including, but not limited to –
 - (i) dishonesty;
 - (ii) alcohol, drug or substance abuse; or
 - (iii) assault or violence?

Yes	No
------------	-----------

If so, full written details pertaining to the facts and circumstances and the decision of the court, or the decision of the chairperson/ presiding officer of the disciplinary enquiry/ hearing, as the case may be, must be submitted to the Panel within five days of the date of the interview.

6. Have you ever resigned from employment after any allegation of –

- (a) a criminal offence; or
- (b) misconduct relating to –
 - (i) insubordination;
 - (ii) maladministration;
 - (iii) theft;
 - (iv) fraud; or

(v) corruption; or
(c) any other charge, including, but not limited to –
(i) dishonesty;
(ii) alcohol, drug or substance abuse; or
(iii) assault or violence,
was made against you?

Yes	No
-----	----

If so, full written details pertaining to the facts, circumstances and allegations must be submitted to the Panel within five days of the date of the interview.

7. Do you currently, or may you imminently, hold a private interest or share in any contract, agreement, tender, asset or investment emanating from, or connected with, the State, any National or Provincial government department, any municipality or any public entity?

Yes	No
-----	----

If so, full written details pertaining to such interest or share must be submitted to the Panel within five days of the date of the interview.

8. Have you, in the past five years –

(a) received any money or benefit from; or
(b) held a private interest or share in, any contract, agreement, tender, asset or investment emanating from, or connected with, the State, any National or Provincial Government department, any municipality or any public entity?

Yes	No
-----	----

If so, full written details pertaining to such money, benefit, interest or share must be submitted to the Panel within five days of the date of the interview.

9. Are you currently, or may you imminently become a –

(a) director;

(b) member; or

(c) partner,

in any company, close corporation or partnership?

Yes	No
-----	----

If so, full written details pertaining to such directorship, membership or partnership (including a written declaration of whether or not such company, close corporation or partnership is currently, or may imminently be, involved in any contractual or business relationship with the State, any National or Provincial Government department, any municipality or any public entity) must be submitted to the Panel within five days of the date of the interview.

10. Are you currently receiving, or have you made application for a –

(a) social grant; or

(b) low income housing subsidy?

Yes	No
-----	----

If so, full written details pertaining to such social grant or low income housing subsidy must be submitted to the Panel within five days of the date of the interview.

11. Are you currently registered with SARS as a taxpayer?

Yes	No
-----	----

If not, full written details pertaining to your non-registration as a taxpayer must be submitted to the Panel within five days of the date of the interview.

12. Are you currently –

(a) facing; or

(b) subject to,

any civil claim or court order for any –

(i) debt;

(ii) damages; or

(iii) maintenance for a former (ex) spouse (partner) or child?

Yes	No
-----	----

If so, full written details pertaining to the civil claim or court order (including the amount of the debt, damages or maintenance) must be submitted to the Panel within five days of the date of the interview.

13. Is there anything relating to –

- (a) *your application (including details pertaining to your qualifications and experience); or*
- (b) *your personal circumstances,*

you, in your opinion, feel legally, ethically or morally bound to disclose to the Panel?

Yes	No
-----	----

If so, full written details pertaining to the facts and circumstances must be submitted to the Panel within five days of the date of the interview.

14. Do you currently have an issue with –

- (a) *alcohol, drug or substance abuse; or*
- (b) *violence (domestic or otherwise),*

you, in your opinion, feel you would want to disclose to the Panel?

Yes	No
-----	----

If so, full written details pertaining to the issue must be submitted to the Panel within five days of the date of the interview. *The Panel may subsequently request from you a report from a medical or other professional practitioner, counselor or social worker.*

15. Do you currently have a disability or impairment (whether physical, mental, emotional or psychological) you, in your opinion, feel you would want to disclose to the Panel, for purposes of –

- (a) *employment equity; or*
- (b) *enabling an employer to take reasonable steps to accommodate you in the workplace or working environment?*

Yes	No
-----	----

If so, full written details pertaining to the disability or impairment must be submitted to the Panel within five days of the date of the interview. *The Panel may subsequently request from you a report from a medical or other professional practitioner.*

16. Are you satisfied –

- (a) *with the composition and representativity of the Panel; and*
- (b) *that your interview was, in your opinion, handled fairly and reasonably by the Panel?*

Yes	No
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If you are, for any reason, not satisfied with the Panel or the interview full written details outlining your dissatisfaction must be submitted to the Panel within five days of the date of the interview.

17. I acknowledge and understand that –

- (a) if I have provided a false or deceptive answer to any question referred to above, such dishonesty or deception constitutes fraud and renders me liable to possible prosecution on a criminal charge;
- (b) if I am ultimately appointed and employed and it is subsequently found that I have provided a false or deceptive answer to any question referred to above, such dishonesty or deception constitutes fraud and a breach of trust in the relationship between the employer and employee and may be used as a basis for the institution of disciplinary proceedings which could lead to a dismissal or any other appropriate sanction in terms of the Disciplinary Code and Procedures for the Public Service;
- (c) I must, within five days of the date of the interview, submit to the Panel a written declaration of any business, commercial or financial interest or activity undertaken by me for financial gain that may raise a possible conflict of interest with my employment in the Public Service, generally, or specifically within the employer department;
- (d) if I do not submit any written details as may be required by any answer or

indication given by me in this DECLARATION to the Panel within the stated period of five days of the date of the interview, such failure or omission on my part may result in the Panel recommending that I am not suitable for appointment regardless of the outcome of the interview;

(e) if I refuse or neglect to complete and sign this DECLARATION, such refusal or neglect on my part may result in the Panel recommending that I am not suitable for appointment regardless of the outcome of the interview; and

(f) I must receive a signed copy of this DECLARATION for my records.

SIGNED AT, ON THIS DAY OF, 20

AS WITNESSES:

1.

CANDIDATE

2.

**MEMORANDUM
ON THE OBJECTS
OF THE
KWAZULU-NATAL PROMOTION OF GOOD GOVERNANCE BILL, 2013**

1. BACKGROUND

The Rule of Law is fundamental to South African law. It is enshrined in the first chapter and first section of the Constitution. It is a binding Founding Provision. Section 1(c) of the Constitution provides for the "*supremacy of the Constitution and the Rule of Law*".

We live in a democracy based on principles of Constitutionalism and the Rule of Law. We have gone some way towards the achievement of that ideal, but great challenges still lie ahead.

The "Rule of Law" must be distinguished from the "rule of man". Complying with the Rule of Law means that there must be a *legal basis* or authority for the exercise of every power and the performance of every duty or function of an executive or administrative functionary or official. In other words, that everyone's rights and duties must be based on law, must be readily apparent from the law and not subject, or subject only in exceptional circumstances, to discretionary power.

In compliance with these principles of Constitutionalism and Rule of Law, the KwaZulu-Natal Provincial Government is, with the introduction of this Bill, attempting to establish the legal basis and the legal authority for good governance measures, programmes and structures in the Province.

These sentiments are echoed in the Preamble to the Bill.

The concept for this Bill emanated from the KwaZulu-Natal Rationalisation of Laws Project (driven by the Chief Directorate: State Law Advisory Services in the Office of the Premier), the aim of which is to establish a Statute Book for the Province that –

- (a) is aligned to the Constitution;
- (b) addresses the current needs of the Province in a coherent and comprehensive manner;
- (c) is free from obsolete and ideologically determined references and components;
- (d) will be accessible; and

(e) will promote legal certainty, good governance, smooth administration and enhanced delivery.

The Bill has as its purpose –

- (a) the confirmation of existing good governance principles and measures;
- (b) the establishment of proposed new good governance principles and measures; and
- (c) the establishment of the legal basis and the legal authority for good governance measures, programmes and structures,

in the Province by means of a Provincial law.

As KwaZulu-Natal does not have a Provincial Constitution, the Bill contains provisions of the nature and class which could have been embodied in a Constitution for the Province and which are regarded as desirable and appropriate to address by means of Provincial legislation. Some provisions restate and confirm existing constitutional provisions pertaining to provinces (for example, clauses 3 – 9, 31, 33 and 36), while other provisions proposed are novel where KwaZulu-Natal breaks new ground (for example, clauses 10 – 23, 25, 26, 27, 29, 30, 32, 34 and 35 and the Schedule).

The draft Bill also establishes the legal basis and authority for, amongst others –

- (a) the KwaZulu-Natal Provincial Planning Commission (Chapter 12: clauses 67 – 86);
- (b) the Provincial Growth and Development Strategy (PGDS);
- (c) the KwaZulu-Natal Citizens' Charter (Chapter 10: clauses 37 – 43); and
- (d) the KwaZulu-Natal Office of the Ombudsman (Chapter 11: clauses 44 – 66).

2. CLAUSE BY CLAUSE EXPLANATION

In summary, the Bill provides as follows:-

CHAPTER 1 DEFINITIONS

Clause 1:

Clause 1 contains the definitions which are largely self-explanatory.

CHAPTER 2 OBJECTS OF BILL

Clause 2:

Clause 2 contains the objects of the Bill which, in broad terms, are to establish the legal basis

and the legal authority for good governance measures, programmes and structures in the Province.

CHAPTER 3

INTERGOVERNMENTAL RELATIONS, INTERNATIONAL CONTACT, INTERNATIONAL AGREEMENTS, RECORDS OF UNDERSTANDING AND CO-OPERATION ARRANGEMENTS

Clause 3:

Clause 3 reaffirms the principle of co-operative government in the Constitution pertaining to the Provincial Government of KwaZulu-Natal as part of the provincial sphere of government in South Africa.

Clause 4:

Clause 4 reaffirms the establishment of the Premier's Intergovernmental Forum in terms of the national Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005).

Clause 5:

Clause 5 reaffirms that the Premier may establish other Provincial intergovernmental forums referred to in the National Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005).

Clause 6:

Clause 6 reaffirms the establishment of district intergovernmental forums for the area of jurisdiction of each district municipality in the Province in terms of the National Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), to promote and facilitate intergovernmental relations between the district municipality and the local municipalities in the district.

Clause 7:

Clause 7 reaffirms that the Premier is, in terms of the National Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), responsible for ensuring the coordination of intergovernmental relations within the Provincial Government.

Clause 8:

Clause 8 reaffirms the participation of provincial delegates to the National Council of Provinces in terms of the Constitution.

Clause 9:

Clause 9 seeks to regulate the conduct of the Provincial Government in international contact.

Clause 10:

Clause 10 seeks to –

- (a) reaffirm that, in terms of the Constitution, the negotiating and signing of international agreements is the exclusive preserve of the National Executive; and
- (b) regulate the competence of the Provincial Government in relation to international records of understanding or co-operation arrangements.

A distinction is drawn between international agreements, on the one hand, and international records of understanding or co-operation arrangements, on the other hand, and the content of, and procedures for, international records of understanding or co-operation arrangements which are to be regulated in accordance with legal opinion received from the National Department of International Relations and Co-operation (formerly Foreign Affairs).

CHAPTER 4

DIRECTIVE PRINCIPLES OF PROVINCIAL POLICY, PROVINCIAL GROWTH AND DEVELOPMENT STRATEGY AND PROVINCIAL PLAN

Clause 11:

Clause 11 sets out certain directive principles of Provincial Policy.

Clause 12:

Clause 12 determines the status of the directive principles of Provincial Policy.

Clause 13:

Clause 13 provides the legal basis for the Provincial Growth and Development Strategy (PGDS).

Clause 14:

Clause 14 provides for the term, monitoring, evaluation and review of the PGDS.

Clause 15:

Clause 15 provides for the publication of the PGDS for information purposes.

Clause 16:

Clause 16 envisages that the PGDS must be given expression in departmental programmes, budgets and legislation and provides that the performance of the heads of department in the Provincial Government must be assessed in relation to the implementation of the PGDS.

Clause 17:

Clause 17 determines the status of the PGDS.

Clause 18:

Clause 18 provides for transitional provisions in respect of the PGDS and regulates the status of any currently applicable PGDS adopted before the date of the commencement of this Bill as an Act.

Clause 19:

Clause 19 provides the legal basis for the Provincial Plan.

Clause 20:

Clause 20 provides for the term, monitoring, evaluation and review of the Provincial Plan.

Clause 21:

Clause 21 provides for the publication of the Provincial Plan for information purposes.

Clause 22:

Clause 22 envisages that the Provincial Plan must be given expression in departmental programmes, budgets and legislation and provides that the performance of the heads of department in the Provincial Government must be assessed in relation to the implementation of the Provincial Plan.

Clause 23:

Clause 23 determines the status of the Provincial Plan.

CHAPTER 5

PROVINCIAL ADMINISTRATION

Clause 24:

Clause 24 determines that the head office of the Provincial Administration is Pietermaritzburg, but also provides for the establishment of satellite or regional offices.

Clause 25:

Clause 25(1) reaffirms the constitutional provision relating to provincial public servants.

Clause 25(2) envisages that any prospective candidate, recruited for appointment in the public service in the administration of the Province and short-listed for an interview, must complete and

sign a declaration to assist with the appropriate screening and vetting of the candidate. The declaration, set out in the Schedule to the Bill, is comprehensive.

Clause 25(3) places an obligation on the Provincial Government to promote, support and facilitate increased productivity, service delivery and performance; training and skills development and the professionalisation of members of the public service in the administration of the Province.

Clause 26:

Clause 26(1) reaffirms the basic values and principles governing public administration in the Province found in the Constitution.

Clause 26(2) places an obligation on the Provincial Government, within its available resources, to take appropriate steps aimed at the prevention and combating of maladministration, fraud and corruption and conflict of interest.

Clause 27:

Clause 27 obligates Provincial departments to review and rationalise laws administered by those departments to ensure consistency and compliance with the Constitution and National laws which, in terms of the Constitution, would be regarded as the prevailing legislation.

As the rationalisation of laws must be undertaken as a continuous process, the performance of the heads of department in the Provincial Government must be assessed in relation thereto.

Clause 28:

Clause 28 obligates the Provincial Government and every department in the Provincial Government to establish its own official website and to place on it any information required to be made public in terms of any law.

CHAPTER 6
CONSULTATIVE AND PARTICIPATORY GOVERNANCE

Clause 29:

Clause 29 sets out certain principles of consultative and participatory governance.

CHAPTER 7

MONITORING AND EVALUATION OF PROVINCIAL GOVERNMENT PERFORMANCE

Clause 30:

Clause 30 sets out certain principles of monitoring and evaluation of Provincial Government performance.

CHAPTER 8

GOOD GOVERNANCE AND CO-OPERATIVE GOVERNMENT IN MUNICIPALITIES

Clause 31:

Clause 31 reaffirms principles of governance and co-operative government found in the Constitution and National legislation pertaining to municipalities as the local sphere of government.

Clause 32:

Clause 32 authorises the Premier, by proclamation in the *Gazette*, to assign or delegate powers, duties or functions of Provincial departments to municipalities.

The Constitution recognises that government is constituted as National, provincial and local spheres of government which are distinctive, interdependent and interrelated. There are elected local government structures covering every part of the Province.

These elected local government structures (generically termed "municipalities" in the Constitution) are, in terms of the Constitution and National legislation, authorised to perform certain powers, duties and functions. The delivery of municipal services to persons resident within their areas of jurisdiction is the prime duty and function of municipalities.

Due to historical circumstances, many functions currently delivered by the Provincial Government through Provincial departments should ideally be delivered at district and local level making use of the existing capacity and infrastructure of the elected municipalities.

It would be illogical and unnecessarily wasteful for a Provincial department to create parallel structures at district (regional) or local level to deliver functions at those levels on behalf of the Provincial department. If each Provincial department embarked on such a course, a proliferation of structures at district and local level would result in lack of co-ordination, confusion at grassroots level and failure to successfully and expeditiously implement service delivery. Perceptions by the community that delivery is not forthcoming, and not knowing what structure at district or local level

to approach for assistance, and being referred back and forth could have serious consequences for government in all spheres and at all levels.

All spheres and levels of government, including municipalities in the local sphere, must be empowered effectively. The motivation for devolving additional powers, duties and functions to elected municipalities must be interpreted as forming part of a major drive in the Province to decentralise service delivery and the municipalities must, in addition to their primary local government service delivery role, also be seen in a broader context as the service delivery arm of the Provincial Government. It is the duty of Government at all levels (spheres) to deliver services to the people in the most efficient, effective, responsive, equitable and cost-effective manner. The aim of government should be to converge delivery in relation to certain functional areas at the appropriate sphere, tier or level of government, which, in many cases will be the level closest to the people (local government level).

This is not only an ideal but also a constitutional imperative. Section 156(4) of the Constitution expressly states that the National Government and Provincial Governments must assign to a municipality the administration of matters relating to the functional areas of National and Provincial competence which necessarily relates to local government if that matter would most effectively be administered locally and if the municipality has the capacity to administer it.

This goal may be achieved –

- (a) by agreement;
- (b) if laws administered by departments in the Province expressly assign or delegate certain of the functions such departments are responsible for delivering at district (regional) and local level to the appropriate elected municipalities instead of creating new structures for this purpose; or
- (c) if the Provincial Legislature passes legislation (as envisaged in this clause of the Bill) providing for the delegation or assignment of powers, duties or functions by the Provincial Government to municipalities.

It should be understood that any such assignment or delegation to any municipality must, as far as is practicable, be accompanied by –

- (a) the transfer of assets, including funds; and
- (b) the transfer or secondment of personnel, as the case may be, relevant to the exercise of the power or the performance of the duty or function concerned.

Where capacity, in the form of resources (assets and funds) and personnel, accompany any

proposed delegation or assignment the positive spin-off of such a delegation or assignment is that the capacity to exercise the power or to perform the duty of function delegated or assigned is simultaneously provided for. Implicit in the transfer or secondment of personnel is that such personnel must, if necessary, undergo training relevant to the exercise of the power or the performance of the function or duty thus delegated or assigned.

It is important to note that the Constitution places an express obligation on the National Government and the provincial governments to support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers (which would include powers delegated or assigned) and to perform their functions (section 154 of the Constitution). No abdication of responsibility by the National or a provincial government in this regard would be allowed.

It is also important to note that the local sphere of government is not only entitled to an equitable share of revenue raised nationally (section 214 of the Constitution) but is furthermore authorised to raise its own revenue within the parameters of section 229 of the Constitution.

It should also be emphasised that Provincial Departments will not, in the case of a delegation of their powers, lose control of their powers as it could be expressly provided that any delegation shall not prevent the exercise of the power concerned or the performance of the duty or function concerned by the department or any duly authorised officer or employee of the department.

A distinction must be drawn between the concepts "delegation" and "assignment". Where a power, duty or function is *assigned*, the responsibility and accountability for the power, duty or function accompanies the power, duty or function concerned. Where, on the other hand, a power, duty or function is *delegated*, responsibility and accountability does not pass and control, monitoring, supervision, intervention and even withdrawing or redefining any particular delegation is possible at any time.

It must be emphasised that the idea is not to usurp any powers, duties and functions of other departments but to ensure that delivery is enhanced at district (regional) and local levels, in accordance with the dictates of the Constitution, by ensuring that the structure or agent responsible for delivery at that level is well-integrated and co-ordinated whilst, at the same time, improving the accessibility of these structures or agents responsible for delivery to the people. The community must be able to approach one visible and identifiable district or local structure in relation to addressing any need or problem they might encounter. The elected municipalities at district and local level largely possess the required legitimacy and infrastructure and are ideally suited to fulfil

such an additional role afforded to them by the Constitution.

Such an approach would also give effect to the principle or concept of "subsidiarity". This concept, developed and applied in the European Union and now reflected in our Constitution, argues that powers, duties and functions should be devolved to the "lowest" competent sphere or tier of government. The concept can be used flexibly and continuously reappraised so that powers, duties and functions are as close to the people as possible satisfying the demand for local democracy and empowerment and promoting capacity building and administrative and economic efficiency at the third sphere of government.

This all serves to strengthen the concept of co-operative government as reflected in Chapter 3 of the Constitution where all spheres of government are seen as distinctive yet interdependent and interrelated with express obligations of assisting and supporting one another and co-ordinating their actions.

Clause 33:

Clause 33 reaffirms the constitutional provision that a Member of the Executive Council may assign any of his or her powers or functions to a municipal council. Such an assignment takes effect upon proclamation by the Premier in the *Gazette*.

Clause 34:

Clause 34 obligates municipalities to review and rationalise by-laws administered by those municipalities to ensure consistency and compliance with the Constitution and National and provincial laws which, in terms of the Constitution, would be regarded as the prevailing legislation.

Clause 35:

Clause 35 gives residents of a municipality the power to decide matters at a public meeting and for their decision to be referred to the municipal council for consideration.

The municipal council *must* consider the decision and *may* confirm, vary, amend or set aside, the decision. Where the municipal council varies, amends or sets aside any such decision, it must give reasons. Where it confirms the decision the municipal council must, within a reasonable time, carry out and give effect to that decision as if it were a resolution taken by the municipal council.

This provision attempts to empower residents with an additional simple mechanism of *public*

participation (and a mild measure of some "voter control" between municipal elections) to ensure that matters which a significant number of residents feel are important are placed before the municipal council of their municipality for consideration. This may also assist to ensure that pressing issues of service delivery are placed before the municipal council for consideration whilst simultaneously acting as a safety "valve" for residents and communities as they now have a mechanism to raise and ventilate issues peacefully and they can compel the council to consider (or reconsider) issues. This proposed mechanism may stave off ill-considered or violent protest action as a result of residents' frustrations or inability to place matters before council. Any complaint relating to a matter of service delivery may also, naturally, be investigated by the KwaZulu-Natal Provincial Ombudsman (see Chapter 11 comprising clauses 44 – 66).

Clause 35 also envisages that not only residents, but also a majority of the municipal council or the Member of the Executive Council for Local Government, may direct the mayor of a municipality to follow this route of convening a public meeting of residents and to place the decision of the meeting formally before the municipal council for consideration.

CHAPTER 9

GOOD GOVERNANCE AND CO-OPERATIVE GOVERNMENT IN TRADITIONAL LEADERHIP AND INSTITUTIONS

Clause 36:

Clause 36 reaffirms the recognition of traditional leadership and institutions and sets out matters which must be addressed in Provincial legislation.

CHAPTER 10

KWAZULU-NATAL CITIZENS' CHARTER

Clause 37:

No other legislation currently provides expressly for, or expressly authorises, a Citizens' Charter for KwaZulu-Natal. In compliance with the principles of constitutionalism and Rule of Law, the KwaZulu-Natal Provincial Government is, with the introduction of this Bill, attempting to establish the legal basis and the legal authority for the Citizens' Charter, its content and the procedure to be followed for its adoption and amendment.

Clause 37 deals with the adoption of the Citizens' Charter and emphasises public participation in the *negotiation* of the Citizens' Charter in relation to the level and standard of services offered or delivered by the Provincial Government to residents of the Province.

Clause 38:

Clause 38 deals with the content of the Citizens' Charter and provides for publication for public comment before adoption of the Citizens' Charter by the Executive Council on behalf of the Provincial Government.

Clause 39:

Clause 39 deals with the publication of the Citizens' Charter in the *Provincial Gazette* for general information after its approval and adoption.

Clause 40:

Clause 40 addresses the term, monitoring, evaluation and review of Citizens' Charter.

Clause 41:

Clause 41 determines that the Citizens' Charter must be given expression in departmental programmes, budgets and legislation and that the Citizens' Charter will play a role in the performance assessment of heads of department.

Clause 42:

Clause 42 expressly provides that the Citizens' Charter is legally enforceable by citizens against the Provincial Government. Citizens may lodge complaints relating to matters of non-compliance with, or a contravention of, the Citizens' Charter, with the Ombudsman for investigation.

Clause 43:

Clause 43 provides for transitional provisions in respect of the Citizens' Charter and regulates the status of any currently applicable Citizens' Charter adopted before the date of the commencement of this Bill as an Act.

CHAPTER 11

KWAZULU-NATAL OFFICE OF OMBUDSMAN

Clause 44:

Clause 44 establishes the KwaZulu-Natal Office of the Ombudsman, placed within the Office of the Premier in the Provincial Government and which is not a juristic person.

Clause 45:

Clause 45 sets out the objects of the Office of the Ombudsman.

Clause 46:

Clause 46 describes the appointment process and determines the eligibility requirements for the appointment of the Ombudsman.

Clause 47:

Clause 47 describes the powers, duties and functions of the Ombudsman which include the powers to investigate any complaint relating to a matter of service delivery, maladministration, corruption or fraud taken either before or after the commencement of this Act by a department, municipality or public entity.

Clause 48:

Clause 48 describes the process of lodging a complaint, the nature of what complaints may be lodged, which complaints must be investigated and which complaints the Ombudsman may refuse to investigate.

Clause 49:

Clause 49 sets out that as a preliminary enquiry the Ombudsman must first approach the head of the department, the municipal manager of the municipality or the Chief Executive Officer of the public entity concerned with a view to informally and expeditiously resolving the matter.

Clause 50:

Clause 50 describes the procedure to be followed by the Ombudsman in investigating a complaint.

Clause 51:

Clause 51 gives the Ombudsman the authority to discuss an investigation with the member of the Executive Council responsible for the department, municipality or public entity concerned, any other Member of the Executive Council concerned or the mayor of a municipality.

Clause 52:

Clause 52 requires the Ombudsman to report breaches of duty of officials and to report offences to the relevant authorities, including the Public Protector.

Clause 53:

Clause 53 requires the Ombudsman to report annually to the Provincial Legislature and gives him or her authority to report to the Executive. The clause also requires that the Ombudsman make findings available to the complainant and to report to the Public Protector.

Clause 54:

Clause 54 sets out the powers of the Ombudsman to request information including the powers to subpoena persons and documents and those of search and seizure.

Clause 55:

Clause 55 gives the Ombudsman the discretion to not investigate certain complaints and to refer matters for review where this process is available to the complainant.

Clause 56:

Clause 56 describes the staffing of the Office of the Ombudsman and that the Director-General of the Province must designate such persons, employed by the Provincial Government in terms of the Public Service Act, 1994 as may be reasonably necessary, to assist the Ombudsman in exercising the powers, performing the duties and fulfilling the functions in terms of this Act and with the secretarial and administrative work incidental to do these things. The clause also allows for secondment of officials and that staff members provide a financial declaration.

Clause 57:

Clause 57 sets out the criteria for disqualification of the Ombudsman.

Clause 58:

Clause 58 requires that the Ombudsman provide a financial declaration on appointment and annually thereafter. All interests declared are to be kept in an updated register by the Premier.

Clause 59:

Clause 59 gives the Premier power to suspend the Ombudsman if under investigation.

Clause 60:

Clause 60 sets out the circumstances in which an Ombudsman resigns or has his or her term of office terminated.

Clause 61:

Clause 61 specifies the security criteria relating to information submitted to the Ombudsman and the financial disclosures of staff members and the Ombudsman.

Clause 62:

Clause 62 makes unauthorized use of the name, acronym, logos, designs or material used or owned by the Office of the Ombudsman as well as falsely claiming to be the Ombudsman, an

offence.

Clause 63:

Clause 63 empowers the Premier to delegate certain powers to the Director-General and the Ombudsman to delegate any power or duty conferred or imposed by the Act to officials in the Office of the Ombudsman.

Clause 64:

Clause 64 creates offences for purposes of Chapter 11.

Clause 65:

Clause 65 prescribes penalties for purposes of Chapter 11.

Clause 66:

Clause 66 provides for transitional arrangements in respect of the Ombudsman.

CHAPTER 12

KWAZULU-NATAL PROVINCIAL PLANNING COMMISSION

Clause 67:

No other legislation currently provides expressly for, or expressly authorises, a Provincial Planning Commission for KwaZulu-Natal. In compliance with the principles of constitutionalism and Rule of Law, the Provincial Government is, with the introduction of this Bill, attempting to establish the legal basis and the legal authority for the KwaZulu-Natal Provincial Planning Commission.

Clause 67 provides for the establishment of the KwaZulu-Natal Provincial Planning Commission, states that the Commission is not a juristic person and determines that the Commission is placed within the Office of the Premier in the Provincial Government with the Director-General of the Province as the accounting officer of the Commission.

Clause 68:

Clause 68 sets out the broad objects of the Commission in respect of strategic planning, strategic direction, and policy planning and policy alignment, which must be undertaken within the directive principles of Provincial Policy contained in clause 11.

Clause 69:

Clause 69 deals in detail with the powers, duties and functions of the Commission.

Similar functions to those exercised by the *Planning Commission of the Government of India* have been included as functions of the Commission. A comprehensive range of additional and extensive powers, duties and functions are also proposed and listed. The formulation of a Provincial Plan, policy alignment, effective, efficient and balanced utilisation of resources and the stimulation of the economic, industrial and rural development of the Province, is envisaged.

Linkages and formal liaison mechanisms with the National Planning Commission in the Office of the Presidency are proposed to ensure a co-ordinated approach.

Clause 69 is a lengthy, detailed and critical clause which must be read in the Bill itself.

Clause 70:

Clause 70 determines the composition of the Commission. It is proposed that the Premier appoints one full-time Commissioner (who must be designated as the Chairperson of the Commission) and at least five, but not more than eight, part-time Commissioners.

Clause 71:

Clause 71 provides for the term of office of Commissioners. The Commissioners hold office for a period of five years and are eligible for reappointment, but may not serve for longer than a continuous period of 10 years.

Clauses 72 and 73:

Clauses 72 and 73 deal with vacancies, removal and resignation from office of Commissioners and temporary suspension of a Commissioner, under certain circumstances.

Clause 74:

Clause 74 deals with meetings and procedures at meetings of the Commission. The first meeting is convened by the Premier and all future meetings by the Chairperson of the Commission. The Commission must meet at least five times in any given financial year.

Clause 75:

Clause 75 provides for recusal of Commissioners from meetings and proceedings in cases of direct or indirect interest. The clause also defines "indirect interest".

Clause 76:

Clause 76 deals in detail with the remuneration of Commissioners, allowances and reimbursement for expenses.

Clause 77:

Clause 77 provides for the establishment by the Commission of Committees to assist the Commission in the performance of any of its powers, duties or functions or to conduct research.

Clause 78:

Clause 78 authorises the Commission to co-opt persons to assist in regard to any of the powers, functions and duties of the Commission. Co-opted persons may not vote at a meeting of the Commission or a committee. The clause also deals with the remuneration of co-opted persons, their allowances and reimbursement for expenses.

Clause 79:

Clause 79 deals with the staff attached to the Commission and provides that the Director-General of the Province must designate public servants employed in terms of the Public Service Act, 1994, to assist the Commission with the secretarial and administrative work incidental to the exercise of its powers, the performance of its duties and the fulfilment of its functions.

Clause 80:

Clause 80 seeks to prevent persons from disclosing confidential information about the Commission, unless such disclosure is in terms of the law or a court order.

Clause 81:

Clause 81 provides that the Commission may only be disestablished by an Act of the Provincial Legislature.

Clause 82:

Clause 82 seeks to prevent the unauthorised use of the name, acronym, logos, designs or material owned or used by the Commission.

Clause 83:

Clause 83 authorises certain delegations of powers and duties by the Commission.

Clause 84:

Clause 84 criminalises certain conduct by Commissioners, staff attached to the Commission and private individuals.

Clause 85:

Clause 85 provides for penalties for persons found guilty of contravening the Act (refer also to

clause 84; criminalising certain conduct).

Clause 86:

Clause 86 provides for transitional arrangements in respect of the Commission.

CHAPTER 13 GENERAL PROVISIONS

Clause 87:

Clause 87 empowers the Premier to make regulations relating to matters which may be necessary or expedient for the effective carrying out or furtherance of the provisions and objects of the Bill or to remove administrative problems which may be experienced in the application of the Bill.

Clause 88:

Clause 88 provides for delegation of powers and duties by the Premier to the Director-General, except the power to publish notices, the power to make proclamations and the power to make regulations.

Clause 89:

Clause 89 contains the short title of the Act.

SCHEDULE

The Schedule to the Act contains the proposed declaration by short-listed candidates referred to in clause 25(2)(b) of the Bill. The Premier is authorised to amend or substitute the Schedule containing the declaration by notice in the Gazette.

3. ORGANISATIONAL AND PERSONNEL IMPLICATIONS FOR PROVINCIAL GOVERNMENT

There are organisational and personnel implications in respect of the establishment of the Office of the Ombudsman. Subject to an organisational design and work study exercise, the structure of the Office and the level and number of posts required to be created to ensure the effective functioning of the Office of the Ombudsman will be determined.

There are similar organisational and personnel implications in respect of the KwaZulu-Natal Provincial Planning Commission.

4. FINANCIAL IMPLICATIONS FOR PROVINCIAL GOVERNMENT

There are financial implications in respect of the establishment of the Office of the Ombudsman in terms of the structure of the Office and the level and number of posts required to ensure the effective functioning of the Office of the Ombudsman. The Office of the Ombudsman will require its own budget and office space. For the Office to be effective, office space easily accessible to persons using public transport, the physically challenged and the elderly, must be identified and procured.

There are similar financial implications in respect of the KwaZulu-Natal Provincial Planning Commission.

5. DEPARTMENTS/BODIES/PERSONS CONSULTED

The initial provisions of the Bill first saw the light in 2006, having been drafted as a *proposal* to the KwaZulu-Natal Public Sector Lawyers' Forum by the Chief Directorate: State Law Advisory Services in the Office of the Premier, KwaZulu-Natal, *for discussion purposes only* in a response to issues emanating from the KwaZulu-Natal Rationalisation of Laws process. This 2013 version of the Bill incorporates wider issues such as the KwaZulu-Natal Office of the Ombudsman and the KwaZulu-Natal Provincial Planning Commission.

The provisions of the Bill dealing with the Ombudsman (Chapter 11, comprising sections 44 – 66) were drafted in consultation with –

- (a) *Mr VIV Made* (Ombudsman, Office of the Premier, KwaZulu-Natal), and *Mr MC Msomi* (General Manger: Integrity Management, Office of the Premier, KwaZulu-Natal);
- (b) the KwaZulu-Natal Provincial Ombudsman Forum; and
- (c) the Public Protector (National).

NOTE: In terms of section 154(2) of the **Constitution**, draft National or Provincial legislation that affects the status, institutions, powers or functions of local government must be published for public comment before it is introduced in Parliament or a Provincial Legislature, in a manner that allows organised local government, municipalities and other interested persons an opportunity to make representations with regard to the draft legislation.

As certain provisions in the proposed Bill affect municipalities, it is recommended that the Bill be published for comment as envisaged in section 154(2) of the Constitution before it is introduced in the Provincial Legislature.

It is further recommended that the Bill be referred to organised local government in KwaZulu-Natal for comment and to initiate consultation before introduction of the Bill in the Provincial Legislature.

6. QUESTIONS ABOUT LEGAL COMPETENCE OF PROVINCIAL LEGISLATURE TO REPEAT, RESTATE OR REFER TO PROVISIONS IN THE CONSTITUTION AND OTHER NATIONAL LEGISLATION IN PROVINCIAL LEGISLATION

This question is open for discussion.

In this respect, the following extracts from the Certification of the Constitution of the Western Cape, 1997 (Case CCT 6/97 - 1997 (4) SA 795 CC) may be useful –

"[21] The ANC objected to the repetition in the WCC [Western Cape Constitution] of provisions in the NC [National Constitution] which relate to matters falling outside the competence of the provincial legislature ... the question still arises whether the provincial legislature has the power even to repeat such provisions in its own constitution ...

[22] What appeared in the KZN constitutional text [1996 text] was the repetition of matters which had nothing to do with provincial powers or competence. Those matters were contained principally in the bill of rights of the KZN constitutional text ... such repetition was not germane to the constitution-making process.

[23] By contrast, in the WCC all of the provisions of the NC that are repeated relate to matters which directly affect governance within the province, that is, the provincial legislature and the members of the provincial executive or legislature ... It would indeed have been difficult for the WCC to be coherent and comprehensible without the repetition of those NC provisions which form the matrix for the related provisions of the WCC. We can find no fault with such provisions.

[25] The challenged clause merely mirrors ... the source of the power ... It is not an attempt at usurpation of power such as disqualified the KZN constitutional text.".

It is suggested that the same principles enunciated by the Constitutional Court in respect of a provincial constitution (as provincial legislation) could be extended to the Bill at hand to ensure that KwaZulu-Natal, with the enactment of this Bill, has a complete compendium or codification of the relevant good governance provisions (also those found in the Constitution) pertaining to the Province in one legislative instrument or document.

The repetition and restatement, in the Bill, of some provisions found in the Constitution merely "mirrors the source of the power" in an attempt to compile one comprehensive and coherent

document without intending to usurp national legislative competence.

7. CONTACT PERSONS

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No. 41**29 Mei 2013****KANTOOR VAN DIE PREMIER****PUBLIKASIE VAN DIE KWAZULU-NATAL WETSONTWERP OP DIE BEVORDERING VAN
GOEIE REGERING, 2013, OOREENKOMSTIG ARTIKEL 154(2) VAN DIE GRONDWET VAN
DIE REPUBLIEK VAN SUID-AFRIKA, 1996**

1. Ooreenkomstig artikel 154(2) van die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet 108 van 1996), word die **KwaZulu-Natal Wetsontwerp op die Bevordering van Goeie Regering, 2013**, hiermee gepubliseer vir openbare kommentaar.

2. Georganiseerde plaaslike regering, munisipaliteite en ander belanghebbende partye word uitgenooi om kommentaar op die voorgestelde Wetsontwerp in te dien nie later nie as 30 dae na die publikasie hiervan per –

- (a) pos aan die Hoof-Staatsregsadviseur, Privaatsak X9037, Pietermaritzburg, 3200;
- (b) hand na die 3de Vloer, Moses Mabhida Gebou, Langalibalelestraat 300, Pietermaritzburg, Aandag: Adv. J Wolmarans;
- (c) faks na: (033) 394 4153; of
- (d) e-pos aan: jacques.wolmarans@kznpremier.gov.za.

Gegee onder my Hand te Pietermaritzburg op hierdie 22ste dag van April, Tweeduusend-en-dertien.

DR ZL MKHIZE

Premier van die Provincie van KwaZulu-Natal

KWAZULU-NATAL
WETSONTWERP OP BEVORDERING VAN GOEIE REGERING, 2013

WETSONTWERP

Om goeie regering en koöperatiewe regering in die Provinse te bevorder en te verseker, en, met dit ten doel, om –

- (a) verder interregeringsvehoudings en internasionale kontak waarby die Provinse betrokke is te reguleer;**
- (b) internasionale rekords van begrip waarvan die Proviniale Regering 'n ondertekenaar of deelnemer is te reguleer;**
- (c) voorsiening te maak voorskrytelike beginsels van Proviniale Beleid;**
- (d) voorsiening te maak vir die aanneem van 'n Proviniale Groei- en Ontwikkelingstrategie en 'n Proviniale Plan;**
- (e) verder goeie regering in die Proviniale Administrasie te reguleer;**
- (f) voorsiening te maak vir die gereelde hersiening en rasionalisering van wette;**
- (g) voorsiening te maak vir beginsels van raadplegende en deelnemende regering;**
- (h) voorsiening te maak vir beginsels van monitering en evaluering van werkverrigting van Proviniale Regering;**
- (i) verder goeie regering en koöperatiewe regering in munisipaliteite te reguleer;**
- (j) voorsiening te maak vir, en verder te reguleer, die toewysing en delegering van bevoegdhede , pligte en werksaamhede aan munisipaliteite;**
- (k) voorsiening te maak vir die gereelde hersiening en rasionalisering van munisipale verordeninge;**
- (l) verder goeie regering en koöperatiewe regering in tradisionele leierskap en instellings te reguleer;**
- (m) voorsiening te maak vir die aanneem van 'n Burgerhandves deur die Proviniale Regering;**
- (n) voorsiening te maak vir die instelling van die KwaZulu-Natal Kantoor van die Ombudsman; en**
- (o) voorsiening te maak vir die instelling van die KwaZulu-Natal Proviniale Beplanningskommissie,**

en om voorsiening te maak vir aangeleenthede wat daarmee verband hou.

AANHEF

IN ERKENNING DAT –

- (a) die Oppergesag van die Reg fundamenteel is tot Suid-Afrikaanse reg;**
- (b) die Oppergesag van die Reg 'n bindende Stigtingsbepaling is wat in die eerste hoofstuk en die eerste artikel van die Grondwet vasgelê is;**

- (c) artikel 1(c) van die Grondwet voorsiening maak vir die "oppergusag van die Grondwet en die Oppergusag van die Reg";
- (d) ons lewe in 'n demokrasie gebaseer op die beginsels van Grondwetlikheid en die Oppergusag van die Reg;
- (e) ons ver gevorder het in die bereiking van daardie ideal, maar dat daar nog groot uitdagings vorentoe lê;
- (f) onderskeid getref moet word tussen die "Oppergusag van die Wet" en die "heerskappy van die mens", en
- (g) voldoening aan die Oppergusag van die Wet beteken dat daar 'n regsbasis of regsgesag moet wees vir die uitoefening van elke bevoegdheid en nakoming van elke plig of verrigting van werkzaamhede van 'n uitvoerende of administratiewe funksionaris of beampte. Met ander woorde, dat elkeen se regte en pligte wetsgebaseerd moet wees, geredelik duidelik moet wees uit die wet en is nie onderworpe, of onderworpe slegs in buitengewone omstandighede nie, aan diskresionêre mag;

OOREENKOMSTIG hierdie beginsels van Grondwetlikheid en die Oppergusag van die Reg, is die KwaZulu-Natal Provinciale Regering besig daarmee, met die aanneming van hierdie Wet, om die regsbasis en die regsgesag vir die maatreëls van goeie regering, programme en strukture in die Provinsie in te stel;

DAAR WORD deur die Provinciale Wetgewer van die Provinsie van KwaZulu-Natal soos volg bepaal:-

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HOOFSTUK 1
OMSKRYWINGS

Omskrywings

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

“**Batho Pele**” verbeterde dienslewering in ‘n mensgesentreerde kultuur van openbare diens wat staatsamptenare inspireer om die **Batho Pele** “geloofstel”: “**Ons behoort, Ons gee om, Ons dien**” te demonstreer;

“**Batho Pele beginsels**” beteken ‘n stel beginsels, soos aangeneem deur die Nasionale Departement van Staatsdiens en Administrasie om staatsamptenare te inspireer ten einde diensgeoriënteerd te wees, om te streef na uitnemendheid in dienslewering en om hulself te verbind tot deurlopende verbetering van dienslewering;

“**Burgerhandves**” die Burgerhandves vermeld in Hoofstuk 10 (artikels 37 – 43);

“departement” ‘n provinsiale regeringsdepartement ingestel ingevolge artikel 7(2)(b) van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), vir die Provincie van KwaZulu-Natal en gelys in Bylae 2 tot die Staatsdienswet, 1994: Met dien verstande dat, vir die doeleindes van Hoofstuk 11, waar die Ombudsman ‘n skriftelike ooreenkoms aangegaan het met ‘n nasionale departement wat streekskantore in die Provincie het soos bedoel in artikel 5(2)(b) van die Staatsdienswet, 1994, sluit **“departement”** in sodanige nasionale departement tot die omvang waarin dit werksaam is in die Provincie;

“departementshoof” die persoon aangestel as Hoof van die betrokke Departement ingevolge artikel 12 van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994);

“georganiseerde plaaslike regering” die KwaZulu-Natal Plaaslike Regeringsorganisasie synde daardie organisasie in die Provincie van KwaZulu-Natal erken ingevolge artikel 2(1) van die Wet op Georganiseerde Plaaslike Regering, 1997 (Wet No. 52 van 1997), as verteenwoordigend van die meerderheid munisipaliteite in die Provincie;

“Grondwet” die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet 108 van 1996);

“hierdie Wet” sluit die regulasies in;

“Kantoor van die Ombudsman” die KwaZulu-Natal Kantoor van die Ombudsman ingestel ingevolge artikel 44(1);

“klagte”, vir die doeleindes van Hoofstuk (artikels 44 – 66), ‘n klagte betreffende enige diens of aangeleentheid wat deel vorm van die kernfunksie van ‘n departement, munisipaliteit of openbare entiteit en sou insluit klagtes betreffende dienslewering, nie-nakoming van, of teenstrydig met, die Burgerhandves, wanadministasie, korupsie en bedrog;

“Koerant” die amptelike *Provinsiale Koerant* van die Provincie van KwaZulu-Natal;

“Kommissaris” ‘n Kommissaris verwys na in artikel 70(1);

“Kommissie” die KwaZulu-Natal Provinsiale Beplanningskommissie ingestel ingevolge artikel 67(1);

“Lid van die Uitvoerende Raad verantwoordelik vir Finansies” die Lid van die Uitvoerende Raad van die Provincie van KwaZulu-Natal verantwoordelik vir Finansies;

“munisipale raad” of **“raad”** ’n munisipale raad verwys na in artikel 157(1) van die Grondwet;

“munisipaliteit” ’n munisipaliteit verwys na in artikel 155 van die Grondwet, en ingestel deur en kragtens artikels 11 en 12 van die Wet op Plaaslike Regering: Munisipale Strukture, 1998 (Wet No. 117 van 1998), saamgelees met artikels 3, 4 en 5 van die KwaZulu-Natal Wet op die Bepaling van Soorte Munisipaliteite, 2000 (Wet No. 7 van 2000), en **“distriksmunisipaliteit”** en **“metropolitaanse munisipaliteit”** het ’n ooreenstemmende betekenis;

“Ombudsman” die persoon aangestel as die KwaZulu-Natal Ombudsman ingevolge artikel 46(1)(a);

“Openbare Beskermer” die staatsinstelling vermeld in artikel 181(1)(a) van die Grondwet en ingestel deur artikel 1A van die Wet op die Openbare Beskermer, 1994 (Wet No. 23 van 1994);

“openbare entiteit” ’n **“provinsiale openbare entiteit”** –

- (a) soos omskryf in artikel 1 van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999);
- (b) ingestel vir die Provincie van KwaZulu-Natal; en
- (c) gelys in Deel C van Bylae 3 tot die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999);

“Plaaslike Huis van Tradisionele Leiers” ’n Plaaslike Huis van Tradisionele Leiers soos omskryf in artikel 1(1) van die KwaZulu-Natal Wet op Tradisionele Leierskap en Regering, 2005 (Wet No. 5 van 2005);

“plaaslike sfeer” die plaaslike regeringsfeer vermeld in artikel 40 van die Grondwet;

“Premier” die Premier van die Provincie van KwaZulu-Natal soos vermeld in artikel 125(1) van die Grondwet;

“Provinsiale Blitslyn” die inbelsentrum vir dienslewering en klagtes geleë binne die

Kantoor van die Premier van die Provincie;

"Provinsiale Groei- en Ontwikkelingstrategie" die Provinsiale Groei- en Ontwikkelingstrategie (PGOS) vermeld in artikel 13;

"Provinsiale Huis van Tradisionele Leiers" die Provinsiale Huis van Tradisionele Leiers soos omskryf in artikel 1(1) van die KwaZulu-Natal Wet op Tradisionele Leierskap en Regering, 2005 (Wet No. 5 van 2005);

"Provinsiale Plan" die Provinsiale Plan vermeld in artikel 19;

"Provinsiale Regering" die Regering van die Provincie van KwaZulu-Natal en, tensy uit die samehang anders blyk, ingesluit elke departement in die Provinsiale Regering;

"provinsiale sfeer van regering" die provinsiale sfeer van regering vermeld in artikel 40 van die Grondwet;

"Provinsiale Wetgewer" die Wetgewer van die Provincie van KwaZulu-Natal vermeld in artikel 105 van die Grondwet en wat beskik oor die wetgewende mag vir die Provincie soos bedoel in artikel 104(1) van die Grondwet;

"Provinsie" die Provincie van KwaZulu-Natal vermeld in artikel 103 van die Grondwet, en **"provinsiaal"** het 'n ooreenstemmende betekenis;

"regulasies" die regulasies gemaak ingevolge artikel 87(1);

"rigtinggewende beginsels van Provinsiale Beleid" die rigtinggewende beginsels van Provinsiale Beleid vermeld in artikel 11;

"Uitvoerende Raad" die Uitvoerende Raad van die Provincie van KwaZulu-Natal soos bedoel in artikel 132 van die Grondwet; en

"voorgeskryf" voorgeskryf deur regulasie ingevolge artikel 87(1), en **"voorskryf"** het 'n ooreenstemmende betekenis;

HOOFSTUK 2
OOGMERKE VAN WET

Oogmerke van Wet

2. Die oogmerke van hierdie Wet is om –

- (a) goeie regering te bevorder en verseker;
- (b) maatreëls benodig vir die verbetering van goeie regering te identifiseer en implementeer;
- (c) voorsiening te maak vir strukture ten einde uitwerking te gee aan goeie regering ; en
- (d) die regsbasis en regsgesag vir die maatreëls, programme en strukture vir goeie regering in te stel,

in die Provincie.

HOOFSTUK 3

INTERREGERINGSVERHOUDINGS, INTERNASIONALE KONTAK, INTERNASIONALE OOREENKOMSTE, REKORDS VAN BEGRIP EN SAMEWERKINGSOOREENKOMSTE

Koöperatiewe regering

3. As deel van die provinsiale sfeer van regering van die Republiek van Suid-Afrika, moet die Provinciale Regering –

- (a) optree in ooreenstemming met die beginsels van koöperatiewe regering en interregeringsverhoudings uiteengesit in die Grondwet in al sy handelinge met die Nasionale Regering, die ander provinsiale regerings en die munisipaliteite in die Provincie;
- (b) deelneem aan strukture en instellings ten einde interregeringsverhoudings, ingestel ingevolge die Grondwet, te bevorder en fasiliteer; en
- (c) gebruik maak van meganismes en procedures, ingestel ingevolge die Grondwet, vir die beslewing van interregeringsgeskille.

Instelling van Premier se Interregeringsforum

4.(1) 'n Interregeringsforum van die Premier bestaan, ingestel ingevolge artikel 16 van die Wet op die Raamwerk vir Interregeringsverhoudings, 2005 (Wet No. 13 van 2005), ten einde interregeringsverhoudings tussen die Provinciale Regering en plaaslike regering in die Provincie te bevorder en fasiliteer.

(2) Artikels 17, 18, 19 en 20 van die Wet op die Raamwerk vir Interregeringsverhoudings, 2005, reguleer die samestelling, rol, vergaderings en verslaglewering van die Premier se Interregeringsforum.

Ander Provinciale interregeringsforums

5. Die Premier kan ander Provinciale interregeringsforums instel, soos vermeld in artikel 21 van die Wet op die Raamwerk vir Interregeringsverhoudings, 2005 (Wet No. 13 van 2005).

Instelling van distriksinterregeringsforums

6.(1) 'n Distriksinterregeringsforum bestaan vir die juridiksiegebied van elke distriksmunisipaliteit in die Provinsie, ingestel ingevolge artikel 24 van die Wet op die Raamwerk vir Interregeringsverhoudings, 2005 (Wet No. 13 van 2005), ten einde interregeringsverhoudings tussen die distriksmunisipaliteit en die plaaslike munisipaliteite in die distrik te bevorder en fasiliteer.

(2) Artikels 25, 26, 27 en 28 van die Wet op die Raamwerk vir Interregeringsverhoudings, 2005, reguleer die samestelling, rol en vergaderings van die distriksinterregeringsforums.

Verantwoordelikheid vir koördinering van interregeringsverhoudings

7. Die Premier is, ingevolge artikel 37 van die Wet op die Raamwerk vir Interregeringsverhoudings, 2005 (Wet No. 13 van 2005), verantwoordelik daarvoor om die koördinasie van interregeringsverhoudings binne die Provinciale Regering met –

- (a) die Nasionale Regering; en
- (b) plaaslike regering in die Provinsie,

te verseker, in ooreenstemming met die bepalings van die Wet op die Raamwerk vir Interregeringsverhoudings, 2005.

Deelname aan Nasionale Raad van Provincies

8. Afgevaardigdes na die Nasionale Raad van Provincies moet aktief deelneem in die Raad ten einde die belang van die Provinsie en die land as 'n geheel te bevorder in ooreenstemming met die beginsels van koöperatiewe regering en interregeringsverhoudings soos uiteengesit in die Grondwet.

Internasionale kontak**9. In enige kontak met –**

- (a) die verteenwoordigers;
- (b) regerings;
- (c) staatsorgane en ander openbare liggame;
- (d) organe van burgelike gemeenskap;
- (e) privaatsektorliggame; of
- (f) individuele burgers,

van buitelandse state, moet die Proviniale Regering optree in ooreenstemming met die Grondwet, Nasionale wetgewing, die Nasionale Regering se buitelandse beleid en enige opdrag of riglyn van die Nasionale Regering.

Internasionale ooreenkomste, rekords van begrip en samewerkingsooreenkomste**10.(1) Ingevolge die Grondwet is die onderhandeling en ondertekening van internasionale ooreenkomste die verantwoordelikheid van die Nasionale Uitvoerende Gesag.**

(2) 'n Rekord van begrip of 'n samewerkingsooreenkoms geteken deur, of namens, die Proviniale Regering met enige sub-nasjonale entiteit of 'n buitelandse staat met die oog op die bevordering van wedersydse samewerking –

- (a) maak nie 'n internasionale ooreenkoms uit nie;
- (b) moet bepalings bevat wat uitdruklik aanteken dat –
 - (i) die rekord van begrip en samewerkingsooreenkoms nie 'n internasionale ooreenkoms uitmaak nie;
 - (ii) die deelnemers aan die rekord van begrip en samewerkingsooreenkoms is nie, en verteenwoordig nie, state of die nasionale regerings nie; en
 - (iii) die rekord van begrip en samewerkingsooreenkoms verbind nie die onderskeie state of nasionale regerings nie,
- ingevolge internasionale reg; en
- (c) moet verwys na –
 - (i) "deelnemers" eerder as "partye";
 - (ii) "paragrawe" eerder as "klousules"; en
 - (iii) "rekord van begrip" eerder as –
 - (aa) "memorandum van begrip";
 - (bb) "notule", of

- (cc) "ooreenkoms"; en
- (d) mag nie enige bindende bepaling of voorwaarde bevat wat die regte, verantwoordelikhede, pligte en werksaamhede van elke deelnemer, ingesluit uitdruklike finansiële bepalings en voorwaardes en sanksies vir wanprestasie of nie-nakoming uiteensit nie;
- (e) moet bepalings bevat met gevolg dat –
 - (i) die deelnemers hul onderskeie nasionale regerings moet inlig oor enige beoogde wedersydse samewerking;
 - (ii) die deelnemers moet poog om hul beste pogings aan te wend ten einde die onderhandeling van bepaalde ooreenkomste tussen hul onderskeie nasionale regerings te faciliteer en bevorder ten einde uitdrukking en uitvoering te gee aan die beoogde wedersydse samewerking, onderhewig aan die huidige grondwetlike, wetlike, procedurele en beleidsraamwerke van hul onderskeie nasionale regerings; en
 - (iii) die onderskeie nasionale departemente verantwoordelik vir die buitelandse beleid en buitelandse sake, en die onderskeie nasionale en provinsiale departemente verantwoordelik vir interregeringsverhoudings, moet in kennis gestel word van enige beoogde ooreenkoms vermeld in paragraaf (ii) en moet 'n redelike geleentheid gebied word om kommentaar te lewer voor afhandeling en ondertekening van enige sodanige ooreenkoms; en
- (f) moet deur die Uitvoerende Raad goedgekeur of bekratig word.

(3) 'n Rekord van begrip of samewerkingsooreenkoms –

- (a) onderteken deur, of namens, die Provinciale Regering met enige sub-nasionale entiteit van 'n buitelandse staat;
- (b) hetsy voor of na die inwerkingtreding van hierdie Wet; en
- (c) wat nie voldoen aan subartikel (2) nie,
is van nul en gener waarde.

HOOFSTUK 4

RIGTINGGEWENDE BEGINSELS VAN PROVINSIALE BELEID, PROVINSIALE GROEI- EN ONTWIKKELINGSTRATEGIE EN PROVINSIALE PLAN

Rigtinggewende beginsels van Provinciale Beleid

11. Die Provinciale Regering moet beleide aanvaar en implementeer ten einde daadwerklik 'n aandeel te hê aan 'n oop en demokratiese samelewing te bevorder wat gebaseer is op

menswaardigheid, gelykheid en vryheid, ingesluit beleide wat daarop gemik is om die volgende te bereik –

- (a) die bevordering en instandhouding van die welsyn van die mense in die Provincie;
- (b) die bevordering van deursigtigheid, openbare deelname en oorlegpleging;
- (c) die bevordering van veiligheid en sekuriteit;
- (d) die voorkoming van misdaad, wanadministrasie, bedrog en korruksie en botsing van belang;
- (e) die bevordering van nie-rassehaat;
- (f) die beskerming of bevordering van persone, of kategorieë van persone wat benadeel is deur onbillike diskriminasie;
- (g) die bevordering van respek vir die regte van kulturele-, godsdienstige- en taalgemeenskappe;
- (h) die stimulering en bevordering van ekonomiese-, nywerheids- en landelike ontwikkeling;
- (i) die skep van werkgeleenthede en volhoubare lewensbestaan;
- (j) die bevordering van 'n werksetiek en verhoogde produktiwiteit;
- (k) die bevordering van morele hernuwing;
- (l) die bevordering van 'n markgerigte ekonomie;
- (m) die verwesenliking van die reg op toegang tot –
 - (i) voldoende behuising;
 - (ii) basiese gesondheidsorgdienste;
 - (iii) genoegsame voedsel en water;
 - (iv) maatskaplike sekuriteit, ingesluit gesikte maatskaplike bystand vir mense wat nie in staat is om hulself en hul afhanklikes te onderhou nie;
 - (v) basiese onderwys; en
 - (vi) ordentlike werk en 'n volhoubare lewensbestaan; en
- (n) 'n omgewing waarin alle kinders –
 - (i) geleenthede en fasiliteite ontvang ten einte te ontwikkel op 'n gesonde wyse en in omstandighede van vryheid en waardigheid;
 - (ii) beskerm word teen uitbuiting, verwaarlozing, misbruik en verlating; en
 - (iii) basiese onderwys ontvang binne 'n stelsel van hul ouers se keuse; en
- (o) grondhervorming;
- (p) landbouhervorming, die ontwikkeling van landelike gemeenskappe en die bevordering van landelike werkers se welsyn;
- (q) 'n stelsel van belasting en betaling vir dienste wat billik en deursigtig is en die vermoë van mense om te betaal tegemoetkom;
- (r) 'n omgewing waarin alle verswaktes of ouer persone –

- (i) toegang het tot gesinsorg of gesikte alternatiewe sorg wanneer hulle uit die gesinsomgewing verwyder word;
 - (ii) voorsien word van basiese voeding, skuling, basiese gesondheidsorgdienste en maatskaplike dienste; en
 - (iii) beskerm word teen mishandeling, verwaarloosig, misbruik, vernedering of gedwonge afsondering; en
- (s) die beskerming en bewaring van die omgewing in die Provinse, ingesluit sy unieke *fauna* en *flora*, tot die voordeel van huidige en toekomstige geslagte;
 - (t) die beskerming en bewaring van die natuurhistoriese, kultuurhistoriese, argeologiese en argitektoniese erfenis van die Provinse tot die voordeel van die huidige en toekomstige generasies; en
 - (u) die bevordering en uitbreiding van jeugontwikkeling.

Status van rigtinggewende beginsels van Proviniale Beleid

12. Die rigtinggewende beginsels van die Proviniale Beleid vervat in artikel 11 is, onderhewig aan die Grondwet, nie deur die burgers regtens afdwingbaar op die Proviniale Regering nie, maar lei en lig die Proviniale Regering in, oor –

- (a) beleidsbepaling;
- (b) beplanning, ingesluit sektor-spesifieke beplanning;
- (c) die maak en toepassing van wette; en
- (d) toepassing van sy programme en aktiwiteite.

Uitvoerende Raad moet Proviniale Groei- en Ontwikkelingstrategie aanvaar

13.(1) Die Uitvoerende Raad moet –

- (a) 'n geïntegreerde en volhoubare Proviniale Groei- en Ontwikkelingstrategie (PGOS) vir die Provinse onderhandel, ontwikkel en aanvaar; en
- (b) omstandighede aanmoedig en skep vir openbare deelname in die onderhandeling, ontwikkeling, implementering en hersiening van die Proviniale Groei- en Ontwikkelingstrategie.

(2) Die Proviniale Groei- en Ontwikkelingstrategie moet –

- (a) geleei en ingelig word deur –
 - (i) die rigtinggewende beginsels van Proviniale Beleid;
 - (ii) die Proviniale Plan; en

- (iii) die verskeie huidig toepaslike munisipale Geïntegreerde Ontwikkelingsplanne (GOP) vermeld in toepaslike Nasionale wetgewing rakende munisipale stelsels en ontwikkeling (in die besonder Hoofstuk 5 (artikels 23 – 37) van die Wet op Plaaslike Regering: Munisipale Stelsels, 2000 (Wet No. 32 van 2000)); en
- (b) die tersaaklike en toepaslike Millennium Ontwikkelingsdoelwitte (MOD) en Proviniale prioriteite voldoende aanspreek; en
- (c) 'n plan van aksie insluit met mylpale en die tydraamwerke vir die implementering van items van aksie deur departemente in die Proviniale Regering.

Termyn, monitering evaluasie en hersiening van die Proviniale Groei- en Ontwikkelingstrategie

14. Die Uitvoerende Raad moet die Proviniale Groei- en Ontwikkelingstrategie –

- (a) se termyn bepaal;
- (b) se implementering moniteer;
- (c) evaluateer; en
- (d) hersien.

Publikasie van Proviniale Groei- en Ontwikkelingstrategie

15.(1) Na die aanname van die Proviniale Groei- en Ontwikkelingstrategie deur die Uitvoerende Raad moet die Premier, binne 'n redelike tyd, die Proviniale Groei- en Ontwikkelingstrategie publiseer deur kennisgewing in die *Koerant* vir algemene inligting.

(2) Die Proviniale Groei- en Ontwikkelingstrategie tree in werking by publikasie van die kennisgewing vermeld in subartikel (1).

(3) Die Premier kan, na goedkeuring deur die Uitvoerende Raad namens die Proviniale Regering en deur kennisgewing in die *Koerant*, die Proviniale Groei- en Ontwikkelingstrategie –

- (a) wysig;
- (b) vervang; of
- (c) onttrek.

Proviniale Groei- en Ontwikkelingstrategie moet uitdrukking gegee word in departementele programme, begrotings en wetgewing

16. Lede van die Uitvoerende Raad moet verseker dat –

- (a) uitdrukking gegee word aan die Proviniale Groei- en Ontwikkelingstrategie in die algemeen, en uitdruklik items van aksie vermeld in artikel 13(2)(c), in departemente programme, begrotings en wetgewing; en
- (b) die individuele prestasie-ooreenkoms van die onderskeie departementshoofde moet die mylpale en tydramwerke vir die implementering van items van aksie vermeld in artikel 13(2)(c) deur die betrokke departement in die Proviniale Regering as lewerbares of sleutelprestasie-areas waarvolgens die werkverrigting van die betrokke departementshoof geassesseer moet word, insluit.

Status van Proviniale Groei- en Ontwikkelingstrategie

17. Die Proviniale Groei- en Ontwikkelingstrategie (PGOS) is, onderhewig aan die Grondwet, nie deur burgers wetlik afdwingbaar op die Proviniale Regering nie, maar lei en lig die Proviniale Regering in, oor –

- (a) beleidsbepaling;
- (b) beplanning, insluitend sektor-spesifieke beplanning;
- (c) die maak en toepassing van wette; en
- (d) implementering van sy programme en aktiwiteite.

Oorgangsbeplittings met betrekking tot Proviniale Groei- en Ontwikkelingstrategie

18.(1) Enige huidig toepaslike Proviniale Groei- en Ontwikkelingstrategie aangeneem voor die datum van inwerkingtreding van hierdie Wet word, onderhewig aan subartikel (2), beskou as regtens aangeneem ingevolge die beplittings van hierdie Wet.

(2)(a) Die proses vir die hersiening van die Proviniale Groei- en Ontwikkelingstrategie vermeld in subartikel (1) moet 'n aanvang neem binne 12 maande na die datum van inwerkingtreding van hierdie Wet.

(b) Die Proviniale Regering moet, binne 36 maande na die datum van inwerkingtreding van hierdie Wet, 'n Proviniale Groei- en Ontwikkelingstrategie aanneem en publiseer soos bedoel in hierdie Wet.

Uitvoerende Raad moet Proviniale Plan oorweeg en aanneem

19.(1) Die Uitvoerende Raad moet –

- (a) 'n Proviniale Plan wat deur die Kommissie voorgelê is oorweeg en die Proviniale Plan met of sonder wysigings aanneem; en

(b) openbare deelname aan die ontwikkeling, implementering en hersiening van die Proviniale Plan aanmoedig en gunstige omstandighede daarvoor skep.

(2) Die Proviniale Plan moet –

(a) toereikend –

- (i) die tersaaklike en toepaslike Millennium Ontwikkelingsdoelwitte (MOD) en Proviniale prioriteite;
- (ii) die ekonomiese-, nywerheids- en landelike ontwikkeling;
- (iii) die instandhouding en ontwikkeling van pad-, spoor- en hawens-infrastruktur en netwerke;
- (iv) landbou-ontwikkeling en voedselsekuriteit;
- (v) volhoubare gebruik van natuurlike hulpbronne, ingesluit grond en water;
- (vi) bevordering en ontwikkeling van toerisme;
- (vii) openbare veiligheid;
- (viii) openbare vervoer; en
- (ix) vaardigheidsontwikkeling,

aanspreek; en

- (b) kennis neem van, en ingelig word deur, die verskeie huidig toepaslike munisipale Geïntegreerde Ontwikkelingsplanne (GOP) vermeld in toepaslike Nasionale wetgewing rakende munisipale stelsels en ontwikkeling; en
- (c) 'n plan van aksie insluit met mylpale en die tydraamwerke vir die implementering van items van aksie deur departemente in die Proviniale Regering.

Termyn, monitering, evaluasie en hersiening van Proviniale Plan

20. Die Uitvoerende Raad moet die Proviniale Plan –

- (a) se termyn bepaal;
- (b) se implementering monitor;
- (c) evalueer; en
- (d) hersien.

Publikasie van Proviniale Plan

21.(1) Na die aanneming van die Proviniale Plan deur die Uitvoerende Raad moet die Premier, binne 'n redelike tyd, die Proviniale Plan publiseer vir algemene inligting deur kennisgewing in die Koerant.

- (2) Die Provinciale Plan tree in werking by die publikasie van die kennisgewing vermeld in subartikel (1).
- (3) Die Premier kan, na goedkeuring deur die Uitvoerende Raad namens die Provinciale Regering, en deur kennisgewing in die *Koerant*, die Provinciale Plan –
- (a) wysig;
 - (b) vervang; of
 - (c) onttrek.

Provinciale Plan moet uitdrukking gegee word in departementele programme, begrotings en wetgewing

22. Lede van die Uitvoerende Raad moet verseker –

- (a) dat die Provinciale Plan, in die algemeen, en uitdruklik items van aksie vermeld in artikel 19(2)(c), uitdrukking gegee word in departementele programme, begrotings en wetgewing; en
- (b) dat die individuele prestasie-ooreenkoms van die onderskeie departementshoofde die mylpale en die tydraamwerke insluit vir die implementering van aksie items soos bedoel in artikel 19(2)(c) deur die betrokke departement in die Provinciale Regering as lewerbares of sleutelprestasie-areas waarvolgens die werkverrigting van die betrokke departementshoof geassesseer moet word.

Status van Provinciale Plan

23. Die Provinciale Plan is, onderhewig aan die Grondwet, nie deur burgers regtens afdwingbaar op die Provinciale Regering nie, maar lei en lig die Provinciale Regering in oor –

- (a) bepaling van beleid;
- (b) bepaling van sektor-spesifieke planne;
- (c) maak en toepassing van wette; en
- (d) implementering van sy programme en aktiwiteite.

HOOFSTUK 5
PROVINSIALE ADMINISTRASIE

Hoofkantoor van Provinciale Administrasie

24.(1) Die Hoofkantoor van die Provinciale Administrasie van die Provinciale Regering is Pietermaritzburg.

(2) Met die versekering van doelmatige en effektiewe dienslewering ten doel, kan 'n verantwoordelike Lid van die Uitvoerende Raad bepaal of gelas dat 'n departementshoof in die Provinciale Regering 'n satelliet- of streekskantoor op enige gesikte plek binne die Provinsie daarstel en handhaaf.

Provinsiale staatsamptenare

25.(1) Die Provinciale Regering is verantwoordelik vir die werwing, aanstelling, bevordering, oorplasing en ontslag van staatsamptenare in die administrasie van die Provinsie binne die raamwerk van eenvormige norme en standarde van toepassing op die staatsdiens.

(2)(a) Die Provinciale Regering moet verseker dat alle voornemende kandidate gewerf vir aanstelling in die staatsdiens in die administrasie van die Provinsie behoorlik gekeur en goedgekeur is.

(b) Enige voornemende kandidaat op die kortlys vir 'n onderhoud moet, direk na die voltooiing van die onderhoud, 'n verklaring voltooи en onderteken beduidend in die formaat soos uiteengesit in die Bylae tot hierdie Wet.

(c) Die Premier kan, deur kennisgewing in die *Koerant* en met inwerkingtreding vanaf 'n datum vermeld in sodanige kennisgewing, die Bylae tot hierdie Wet –

- (i) wysig; of
- (ii) vervang.

(3) Die Provinciale Regering moet –

- (a) verhoogde produktiwiteit, dienslewering en werkverrigting;
- (b) opleiding en vaardigheidsontwikkeling; en
- (c) die professionalisering,

van staatsamptenare in die administrasie van die Provinsie bevorder, ondersteun en faciliteer.

Basiese waardes en beginsels wat openbare administrasie bestuur

26.(1) Openbare administrasie in die Provinsie moet bestuur word deur die demokratiese waardes en beginsels wat in die Grondwet vasgelê is.

(2) Die Provinciale Regering moet, binne hulpbronne tot sy beskikking, gepaste stappe neem wat gemik is op die voorkoming en bekamping van –

- (a) wanadministrasie;
- (b) bedrog en korruksie; en
- (c) botsing van belang.

Provinciale Regeringsdepartemente moet wette hersien en rasionaliseer

27.(1) 'n Departement in die Provinciale Regering moet, binne ses maande vanaf die datum van die inwerkingtreding van hierdie Wet, en jaarliks daarna, die bepalings van elke wet wat hy administreer hersien met die oog daarop om –

(a) aan die verantwoordelike Lid van die Uitvoerende Raad enige wysiging of herroeping wat vereis of toepaslik geag word aan te beveel ten einde te verseker dat elke bepaling in sodanige wet in ooreenstemming is met –

- (i) die Grondwet;
- (ii) enige toepaslike Nasionale wet wat, ingevolge artikels 146 – 150 van die Grondwet, beskou word as die geldende wetgewing;
- (iii) die Nasionale en Provinciale Beleid;
- (iv) die Provinciale Groei- en Ontwikkelingstrategie; en
- (v) die Provinciale Plan; en

(b) aan die verantwoordelike Lid van die Uitvoerende Raad enige nuwe wet, hetsy hoof of ondergeskik, binne die Provinciale wetgewende bevoegdheid vereis of toepaslik geag vir die versekering van die instelling van die vereisde regsbasis, gesag en raamwerk vir die huidige Provinciale Beleid aanbeveel in ooreenstemming met –

- (i) die Grondwet;
- (ii) enige toepaslike Nasionale wet wat, ingevolge artikels 146 - 150 van die Grondwet, beskou word as die geldende wetgewing;
- (iii) die Nasionale en Provinciale Beleid;
- (iv) die Provinciale Groei- en Ontwikkelingstrategie; en
- (v) die Provinciale Plan; en

(c) die tegniese versoening en rasionalisering van die wette wat die departement administreer te verseker.

(2) Lede van die Uitvoerende Raad moet verseker dat die individuele prestasie-ooreenkomste van die onderskeie departementshoofde die verpligte van die betrokke departement, soos vermeld in subartikel (1)(a), (b) en (c) as lewerbares of sleutelprestasie-areas waarvolgens die werkverrigting van die betrokke departementshoof geassesseer moet word, insluit.

Provinsiale Regering en elke departement in Provinsiale Regering moet amptelike webwerf daarstel

- 28.(1)** Die Provinsiale Regering en elke departement in die Provinsiale Regering moet –
- (a) sy eie amptelike webwerf daarstel; en
 - (b) enige inligting wat nodig is om openbaar gemaak word ingevolge enige wet op die amptelike webwerf plaas.

(2) Die Direkteur-generaal en elke departementshoof moet die betrokke amptelike webwerf in stand hou en gereeld opdateer.

HOOFSTUK 6
OORLEGPLEGENDE EN DEELNEMENDE REGERING

Beginsels van oorlegplegende en deelnemende regering

- 29.(1)** Die Provinsiale Regering moet, binne sy beskikbare hulpbronne –
- (a) 'n kultuur van regering ontwikkeling wat die uitvoerende tak van regering komplementeer met 'n stelsel van oop, raadgewende en deelnemende bestuur; en
 - (b) toepaslike stappe neem om kommunikasie en oorlegpleging aan te moedig en te faciliteer met, en deelname deur –
 - (i) die algemene publiek; en
 - (ii) geïdentifiseerde belanghebbendes of sektore, insluitend, maar nie beperk nie tot –
 - (aa) besigheid en handel;
 - (bb) nywerheid;
 - (cc) landbou;
 - (dd) nie-regeringsorganisasies;
 - (ee) gemeenskapsgebaseerde organisasies;
 - (ff) geloofsgebaseerde organisasies;
 - (gg) kulturele of tradisionele verenigings of liggeme;
 - (hh) organe of samestellings van burgerlike samelewing;
 - (ii) burgerlike organisasies;
 - (jj) koöperatiewe;
 - (kk) ontwikkelings- en hulpagentskappe;

(II) sportverenigings of -liggame verteenwoordigend van die verskeie sportkodes;

(mm) sektor-spesifieke verenigings of liggeme; en

(nn) professionele verenigings of ander professionele liggame,
in die Provinse se regeringsproses.

(2) Die Provinciale Regering kan –

- (a) oorleg pleeg met; en
- (b) kommentaar, vertoë, insette en voorstelle (mondeling, skriftelik of in gedrukte of elektroniese formaat) ontvang vanaf,
die algemene publiek en enige belanghebbende of sektor ten opsigte van enige aangeleentheid betreffende –
 - (i) regeringstrategie;
 - (ii) regeringsbeleid;
 - (iii) konsep- of bestaande wetgewing, waar openbare, belanghebbende of sektor-spesifieke oorlegpleging nie spesifiek deur die wet vereis word nie;
 - (iv) toeganklikheid tot en integrasie van, regeringsdienste, programme of werksaamhede;
 - (v) implementering van regeringsdienste, programme of werksaamhede;
 - (vi) evaluering van regeringsdienste, programme of werksaamhede; en
 - (vii) evaluering van die regering se werkverrigting.

(3) Waar die Provinciale Regering skriftelike kommentaar, vertoë, insette of voorstelle betreffende enige aangeleentheid uitnooi, moet dit aangedui word in die uitnodiging dat enige persoon wat nie kan skryf nie, tydens kantoorure na 'n plek kan gaan waar 'n personeellid verbonde aan die Provinciale Regering vermeld in die uitnodiging, sal help met die transkripsie van daardie persoon se kommentaar, vertoë, inset of voorstel.

(4) Die Provinciale Regering kan –

- (a) openbare vergaderings of verhore;
- (b) belanghebbende of sektorspesifieke beraadslagingsessies; en
- (c) terugrapporteringsvergaderings of -sessies,
belê en voorsit.

(5)(a) Die Provinciale Regering moet behoorlike kennisgewing gee van enige openbare vergadering of verhoor in die media, ingesluit minstens twee plaaslike koerante en minstens een plaaslike radio uitsending.

- (b) Enige openbare vergadering of verhoor is toeganklik vir die media.
- (c) Die Proviniale Regering moet redelike stappe neem om openbare toegang tot, en gedrag van die publiek by, openbare vergaderings of verhore te reguleer.

HOOFSTUK 7

MONITERING EN EVALUASIE VAN PROVINSIALE REGERING SE WERKVERRIGTING

Beginsels vir monitering en evaluasie van Proviniale Regering se werkverrigting

30.(1) Die Proviniale Regering moet sy werkverrigting voortdurend monitor en krities evalueer in die –

- (a) lewering van sy dienste;
- (b) implementering van sy programme;
- (c) uitoefening van sy bevoegdhede;
- (d) verrigting van sy werksaamhede; en
- (e) uitvoering van sy pligte en verpligtinge.

HOOFSTUK 8

GOEIE REGERING EN KOÖPERATIEWE REGERING IN MUNISIPALITEITE

Beginsels van goeie regering en koöperatiewe regering rakende munisipaliteite

31.(1)(a) Die plaaslike sfeer van regering in die Provinie bestaan uit munisipaliteite ingestel ingevolge die Grondwet.

(b) Proviniale wetgewing moet die verskillende soorte munisipaliteite wat in die Provinie ingestel word bepaal, soos omskryf deur Nasionale wetgewing.

(2) Munisipaliteite het –

- (a) die bevoegdhede, pligte en werksaamhede bedoel in die Grondwet, ingesluit die bevoegdhede, pligte en werksaamhede soos vasgestel en bepaal ingevolge 'n Wet van Parlement of 'n Wet van die Proviniale Wetgewer; en
- (b) enige ander bevoegdheid, plig of werksaamheid opgedra of gedelegeer aan munisipaliteite in die algemeen, 'n spesifieke munisipaliteit of 'n kategorie of soort munisipaliteit ingevolge die Grondwet, 'n Wet van Parlement of 'n Wet van die Proviniale Wetgewer.

(3) Die bevoegdheid of reg van 'n munisipaliteit om sy bevoegdhede uit te oefen of sy werksaamhede te verrig, mag nie gekompromitteer of belemmer word nie.

(4) Die Provinciale Regering, deur wetgewende en ander maatreëls, moet die vermoë van munisipaliteite om hul eie sake te bestuur, om hul magte uit te oefen en om hul werksaamhede te verrig, ondersteun en versterk.

(5) Die Provinciale Regering moet aan 'n munisipaliteit toewys, deur ooreenkoms en onderhewig aan enige voorwaardes, die administrasie van 'n aangeleentheid gelys in Deel A van Bylae 4 of Deel A van Bylae 5 tot die Grondwet, wat noodwendig op plaaslike regering van toepassing is, indien –

- (a) daardie aangeleentheid plaaslik meer doeltreffend geadministreer sou word; en
- (b) die munisipaliteit die vermoë het om dit te administreer.

(6) Provinciale Konsepwetgewing wat die status, instellings, bevoegdhede of werksaamhede van plaaslike regering affekteer, moet vir openbare kommentaar gepubliseer word voordat dit by die Provinciale Wetgewer ingedien word, op 'n wyse wat georganiseerde plaaslike regering, munisipaliteite en ander belanghebbende persone 'n geleentheid bied om vertoë te rig met betrekking tot die konsepwetgewing.

(7) Die Provinciale Regering moet 'n munisipale verordening op versoek van die munisipaliteit in die *Koerant* publiseer.

(8) Wanneer 'n munisipaliteit in die Provincie nie kan nie, of nie voldoen aan 'n uitvoerende verpligting nie ingevolge wetgewing, kan die Uitvoerende Raad ingryp deur toepaslike stappe te neem ingevolge die Grondwet of Nasionale wetgewing om te verseker dat daardie verpligting verwesenlik word.

Toewysing of delegering van bevoegdhede, pligte en werksaamhede deur Premier aan munisipaliteite

32.(1) Die Premier kan –

- (a) deur proklamasie in die *Koerant*;
- (b) met die instemming van 'n Lid van die Uitvoerende Raad verantwoordelik vir enige departement in die Provinciale Regering; en
- (c) na raadpleging deur die betrokke Lid van die Uitvoerende Raad met –
 - (i) georganiseerde plaaslike regering in die Provincie;

- (ii) munisipaliteit in die algemeen;
- (iii) die spesifieke munisipaliteit; en
- (iv) die kategorie of tipe munisipaliteit,

na gelang van wat die geval mag wees, enige bevoegdheid, plig of werksaamheid van daardie departement, ingesluit enige bevoegdheid, plig of werksaamheid van die hoof of enige beamppte of werknemer van daardie departement, toewys of deleger aan munisipaliteit in die algemeen, 'n spesifieke munisipaliteit of 'n kategorie of tipe munisipaliteit.

(2) 'n Toewysing of delegering ingevolge subartikel (1) moet vergesel gaan van –

- (a) die oordrag van bates, ingesluit fondse; en
- (b) die oordrag, sekondering of beskikbaarstelling van personeel, na gelang van wat die geval mag wees,

van toepassing op die uitoefening van die bevoegdheid of die uitvoering van die betrokke plig of werksaamheid vanaf die departement aan die betrokke munisipaliteit.

(3) 'n Departement in die Provinciale Regering vermeld in subartikel (1) moet in die algemeen 'n munisipaliteit, vermeld in daardie subartikel, bystaan met kapasiteitsbou ten einde daardie munisipaliteit in staat te stel om 'n toewysing of delegering vermeld in hierdie artikel uit te oefen of te verrig.

(4) Die Provinciale Regering, ingesluit enige departement binne die Provinciale Regering of enige beamppte of werknemer van enige sodanige departement, kan nie enige toegewysde bevoegdheid uitoefen of enige toegewysde plig of werksaamheid, vermeld in subartikel (1), verrig binne die jurisdiksiegebied van die betrokke munisipaliteit nie: Met dien verstande dat hierdie subartikel nie van toepassing is op enige beamppte of werknemer van die Provinciale Regering wat, in ooreenstemming met die toepaslike wette, beskikbaar gemaak of gesekondeer is aan, of oorgeplaas na en geplaas is in die diens van, 'n munisipaliteit nie.

(5) 'n Delegering ingevolge subartikel (1) verhinder nie die uitoefening van die betrokke bevoegdheid of die verrigting van die betrokke plig of werksaamheid deur die departement of enige behoorlik gemagtigde beamppte of werknemer van die departement nie.

Toewysing van werksaamhede aan munisipale raad deur Lid van Uitvoerende Raad

33.(1) 'n Lid van die Uitvoerende Raad kan enige bevoegdheid of werksaamheid, wat uitgeoefen of verrig moet word deur sodanige Lid van die Uitvoerende Raad ingevolge 'n Wet van Parlement of 'n Wet van die Provinciale Wetgewer, toewys aan 'n munisipale raad.

(2) 'n Toewysing vermeld in subartikel (1) –

- (a) moet gemaak word ingevolge 'n ooreenkoms tussen die betrokke Lid van die Uitvoerende Raad en die munisipale raad;
- (b) moet in ooreenstemming wees met die Wet ingevolge waarvan die betrokke bevoegdheid of werksameheid uitgeoefen of verrig word; en
- (c) tree in werking by proklamasie deur die Premier in die Koerant.

Munisipaliteite moet verordeninge hersien en rasionaliseer

34.(1) In ooreenstemming met artikel 15 van die Wet op Plaaslike Regering: Munisipale Stelsels, 2000 (Wet No. 32 van 2000), moet 'n munisipale raad, binne ses maande vanaf die datum van inwerkingtreding van hierdie Wet, en jaarliks daarna, die bepalings van elke verordening wat die munisipaliteit administreer hersien met die oog daarop om –

- (a) die wysiging of herroeping wat vereis of toepaslik beskou word ten einde te verseker dat elke bepaling in sodanige verordening in ooreenstemming is met –
 - (i) die Grondwet;
 - (ii) enige toepaslike Nasionale wet wat, ingevolge van artikels 146 – 150 van die Grondwet, beskou sou word as die geldende wetgewing;
 - (iii) Proviniale wetgewing (hoof en ondergeskik);
 - (iv) Nasionale en Proviniale Beleid;
 - (v) die Proviniale Groei- en Ontwikkelingstrategie;
 - (vi) die Proviniale Plan; en
 - (vii) die betrokke huidige toepaslike munisipale Geïntegreerde Ontwikkelingsplan (GOP) waarna verwys word in die toepaslike Nasionale wetgewing rakende munisipale stelsels en ontwikkeling; en
- (b) te verseker dat die verordeninge tegnies in ooreenstemming gebring en gerasionaliseer word.

(2) 'n Munisipale raad moet verseker dat die individuele prestasie-ooreenkoms van die munisipale bestuurder die verpligte, vermeld in subartikel (1)(a) en (b), insluit as lewerbares of sleutelprestasie-areas waarvolgens die werkverrigting van die munisipale bestuurder geassesseer moet word.

Bevoegdheid van munisipale inwoners om besluite te neem oor aangeleenthede by openbare vergadering

35.(1) Die burgemeester van 'n munisipaliteit, vir die doel van bespreking en besluitneming oor enige aangeleentheid wat die belang van 'n munisipaliteit of die belang van die inwoners van 'n munisipaliteit raak –

(a) kan, wanneer aldus skriftelik versoek deur –

- (i) nie minder nie as een-derde van die totale getal raadslede bepaal vir daardie munisipaliteit;
- (ii) nie minder nie as een persent van die totale getal inwoners wat as kiesers van daardie munisipaliteit geregistreer is; of
- (iii) 50 sodanige inwoners wat as kiesers van daardie munisipaliteit geregistreer is, watter een ookal die grootste getal is; en

(b) moet, wanneer aldus gelas –

- (i) deur 'n resolusie van die munisipale raad; of
- (ii) skriftelik deur daardie Lid van die Uitvoerende Raad verantwoordelik vir Plaaslike Regering,

deur kennisgewing gepubliseer in minstens twee plaaslike koerante wat sirkuleer in die jurisdiksiegebied van die munisipaliteit, 'n vergadering van die inwoners wat as kiesers van die munisipaliteit geregistreer is belê op 'n dag en op 'n tyd gespesifiseer in sodanige kennisgewing: Met dien verstande dat die datum van die vergadering nie minder as drie werksdae na die publikasiedatum van die kennisgewing is nie: Met dien verstande, verder, dat die kennisgewing 'n aanduiding moet gee van die aangeleentheid of aangeleenthede wat voor die vergadering geplaas sal word, of bespreek sal word by die vergadering.

(2) Elke vergadering bedoel in subartikel (1) is toeganklik vir die media.

(3) Die kworum by 'n vergadering belê ingevolge subartikel (1) is 50 persone wat inwoners is, geregistreer as kiesers van die munisipaliteit.

(4) Die burgemeester moet voorsit by die vergadering en moet toesien dat alle reëlings noodsaaklik vir die behoorlike leiding daarvan gemaak moet word, ingesluit die hou van notule van die verrigtinge en om te verseker dat slegs inwoners wat geregistreer is as kiesers van die munisipaliteit daaraan deelneem: Met dien verstande dat die burgemeester 'n werknemer van die raad of enige ander persoon kan toelaat om deel te neem aan die verrigtinge vir die doel van verskaffing van inligting met betrekking tot enige aangeleentheid voor die vergadering.

(5)(a) Alle vraagpunte voor die vergadering word besluit deur 'n meerderheid van die inwoners wat geregistreer is as kiesers en teenwoordig is.

(b) Stemming geskied deur die opsteek van hande.

(c) Die burgemeester se verklaring van die uitslag van die stemming en die opneem daarvan in die notule van die vergadering is onweerlegbare bewys van enige besluit geneem ten opsigte van enige vraagpunt voor die vergadering.

(d) Die burgemeester moet onverwyld die notule van die vergadering en elke sodanige besluit by die munisipale raad indien vir oorweging.

(6) Die munisipale raad moet, binne 'n redelike tyd, elke sodanige besluit oorweeg en –

(a) kan enige sodanige besluit –

- (i) bevestig;
- (ii) verander;
- (iii) wysig; of
- (iv) ter syde stel.

(b) redes moet verskaf word waar enige sodanige besluit verander, gewysig of ter syde gestel word; en

(c) moet, waar dit enige sodanige besluit bevestig, binne 'n redelike tyd uitvoer en uitwerking gee aan daardie besluit asof dit 'n resolusie, geneem deur die munisipale raad, is.

(7) Alle kostes in verband met –

(a) 'n vergadering gehou ingevolge hierdie artikel; en

(b) die uitvoer en uitwerking gee aan 'n besluit bedoel in subartikel (6)(c), moet deur die munisipaliteit gedra word.

(8) Vir die doeleindes van hierdie artikel –

(a) dra die woorde "**inwoner**" of "**inwoners**" die betekenis wat aan hulle toegewys word in artikel 1 van die Wet op Plaaslike Regering: Munisipale Stelsels, 2000 (Wet No. 32 van 2000); en

(b) beteken die uitdrukking "**ingeskryf as kiesers**" huidiglik geregistreer as kiesers op die munisipaliteit se gedeelte van die kieserslys vir die stemdistrikte wat binne die munisipaliteit val soos bedoel in artikel 5 van die Wet op Plaaslike Regering: Munisipale Verkiesings, 2000 (Wet No. 27 van 2000), en die woorde "**kieser**", "**kieserslys**" en "**stemdistrik**" dra die betekenis wat in artikel 1 van daardie Wet daaraan toegeken is.

HOOFSTUK 9

GOEIE REGERING EN KOÖPERATIEWE REGERING IN TRADISIONELE LEIERSKAP EN INSTELLINGS

Erkenning van tradisionele leierskap en instellings

36.(1) Die instelling, status en rol van tradisionele leierskap volgens gewoontereg word erken, onderworpe aan –

- (a) die Grondwet; en
- (b) toepaslike Nasionale raamwerkwetgewing van toepassing op tradisionele leierskap en regering.

(2) Proviniale wetgewing moet voorsiening maak vir –

- (a) die erkenning van tradisionele gemeenskappe;
- (b) die instelling en samestelling van tradisionele rade, ingesluit –
 - (i) hul rolle, bevoegdhede, werksaamhede en pligte; en
 - (ii) hul verhouding met munisipaliteite; en
- (c) die erkenning van tradisionele leierskap en, onderhewig aan die Grondwet en Nasionale wetgewing –
 - (i) die rolle, bevoegdhede, werksaamhede en pligte van tradisionele leierskap;
 - (ii) die verhouding tussen tradisionele leierskap en munisipaliteite; en
 - (iii) die deelname van tradisionele leierskap aan munisipale rade; en
- (d) die instelling en samestelling van 'n Proviniale Huis van Tradisionele Leiers, ingesluit die rolle, bevoegdhede, werksaamhede en pligte van 'n Proviniale Huis van Tradisionele Leiers; en
- (e) die instelling en samestelling van Plaaslike Huise van Tradisionele Leiers, ingesluit die rolle, bevoegdhede, werksaamhede en pligte van Plaaslike Huise van Tradisionele Leiers.

HOOFSTUK 10
KWAZULU-NATAL BURGERHANDVES

Aanneming van Burgerhandves

37. Die Proviniale regering moet –

- (a) 'n Burgerhandves aanneem as 'n bindende verklaring van voorneme uitgereik deur die Proviniale Regering en onderskryf deur die Proviniale Regering en die burgers woonagtig in die Provincie as 'n meganisme wat aangewend word om die burgers woonagtig in die Provincie in te lig oor wat hulle kan verwag van die Proviniale Regering met betrekking tot die vlak en diensstandaarde wat aangebied of gelewer word deur die Proviniale Regering; en

(b) omstandighede skep en aanmoedig vir openbare deelname in die onderhandeling, ontwikkeling, toepassing en hersiening van die Burgerhandves.

Inhoud van Burgerhandves

38. Die Burgerhandves moet –

- (a) in ooreenstemming wees met –
 - (i) die Grondwet;
 - (ii) enige toepaslike Nasionale wet wat, ingevolge artikels 146 – 150 van die Grondwet, beskou word as die geldende wetgewing;
 - (iii) Proviniale wetgewing;
 - (iv) Nasionale en Proviniale Beleid;
 - (v) die Proviniale Groei- en Ontwikkelingstrategie; en
 - (vi) die Proviniale Plan; en
- (b) van toepassing wees op alle openbare dienste aangebied of gelewer deur die Proviniale Regering;
- (c) mede-bepalend wees in oorleg met, en deelname deur, die inwoners van die Provinsie en die Proviniale Regering;
- (d) duidelik –
 - (i) die pligte en verpligte van die Proviniale Regering ten opsigte van die vlak en diensstandaarde aangebied of voorsien deur die Proviniale Regering aan inwoners van die Provinsie; en
 - (ii) die regte en die verantwoordelikhede van inwoners van die Provinsie, weerspieël; en
- (e) vir openbare kommentaar gepubliseer word voordat dit aangeneem word deur die Uitvoerende Raad namens die Proviniale Regering op 'n wyse wat staatsorgane, burgerlike samelewing en ander belangstellende persone 'n geleentheid bied om vertoë te rig met betrekking tot die konsep Burgerhandves.

Publikasie van Burgerhandves

39.(1) Na goedkeuring van die aanneming van die Burgerhandves deur die Uitvoerende Raad namens die Proviniale Regering moet die Premier, binne 'n redelike tyd, die Burgerhandves publiseer deur kennisgewing in die *Koerant vir algemene inligting*.

(2) Die Burgerhandves tree in werking by publikasie van die kennisgewing vermeld in subartikel (1).

(3) Die Premier kan, deur kennisgewing in die *Koerant*, na oorlegpleging en publikasie vir openbare kommentaar vermeld in paragrawe (c) en (e) van artikel 38 en na goedkeuring deur die Uitvoerende Raad namens die Provinciale Regering, die Burgerhandves –

- (a) wysig;
- (b) vervang; of
- (c) onttrek.

Termyn, monitering, evaluasie en hersiening van Burgerhandves

40. Die Uitvoerende Raad moet die Burgerhandves –

- (a) se termyn bepaal;
- (b) se implementering monitor;
- (c) evalueer; en
- (d) hersien.

Burgerhandves moet uitdrukking gegee word in departementele programme, begrotings en wetgewing

41. Lede van die Uitvoerende Raad moet verseker dat –

- (a) die Burgerhandves in die algemeen, en spesifiek departementele Verbeteringsplanne vir Dienslewering, uitdrukking gegee word in departementele programme, begrotings en wetgewing; en
- (b) die individuele prestasie-ooreenkomsste van die onderskeie departementshoofde die mylpale en die tydramwerke vir die implementering van spesifieke Departementele Diensleweringsverbeteringsplanne deur die betrokke departement in die Provinciale Regering insluit as lewerbares of sleutelprestasie-areas waarvolgens die werkverrigting van die betrokke departementshoof geassesseer moet word.

Status van Burgerhandves

42.(1) Die Burgerhandves is deur burgers woonagtig in die Provinsie regtens afdwingbaar op die Provinciale Regering.

(2)(a) Burgers kan klagtes indien betreffende aangeleenthede van nie-nakoming van, of 'n oortreding van, die Burgerhandves by die Ombudsman vir ondersoek.

(b) Die Premier kan bykomende toepaslike en bekostigbare meganismes van regstelling deur burgers teen die Proviniale Regering bevorder en fasiliteer.

(3) Vir die doeleindes van hierdie artikel sluit "burgers" enige persoon woonagtig of teenwoordig in die Provinsie vir enige tydperk in.

Organgsbeplings ten opsigte van Burgerhandves

43.(1) Enige huidige toepaslike Burgerhandves aangeneem voor die datum van inwerkingtreding van hierdie Wet word, onderhewig aan subartikel (2), beskou as regtens aanvaar ingevolge die beplings van hierdie Wet.

(2)(a) Die proses vir die hersiening van die Burgerhandves verwys na in subartikel (1) moet binne drie maande na die datum van inwerkingtreding van hierdie Wet 'n aanvang neem.

(b) Die Proviniale Regering moet, binne 12 maande na die datum van die inwerkingtreding van hierdie Wet 'n Burgerhandves aanvaar en publiseer soos bedoel in hierdie Wet.

HOOFSTUK 11

KWAZULU-NATAL PROVINSIALE OMBUDSMAN

Instelling van KwaZulu-Natal Kantoor van Ombudsman

44.(1) Hiermee word die KwaZulu-Natal Kantoor van die Ombudsman, hierna verwys na as die Kantoor van die Ombudsman, ingestel.

(2) Die Kantoor van die Ombudsman is nie 'n regspersoon nie.

(3)(a) Operasioneel, en ingevolge sy begroting en finansiële administrasie, is die Kantoor van die Ombudsman geleë in die Kantoor van die Premier in die Proviniale Regering.

(b) Die Direkteur-generaal van die Proviniale Regering is die rekenpligtige beampete van die Kantoor van die Ombudsman.

Oogmerke van Kantoor van Ombudsman

45. Die oogmerke van die Kantoor van die Ombudsman is om –

- (a) klagtes te ondersoek teen departemente, munisipaliteite of openbare entiteite;
- (b) dienslewering te bevorder en verbeter; en

- (c) die kultuur van nakoming deur staatsamptenare in die Provinse uit te brei deur –
(i) die *Batho Pele*-beginsels; en
(ii) die Burgerhandves.

Aanstelling van Ombudsman

46.(1)(a) Die Premier moet, nadat 'n deursigtige adverteeringsproses gevolg is, die KwaZulu-Natal Ombudsman aanstel, hierna verwys na as die Ombudsman.

(b) Die Ombudsman moet 'n Suid-Afrikaanse burger wees wat 'n gesikte en gepaste persoon is om sodanige amp te beklee, en wat –

- (i) toegelaat is as advokaat of prokureur van die Hooggeregshof van Suid-Afrika en, vir 'n kumulatiewe tydperk van minstens tien jaar na sodanige toelating, gepraktiseer het as 'n advokaat of prokureur;
- (ii) gekwalifiseerd is om toegelaat te word as 'n advokaat of 'n prokureur en, vir 'n kumulatiewe tydperk van minstens van tien jaar na sodanige kwalifikasie, regte gedoseer het by 'n tersiêre instelling;
- (iii) vir 'n kumulatiewe tydperk van minstens tien jaar, beskik oor spesifieke kennis van of ervaring inregspleging, publieke administrasie of openbare finansies;
- (iv) vir 'n kumulatiewe tydperk van minstens tien jaar, 'n lid van die Parlement of 'n provinsiale wetgewer was; of
- (v) enige kombinasie van ervaring vermeld in paragrawe (i) tot (iv) bekom het vir 'n kumulatiewe tydperk van minstens tien jaar.

(2) Die Ombudsman word aangestel vir 'n tydperk wat nie vyf jaar oorskry nie, en kan heraangestel word vir een bykomende ampstermy wat nie vyf jaar oorskry nie.

(3)(a) Die aanstelling van die Ombudsman is onderhewig aan die sluiting van 'n skriftelike prestasie-ooreenkoms aangegaan tussen daardie persoon en die Premier.

(b) Die Premier en die Ombudsman kan, skriftelik en volgens ooreenkoms, die prestasie-ooreenkoms wysig.

(c) Die Ombudsman kan nie, tensy skriftelik daartoe gemagtig deur die Premier, enige winsgewende werk buite sy of haar amptelike pligte uitoefen nie.

(4) Die Premier kan, niteenstaande die bepalings van subartikel (1)(a), gebruik maak van die dienste van 'n persoon wat gesekondeer of oorgeplaas is in ooreenstemming met die bepalings van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994).

- (5)(a) Die Ombudsman moet onafhanklik en onpartydig wees en moet sy of haar bevoegdhede, werksaamhede en pligte uitoefen en verrig onderworpe slegs aan die Grondwet en die wet.
- (b) Die Ombudsman beskik oor die immuniteit en voorregte wat aan hom of haar toegewys word ingevolge hierdie hoofstuk met die versekering van die onafhanklike en onpartydige uitoefening en verrigting van sy of haar bevoegdhede en werksaamhede ten doel.
- (c) Alle departemente, munisipaliteite en openbare entiteite moet sodanige bystand verleen soos wat redelikerwys vereis mag word vir die beskerming van die onafhanklikheid, onpartydigheid, waardigheid en doeltreffendheid van die Ombudsman in die uitoefening en verrigting van sy of haar bevoegdhede en werksaamhede.
- (d) Die Ombudsman of enige lid van die Kantoor van die Ombudsman is nie aanspreeklik ten opsigte van enigets wat te goeder trou gedoen word kragtens enige bepaling van hierdie Wet of die Grondwet nie.

Bevoegdhede, werksaamhede en pligte van Ombudsman

47.(1) Die Ombudsman moet –

- (a) enige klagte ondersoek wat verband hou met 'n aangeleentheid rakende –
- (i) dienslewering;
 - (ii) nie-nakoming van, of oortreding van, die Burgerhandves;
 - (iii) wanadministrasie;
 - (iv) korruksie; of
 - (v) bedrog,
- wat sy ontstaan het, hetsy voor of na die inwerkingtreding van hierdie Wet, in 'n departement, munisipaliteit of openbare entiteit, en ten opsigte waarvan 'n klagte by die Ombudsman ingedien is; en
- (b) ondersoek, op sy of haar inisiatief of by ontvangs van 'n klagte enige beweerde –
- (i) wanadministrasie in verband met regeringsake binne die provinsiale of plaaslike sfeer;
 - (ii) misbruik of ongeregverdigbare magsgebruik of onbillike, wispelturige, onbeleefde of ander onbehoorlike gedrag of oormatige vertraging deur 'n persoon in die verrigting van 'n openbare funksie;
 - (iii) onbehoorlike of oneerlike optrede of weglatting of korruksie ten opsigte van openbare geld;
 - (iv) onbehoorlike of onregmatige verryking, of ontvangs van enige onbehoorlike voordeel, of belofte van sodanige verryking of voordeel, deur 'n persoon as gevolg van optrede of versium in die openbare administrasie of in verband met regeringsake binne die provinsiale sfeer of van 'n persoon in die verrigting van 'n openbare funksie; of

- (v) enige of weglatting of optrede deur 'n persoon in diens van die regering binne die provinsiale sfeer, plaaslike sfeer of 'n persoon wat 'n openbare funksie verrig, wat lei tot onregmatige of onbehoorlike vooroordeel teenoor enige ander persoon; en
- (c) formele bande smee en verhoudings vorm en in stand hou met ander departementele kantore van die ombudsman met die oog daarop om te verseker dat daar –
 - (i) berigting en sinergie is met betrekking tot die funksionering van die onderskeie kantore van die ombudsman; en
 - (ii) geen duplisering is met betrekking tot die aktiwiteite van die onderskeie kantore van die ombudsman nie; en
- (d) die aktiwiteite van al die kantore van die ombudsman in departemente, munisipaliteite en openbare entiteite in die Provinse koördineer;
- (e) die Provinciale Blitslyn bestuur;
- (f) elke Presidensiële en Provinciale *Imbizo* gehou in die Provinse bywoon met die eerstehandse insameling van inligting ten opsigte van klagtes of bekommernisse van burgers ten opsigte van dienslewering deur die Provinciale Regering ten doel; en
- (g) 'n kantoor in elke distrik en metropolitaanse munisipaliteit daarstel met die oog daarop om uit te reik na die breër burgery van die Provinse ten einde sy of haar mandaat te vervul.

(2) Die Ombudsman kan –

- (a) volgens sy of haar diskresie, enige klagte ondersoek wat verband hou met 'n aangeleenthed van –
 - (i) dienslewering;
 - (ii) nie-nakoming van, of oortreding van, die Burgerhandves;
 - (iii) wanadministrasie;
 - (iv) korruksie; of
 - (v) bedrog,wat sy ontstaan het, hetsy voor of na die inwerkingtreding van hierdie Wet, deur 'n departement, munisipaliteit of openbare entiteit; en
- (b) met die voorafverkrygde skriftelike goedkeuring van die Premier, 'n ooreenkoms of reëling aangaan ingevolge waarvan die Ombudsman klagtes, bedoel in paragraaf (a), kan ondersoek ten opsigte van 'n Nasionale regeringsdepartement wat streekskantore in die Provinse het;
- (c) 'n nakomingsbevel uitreik teen 'n departement, munisipaliteit of openbare entiteit indien aandag nie geskenk word aan 'n klagte teen sodanige departement, munisipaliteit of openbare entiteit binne 'n redelike tyd nie;

- (d) aanbevelings maak aan die Proviniale Regering, die Premier, die Uitvoerende Raad of die Proviniale Wetgewer, ten opsigte van bevordering en verbetering van diensleweringskwessies in die Provinsie;
- (e) ooreenkomsa aangaan met enige persoon met deskundige kennis in 'n bepaalde gebied, ten einde die Ombudsman by te staan of te adviseer rakende enige aangeleentheid met betrekking tot sy of haar oogmerke, bevoegdhede, werksaamhede en pligte; en
- (f) oor die algemeen, alles doen wat nodig is ten einde die oogmerke van hierdie Hoofstuk te bereik.

Indiening van klagtes by Ombudsman

48.(1) Enige persoon wat 'n klage het teen 'n departement, munisipaliteit of openbare entiteit, kan sodanige klage by die Ombudsman indien.

(2) 'n Klage soos vermeld in subartikel (1) kan mondelings of skriftelik ingedien word.

(3) Indien 'n klage mondelings aan die Ombudsman gemaak word, kan die Ombudsman die klage op skrif stel of te eniger tyd vereis dat die klaer die klage op skrif stel en, indien die Ombudsman sodanige versoek rig, verdere ondersoek van die klage weerhou word totdat die klaer die klage op skrif gestel het.

(4) 'n Klage kan –

- (a) 'n enkele klage wees, wat 'n individuele voorlegging van 'n enkele klaer is, met betrekking tot 'n bepaalde klage of versoek;
- (b) 'n klage van 'n vereniging wees, wat 'n individuele voorlegging is van 'n vereniging of 'n enkele versoeker met 'n mandaat van 'n vereniging om daardie klage in te dien, aangaande 'n bepaalde klage of versoek;
- (c) 'n gemeenskaplike klage wees, wat 'n versameling van handtekeninge van 'n aantal klaers, aangaande 'n bepaalde klage of versoek, is;
- (d) 'n massa of 'n groepklage wees, wat saamgestel is uit individuele of groepsvoorleggings deur 'n aantal klaers, aangaande dieselfde klagtes of wesenlik gelyksoortige klagtes of versoekte; of
- (e) anoniem wees.

(5) 'n Klage kan ingedien word deur 'n persoon wat optree –

- (a) in sy of haar eie belang;

- (b) in die belang van 'n ander persoon wat nie in 'n posisie is nie, vir watter rede ookal, om 'n klag in sy of haar eie naam in te dien;
- (c) as 'n lid, of in die belang, van 'n groep of klas persone; of
- (d) in openbare belang.

- (6) 'n Klagte kan, onderhewig aan subartikel (7), enige aangeleentheid aanspreek –
 - (a) binne die wetgewende gesag van die Provinse soos bedoel in artikel 104 van die Grondwet;
 - (b) binne die Uitvoerende Gesag van die Provinse soos bedoel in artikel 125 van die Grondwet;
 - (c) wat toege wys of oorgedra is aan 'n Lid van die Uitvoerende Raad ingevolge artikels 128, 132(2), 137 of 138 van die Grondwet; of
 - (d) betreffebde die Proviniale toesig van en ingryping in plaaslike regering bedoel in artikel 139 van die Grondwet.

- (7) Die Ombudsman moet weier om 'n klagte te oorweeg –
 - (a) wat buite die bestek val van aangeleenthede bedoel in subartikel (6);
 - (b) aangaande 'n saak hangende in 'n regshof of ander tribunaal of forum bedoel in die Grondwet;
 - (c) in verband met die skuldigbevinding en vonnisoplegging deur 'n kriminele regshof van 'n persoon vir 'n gevangenistermyn; of
 - (d) wat 'n aangeleentheid aanspreek wat binne die omvang van 'n kommissie van ondersoek val, ingestel ingevolge die KwaZulu-Natal Wet op Kommissies, 1999 (Wet No. 3 van 1999).

- (8) Die Ombudsman kan weier om 'n klagte te oorweeg wat –
 - (a) onleesbaar is;
 - (b) onderworpe aan subartikel (3), nie die korrekte naam en kontakbesonderhede van die klaer verskaf nie en, waar van toepassing, die naam van die vereniging of groep namens wie die klagte ingedien is;
 - (c) waar vereis word om skriftelik te wees ingevolge subartikel (3), nie deur die klaer onderteken is nie, behalwe in die geval van 'n klaer wat nie in staat is om te skryf nie en –
 - (i) wat 'n merk op die klagte gemaak het as 'n simbool van sy of haar gesag om die klagte in te dien; en
 - (ii) daardie merk gemaak is in die teenwoordigheid van twee getuies wat kan skryf en wat deur daardie klagte te onderteken, sertificeer dat die teken díe is van die klaer; en

- (d) 'n saak aanspreek wat voorheen deur die Ombudsman oorweeg is, behalwe in die geval dat die klagte nuwe inligting bevat wat 'n wesenlike invloed kan hê op die uitslag van die oorweging van die saak;
- (e) lasterlike stellings of onfatsoenlike taal bevat; of
- (f) indien van toepassing, 'n saak aanspreek wat die klaer nog nie onder die aandag van die betrokke owerheid binne 'n departement, munisipaliteit of openbare entiteit gebring het nie, of indien die klaer dit onder die aandag van die betrokke owerheid gebring het en die betrokke owerheid nie, na die mening van die Ombudsman, 'n redelike tyd gegun is om die aangeleentheid te oorweeg nie.

Voorlopige ondersoeke deur Ombudsman

49. Waar 'n klag ingedien is by die Ombudsman teen 'n departement, munisipaliteit of openbare entiteit, kan die Ombudsman voorlopig ondersoek doen by die departementshoof, die municipale bestuurder van die munisipaliteit of die Hoof-Uitvoerende Beampte van die openbare entiteit met die oog daarop om die die saak informeel en spoedig op te los.

Ondersoek deur Ombudsman

50.(1) Die Ombudsman moet, voordat 'n ondersoek begin word ingevolge hierdie hoofstuk, die departementshoof, die municipale bestuurder van die munisipaliteit of die Hoof-Uitvoerende Beampte van die openbare entiteit inlig, na gelang van die geval, van die klagte en dat sodanige klagte ondersoek sal word.

(2) Die Ombudsman kan, voor 'n klagte ondersoek word, 'n departement, munisipaliteit of openbare entiteit 'n spesifieke tydperk gun waarbinne die klagte aangespreek moet word.

(3) Die formaat en die prosedure wat gevolg moet word in die uitvoering van enige ondersoek moet bepaal word deur die Ombudsman met inagneming van die omstandighede van elke geval: Met dien verstande dat alle ondersoeke ingevolge hierdie hoofstuk privaat en vertroulik uitgevoer moet word.

(4) Die Ombudsman kan, vir die doeleindes van ondersoek doen ingevolge hierdie hoofstuk, inligting bekom vanaf sodanige persone, en sodanige navrae doen wat hy of sy van toepassing ag, met behoorlike inagneming van enige bewering, feit of omstandigheid.

(5) Dit is nie nodig vir die klaer of enige ander persoon om 'n geleentheid gebied te word om voor die Ombudsman of enige ander persoon te verskyn in verband met 'n ondersoek deur die Ombudsman nie: Met dien verstande dat die Ombudsman nie 'n verslag ten opsigte van 'n ondersoek, ingevolge hierdie hoofstuk, mag maak nie, waarin wat hy of sy opinies uiteensit wat, hetsy uitdruklik of geïmpliseer, kritiek uitspreek oor 'n departement, munisipaliteit of openbare entiteit, of 'n persoon, tensy, voor voltooiing van die ondersoek, hy of sy –

- (a) indien die opinies betrekking het op 'n departement, munisipaliteit of openbare entiteit, aan die departement, munisipaliteit of openbare entiteit geleentheid gebied het om voor hom of haar te verskyn, en voorleggings te maak, hetsy mondelings of skriftelik, met betrekking tot die saak; of
- (b) indien die opinies betrekking het op 'n persoon, daardie persoon 'n geleentheid gebied het om voor hom of haar te verskyn en sodanige voorleggings te maak, hetsy mondelings of skriftelik, in verband met die saak.

Bespreking van ondersoek met verantwoordelike Lid van Uitvoerende Raad of burgemeester van munisipaliteit

51. Die ombudsman kan, hetsy voor of na die voltooiing van 'n ondersoek ingevolge hierdie hoofstuk, enige aangeleentheid met betrekking tot die ondersoek bespreek met –

- (a) die Lid van die Uitvoerende Raad verantwoordelik vir die betrokke departement, munisipaliteit of openbare entiteit;
- (b) enige ander Lid van die Uitvoerende Raad betrokke by die aangeleentheid; of
- (c) die burgemeester van 'n munisipaliteit.

Oortreding van plig of wangedrag deur departementele werknemer, munisipaliteit of openbare entiteit

52.(1) Waar die Ombudsman van mening is, hetsy voor of na die voltooiing van 'n ondersoek ingevolge hierdie hoofstuk, dat daar *prima facie* bewys is dat 'n werknemer van 'n departement, munisipaliteit of openbare entiteit, 'n skending van plig of wangedrag gepleeg het, moet die Ombudsman die bewyse ter ondersteuning onder die aandag bring van –

- (a) indien die persoon die departementshoof, Hoof-Uitvoerende Beamppte of munisipale bestuurder is, die Lid van die Uitvoerende Raad verantwoordelik vir die betrokke departement, munisipaliteit of openbare entiteit; of
- (b) indien die persoon 'n werknemer van 'n departement, munisipaliteit of openbare entiteit is, maar nie die departementshoof, Hoof-Uitvoerende Beamppte of munisipale bestuurder is nie, die departementshoof, Hoof-Uitvoerende Beamppte of 'n munisipale bestuurder.

(2) Indien die Ombudsman van mening is, hetsy voor of na die voltooiing van 'n ondersoek ingevolge hierdie hoofstuk, dat die feite die pleeg van 'n oortreding deur enige persoon onthul, moet hy of sy die aangeleentheid onder die aandag bring van die betrokke wetstoepassingsagentskap of, waar van toepassing, die Openbare Beskermer, om voort te gaan met die ondersoek.

Publikasie van bevindings en tafellegging van verslae deur Ombudsman

53.(1) Die Ombudsman kan, onderhewig aan die bepalings van subartikel (3), op 'n wyse soos hy of sy mag goeddink, aan enige betrokke persoon die standpunt of aanbeveling ten opsigte van 'n aangeleentheid wat deur hom of haar ondersoek is bekend maak.

(2)(a) Die Ombudsman moet, deur die Premier, 'n jaarlikse verslag, skriftelik, ten opsigte van die aktiwiteite van sy of haar amp, voorlê aan die Provinciale Wetgewer.

(b) Die Ombudsman kan, te eniger tyd, 'n verslag voorlê aan die Uitvoerende Raad oor die bevindinge van 'n bepaalde ondersoek indien –

- (i) hy of sy dit nodig ag;
- (ii) hy of sy dit in openbare belang ag;
- (iii) dit die dringende aandag van, of 'n ingryping deur, die Uitvoerende Raad vereis;
- (iv) hy of sy versoek word om so te doen deur die Uitvoerende Raad; of
- (v) hy of sy versoek word om so te doen deur die Premier.

(3) Die bevindinge van 'n ondersoek deur die Ombudsman moet, wanneer hy of sy dit toepaslik ag, maar so gou as wat redelikerwys moontlik is, beskikbaar gemaak word aan die klaer en enige persoon wat daardeur geïmpliseer word.

(4) Die Ombudsman moet die Openbare Beskermer voorsien van 'n maandelikse verslag wat –

- (a) die klagtes ontvang en hanteer deur die Ombudsman lys en beskryf;
- (b) die vordering met elke klage noteer;
- (c) klagtes wat reeds gefinaliseer en afgehandel is deur die Ombudsman lys; en
- (d) die bevindings van die Ombudsman met betrekking tot gefinaliseerde en afgehandelde klagtes deur die Ombudsman bevat.

(5) Die Ombudsman moet die Openbare Beskermer versoek om 'n maandelikse verslag te voorsien wat die klagtes met betrekking tot die Provincie beskryf wat –

- (a) hanteer word deur die Openbare Beskermer;

- (b) vordering met elke klagte noteer;
- (c) klages wat reeds gefinaliseer en afgehandel is deur die Openbare Beskermer lys; en
- (d) die bevindinge bevat van die Openbare Beskermer met betrekking tot klages gefinaliseer en afgehandel deur die Openbare Beskermer.

Bevoegdheid van Ombudsman om inligting te versoek

54.(1)(a) Vir die doeleinnes van 'n ondersoek doen, kan die Ombudsman enige persoon gelas om 'n beëdigde verklaring of plegtige verklaring in te dien of om voor hom of haar te verskyn om getuenis te lewer of om enige dokument, in sy of haar besit of onder sy of haar beheer, wat van betrekking is op die saak wat ondersoek word, in te handig en kan sodanige persoon ondervra.

(b) Die Ombudsman, of enige persoon wat behoorlik daartoe gemagtig is deur hom of haar, kan 'n verduidelikings versoek vanaf enige persoon wat hy of sy redelikerwys vermoed inligting mag hê wat betrekking het op 'n saak wat huidiglik of in die toekoms ondersoek word.

(2) 'n Opdrag vermeld in subartikel (1)(a) moet geskied deur middel van 'n dagvaarding wat besonderhede bevat van die aangeleentheid in verband waarmee die persoon wat gedagvaar word vereis word om –

- (a) 'n beëdigde verklaring of plegtige verklaring in te dien;
- (b) voor die Ombudsman te verskyn;
- (c) getuenis te lewer; of
- (d) enige dokument in sy of haar besit of onder sy of haar beheer te lewer,

en sodanige dagvaarding moet onderteken word deur die Ombudsman en beteken word op die persoon wat gedagvaar is hetsy per geregistreerde brief per pos gestuur of afgelewer word deur 'n persoon daartoe gemagtig deur die Ombudsman.

(3) Die Ombudsman kan vereis dat enige persoon wat as 'n getuie voor hom of haar verskyn kragtens subartikel (1) onder eed of plegtige verklaring getuenis aflê.

(4) Die Ombudsman of 'n persoon wat skriftelik gemagtig is deur hom of haar kan 'n eed afneem, of 'n bevestiging aanvaar, van enige persoon bedoel in subartikel (1) en sodanige persoon geniet dieselfde voorregte as 'n getuie wat getuenis aflê in 'n strafregtelike verrigting voor 'n afdeling van die Hooggereghof van Suid-Afrika.

(5) Enige persoon wat voor die Ombudsman verskyn uit hoofde van die bepalings van subartikel (1) kan bygestaan word in sodanige ondersoek deur 'n advokaat of 'n prokureur en is geregtig

daarop om sodanige van die dokumente of rekords bedoel in subartikel (1) deur te lees, soos wat redelikerwys nodig mag wees, om sy of haar geheue te verfris.

(6) Die Ombudsman kan, met redelike vooraf kennisgewing en tydens kantoorure, enige gebou of perseel betree, of 'n ander persoon magtig om te betree, ten einde sodanige ondersoek of navraag te doen as wat hy of sy nodig mag ag, en beslag lê op enigiets op daardie perseel wat, volgens sy of haar mening, betrekking het op die doel van 'n ondersoek.

(7) Indien dit vir die Ombudsman blyk, tydens die verloop van 'n ondersoek, dat enige persoon geïmpliseer word in die aangeleentheid wat ondersoek word, moet die Ombudsman sodanige persoon 'n geleentheid bied om aangehoor te word, deur middel van die aflê van getuenis in verband daarmee en sodanige persoon of sy of haarregsverteenvoerdiger is geregtig om, deur die Ombudsman, ander getuies, bepaal deur die Ombudsman, te ondervra wat voor die Ombudsman verskyn het ingevolge van hierdie artikel.

(8) Enige persoon wat weier of versuim om te voldoen aan 'n opdrag ingevolge subartikel (1), of wat weier om enige vraag te beantwoord wat aan hom of haar gestel word ingevolge daardie subartikel, of wat op sodanige vraag 'n antwoord verskaf wat volgens sy of haar kennis vals is, of weier om die eed af te lê of 'n bevestiging te maak, op versoek van die Ombudsman ingevolge subartikel (3), is skuldig aan 'n misdryf.

(9) Die Ombudsman kan, indien hy of sy besluit om ondersoek te doen ingevolge hierdie hoofstuk, te eniger tyd voor of tydens sodanige ondersoek, vereis dat enige persoon in diens van die Staat of wat 'n openbare funksie verrig, die Ombudsman bystaan, onder die toesig en beheer van die Ombudsman, in die uitvoer van sy of haar werksaamhede.

(10) Die Ombudsman, of enige lid van sy of haar personeel, is bevoeg maar nie verplig nie om vrae te beantwoord in enige verrigtinge in of voor 'n hof van die wet of enige instelling of liggaam ingestel deur of kragtens enige wet, in verband met enige inligting wat, tydens die loop van sy of haar ondersoek, tot sy of haar kennis gekom het.

(11) Toegang tot, of die uitvoering of verrigting van enige bevoegdhede en werksaamhede van, die Ombudsman ontsetel nie die jurisdiksie van 'n regshof om enige aangeleentheid of saak hoegenaamd aan te hoor nie.

Diskresie van Ombudsman om nie sekere klages te ondersoek nie

55.(1) Die Ombudsman kan besluit om nie 'n klagte te ondersoek nie, indien, volgens sy of haar oorweegde mening –

- (a) die klagte beuselagtig of kwelsugtig is of nie is in goeder trou gemaak is nie;
- (b) die klaer nie voldoende belang het by die onderwerp van die klagte nie; of
- (c) 'n ondersoek, of verdere ondersoek, van die handeling nie geregtig is met betrekking tot al die bewerings, feite en omstandighede nie.

(2) Die Ombudsman kan besluit om nie 'n klag te ondersoek nie indien die aangeleentheid waaroor daar gekla word nie eers deur die klaer by betrokke die departement, munisipaliteit of openbare entiteit aanhangig gemaak is nie.

(3) Indien 'n persoon wat 'n klagte by die Ombudsman indien, 'n klagte by die departement, munisipaliteit of openbare entiteit ingedien het, kan die Ombudsman na sy of haar goeddunke, besluit om nie die aksie te ondersoek nie, tensy of totdat die klaer die Ombudsman in kennis stel dat –

- (a) geen regstelling toegestaan is nie; of
- (b) regstelling toegestaan is maar die regstelling nie, volgens die opinie van die klaer, voldoende is nie.

(4) Indien 'n klagte binne die bepalings van subartikel (3) val en die Ombudsman van mening is dat –

- (a) indien geen regstelling toegestaan is nie, 'n redelike tydperk verloop het waarin regstelling toegestaan kon gewees het; of
- (b) indien regstelling toegestaan is, die regstelling nie redelikerwys voldoende was nie, moet die ombudsman die klagte ondersoek.

(5) Indien 'n klaer 'n reg om hersiening uitgeoefen het, of uitgeoefen, deur 'n hof of deur 'n tribunaal, kan die Ombudsman nie die klagte ondersoek nie, of voortgaan om ondersoek in te stel, na gelang van die geval, tensy die Ombudsman van mening is dat daar spesiale omstandighede of redes is om die ondersoek van die klagte te regverdig.

(6) Indien die Ombudsman van mening is dat 'n klaer 'n reg tot hersiening het deur 'n hof of deur 'n tribunaal, maar nie die reg uitgeoefen het nie, kan die Ombudsman besluit om nie die klagte te ondersoek nie, indien hy of sy van mening is dat, met inagneming van al die tersaaklike feite en omstandighede, dit redelik sou wees vir die klaer om daardie reg uit te oefen.

(7) Indien, voordat die Ombudsman 'n aanvrag neem, of nadat die Ombudsman 'n aanvrag

geneem het, om 'n klagte te ondersoek, hy of sy van mening is dat voldoende voorsiening gemaak is vir die hersiening van die handeling of versuim wat gelei het tot die klagte, kan die Ombudsman besluit om die handeling of versuim nie te ondersoek nie –

- (a) indien die handeling of versuim hersien is, besig is om hersien te word of hersien sal word is, op versoek van die klaer; of
- (b) indien die Ombudsman tevrede is dat die klaer geregtig is daarop om mee te bring dat die handeling of versuim hersien sal word en dit redelik sou wees vir die klaer om mee te bring dat dit hersien word.

Personnel van Kantoor van Ombudsman

56.(1) Die Direkteur-generaal van die Provinse moet sodanige persone aanwys, in diens van die Proviniale Regering ingevolge die Staatsdienswet, 1994 (Proklamasie No.103 van 1994), as wat redelikerwys nodig kan wees, ten einde die Ombudsman by te staan –

- (a) in die uitoefening van die bevoegdhede, die uitvoer van die pligte en die verrigting van die werksaamhede ingevolge hierdie Hoofstuk; en
- (b) met die sekretariële en administratiewe werk bykomstig tot die uitoefening van bevoegdhede, die uitvoer van die pligte en die verrigting van die werksaamhede.

(2) Die Ombudsman kan, ten spyte van subartikel (3)(b), gebruik maak van die dienste van persone gesekondeer of oorgeplaas in ooreenstemming met die bepalings van die Staatsdienswet, 1994.

(3) 'n Personeellid van die Kantoor van die Ombudsman moet –

- (a) onpartydig en onafhanklik dien en sy of haar werksaamhede te goeder trou en sonder vrees, begunstiging, vooroordeel of partydigheid verrig; en
- (b) dien in 'n voltydse hoedanigheid met uitsluiting van enige ander plig of verpligting wat voortspruit uit enige ander werk of beroep of die beklee van enige ander amp.

(4) 'n Personeellid van die Kantoor van die Ombudsman moet, binne 14 dae na aanstelling, by die Ombudsman 'n skriftelike verklaring indien waarin verklaar word hetsy of nie daardie personeellid enige direkte of indirekte belang het, finansieel of andersins, wat –

- (a) 'n strydige belang kan uitmaak ten opsigte van sy of haar bevoegdhede, pligte of werksaamhede as 'n personeellid van die Kantoor van die Ombudsman; of
- (b) redelickerwys verwag kan word om die Kantoor van die Ombudsman te kompromitteer in die uitoefening van sy bevoegdhede, pligte en werksaamhede.

(5) Indien enige personeellid van die Kantoor van die Ombudsman daaropvolgende 'n belang bedoel in subartikel (4) bekom, moet hy of sy, binne sewe dae, dit skriftelik verklaar aan die Ombudsman.

(6) Die Ombudsman moet 'n register hou en byhou van die belang van personeellede van die Kantoor van die Ombudsman openbaar gemaak ingevolge hierdie artikel en moet daardie register jaarliks opdateer.

(7) Die bepalings van subartikels (3) – (6) is van toepassing, met die nodige veranderinge, op 'n persoon gesekondeer of oorgeplaas na die Kantoor van die Ombudsman ingevolge subartikel (2).

Onbevoegdheid om as Ombudsman aangestel te word

57. 'n Persoon is onbevoeg vir aanstelling as Ombudsman of om aan te bly in die posisie as Ombudsman, indien hy of sy –

- (a) 'n ongerehabiliteerde insolvent is of word;
- (b) deur 'n bevoegde hof as ontoerekeningsvatbaar verklaar is;
- (c) direk of indirek belang het by enige kontrak met die kantoor van die Ombudsman en versuim om sy of haar belang en die aard daarvan te verklaar op die wyse soos deur hierdie hoofstuk vereis;
- (d) 'n persoon onder kuratorskap is;
- (e) te eniger tyd uit 'n vertrouensamp verwyder is as gevolg van wangedrag wat diefstal of bedrog behels en nog nie herstel is tot so 'n vertrouensamp nie; of
- (f) skuldig bevind is en gevonnis word tot 'n tydperk van gevangenisstraf sonder die keuse van 'n boete, buiten dat die Premier, by ontvangs van 'n beëdigde verklaring wat volle besonderhede bevat van 'n misdryf deur sodanige persoon, 'n misdryf kan kondoneer op 'n wyse wat konsekwent is met artikel 106(1)(e) van die Grondwet: Met dien verstande dat onbevoegdheid kragtens hierdie subartikel eindig vyf jaar nadat die vonnis uitgedien is.

Verklaring van finansiële of ander belang van Ombudsman

58.(1) 'n Persoon wat aangestel is as Ombudsman ingevolge artikel 46 moet, binne 14 dae na aanstelling, 'n skriftelike verklaring aan die Premier voorlê waarin verklaar word hetsy of nie hy of sy enige direkte of indirekte belang het, finansieël of andersins, wat –

- (a) 'n konflik van belang kan uitmaak ten opsigte van sy of haar bevoegdhede, pligte of werksaamhede as Ombudsman; of

(b) redelikerwys verwag kan word om die Ombudsman te kompromitteer in die uitoefening van sy of haar bevoegdhede, pligte en werksaamhede.

(2) Indien die Ombudsman vervolgens 'n belang verkry soos bedoel in subartikel (1), moet hy of sy, binne sewe dae; dit op skrif aan die Premier verklaar.

(3) Die Premier moet 'n register hou en byhou van die belang van die Ombudsman verklaar ingevolge hierdie artikel en moet die register jaarliks opdateer.

(4) Enige versuim aan die kant van die Ombudsman om sy of haar belang, soos bedoel in subartikels (1) en (2) te verklaar, maak 'n regverdige rede uit vir die beëindiging van sy of haar aanstelling ingevolge artikel 60(2).

Tydelike skorsing van Ombudsman

59. Die Premier kan, na oorlegpleging met die Uitvoerende Raad, die Ombudsman skors in oorstemming met toepaslike indiensnemings- en arbeidswetgewing terwyl die Premier die bewerigs ondersoek wat, indien gevind dat dit korrek is, kan lei tot die beëindiging van die Ombudsman se aanstelling ingevolge artikel 60(2).

Bedanking en ontslag uit amp van Ombudsman

60.(1) Die Ombudsman verlaat amp –

- (a) indien hy of sy onbevoeg raak soos bedoel in artikel 57;
- (b) deur in nie minder nie as 30 dae skriftelik kennis te gee aan die Premier: Met dien verstande dat die Premier die kennisgewing van bedanking kan laat vaar; of
- (c) by ontslag uit amp ingevolge subartikel (2).

(2) Die Premier kan, in oorlegpleging met die Uitvoerende Raad, vir geregverdige en afdoende redes, die Ombudsman se aanstelling beëindig in ooreenstemming met toepaslike indiensnemings- en arbeidswetgewing.

Sekuriteit van vertroulike inligting gehou deur Ombudsman

61.(1) Onderhewig aan die Grondwet en die Wet op Bevordering van Toegang tot Inligting, 2000 (Wet No. 2 van 2000), kan geen persoon enige inligting ingedien by die Ombudsman in verband met enige klakte openbaar maak nie, tensy –

- (a) hy of sy so beveel word deur 'n geregshof; of
 - (b) die persoon wat die klag gemaak het skriftelik daartoe instem.
- (2) Geen persoon kan enige inligting openbaar maak wat gehou word in die register bedoel in artikel 56(6) en 58(3) tensy sodanige openbaarmaking –
- (a) ingevolge enige wet is wat sodanige openbaarmaking afdwing of magtig;
 - (b) wesenlik noodsaaklik is vir die behoorlike funksionering van die Kantoor van die Ombudsman; of
 - (c) gemaak word vir doeleiendes van monitering, evaluering, ondersoek of oorweging van enige aktiwiteit met betrekking tot die Kantoor van die Ombudsman, of enige personeellid van die Kantoor van die Ombudsman.
- (3) Enige persoon wat subartikel (1) of (2) oortree is skuldig aan 'n misdryf.

Gebruik van Kantoor van Ombudsman se naam

- 62.(1) Geen persoon mag, sonder vooraf skriftelike magtiging deur die Ombudsman, op enige wyse die Kantoor van die Ombudsman verteenwoordig of gebruik maak van die naam, akroniem, logo's, ontwerpe of materiaal gebruik of besit deur die Kantoor van die Ombudsman nie.
- (2) Geen persoon mag valslik beweer dat hy of sy namens die Ombudsman of sy of haar Kantoor optree nie.
- (3) Enige persoon wat subartikel (1) of (2) oortree, is skuldig aan 'n misdryf.

Delegering deur Ombudsman

- 63.(1) Die Ombudsman kan aan 'n personeellid van die Kantoor van die Ombudsman bedoel in artikel 56(1)(a) enige bevoegheid of plig deleger wat aan die Ombudsman verleen of opgelê is deur hierdie Hoofstuk.
- (2) Enige bevoegdheid of plig gedelegeer ingevolge subartikel (1) moet uitgevoer of verrig word onderhewig aan sodanige voorwaardes soos wat die Ombudsman nodig ag.
- (3) 'n Delegering vermeld in subartikel (1) –
- (a) moet skriftelik wees;

- (b) verbied nie die Ombudsman om daardie bevoegdheid uit te oefen of daardie plig te verrig nie; en
(c) kan te eniger tyd skriftelik deur die Ombudsman onttrek of gewysig word.

Algemene misdrywe vir doeleinades van Hoofstuk 11

64.(1) Die Ombudsman, 'n personeellid van die Kantoor van die Ombudsman, 'n raadgewer, agent of enige ander persoon betrokke, in diens van, of wat namens die Kantoor van die Ombudsman optree, is skuldig aan 'n misdryf indien hy of sy direk of indirek enige omkoopgeld aanvaar en of enige ongemagtigde fooi of beloning aanvaar vanaf enige persoon in verband met enigiets gedoen of gebied deur die Kantoor van die Ombudsman.

(2) Enige persoon is skuldig aan 'n misdryf indien hy of sy, met betrekking tot of in verband met enigiets wat deur die Kantoor van die Ombudsman gedoen of gebied word, 'n personeellid, adviseur, agent of enige ander persoon betrokke by, in diens van of waarnemend namens, die Kantoor van die Ombudsman, omkoop of poog om om te koop of omkoopbaar beïnvloed of poog om omkoopbaar te beïnvloed.

(3) Enige persoon wat valslik beweer dat hy of sy gemagtig is om fooie, donasies of bydraes te hef of in te vorder, namens of in opdrag die Kantoor van die Ombudsman is skuldig aan 'n misdryf.

(4) Enige persoon wat die bepalings van hierdie hoofstuk of enige regulasie betreffende aangeleenthede betreffende hierdie hoofstuk oortree of nakoming daarvan versuim is skuldig aan 'n misdryf.

Strawwe vir doeleinades van Hoofstuk 11

65. Enige persoon wat skuldig bevind is aan 'n misdryf ingevolge hierdie hoofstuk is aanspreeklik vir 'n boete of tot gevangenisstraf vir 'n tydperk wat nie vyf jaar oorskry nie of tot beide.

Oorgangsbeplings ten opsigte van Ombudsman

66.(1) Die Kantoor van die Ombudsman is dieregsopvolger van die Kantoor van die Ombudsman, administratief ingestel in die Kantoor van die Premier voor die inwerkingtredingsdatum van hierdie Wet.

(2) Die persoon wat, op die dag voor die inwerkingtredingsdatum van hierdie Wet, administratief aangestel of aangewys is as Ombudsman, gaan voort om as Ombudsman op te tree en word beskou as aangestel ingevolge artikel 46 van hierdie Wet, met inwerkingtreding vanaf die inwerkingstredingsdatum van hierdie Wet.

(3) 'n Persoon wat, op die dag voor die datum van inwerkingtreding van hierdie Wet, 'n personeellid was van die Kantoor van die Ombudsman word beskou as aangewys ingevolge artikel 56(1) van hierdie Wet met die behouding van alle regte en voordele.

HOOFSTUK 12

KWAZULU-NATAL PROVINSIALE BEPLANNINGSKOMMISSIE

Instelling van KwaZulu-Natal Beplanningskommissie

67.(1) Hiermee word 'n kommissie ingestel vir die Provinse wat bekend sal staan as die KwaZulu-Natal Beplanningskommissie.

(2) Die Kommissie is nie 'n regspersoon nie.

(3)(a) Operasioneel, en ingevolge sy begroting en finansiële administrasie, is die Kommissie geleë binne die Kantoor van die Premier in die Provinciale Regering.

(b) Die Direkteur-generaal van die Provinciale Regering is die rekenpligtige beampte van die Kommissie.

Oogmerke van Kommissie

68. Die oogmerke van die Kommissie is om –

- (a) strategiese beplanning, strategiese rigtinggewing en beleidsbeplanning in die Provinse te bevorder en faciliteer;
- (b) die makro-beleid in die Provinse te ontwikkel; en
- (c) berigting te verseker van die makro-beleid in die Provinse met die Nasionale makro-beleid,

in ooreenstemming met die rigtinggewende beginsels van die Provinciale Beleid vervat in artikel 11.

Bevoegdhede, pligte en werksaamhede van Kommissie

69.(1) Die Kommissie moet –

- (a) die volgende hulpbronne van die Provinse assesseer –
 - (i) fisiese;
 - (ii) materiële;
 - (iii) finansiële; en
 - (iv) menslike; en
- (b) die Provinciale Plan vermeld in artikel 18, formuleer vir voorlegging aan die Uitvoerende Raad vir oorweging vir die mees effektiewe, doeltreffende, gebalanseerde en volhoubare aanwending van die hulpbronne verwys na in paragraaf (a);
- (c) omstandighede skep en aanmoedig vir openbare deelname in die ontwikkeling, implementering en hersiening van die Provinciale Plan;
- (d) die prioriteite bepaal, die fases omskryf met tydraamwerke en voorstelle maak vir die toewysing van hulpbronne vir die implementering van die Provinciale Plan;
- (e) faktore identifiseer wat die –
 - (i) ekonomiese-, nywerheids- en landelike ontwikkeling in die Provinse; en
 - (ii) suksesvolle implementering van die Provinciale Plan,beperk; en
- (f) die aard van die prosedures, stelsels en ingrypings bepaal wat vereis word vir of van toepassing is op –
 - (i) die stimulering en bevordering van die ekonomiese-, nywerheids- en landelike ontwikkeling van die Provinse; en
 - (ii) die suksesvolle implementering van die Provinciale Plan; en
- (g) gereeld vordering en impak monitor en evalueer met betrekking tot –
 - (i) die stimulering en bevordering van die ekonomiese-, nywerheids- en landelike ontwikkeling van die Provinse; en
 - (ii) die suksesvolle implementering van die Provinciale Plan; en
- (h) strategiese beplanning, strategiese rigtinggewing en beleidsbeplanning in die Provinse verseker, onder andere, sodat geïntegreerde en sektor-spesifieke strategieë, beleide en planne ontwikkel en geïmplementeer word ten einde uitvoering te gee aan die Provinciale Plan;
- (i) die makro-beleid in die Provinse ontwikkel;
- (j) berigting verseker van die makro-beleid in die Provinse met die Nasionaal-bepaalde makro-beleid;
- (k) navorsing en ontwikkeling doen op alle gebiede van strategiese beplanning en beleidsbeplanning;
- (l) in oorleg met die Premier, 'n formele verhouding en formele liaisonmeganismes met die Nasionale Beplanningskommissie in die Kantoor van die Presidensie daarstel;

(m) 'n formele verhouding en formele liaison- en koördineringsmeganismes daarstel met die lynfunksietak en lynfunksiekomponente in die Kantoor van die Premier verantwoordelik vir –

- (i) die ontwikkeling, formulering en koördinasie van makro-beleid;
- (ii) monitering en evaluering; en
- (iii) sake-intelligensie en Geografiese Inligtingstelsels (GIS), algemeen bekend as die "Provinsiale Beheersentrum"; en

(n) 'n databasis saamstel van, en inligting verskaf met betrekking tot –

- (i) Provinsiale Beleid; en
- (ii) Provinsiale Strategiese Beplanning; en

(o) die Provinsiale Regering, die Premier en die Uitvoerende Raad adviseer oor –

- (i) die stimulering en bevordering van die ekonomiese-, nywerheids- en landelike ontwikkeling van die Provinsie;
- (ii) die ontwikkeling en implementering van die Provinsiale Plan;
- (iii) die Provinsiale Groei- en Ontwikkelingstrategie (PGOS) vermeld in artikel 13;
- (iv) die Burgerhandves vermeld in artikel 37;
- (v) strategiese en beleidsake;
- (vi) Provinsiale konsep- of voorgestelde wetgewing, ingesluit ondergeskikte wetgewing (regulasies); en
- (vii) die hersiening en rasionalisering van Provinsiale wette en munisipale verordeninge vermeld in artikels 27 en 34, onderskeidelik; en

(p) kwartaalliks verslag lewer aan die Uitvoerende Raad, of so dikwels as wat bepaal mag word deur die Uitvoerende Raad, oor die Kommissie se verrigting van sy oogmerke, die uitoefening van sy bevoegdhede, die uitvoering van sy pligte en die verrigting van sy werksaamhede, ingevolge hierdie Wet.

(2) Ten einde eenvormigheid en samewerking deur alle staatsorgane in die provinsiale en plaaslike sfere van regering te bevorder oor aangeleenthede met betrekking tot Provinsiale Strategiese Rigtinggewing, Provinsiale Beleid en die interpretasie en implementering van die Provinsiale Plan, en om te verseker dat, onder andere, geïntegreerde en sektor-spesifieke strategieë, beleide en planne ontwikkel en geïmplementeer word ten einde uitvoering te gee aan die Provinsiale Plan, moet die Kommissie, minstens een keer per jaar, vergaderings belê tussen staatsorgane in die provinsiale en plaaslike sfere, ingesluit –

- (a) Provinsiale departemente, Provinsiale Regeringskomponente of agentskappe;
- (b) munisipaliteite;
- (c) Provinsiale openbare entiteite;
- (d) Sake-ondernemings van die Provinsiale Regering;

- (e) die Provinciale Huis van Tradisionele Leiers; en
- (f) Plaaslike Huise van Tradisionele Leiers.

(3) Die Kommissie kan –

- (a) aanbevelings maak aan die Provinciale Regering, die Premier, die Uitvoerende Raad of die Provinciale Wetgewer op –
 - (i) die stimulering en bevordering van die ekonomiese-, nywerheids- en landelike ontwikkeling van die Provincie;
 - (ii) die ontwikkeling en implementering van die Provinciale Plan;
 - (iii) die Provinciale Groei- en Ontwikkelingstrategie (PGOS) vermeld in artikel 13;
 - (iv) die Burgerhandves vermeld in artikel 37;
 - (v) strategiese- en beleidsake;
 - (vi) Provinciale konsep- of voorgestelde wetgewing, (ingesluit regulasies); en
 - (vii) die hersiening en rasionalisering van Provinciale wette en munisipale verordeninge vermeld in artikels 27 en 34, onderskeidelik; en
- (b) aanbevelings maak aan die Lede van die Uitvoerende Raad en Departemente in die Provinciale Regering van KwaZulu-Natal oor strategiese- en beleidsake, ingesluit departementele beleid en wetgewing en ook ingesluit ondergeskikte wetgewing (regulasies);
- (c) skakel met en, in oorleg met die Uitvoerende Raad, aanbevelings maak aan –
 - (i) besigheid;
 - (ii) nie-regeringsorganisasies;
 - (iii) gemeenskapsgebaseerde organisasies;
 - (iv) geloofsgebaseerde organisasies;
 - (v) organe of formasies van burgerlike samelewning;
 - (vi) burgerlike organisasies;
 - (vii) koöperatiewe;
 - (viii) sektor-spesifieke verenigings of liggeme; en
 - (ix) professionele verenigings of ander professionele liggeme,ten opsigte van enige aangeleentheid wat verband hou met strategie, beleid en die implementering van die Provinciale Plan en die Provinciale Groei- en Ontwikkelingstrategie (PGOS); en
- (d) skakel met, en in oorlegpleging met, die Uitvoerende Raad –
 - (i) aanbevelings maak aan enige struktuur of liggaam verwys na in items (aa) – (ff) van subparagraph (ii) hieronder; en
 - (ii) na oorlegpleging met die betrokke struktuur of liggaam verwys na in items (aa) – (ff) hieronder, riglyne of voorskrifte uitreik aan –

- (aa) Provinciale departemente, Provinciale Regeringskomponente of agentskappe;
- (bb) munisipaliteite;
- (cc) Provinciale openbare entiteite;
- (dd) sake-ondernehemings van die Provinciale regering;
- (ee) die Provinciale Huis van Tradisionele Leiers; en
- (ff) Plaaslike Huise van Tradisionele Leiers,

ten opsigte van enige aangeleentheid wat verband hou met strategie, beleid en die implementering van die Provinciale Plan en die Provinciale Groei- en Ontwikkelingstrategie (PGOS); en

(e) ooreenkomste aangaan met enige persoon met deskundige kennis in 'n bepaalde gebied, ten einde die Kommissie by te staan of te adviseer in verband met enige aangeleentheid met betrekking tot sy oogmerke, bevoegdhede, pligte en werksaamhede;

(f) aanneem en registreer –

- (i) 'n logo; of
- (ii) 'n wapen soos omskryf in, en ingevolge, die bepalings van die Heraldiekwet, 1962 (Wet No. 18 van 1962); en

(g) die ontwerp, daarstelling en instandhouding van 'n webwerf;

(h) die volgende ontwerp en aanneem –

- (i) 'n briefhoof wat, onderhewig aan die Heraldiekwet, 1962, en ander toepaslike heraldiese beginsels, die Provinciale Wapenskild moet inkorporeer; en
- (ii) ander skryfbehoeftes; en

(i) konferensies, werkswinkels en vergaderings hou;

(j) konferensies, werkswinkels en vergaderings van soortgelyke liggeme, beide nasionaal en internasionaal bywoon; en

(k) oor die algemeen, alles doen wat nodig is om sy oogmerke te bereik.

(4) Die Kommissie speel geen direkte rol of vervul geen lynfunksie ten opsigte van fisiese, ruimtelike of geografiese beplanning wat, tradisioneel, die domein is van die Lid van die Uitvoerende Raad verantwoordelik vir Plaaslike Regering nie.

(5) Die funksionele gebiede en terme "*Streeksbeplanning en -ontwikkeling*" in Deel A van Bylae 4, en "*Provinciale Beplanning*" in Deel A van Bylae 5 tot die Grondwet, verwys na beplanning in die fisiese, ruimtelike en geografiese strekking, wat tradisioneel beskou word as funksionele gebiede van die Lid van die Uitvoerende Raad verantwoordelik vir Plaaslike Regering.

Samestelling van Kommissie

70.(1) Die Kommissie bestaan uit –

- (a) een voltydse Kommissaris; en
 - (b) minstens vyf, maar nie meer as agt nie, deeltydse Kommissarisse, aangestel deur die Premier.
- (2) Die Kommissarisse vermeld in subartikel (1) moet gesikte en gepaste persone wees wat sal dien in die beste belang van die Provinsie en gesamentlik beskik oor toepaslike kennis, ondervinding en vaardighede in die gebied van strategiese beplanning en beleidsbeplanning- en formulering.
- (3) Die Premier moet –
- (a) die voltydse Kommissaris vermeld in subartikel (1)(a) as die Voorsitter van die Kommissie; en
 - (b) een deeltydse Kommissaris vermeld in subartikel (1)(b) as die Ondervoorsitter van die Kommissie,
- aanstel.
- (4) Die Voorsitter van die Kommissie vermeld in subartikel (3)(a) moet –
- (a) liaison tussen die Premier en die Kommissie faciliteer; en
 - (b) van tyd tot tyd verslag lewer aan die Premier ten opsigte van aangeleenthede wat as relevant beskou word.
- (5) Die Premier moet meebring dat die name van die Kommissarisse vermeld in subartikel (1) en aangestel op die Kommissie in die *Koerant* gepubliseer word en minstens twee koerante wat in die Provinsie sirkuleer, direk nadat sodanige persone skriftelik in kennis gestel is van hul aanstelling op die Kommissie.
- (6) Die Premier moet, binne twee maande na die aanstelling van die Kommissarisse vermeld in subartikel (1), die Uitvoerende Raad en die betrokke Portefeuiljekomitee inlig van die name van die Kommissarisse, ingesluit die termyn van hul aanstelling.
- (7) Hierdie artikel is van toepassing, met die nodige veranderinge, op die vul van 'n vakature in die Kommissie.

Ampstermyn en heraanstelling van Kommissarisse

71. Kommissarisse beklee die amp vir 'n tydperk van vyf jaar, of sodanige korter tydperk soos die Premier kan bepaal, en is benoembaar vir heraanstelling by die verstryking van sodanige tydperk: Met dien verstande dat geen Kommissaris heraangestel kan word nadat hy of sy op die Kommissie gedien het vir 'n aaneenlopende tydperk van 10 jaar nie.

Vakatures, ontslag en bedanking uit Kantoor van Kommissie

72.(1) Die Premier kan, nadat hy 'n Kommissaris die geleentheid gebied het om sy of haar saak te stel, te eniger tyd die ampstermyn van sodanige Kommissaris beëindig indien, volgens die mening van die Premier, grondige en afdoende redes bestaan om so te doen.

(2) 'n Kommissaris kan bedank deur nie minder nie as 30 dae skriftelike kennisgewing aan die Premier te gee: Met dien verstande dat die Premier die kennisgewing van bedanking kan laat daar.

(3) Wanneer 'n vakature in die Kommissie ontstaan, moet die Premier, onderhewig aan artikel 70, 'n persoon aanstel om sodanige vakature te vul vir die onverstreke deel van die ampstydperk van die Kommissaris in wie se plek sodanige persoon aangestel word.

Tydelike skorsing van Kommissaris

73. Die Premier kan 'n Kommissaris skors terwyl die Premier bewerings ondersoek wat, indien daar gevind word dat dit korrek is, kan lei tot die beëindiging van die Kommissaris se aanstelling ingevolge artikel 72(1).

Vergaderings en vergaderingsprosedures van Kommissie

74.(1) Die eerste vergadering van die Kommissie moet gehou word op 'n datum tyd en plek soos deur die Premier bepaal waarna alle toekomstige vergaderings moet plaasvind soos bepaal deur die Voorsitter: Met dien verstande dat die Kommissie ten minste vyf keer vergader in enige gegewe finansiële jaar.

(2) Die kworum vir 'n vergadering van die Kommissie is 'n meerderheid van die lede van die Kommissie.

(3) Die verrigtinge by 'n vergadering van die Kommissie moet, onderhewig aan die bepalings van hierdie artikel, bepaal word deur die Voorsitter, ingesluit die reg om te besluit dat enige

aangeleentheid onder bespreking onttrek kan word voordat daaroor gestem word.

(4) Die Voorsitter moet by alle vergaderings van die Kommissie voorsit: Met dien verstande dat die Ondervoorsitter in sy of haar afwesigheid as Voorsitter moet optree en indien beide die Voorsitter en die Ondervoorsitter by 'n vergadering van die Kommissie afwesig is kan die Kommissarisse teenwoordig, uit hul eie geledere, 'n persoon verkies om as Voorsitter op te tree vir die duur van daardie spesifieke vergadering.

(5) 'n Besluit van die Kommissie moet geneem word deur 'n meerderheid van die stemme van die Kommissarisse wat by 'n vergadering teenwoordig is en, in die geval van 'n staking van stemme oor enige aangeleentheid, het die Voorsitter 'n beslissende stem buiten sy of haar beraadslaagende stem.

(6) Die Kommissie moet notules van sy vergaderings hou.

(7) Geen besluit van die Kommissie is ongeldig slegs op grond van 'n vakature in die Kommissie nie: Met dien verstande dat die besluit geneem word deur die vereiste meerderheid van die Kommissarisse daar teenwoordig en geregtig daarop om as Kommissarisse te sit.

(8) Die Voorsitter of 'n meerderheid van die Kommissie, kan 'n buitengewone vergadering van die Kommissie roep, in welke geval die bepalings van hierdie artikel, met die nodige veranderings, van toepassing is.

Kommissaris se onttrekking van vergaderings en verrigtinge van Kommissie

75.(1) 'n Kommissaris moet homself of haarself van 'n saak onttrek wat deur die Kommissie ondersoek, oorweeg of oor gestem word indien een of meer van die volgende geld –

- (a) indien hy of sy 'n direkte of indirekte belang in die saak het; en
- (b) indien daar 'n moontlikheid bestaan dat 'n direkte of indirekte belang in die saak mag ontstaan.

(2) Indien dit op enige stadium tydens die verloop van enige verrigtinge voor die Kommissie blyk dat 'n Kommissaris wat by daardie vergadering teenwoordig is, 'n belang het of kan hê soos bedoel in subartikel (1), moet sodanige Kommissaris onverwyld die aard van sy of haar belang verklaar en die vergadering verlaat.

(3) Enige verklaring ingevolge subartikel (1), moet opgeteken word in die notule van die betrokke

vergadering.

(4) Indien dit daarna blyk dat die Kommissie 'n besluit geneem het oor 'n saak ten opsigte waarvan 'n Kommissaris versuim het om 'n belang soos bedoel in subartikel (1) te verklaar, is sodanige besluit deur die Kommissie ongeldig.

(5) Vir die doeleindes van hierdie artikel sluit "indirekte belang" in, maar is nie beperk nie tot, 'n belang wat gehou word deur enige Kommissaris se –

- (a) besigheidsvennoot, vennoot of werkewer, buiten die Staat;
- (b) eggenoot, deelgenoot in 'n gewoontehuwelik, of persoon saam met wie sodanige 'n lid bly of leef asof hulle getroud is; of
- (c) kind, ouer, broer of suster.

Besoldiging van Kommissarisse

76.(1)(a) Onderhewig aan subartikels (1)(b) en (2)(a), kan 'n Kommissaris sodanige besoldiging en toelaes betaal word soos mag bepaal deur die Premier in oorleg met die Lid van die Uitvoerende Raad verantwoordelik vir Finansies.

(b) 'n Kommissaris wat besoldiging, toelaes of ander voordele ontvang uit hoofde van sy of haar amp, posisie, pos of diens in –

- (i) die Nasionale Regering;
- (ii) 'n provinsiale regering;
- (iii) 'n munisipaliteit; of
- (iv) 'n korporasie, liggaam of instelling waarin die Nasionale of 'n Provinsiale regering 'n beherende belang het,

en wat voortgaan om sodanige besoldiging, toelaes of ander voordele te ontvang terwyl hy as Kommissaris dien, kan slegs besoldiging en toelaes vermeld in paragraaf (a) ontvang tot die omvang wat vereis word om sodanige Kommissaris in die finansiële posisie te plaas waarin hy of sy sou gewees het indien dit nie vir sodanige amp, posisie, pos of werk was nie.

(c) Verskillende besoldiging en toelaes kan bepaal word vir die volgende kategorieë van Kommissarisse –

- (i) die voltydse Kommissaris en Voorsitter; en
- (ii) die deeltydse Kommissarisse.

(2)(a) 'n Kommissaris kan, met betrekking tot sy of haar funksies as 'n Kommissaris, vergoeding ontvang vir redelike werklike reis- en verblyfkoste genoodsaak deur die werklike bywoning van 'n vergadering van die Kommissie.

(b) Die Lid van die Uitvoerende Raad verantwoordelik vir Finansies moet prosedures, insluitende beheermaatreëls, bepaal vir die bestuur, hantering en verwerking van eise vir reis- en verblyfkoste van uitgawes bedoel in paragraaf (a)

Instelling van komitees om Kommissie by te staan

77.(1) Die Kommissie kan komitees instel wat uit een of meer van sy lede bestaan om –

- (a) die Kommissie by te staan in die uitvoering van enige van die bevoegdhede, pligte of werksaamhede van die Kommissie bedoel in artikel 69; of
- (b) ondersoek in te stel of navorsing te doen oor enige aangeleentheid wat binne die mandaat van die Kommissie ingevolge hierdie Wet val.

(2) Wanneer 'n komitee bedoel in subartikel (1) ingestel word, moet die Kommissie –

- (a) die opdrag van sodanige komitee bepaal, insluitend, maar nie beperk nie tot, of sodanige komitee ophou voortbestaan of nie wanneer dit die taak of take voltooi het wat deur die Kommissie daaraan toegewys is;
- (b) 'n Voorsitter van sodanige komitee aanstel wat 'n lid van die Kommissie moet wees; en
- (c) bepaal of sodanige komitee persone kan koöpteer wat nie lede van die Kommissie is nie, en indien wel, volgens watter bepalings en voorwaardes.

(3) Die Kommissie kan, te eniger tyd, die bestaan van 'n komitee of enige mandaat wat aan 'n komitee gegee is, beëindig, ongeag of sodanige komitee die taak of take voltooi het wat daaraan toegewys is deur die Kommissie.

Koöptering van persone tot Kommissie of komitees van Kommissie

78.(1) Die Kommissie kan, indien hy van mening is dat 'n spesifieke persoon in staat is om is om hom by te staan met betrekking tot enige van sy bevoegdhede, pligte of werksaamhede, sodanige persoon vir daardie doel koöpteer aan die Kommissie of 'n komitee van die Kommissie vir sodanige tydperk as wat die Kommissie mag bepaal.

(2) 'n Persoon wat gekoöpteer is ingevolge subartikel (1) is nie geregtig daarop om te stem by enige vergadering van die Kommissie of 'n komitee van die Kommissie nie.

(3)(a) 'n Persoon wat gekoöpteer is ingevolge subartikel (1) kan sodanige besoldiging en toelaes betaal word soos deur die Premier, bepaal in oorleg met die Lid van die Uitvoerende Raad verantwoordelik vir Finansies.

(b) Enige sodanige gekoöpteerde persoon wat besoldiging, toelaes of ander voordele ontvang uit hoofde van sy of haar amp, posisie, pos of diens in –

- (i) die Nasionale Regering;
- (ii) 'n provinsiale regering;
- (iii) 'n munisipaliteit; of
- (iv) 'n korporasie, liggaam of instelling waarin die Nasionale of 'n Provinsiale regering 'n beherende belang het,

en wat voortgaan om sodanige besoldiging, toelaes of ander voordele te ontvang terwyl hy dien as 'n gekoöpteerde lid van die Kommissie of 'n komitee van die Kommissie, mag slegs besoldiging en toelaes ontvang vermeld in paragraaf (a) tot die omvang wat vereis word om sodanige persoon in die finansiële posisie te plaas waarin hy of sy sou gewees het indien dit nie vir sodanige amp, posisie, pos of diens was nie.

(4)(a) 'n Persoon gekoöpteer ingevolge subartikel (1) kan, ten opsigte van sy of haar funksies as 'n gekoöpteerde lid van die Kommissie of 'n komitee van die Kommissie, vergoeding ontvang vir redelike werklike reis- en verblyfkoste genoodsaak deur die werklike bywoning van 'n vergadering van die Kommissie of 'n komitee van die Kommissie, na gelang van die geval.

(b) Die Lid van die Uitvoerende Raad verantwoordelik vir Finansies moet prosedures, insluitend beheermaatreëls bepaal vir die bestuur, hantering en verwerking van eise vir reis- en verblyfkoste bedoel in paragraaf (a).

Personeel van Kommissie

79.(1) Die Direkteur-generaal van die Provincie moet sodanige persone, in diens van die Provinsiale Regering ingevolge die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), as wat redelikerwys nodig mag wees om die Kommissie by te staan –

- (a) in die uitoefening van sy bevoegdhede, die uitvoering van sy pligte en die verwesenliking van sy werksaamhede ingevolge hierdie Wet; en
- (b) met die sekretariële en administratiewe werk bykomend tot die uitoefening van sy bevoegdhede, die verrigting van sy pligte en die verwesenliking van sy werksaamhede.

(2) Die Kommissie kan die dienste aanwend van persone wat gesekondeer of oorgeplaas is in ooreenstemming met die bepalings van die Staatsdienswet, 1994.

Sekuriteit van vertroulike inligting gehou deur Kommissie

80.(1) Onderhewig aan die Grondwet en die Wet op Bevordering van Toegang tot Inligting, 2000 (Wet No. 2 van 2000), mag geen persoon enige inligting wat aan die Kommissie voorgelê word met betrekking tot enige regsonddrag of -instruksie openbaar maak nie, tensy –

- (a) hy of sy deur 'n gereghof daartoe gelas word; of
- (b) die persoon wat sodanige opdrag of instruksie gegee het skriftelik daartoe instem.

(2) Enige persoon wat subartikel (1) oortree is skuldig aan 'n misdryf.

Ontbinding van Kommissie

81. Die Kommissie kan slegs ingevolge 'n Wet van die Provinciale Wetgewer ontbind word.

Gebruik van naam van Kommissie

82.(1) Geen persoon kan, sonder die vooraf skriftelike magtiging van die Kommissie, op enige wyse die Kommissie verteenwoordig of gebruik maak van die naam, akrooniem, logo's, ontwerpe of materiaal gebruik of besit deur die Kommissie nie.

(2) Geen persoon mag valslik beweer dat hy of sy namens die Kommissie optree nie.

(3) Enige persoon wat subartikel (1) of (2) oortree is skuldig aan 'n misdryf.

Delegering deur Kommissie

83.(1) Die Kommissie kan, deur 'n spesiale beslissing, enige bevoegdheid of plig wat deur hierdie Wet aan die Kommissie verleen of opgelê is, aan 'n personeellid bedoel in artikel 79 deleger.

(2) Enige bevoegdheid of plig gedelegeer ingevolge subartikel (1) moet uitgeoefen of verrig word onderhewig aan sodanige voorwaardes soos wat die Kommissie nodig ag.

(3) 'n Delegering vermeld in subartikel (1) –

- (a) moet skriftelik wees;
- (b) nie die Kommissie verbied om daardie bevoegdheid uit te oefen of daardie plig te verrig nie; en
- (c) kan te eniger tyd skriftelik deur die Kommissie onttrek of gewysig word.

Algemene misdrywe vir doeleiendes van Hoofstuk 12

84.(1) 'n Kommissaris, 'n personeellid, adviseur, agent of enige ander persoon betrokke , in diens van of waarnemend namens die Kommissie, is skuldig aan 'n misdryf indien hy of sy direk of indirek enige omkoopgeld aanvaar en of enige ongemagtigde fooi of beloning ontvang vanaf enige persoon in verband met enigiets gedoen of gebied deur die Kommissie.

(2) Enige persoon is skuldig aan 'n misdryf indien hy of sy, met betrekking tot of in verband met enigiets wat deur die Kommissie gedoen of gebied word, 'n Kommissaris, 'n personeellid, adviseur, agent of enige ander persoon betrokke, in diens van, of waarnemend namens die Kommissie, omkoop of poog om om te koop of omkoopbaar te beïnvloed of poog om omkoopbaar te beïnvloed.

(3) Enige persoon wat valslik beweer dat hy of sy gemagtig is om fooie, donasies of bydraes te hef of in te vorder, namens of in opdrag van die Kommissie, is skuldig aan 'n misdryf.

(4) Enige persoon wat die bepalings van hierdie hoofstuk of enige regulasie met betrekking tot hierdie hoofstuk oortree, of versuim om daaraan te voldoen, is skuldig aan 'n misdryf.

Strawwe vir doeleiendes van Hoofstuk 12

85. Enige persoon wat skuldig bevind is aan 'n misdryf ingevolge hierdie hoofstuk is strafbaar met 'n boete of gevangenisstraf vir 'n tydperk wat nie vyf jaar oorskry nie of beide.

Oorgangsbeplannings ten opsigte van Kommissie

86.(1) Die Kommissie is die regsonvolger van die Provinciale Beplanningskommissie, administratief ingestel in die Kantoor van die Premier voor die datum van die inwerkingtreding van hierdie Wet.

(2) Die persone wat, op die dag voor die datum van inwerkingtreding van hierdie Wet, administratief aangestel of aangewys is as die voltydse Kommissaris en Voorsitter en die ander deeltydse Kommissarisse, gaan voort as Voorsitter en Kommissarisse en word beskou as aangestel ingevolge artikel 70 van hierdie Wet met ingang vanaf die datum van inwerkingtreding van hierdie Wet.

(3) 'n Persoon wat, op die dag voor die datum van die inwerkingtreding van hierdie Wet, 'n

personeellid van die Kommissie was word beskou as aangestel ingevolge artikel 79 van hierdie Wet aangewys is met behouding van alle regte en voordele.

HOOFSTUK 13

ALGEMENE BEPALINGS

Regulasies

- 87.(1) Die Premier kan, deur kennisgewing in die *Koerant*, regulasies maak met betrekking tot –
- (a) enige aangeleentheid wat voorgeskryf kan of moet word ingevolge hierdie Wet; of
 - (b) enige administratiewe of procedurele aangeleentheid wat nodig is ten einde uitvoering te gee aan die bepalings van hierdie Wet: Met dien verstande dat –
 - (i) regulasies met betrekking tot aangeleenthede ten opsigte van Hoofstuk 11 (artikels 44 – 66) van hierdie Wet moet gemaak word na oorlegpleging met die Ombudsman; en
 - (ii) regulasies met betrekking tot aangeleenthede ten opsigte van Hoofstuk 12 (artikels 67 – 86) van hierdie Wet moet gemaak word na oorlegpleging met die Kommissie.
- (2) Die regulasies kan bepaal dat enige persoon wat enige regulasie oortree of versuim om daaraan te voldoen skuldig is aan 'n misdryf en by skuldigbevinding strafbaar is met 'n boete of met gevengenisstraf wat nie vyf jaar oorskry nie.

Delegering deur Premier

- 88.(1) Die Premier kan aan die Direkteur-generaal –
- (a) enige bevoegdheid deleger wat aan die Premier deur hierdie Wet verleen is, buiten die bevoegdheid om –
 - (i) 'n kennisgewing te publiseer;
 - (ii) 'n proklamasie uit te vaardig; en
 - (iii) regulasies te maak; of
 - (b) enige plig deleger wat aan die Premier deur hierdie Wet opgelê is, buiten enige plig aangaande die aanstelling en beëindiging van amp van –
 - (i) die Ombudsman bedoel in artikels 46 en 60(2); en
 - (ii) die Voorsitter of die Kommissarisse bedoel in artikels 70 en 72(1).
- (2) Enige bevoegdheid of plig gedelegeer ingevolge subartikel (1) moet uitgeoefen of verrig word onderhewig aan sodanige voorwaardes soos wat die Premier nodig ag.

(3) 'n Delegasie ingevolge subartikel (1) –

- (a) moet skriftelik wees;
- (b) verbied nie die Premier om daardie bevoegdheid uit te oefen of daardie plig te verrig nie; en
- (c) kan te eniger tyd deur die Premier skriftelik onttrek of gewysig word.

Kort titel

89. Hierdie Wet word die KwaZulu-Natal Wetsontwerp op Bevordering van Goeie Regering, 2013 genoem.

BYLAE**Verklaring deur kandidate op die kortly**

(Artikel 25(2)(b))

VERKLARING**DEUR KORTLYSKANDIDATE****INSTRUKSIES:**

- 1. Elke KANDIDAAT op die kortly wat die Onderhoud bywoon MOET, direk na die onderhoud –**
 - (a) hierdie VERKLARING volledig voltooi ten opsigte van elke vraag (deur 'n kruis te maak op die "Ja" of Nee" in die toepaslike blokkie rakende die vraag);**
 - (b) elke bladsy van hierdie VERKLARING parafeer;**
 - (c) die laaste bladsy van hierdie VERKLARING onderteken; en**
 - (d) 'n getekende afskrif van hierdie VERKLARING ontvang.**
- 2. Waar skriftelike besonderhede vereis word, moet die KANDIDAAT dit binne vyf dae vanaf die datum van die Onderhoud by die Paneel indien. Indien die KANDIDAAT in gebreke bly om sodanige skriftelike besonderhede by die Paneel binne die genoemde tydperk van vyf dae in te dien, kan sodanige versuum of weglatting aan die kant van die KANDIDAAT meebring dat die Paneel aanbeveel dat die KANDIDAAT nie geskik is vir aanstelling nie, ongeag van die uitslag van die Onderhoud.**
- 3. Indien 'n KANDIDAAT uiteindelik in diens geneem word en daar word vervolgens gevind dat die KANDIDAAT 'n vals of misleidende antwoord verskaf het op enige vraag hieronder genoem, sal sodanige oneerlikheid of wanvoorstelling bedrog en 'n skending van vertroue in die verhouding tussen die werkgewer en werknemer uitmaak, en mag gebruik word as grondslag vir die instelling van dissiplinêre procedures wat kan lei tot ontslag of enige ander gepaste strafbepaling ingevolge die Dissiplinêre Kode en Procedures vir die Staatsdiens.**
- 4. Die KANDIDAAT moet binne vyf dae vanaf die datum van die Onderhoud 'n skriftelike verklaring van enige besigheid, kommersiële of finansiële belang of aktiwiteit onderneem deur die KANDIDAAT vir finansiële gewin wat 'n moontlike botsing van belang kan veroorsaak met indiensneming van die kandidaat in die Staatsdiens, oor die algemeen, of spesifieker binne die betrokke indiensnemingsdepartement.**

KANDIDAAT	POS	DATUM VAN ONDERHOUD
Naam:
I.D. Nommer:	

1. Is u ooit skuldig bevind aan 'n kriminele oortreding?

Ja	Nee
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Indien wel, moet volledige skriftelike besonderhede betreffende die feite en omstandighede en die beslissing van die hof by die Paneel ingedien word binne vyf dae vanaf datum van die onderhoud.

2. Word u tans –

(a) *in die gesig gestaar deur; of*

(b) *onderwerp aan,*

enige kriminele aanklag?

Ja	Nee
----	-----

Indien wel, moet volledige skriftelike besonderhede betreffende die feite en omstandighede ten opsigte van die kriminele klag by die Paneel ingedien word binne vyf dae vanaf die datum van die onderhoud.

3. Is u ooit skuldig bevind aan wangedrag deur u huidige of enige vorige werknemer?

Ja	Nee
----	-----

Indien wel, moet volledige skriftelike besonderhede betreffende die feite en omstandighede en die besluit van voorsitter/ voorsittende beampete van die dissiplinêre ondersoek/ verhoor by die Paneel ingedien word binne vyf dae vanaf die datum van die onderhoud.

4. Is u tans –

- (a) geskors;
- (b) besig om dissiplinêre aksie in die gesig te staar; of
- (c) onderworpe aan dissiplinêre aksie,

deur u huidige werknemer?

Ja	Nee
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Indien wel, moet volledige skriftelike besonderhede betreffende die feite en omstandighede ten opsigte van die skorsing of dissiplinêre aksie by die Paneel ingedien word binne vyf dae vanaf die datum van die onderhoud.

5. Is u al ooit afgedank vir –

- (a) 'n kriminele oortreding;
- (b) wangedrag met betrekking tot –
 - (i) insubordinasie;
 - (ii) wanadministrasie;
 - (iii) diefstal;
 - (iv) bedrog; of
 - (v) korupsie; of
- (c) enige ander aanklag, insluitend, maar nie beperk nie tot –
 - (i) oneerlikheid;
 - (ii) alkohol, dwelmmiddels of misbruik van gewoontevormende middele; of
 - (iii) aanranding of geweld?

Ja	Nee
----	-----

Indien wel, moet volledige skriftelike besonderhede betreffende die feite en omstandighede en die beslissing van voorsitter/ voorsittende beampte van die dissiplinêre ondersoek/ verhoor, na gelang van die geval, by die Paneel ingedien word binne vyf dae vanaf die datum die onderhoud.

6. Het u al ooit bedank uit diens na enige bewering van –

- (a) 'n kriminele oortreding; of
- (b) wangedrag wat verband hou met –
 - (i) insubordinasie;

- (ii) wanadministrasie;
 - (iii) diefstal;
 - (iv) bedrog; of
 - (v) korruksie; of
- (c) enige ander aanklag, insluitend, maar nie beperk nie tot –
- (i) oneerlikheid;
 - (ii) alkohol, dwelmmiddels of misbruik van gewoontevormende middele; of
 - (iii) aanranding of geweld,
- wat teen u gemaak was?

Ja	Nee
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Indien wel, moet volledige skriftelike besonderhede betreffende die feite, omstandighede en bewering by die Paneel ingedien word binne vyf dae vanaf die datum van die onderhoud.

7. Hou u op die oomblik, of kan u in binnekort, 'n privaatbelang of aandeel in enige kontrak, ooreenkoms, tender, bate of belegging voortspruitend uit, of in verband met, die Staat, enige nasionale of provinsiale staatsdepartement, enige munisipaliteit of enige openbare entiteit?

Ja	Nee
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Indien wel, moet volledige skriftelike besonderhede sodanige belang of aandee by die Paneel ingedien word binne vyf dae vanaf die datum van die onderhoud.

8. Het u in die afgelope vyf jaar –

- (a) enige geld ontvang of voordeel getrek uit; of
- (b) 'n privaatbelang of aandeel gehou in,
enige kontrak, ooreenkoms, tender, bate of belegging voortspruitend uit of in verband met die Staat, enige nasionale of provinsiale staatsdepartement, 'n munisipaliteit of enige openbare entiteit?

Ja	Nee
----	-----

Indien wel, moet volledige skriftelike besonderhede betreffende sodanige geld, voordeel, belang of aandeel by die Paneel ingedien word binne vyf dae vanaf die datum van die onderhoud.

9. Is u huidiglik, of kan u binnekort 'n –

- (a) direkteur;
- (b) lid; of
- (c) vennoot,

van 'n maatskappy, beslote korporasie of vennootskap word?

Ja	Nee
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Indien wel, moet volledige skriftelike besonderhede met betrekking tot sodanige direkteurskap, lidmaatskap of vennootskap (insluitend 'n skriftelike verklaring hetsy of nie sodanige maatskappy, beslote korporasie of vennootskap tans, of in die nabye toekoms, betrokke kan wees by enige kontraktuele of besigheidsverhouding met die Staat, enige nasionale of provinsiale regeringsdepartement, enige munisipaliteit of enige openbare entiteit) ingedien word by die Paneel binne vyf dae vanaf datum van die onderhoud.

10. Ontvang u tans, of het u aansoek gedoen om –

- (a) 'n welsynstoelaag; of
- (b) 'n lae-inkomste behuisingsubsidie?

Ja	Nee
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Indien wel, moet volledige skriftelike besonderhede betreffende sodanige welsynstoelaag of lae-inkomste behuisingsubsidie by die Paneel ingedien word binne 5 dae vanf datum van die onderhoud.

11. Is u tans geregistreer by SARS as 'n belastingbetaaler?

Ja	Nee
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Indien wel, moet skriftelike besonderhede betreffende u nie-registrasie as

belastingbetaler by die Paneel ingedien word binne vyf dae vanaf die datum van die onderhoud.

12. Word u tans –

(a) *in die gesig gestaar deur; of*

(b) *onderwerp aan,*

enige siviele eis of 'n hofbevel vir enige –

(i) *skuld;*

(ii) *skadevergoeding; of*

(iii) *onderhoud vir 'n voormalige (gewese) eggenoot (maat) of kind?*

Ja	Nee
----	-----

Indien wel, moet volledige skriftelike besonderhede betreffende die siviele eis of hofbevel (insluitend die bedrag van die skuld, skade of onderhoud) by die Paneel ingedien word binne vyf dae vanaf die datum van die onderhoud.

13. Is daar enigiets betreffende –

(a) *u aansoek (insluitend besonderhede betreffende u kwalifikasies en ondervinding); of*

(b) *u persoonlike omstandighede,*

wat u, volgens u opinie, wetlik, eties of moreel verplig voel om aan die Paneel te openbaar?

Ja	Nee
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Indien wel, moet volledige skriftelike besonderhede betreffende die feite en omstandighede by die Paneel ingedien word binne vyf dae vanaf die datum van die onderhoud.

14. Het u tans 'n probleem met –

(a) *alkohol-, dwelmmisbruik of misbruik van gewoontevormende stowwe; of*

(b) *geweld (huishoudelik of andersins),*

wat u, volgens u opinie, voel u wil aan die Paneel verklaar?

Ja	Nee
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Indien wel, moet volledige skriftelike besonderhede betreffende die kwessie by die Paneel ingedien word binne vyf dae vanaf die datum die onderhoud. Die Paneel kan u gevolglik versoek om 'n verslag van 'n mediese of ander professionele praktisyn, voorligter of maatskaplike werker in te dien.

15. *Het u tans 'n gestremdheid of gebrek (hetsy fisies, geestelik, emosioneel of sielkundig), wat u, volgens u opinie, voel u wil aan die Paneel verklaar vir doeleinades –*

- (a) *van billike indiensneming; of*
- (b) *om 'n werkgewer in staat stel om redelike stappe te neem ten einde u te akkommodeer in die werkplek of werksomgewing?*

Ja	Nee
----	-----

Indien wel, moet volledige skriftelike besonderhede betreffende die gestremdheid of gebrek by die Paneel ingedien word binne vyf dae vanaf die datum van die onderhoud. Die Paneel kan u gevolglik versoek om 'n verslag van 'n mediese of ander professionele praktisyn.

16. *Is u tevrede –*

- (a) *met die samestelling en verteenvoording van die Paneel; en*
- (b) *dat u onderhoud, volgens u mening, billik en redelikerwys hanteer is deur die Paneel?*

Ja	Nee
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Indien u, om enige rede, nie tevrede is met die Paneel of onderhoud nie moet volledige skriftelike besonderhede wat u u ontevredenheid uiteensit ingedien word by die Paneel binne vyf dae vanaf die datum van die onderhoud.

17. *Ek erken en verstaan:* dat –

- (a) *indien ek 'n vals of misleidende antwoord verskaf het op enige vraag verwys na hierbo, sodanige oneerlikheid of misleiding bedrog uitmaak en stel my bloot aan moontlike vervolging op 'n kriminele klag;*

- (b) indien ek oplaas aangestel en in diens geneem word en dit gevvolglik gevind word dat ek 'n vals of misleidende antwoord verskaf het op enige vraag verwys na hierbo, sodanige oneerlikheid of misleiding bedrog uitmaak en skending van vertroue in die verhouding tussen die werkewer en werknemer en kan gebruik word as grondslag vir die instelling van dissiplinêre procedures wat kan lei tot ontslag of enige ander toepaslikes trafbepaling ingevolge die Dissiplinêre Kode en Procedures vir die Staatsdiens;
- (c) ek binne vyf dae vanaf die datum van die onderhoud by die Paneel 'n skriftelike verklaring sal indien van enige besigheid, kommersiële of finansiële belang of aktiwiteit deur my onderneem vir finansiële gewin wat aanleiding kan gee tot 'n moontlike botsing van belang met my werk in die Staatsdiens, oor die algemeen, of in die besonder, binne die werkgewersdepartement;
- (d) indien ek nie enige skriftelike besonderhede soos wat vereis mag word deur enige antwoord of aanduiding verskaf deur my in hierdie VERKLARING by die Paneel indien binne die vermelde tydperk van vyf dae vanaf die datum van die onderhoud nie, kan sodanige versuim of weglatting aan my kant lei tot die Paneel se aanbeveling dat ek nie geskik is vir aanstelling nie, ongeag van die uitslag van die onderhoud;
- (e) indien ek weier of nalaat om hierdie VERKLARING te voltooi en onderteken, kan sodanige weierung of nalating aan my kant die Paneel se aanbeveling dat ek nie geskik is vir aanstelling nie tot gevolg hê, ongeag van die uitslag van die onderhoud; en
- (f) ek 'n getekende afskrif van hierdie VERKLARING vir my rekords moet ontvang.

GETEKEN TE OP HIERDIE DAG VAN 20

AS GETUIENISSE:

1.

KANDIDAAT

2.

**MEMORANDUM
OOR DIE OOGMERKE
VAN DIE**

KWAZULU-NATAL WETSONTWERP OP BEVORDERING VAN GOEIE REGERING, 2013

1. AGTERGROND

Die Oppergesag van die Reg is fundamenteel tot Suid-Afrikaanse reg. Dit is vasgelê in die eerste hoofstuk en eerste artikel van die Grondwet. Dit is 'n Stigtingsbepaling. Artikel 1(c) van die Grondwet maak voorsiening vir die "*oppergusag van die Grondwet en die Oppergusag van die Reg*".

Ons leef in 'n demokrasie gebaseer op beginsels van Konstitutionalisme en Oppergusag van die Reg. Ons het met rasse skrede gevorder in die bereiking van daardie ideaal, maar groot uitdagings lê nog voor.

Die "Oppergusag van die Reg" moet onderskei word van die "heerskappy van mens". Nakoming van die Oppergusag van die Reg beteken dat daar 'n *regsbasis* of gesag moet wees vir die uitoefening van elke bevoegdheid en die uitvoering van elke plig of werksaamheid van 'n uitvoerende of administratiewe funksionaris of beampete. Met ander woorde, dat almal se regte en pligte regsgbaseerd moet wees, geredelik duidelik moet wees uit die wet en nie onderworpe nie, of slegs onderworpe in buitengewone omstandighede, aan diskresionêre bevoegdheid.

Ooreenkomsdig hierdie beginsels van Konstitutionalisme en die Oppergusag van die Reg, poog die KwaZulu-Natal Provinsiale Regering, met die inwerkingstelling van hierdie Wetsontwerp, om 'n *regsbasis* en die regsgesag vir goeie regeringsmaatreëls, -programme en -strukture in die Provinsie te daar te stel.

Hierdie sentimente word weergegee in die Aanhef tot die Wetsontwerp.

Die konsep vir hierdie Wetsontwerp spruit voort uit die KwaZulu-Natal Rasionalisering van Wette Projek (gedrewe deur die Hoofdirektoraat: Staatsregsadviseursdienste in die Kantoor van die Premier) met die instelling van 'n Wetboek vir die Provinsie ten doel wat –

- (a) berig is met die Grondwet;
- (b) die huidige behoeftes van die Provinsie aanspreek op 'n samehangende en omvattende wyse;
- (c) vry is van uitgediende en ideologies-bepaalde verwysings en samestellende dele;
- (d) toeganklik sal wees; en

(e) regsekerheid, goeie regering, vlot administrasie, en verbeterde dienslewering sal bevorder.

Die Wetsontwerp het ten doel –

- (a) die bevestiging van die bestaande beginsels vir goeie regering en -maatreëls;
- (b) die instelling van die voorgenome nuwe beginsels van goeie regering en -maatreëls; en
- (c) die instelling van 'n regsbasis en die regsgesag vir goeie regeringsmaatreëls, - programme en -strukture,

in die Provinse deur middel van 'n Proviniale wet.

Aangesien KwaZulu-Natal nie 'n Proviniale grondwet het nie, sluit die Wetsontwerp bepalings in van die aard en klas wat vergestal kon word in 'n Grondwet vir die Provinse en wat beskou word as wenslik en toepaslik om aangespreek te word deur middel van Proviniale wetgewing. Sommige bepalings herhaal en bevestig bestaande grondwetlike bepalings met betrekking tot provinsies (byvoorbeeld, klousules: 3 – 9, 31, 33 en 36), terwyl ander voorgenome bepalings nuut is, waar KwaZulu-Natal die weg baan (byvoorbeeld, klousules: 10 – 23, 25, 26, 27, 29, 30, 32, 34 en 35 en die Bylae).

Die Wetsontwerp stel ook die regsbasis en regsgesag daar vir, onder andere –

- (a) die KwaZulu-Natal Proviniale Beplanningskommissie (Hoofstuk 12: klousules 67 – 86);
- (b) die Proviniale Groei- en Ontwikkelingstrategie (PGOS);
- (c) die KwaZulu-Natal Burgerhandves (Hoofstuk 10: klousules 37 – 43); en
- (d) die KwaZulu-Natal Kantoor van die Ombudsman (Hoofstuk 11: klousules 44 – 66).

2. KLOUSULE-VIR-KLOUSULE VERDUIDELIKING

Ter opsomming voorsien die Wetsontwerp as volg:-

HOOFTUK 1 OMSKRYWINGS

Klousule 1:

Klousule 1 sluit die omskrywings in wat grotendeels selfverduidelikend is.

HOOFTUK 2 OOGMERKE VAN WETSONTWERP

Klousule 2:

Klousule 2 sluit die oogmerke van die Wetsontwerp in wat, in breë trekke, die regsbasis en die regsgesag vir goeie regeringsmaatreëls, -programme en -strukture in die Provinsie daarstel.

HOOFSTUK 3

INTERREGINGSVERHOUDINGS, INTERNASIONALE KONTAK, INTERNASIONALE OOREENKOMSTE, REKORDS VAN BEGRIP EN SAMEWERKINGSOOREENKOMSTE

Klousule 3:

Klousule 3 herbevestig die beginsel van koöperatiewe regering in die Grondwet rakende die Provinciale Regering van KwaZulu-Natal as deel van die provinsiale sfeer van regering in Suid-Afrika.

Klousule 4:

Klousule 4 herbevestig die instelling van die Premier se Interregeringsforum ingevolge van die Nasionale Wet op Raamwerk vir Interregeringsverhoudings, 2005 (Wet No. 13 van 2005).

Klousule 5:

Klousule 5 herbevestig dat die Premier ander Provinciale interregeringforums kan instel, soos vermeld in die Nasionale Wet op die Raamwerk vir Interregeringsverhoudings, 2005 (Wet No. 13 van 2005).

Klousule 6:

Klousule 6 herbevestig die instelling van distriksforums vir interregeringsinstansies vir die jurisdiksiegebied van elke distriksmunisipaliteit in die Provinsie ingevolge die Nasionale Wet op die Raamwerk vir Interregeringsverhoudings, 2005 (Wet No. 13 van 2005), ten einde interregeringsverhoudings tussen die distriksmunisipaliteit en die plaaslike munisipaliteite in die distrik te bevorder en faciliteer.

Klousule 7:

Klousule 7 herbevestig dat die Premier, ingevolge die Nasionale Wet op die Raamwerk vir Interregeringsverhoudings, 2005 (Wet No. 13 van 2005), verantwoordelik is om die koördinasie van interregeringsverhoudings binne die Provinciale Regering te verseker.

Klousule 8:

Klousule 8 herbevestig die deelname van Provinciale afgevaardigdes aan die Nasionale Raad van Provincies ingevolge die Grondwet.

Klousule 9:

Klousule 9 beoog om die optrede van die Proviniale Regering in die internasionale kontak te reguleer.

Klousule 10:

Klousule 10 beoog om –

- (a) te herbevestig dat, ingevolge die Grondwet, die onderhandeling en ondertekening van internasionale ooreenkomste die eksklusieve gebied van die Nasionale Uitvoerende Gesag is; en
- (b) die bevoegdheid van die Proviniale Regering te reguleer met betrekking tot internasionale rekords van begrip of samewerkingsooreenkomste.

Onderskeid word getref tussen internasionale ooreenkomste, aan die een kant, en internasionale rekords van begrip of samewerkingsooreenkomste, aan die ander kant, en die inhoud van, en procedures vir, internasionale rekords van begrip of samewerkingsooreenkomste wat gereguleer sal word ooreenkomsdigregsadvies ontvang deur die Nasionale Departement van Internasionale Betrekkinge en Samewerking (voorheen Buitelandse sake).

HOOFSTUK 4

RIGTINGGEWENDE BEGINSELS VAN PROVINSIALE BELEID, PROVINSIALE GROEI- EN ONTWIKKELINGSTRATEGIE EN PROVINSIALE PLAN

Klousule 11:

Klousule 11 sit sekere rigtinggewende beginsels van die Proviniale Beleid uiteen.

Klousule 12:

Klousule 12 bepaal die status van rigtinggewende beginsels van die Proviniale Beleid.

Klousule 13:

Klousule 13 maak voorsiening vir die regsbasis vir die Proviniale Groei- en Ontwikkelingstrategie (PGOS).

Klousule 14:

Klousule 14 maak voorsiening vir die termyn, monitering, evaluering en hersiening van die PGOS.

Klousule 15:

Klousule 15 maak voorsiening vir die publikasie van die PGOS vir inligtingsdoeleindes.

Klousule 16:

Klousule 16 stel in die vooruitsig dat die PGOS uitdrukking gegee moet word in departementele programme, begrotings en wetgewing en bepaal dat die werkverrigting van die departementshoofde in die Provinciale Regering geassesseer moet word met betrekking tot die implementering van die PGOS.

Klousule 17:

Klousule 17 bepaal die status van die PGOS.

Klousule 18:

Klousule 18 maak voorsiening vir oorgangsbeplings ten opsigte van die PGOS en reguleer die status van enige teenswoordige toepaslike PGOS aanvaar voor die datum van inwerkingtreding van hierdie Wetsontwerp as 'n Wet.

Klousule 19:

Klousule 19 maak voorsiening vir die regsbasis vir die Provinciale Plan.

Klousule 20:

Klousule 20 maak voorsiening vir die termyn, monitering, evaluering en hersiening van die Provinciale Plan.

Klousule 21:

Klousule 21 maak voorsiening vir die publikasie van die Provinciale Plan vir inligtingsdoeleindes.

Klousule 22:

Klousule 22 stel in die vooruitsig dat die Provinciale Plan uitdrukking gegee moet word in departementele programme, begrotings en wetgewing en bepaal dat die werksverrigting van die departementshoofde in die Provinciale Regering geassesseer moet word met betrekking tot die implementering van die Provinciale Plan.

Klousule 23:

Klousule 23 bepaal die status van die Provinciale Plan.

HOOFTUK 5**PROVINSIALE ADMINISTRASIE****Klousule 24:**

Klousule 24 bepaal dat die hoofkantoor van die Proviniale Administrasie Pietermaritzburg is, maar maak ook voorsiening vir die daarstelling van satelliet- of plaaslike kantore.

Klousule 25:

Klousule 25(1) herbevestig die grondwetlike bepaling met betrekking tot Proviniale staatsamptenare.

Klousule 25(2) stel in die vooruitsig dat enige voornemende kandidaat, gewerf vir aanstelling in die staatsdiens in die administrasie van die Provinie en op die kortlyks geplaas vir 'n onderhoud, moet 'n verklaring, ten einde die toepaslike keuring en kontrollering van die kandidaat mee te help, voltooи en onderteken. Die verklaring, soos uiteengesit in die Bylae tot die Wetsontwerp, is omvattend.

Klousule 25(3) verplig die Proviniale Regering om die verhoging van produktiwiteit, dienslewering en werksverrigting, opleiding en vaardigheidsontwikkeling en die professionalisering van staatsdiensamptenare in die administrasie van die Provinie te bevorder, ondersteun en fasiliteer.

Klousule 26:

Klousule 26(1) herbevestig die basiese waardes en beginsels vir die bestuur van openbare administrasie in die Provinie, soos gevind in die Grondwet.

Klousule 26(2) verplig die Proviniale Regering, binne sy beskikbare hulpbronne, om gepaste stappe te neem met die oog op die voorkoming en bekamping van wanadministrasie, bedrog en korupsie en botsing van belangtegenstanders.

Klousule 27:

Klousule 27 verplig Proviniale departemente om wette te hersien en rasionaliseer wat administreer word deur daardie departemente vir die versekering van konsekwentheid en die nakoming van die Grondwet en Nasionale wette wat, ingevolge die Grondwet, beskou sou word as die geldende wetgewing.

Soos wat die rasionalisering van wette onderneem moet word as 'n deurlopende proses, moet die werkverrigting van die departementshoofde in die Proviniale Regering geassesseer word in verhouding daarmee.

Klousule 28:

Klousule 28 verplig die Provinciale Regering en elke departement in die Provinciale Regering om sy eie amptelike webwerf daar te stel en om enige inligting wat vereis word om openbaar gemaak te word ingevolge enige wet daarop te plaas.

HOOFTUK 6

RAADGEWENDE EN DEELNEMENDE REGERING

Klousule 29:

Klousule 29 sit sekere beginsels van raadgewende en deelnemende regering uiteen.

HOOFTUK 7

MONITERING EN EVALUASIE VAN WERKVERRIGTING VAN PROVINSIALE REGERING

Klousule 30:

Klousule 30 sit sekere beginsels van monitering en evaluasie van die werkverrigting van Provinciale regering prestasie uiteen.

HOOFTUK 8

GOEIE REGERING EN KOÖPERATIEWE REGERING IN MUNISIPALITEITE

Klousule 31:

Klousule 31 herbevestig regeringsbeginsels en koöperatiewe regering wat in die Grondwet en Nasionale wetgewing gevind word rakende munisipaliteite as die plaaslike sfeer van regering.

Klousule 32:

Klousule 32 bemagtig die Premier, deur proklamasie in die *Koerant*, om bevoegdhede, pligte of werksaamhede van Provinciale departemente aan munisipaliteite toe te wys of te deleer.

Die Grondwet erken dat die regering saamgestel is as Nasionale, provinsiale en plaaslike sfere van regering wat kenmerkend, interafhanklik en onderling verbonde is. Verkose plaaslike regeringstrukture bestaan wat elke deel van die Provinsie beslaan.

Hierdie verkose plaaslike regeringstrukture (geneties "munisipaliteite" in die Grondwet genoem) is, ingevolge die Grondwet en Nasionale wetgewing, gemagtig om sekere bevoegdhede, pligte en werksaamhede te verrig. Die lewering van munisipale dienste aan persone wat binne hul jurisdiksiegebied woonagtig is, is die vernaamste plig en funksie van munisipaliteite.

As gevolg van historiese omstandighede, moet baie funksies wat tans gelewer word deur die Provinciale Regering via Provinciale Departemente ideaal gesien gelewer word op distrikse- en

plaaslike vlak deur gebruik te maak van die verkose munisipaliteite se bestaande bevoegdheid en infrastruktuur.

Dit sou onlogies en onnodiglik verkwistend wees vir 'n Provinciale Departement om parallelstrukture te skep op distriksvlak (streek) of plaaslike vlak om werksaamhede te lewer op daardie vlakke namens die Provinciale Departement. Indien elke Provinciale Departement hierdie koers inslaan, sal 'n oorvloed van strukture op distriksvlak en plaaslike vlak lei tot 'n gebrek aan koördinasie, verwarring op grondvlak en versuum om dienslewering suksesvol en onverwyld te implementeer. Persepsies van die gemeenskap dat die lewering nie op hande is nie en nie weet watter struktuur op distriks- of plaaslike vlak te nader vir hulp nie, en om heen en weer verwys te word kan ernstige gevolge hê vir regering in alle sfere en op alle vlakke.

Alle sfere en vlakke van die regering, ingesluit munisipaliteite in die plaaslike sfeer, moet doeltreffend bemagtig word. Die motivering vir die afwenteling van bykomende bevoegdhede, pligte en werksaamhede na verkose munisipaliteite moet geïnterpreteer word as deelvormend van 'n groot veldtog in die Provincie om dienslewering te desentraliseer en die munisipaliteite moet, bykomend tot hul primêre rol van dienslewering deur plaaslike regering, ook gesien word, in 'n breër samehang, as die diensleveringsarm van die Provinciale Regering. Dit is die plig van alle vlakke (sfere) van regering om dienste te lewer aan die mense op die mees doeltreffende, effektiewe, reaktiewe, billike en koste-effektiewe wyse. Die mikpunt van die regering moet wees om lewering met betrekking tot sekere funksionele gebiede saam te stroom op die toepaslike sfeer, laag or vlak van regering, wat in vele gevalle die vlak naaste aan die mense sal wees (plaaslike regeringsvlak).

Dit is nie slegs 'n ideaal nie, maar ook 'n grondwetlike opdrag. Artikel 156(4) van die Grondwet bepaal uitdruklik dat die Nasionale regering en provinsiale regerings aan 'n munisipaliteit moet toewys die administrasie van aangeleenthede met betrekking tot die funksionele gebiede van Nasionale en Provinciale bevoegdheid wat noodsaklikerwys op plaaslike regering van betrekking is, indien daardie aangeleentheid mees doeltreffend plaaslik gadministreer sal word en indien die munisipaliteit die vermoë het om daardie aangeleentheid te administeer.

Hierdie doel kan bereik word –

- (a) deur 'n ooreenkoms;
- (b) indien wette gadministreer deur die departemente in die Provincie uitdruklik sekere funksies toewys of deleger, is sodanige departemente verantwoordelik vir die lewering, op distriksvlak (streek) en plaaslike vlak, aan die toepaslik-verkose munisipaliteite in plaas daarvan om nuwe strukture te skep vir hierdie doel; of

(c) indien die Provinciale Wetgewer wetgewing maak (soos in die vooruitsig gestel in hierdie klousule van die Wetsontwerp) wat voorsiening maak vir die delegering of toewysing deur die Provinciale Regering van bevoegdhede, pligte of werksaamhede aan munisipaliteite.

Dit moet verstaan word dat enige sodanige toewysing of delegering aan 'n munisipaliteit moet, sover as wat dit uitvoerbaar is, vergesel word deur –

- (a) die oordrag van bates, ingesluit fondse; en
- (b) die oorplasing of sekondering van personeel, na gelang van die geval,

met betrekking tot die uitoefening van die bevoegdheid of die verrigting van die betrokke plig of werksaamheid.

Waar kapasiteit, in die vorm van hulpbronne (bates en fondse) en personeel, enige voorgenome delegering of opdrag vergesel, is die positiewe byvoordeel van sodanige delegering of opdrag dat die vermoë om die bevoegdheid uit te oefen of die plig uit te voer of werksaamheid te verrig wat gedelegeer of toegewys is, terselfdertyd voorsiening voor gemaak word. Onvoorwaardelik in die oordrag of sekondering van personeel is dat sodanige personeel opleiding moet ondergaan, indien nodig, met betrekking tot die uitoefen van die bevoegdheid of die verrigting van die werksaamheid of plig aldus gedelegeer of toegewys.

Dit is belangrik om daarop te let dat die Grondwet 'n uitdruklike verpligting plaas op die Nasionale regering en die provinsiale regerings ten einde die vermoë van munisipaliteite te ondersteun en versterk om hul eie sake te bestuur, om hul bevoeghede uit te oefen (wat bevoegdhede gedelegeer of toegewys sou insluit) en hul werksaamhede te verrig (artikel 154 van die Grondwet). Geen neerlê van verantwoordelikheid deur die Nasionale of 'n provinsiale regering sal in hierdie opsig toegelaat word nie.

Dit is ook belangrik om daarop te let dat die plaaslike sfeer van regering nie net geregtig is op 'n billike deel van inkomste wat nasionaal ontvang word nie (artikel 214 van die Grondwet), maar is vervolgens gemagtig om hul eie inkomste in te samel binne die beperkings van artikel 229 van die Grondwet.

Dit behoort ook beklemtoon te word dat provinsiale departemente nie, in die geval van 'n delegering van hul bevoegdhede, beheer sal verloor oor hul bevoegdhede nie, soos wat uitdruklik bepaal kon word dat enige delegering nie die uitoefening van die betrokke bevoegdheid of die uitvoer van die plig of betrokke werksaamheid deur die departement of enige behoorlik gemagtigde beampete of werknemer van die departement verhinder nie.

'n Onderskeid moet getref word tussen die konsepte van "delegering" en "toewysing". Waar 'n bevoegdheid, plig of werkzaamheid *toegewys* word, vergesel die verantwoordelikheid en aanspreeklikheid vir die bevoegdheid, plig of werkzaamheid die betrokke bevoegdheid, plig of werkzaamheid. Waar, aan die ander kant, 'n bevoegdheid, plig of werkzaamheid *gedelegeer* is, word verantwoordelikheid en aanspreeklikheid nie oorgedra nie en beheer, monitering, toesig, ingryping en selfs onttrekking of die herbepaling van enige spesifieke delegering is moontlik te eniger tyd.

Dit moet beklemtoon word dat die idee nie is om enige bevoegdhede, pligte en werkzaamhede van ander departemente toe te eien nie, maar eerder om te verseker dat daardie lewering versterk word op distriksvlak (streek) en plaaslike vlakke, in ooreenstemming met die voorskrifte van die Grondwet, deur te verseker dat die struktuur of verteenwoordiger verantwoordelik vir lewering op daardie vlak goed geïntegreer en gekoördineer is terwyl die toeganklikheid van hierdie strukture of verteenwoordigers wat verantwoordelik is vir lewering aan die mense terselfdertyd verbeter word. Die gemeenskap moet die geleentheid hê om een sigbare en identifiseerbare distrik of plaaslike struktuur te kan nader ten einde enige behoefté of probleem wat hulle mag teëkom aan te spreek. Die verkose munisipaliteite op distriksvlak en plaaslike vlak besit in 'n grotere mate die vereiste regmatigheid en infrastruktuur en is ideaalgesproke gesik om sodanige addisionele rol te vervul wat deur die Grondwet aan hulle verleen word.

Sodanige benadering sal ook uitvoering gee aan die beginsel of konsep van "*subsidiariteit*". Hierdie konsep, ontwikkel en toegepas in die Europese Unie en nou weerspieël in ons Grondwet, voer aan dat bevoegdhede, pligte en werkzaamhede afgewentel moet word na die "laagste" bevoegde sfeer of regeringsvlak. Die konsep kan buigbaar gebruik word en voortdurend herevalueer word sodat bevoegdhede, pligte en werkzaamhede so nabij aan die mense is as wat moontlik is vir bevrediging van die aandrang op plaaslike demokrasie en bemagtiging en bevordering van kapasiteitsbou en administratiewe en ekonomiese doeltreffendheid op die derde vlak van regering.

Dit alles dien om die konsep van koöperatiewe regering te versterk, soos weerspieël in hoofstuk 3 van die Grondwet waar alle sfere van regering beskou word as onmiskenbaar en onderling verbonde met die uitdruklike verpligting om mekaar by te staan en ondersteun en hul handelinge te koördineer.

Klusule 33:

Klusule 33 herbevestig die grondwetlike bepaling dat 'n Lid van die Uitvoerende Raad enige van sy of haar bevoegdhede of werkzaamhede kan toewys aan 'n munisipale raad. Sodanige

toewysing tree in werking deur die Premier se proklamering in die Koerant.

Klousule 34:

Klousule 34 verplig munisipaliteite om verordeninge geadministreer deur daardie munisipaliteite te hersien en rasionaliseer ten einde konsekwentheid en nakoming van die Grondwet en Nasionale en provinsiale wette te verseker wat, ingevolge die Grondwet, beskou sou word as die geldende wetgewing.

Klousule 35:

Klousule 35 gee die inwoners van 'n munisipaliteit die bevoegdheid om te besluit oor aangeleenthede by 'n openbare vergadering en vir hul besluitneming om verwys te word na die munisipale raad vir oorweging.

Die munisipale raad moet die besluit oorweeg en kan die besluit bevestig, verander, wysig of tersyde stel. Waar die munisipale raad aan enige sodanige besluit verander, wysig of ter syde stel, moet redes verskaf word daarvoor. Waar dit die besluit van die munisipale raad bevestig, moet die munisipale raad, binne 'n redelike tydperk, die besluit uitvoer en uitwerking gee aan daardie besluit asof dit 'n resolusie is, geneem deur die munisipale raad.

Hierdie bepaling poog om inwoners te bemagtig met 'n bykomende eenvoudige meganisme van *openbare deelname* (en 'n matige vorm van "kiesersbeheer" tussen munisipale verkiesings) ten einde te verseker dat aangeleenthede wat deur 'n beduidende getal inwoners beskou word as belangrik, voor die munisipale raad van hul munisipaliteit geplaas word vir oorweging. Dit mag bydra daartoe om te verseker dat dringende kwessies van dienslewering voor die munisipale raad geplaas word vir oorweging, terwyl dit gelyktydig funksioneer as 'n "veiligheidsklep" vir inwoners en gemeenskappe omdat hulle nou oor 'n meganisme beskik om kwessies vredsaam te opper en te ventileer en hulle kan die raad verplig om kwessies te oorweeg (of te heroorweeg). Hierdie voorgenome meganisme kan onnadenkende of gewelddadige protesoptrede as gevolg van inwoners se frustrasies of onvermoë om aangedeleenthede voor die Raad te kan plaas afweer. Enige klagte met betrekking tot 'n aangeleenthed van dienslewering kan ook, vanselfsprekend, ondersoek word deur die KwaZulu-Natal Provinsiale Ombudsman (sien Hoofstuk 11, bestaande uit klousules 44-66).

Klousule 35 beoog dat nie slegs inwoners nie, maar ook die meerderheid van die munisipale raad of die Lid van die Uitvoerende Raad vir Plaaslike Regering, die burgemeester van 'n munisipaliteit kan gelas om hierdie roete te volg van sameroeping van 'n openbare vergadering van inwoners en om die besluit van die vergadering formeel voor die munisipale raad te plaas vir

oorweging.

HOOFSTUK 9

GOEIE REGERING EN KOÖPERATIEWE REGERING IN TRADISIONELE LEIERSKAP EN INSTELLINGS

Klousule 36:

Klousule 36 herbevestig die erkenning van tradisionele leierskap en instellings en sit aangeleenthede uiteen wat in Provinciale wetgewing aangespreek moet word.

HOOFSTUK 10

KWAZULU-NATAL BURGERHANDVES

Klousule 37:

Geen ander wetgewing maak huidiglik uitdruklik voorsiening, of verskaf uitdruklike volmag, vir 'n KwaZulu-Natal Burgerhandves nie. Ooreenkomsigt die beginsels van konstitutionalisme en die Oppergesag van Reg, poog die KwaZulu-Natal Provinciale Regering, met die indiening van hierdie Wetsontwerp, om die regsbasis en regsgesag vir die Burgerhandves, die inhoud en die prosedure om te volg vir die aanvaarding en wysiging in te stel.

Klousule 37 handel oor die aanneming van die Burgerhandves en beklemtoon openbare deelname in die *onderhandeling* van die Burgerhandves met betrekking tot die vlak en standaard van dienste aangebied of gelewer deur die Provinciale Regering aan inwoners van die Provincie.

Klousule 38:

Klousule 38 handel oor die inhoud van die Burgerhandves en maak voorsiening vir publikasie vir openbare kommentaar voor die aanneming van die Burgerhandves deur die Uitvoerende Raad namens die Provinciale Regering.

Klousule 39:

Klousule 39 handel oor die publikasie van die Burgerhandves vir algemene inligting na goedkeuring en aanneming daarvan in die *Provinciale Koerant*.

Klousule 40:

Klousule 40 addresseer die termyn, monitering, evaluering en hersiening van die Burgerhandves.

Klousule 41:

Klousule 41 bepaal dat die Burgerhandves uitdrukking gegee moet word in departementele

programme, begrotings en wetgewing en dat die Burgerhandves 'n rol sal speel in die prestasie-evaluering van die departementshoofde.

Klousule 42:

Klousule 42 bepaal uitdruklik dat die Burgerhandves regtens afdwingbaar is deur die burgers op die Provinciale Regering. Burgers kan klagtes met betrekking tot aangeleenthede van nie-nakoming, of 'n oortreding, van die Burgerhandves by die Ombudsman indien vir ondersoek.

Klousule 43:

Klousule 43 maak voorsiening vir oorgangsbeplannings ten opsigte van die Burgerhandves en reguleer die status van enige huidiglike toepaslike Burgerhandves aangeneem as 'n Wet voor die datum van inwerkingtreding van hierdie Wetsontwerp as 'n Wet.

HOOFSTUK 11**KWAZULU-NATAL KANTOOR VAN OMBUDSMAN****Klousule 44:**

Klousule 44 stel die KwaZulu-Natal Kantoor van die Ombudsman daar, wat geleë is binne die Kantoor van die Premier in die Provinciale Regering en wat nie 'n regspersoon is nie.

Klousule 45:

Klousule 45 sit die oogmerke van die Kantoor van die Ombudsman uiteen.

Klousule 46:

Klousule 46 beskryf die aanstellingsproses en bepaal die vereistes vir benoembaarheid van die aanstelling van die Ombudsman.

Klousule 47:

Klousule 47 beskryf die bevoegdhede, pligte en werkzaamhede van die Ombudsman, ingesluit die bevoegdhede om enige klakte te ondersoek met betrekking tot 'n aangeleentheid van dienslewering, wanadministrasie, korruksie of bedrog, ontvang hetsy voor of na die inwerkingtreding van hierdie Wet deur 'n departement, munisipaliteit of openbare entiteit.

Klousule 48:

Klousule 48 beskryf die proses vir die indiening van 'n klakte, die aard van klagtes wat ingedien kan word, watter klagtes ondersoek moet word en watter klagtes die Ombudsman mag weier om te ondersoek.

Klousule 49:

Klousule 49 sit uiteen dat, as 'n voorlopige ondersoek, die Ombudsman eers die departementshoof, die munisipale bestuurder van die munisipaliteit of die Hoof-Uitvoerende Beampete van die betrokke openbare entiteit moet nader met die oog daarop om die aangeleentheid informeel en onverwyld op te los.

Klousule 50:

Klousule 50 beskryf die prosedure wat gevolg moet word deur die Ombudsman in die ondersoek na 'n klagte.

Klousule 51;

Klousule 51 gee die Ombudsman die magtiging om 'n ondersoek met die Lid van die Uitvoerende Raad verantwoordelik vir die departement, munisipaliteit of openbare entiteit, enige ander betrokke Lid van die Uitvoerende Raad of die burgemeester van 'n munisipaliteit te bespreek.

Klousule 52:

Klousule 52 vereis dat die Ombudsman oortredings ten opsigte van pligsversuum deur amptenare aan te meld en om oortredings by die betrokke owerhede aan te meld, ingesluit die Openbare Beskermer.

Klousule 53:

Klousule 53 vereis dat die Ombudsman jaarliks verslag lewer aan die Provinciale Wetgewer en ken aan hom of haar die gesag toe om aan die Uitvoerende Gesag te rapporteer. Die klousule vereis ook dat die Ombudsman bevindings beskikbaar maak aan die klaer en verslag lewer aan die Openbare Beskermer.

Klousule 54:

Klousule 54 sit uiteen die bevoegdhede van die Ombudsman om inligting te versoek, ingesluit die bevoegdheid om persone en dokumente en dié van deursoeking en beslaglegging te dagvaar.

Klousule 55:

Klousule 55 verskaf aan die Ombudsman die diskresie om nie sekere klagtes te ondersoek en om aangeleenthede te verwys vir hersiening waar hierdie proses aan die klaer beskikbaar is.

Klousule 56:

Klousule 56 beskryf die voorsiening van personeel aan die Kantoor van die Ombudsman en dat die Direkteur-generaal van die Provincie sodanige persone, in diens van die Regering ingevolge die Staatsdienswet, 1994, moet aanwys soos wat redelikerwys nodig mag wees, ten einde die Ombudsman by te staan in die uitoefening van die bevoegdhede, die uitvoer van die pligte en die verrigting van die werksaamhede ingevolge hierdie Wet en met die bykomende sekretariële en administratiewe werk ten einde hierdie dinge te doen. Die klousule maak ook voorsiening vir die sekondering van amptenare en dat personeellede 'n finansiële verklaring verskaf.

Klousule 57:

Klousule 57 sit die kriteria vir die onbevoegdheid van die Ombudsman uiteen.

Klousule 58:

Klousule 58 vereis dat die Ombudsman 'n finansiële verklaring verskaf by aanstelling en jaarliks daarna. Alle verklaarde belang moet in 'n opgedateerde register bygehou word deur die Premier.

Klousule 59:

Klousule 59 verskaf aan die Premier die bevoegdheid vir die skorsing van die Ombudsman indien hy of sy ondersoek work.

Klousule 60:

Klousule 60 sit die omstandighede uiteen waaronder 'n Ombudsman bedank of sy of haar ampstermyn beëindig word.

Klousule 61:

Klousule 61 vermeld die veiligheidskriteria betreffende inligting voorgelê aan die Ombudsman en die finansiële verklarings van personeel en die Ombudsman.

Klousule 62:

Klousule 62 maak die ongemagtigde gebruik van die naam, akroniem, logo's, ontwerpe of materiaal gebruik deur of in besit van die Kantoor van die Ombudsman sowel as om valslik te beweer dat hy of sy die Ombudsman is, 'n misdryf.

Klousule 63:

Klousule 63 bemagtig die Premier om sekere bevoegdhede aan die Direkteur-generaal te deleger en die Ombudsman om enige bevoegdheid of plig verleen of opgelê deur die Wet aan amptenare in die Kantoor van die Ombudsman te deleger.

Klousule 64:

Klousule 64 benoem oortredings vir die doeleindes van Hoofstuk 11.

Klousule 65:

Klousule 65 omskryf boetes vir die doeleindes van Hoofstuk 11.

Klousule 66:

Klousule 66 maak voorsiening vir oorgangsbeplannings ten opsigte van die Ombudsman.

HOOFSTUK 12

KWAZULU-NATAL PROVINSIALE BEPLANNINGSKOMMISSIE

Klousule 67:

Geen ander wetgewing maak huidiglik uitdruklik voorsiening voor, of magtig uitdruklik, 'n Proviniale Beplanningskommissie vir KwaZulu-Natal. In ooreenstemming met die beginsels van grondwetlikheid en die Oppergesag van Reg, poog die Proviniale Regering, met die inwerkingstelling van hierdie Wetsontwerp, om die regsbasis en die regsgesag vir die KwaZulu-Natal Proviniale Beplanningskommissie in te stel.

Klousule 67 maak voorsiening vir die instelling van die KwaZulu-Natal Proviniale Beplanningskommissie, verklaar dat die Kommissie nie 'n regspersoon is nie en bepaal dat die Kommissie geleë is in die Kantoor van die Premier in die Proviniale Regering met die Direkteur-generaal van die Provinie as die rekenpligtige beampete van die Kommissie.

Klousule 68:

Klousule 68 sit die breë oogmerke van die Kommissie uiteen met betrekking tot strategiese beplanning, strategiese rigting en beleidsbeplanning en beleidsberigting, wat onderneem moet word binne die rigtinggewende beginsels van Proviniale Beleid vervat in klousule 11.

Klousule 69:

Klousule 69 handel breedvoerig oor die bevoegdhede, pligte en werksaamhede van die Kommissie.

Soortgelyke werksaamhede wat uitgeoefen word deur die *Beplanningskommissie van die Regering van Indië* is ingesluit as werksaamhede van die Kommissie. 'n Omvattende bestek van bykomende en uitgebreide bevoegdhede, pligte en werksaamhede word ook voorgestel en gelys. Die formulering van 'n Proviniale Plan, beleidsberigting, effektiewe, doeltreffende en

gebalanseerde benutting van hulpronne en die stimulering van die ekonomiese-, nywerheids- en landelike ontwikkeling van die Provinse word in die vooruitsig gestel.

Skakeling en formele liaisonmeganismes met die Nasionale Beplanningskommissie in die Kantoor van die Presidensie word voorgestel ten einde 'n gekoördineerde benadering te verseker.

Klousule 69 is 'n lang, breedvoerige en kritieke klousule wat in die Wetsontwerp self gelees moet word.

Klousule 70:

Klousule 70 bepaal die samestelling van die Kommissie. Dit is voorgestel dat die Premier een voltydse Kommissaris aanstel (wat aangewys moet word as die Voorsitter van die Kommissie) en minstens vyf, maar nie meer nie as agt, deeltydse Kommissarisse.

Klousule 71:

Klousule 71 maak voorsiening vir die ampstermy van die Kommissarisse. Die Kommissarisse beklee die amp vir 'n tydperk van vyf jaar en kan in aanmerking kom vir heraanstelling, maar kan nie dien vir langer as 'n aaneenlopende tydperk van 10 jaar nie.

Klousules 72 en 73:

Klousules 72 en 73 handel oor vakatures, ontslag en bedanking uit amp van Kommissarisse en tydelike skorsing van 'n Kommissaris onder sekere omstandighede.

Klousule 74:

Klousule 74 handel oor vergaderings en procedures by vergaderings van die Kommissie. Die eerste vergadering word belê deur die Premier en alle vergaderings daarna deur die Voorsitter van die Kommissie. Die Kommissie moet minstens vyf keer in enige gegewe finansiële jaar vergader.

Klousule 75:

Klousule 75 maak voorsiening vir onttrekking van Kommissarisse aan vergaderings en verrigtinge in gevalle van direkte of indirekte belang. Die klousule omskryf ook "indirekte belang".

Klousule 76:

Klousule 76 handel breedvoerig oor die besoldiging van Kommissarisse, toelae en die vergoeding van uitgawes.

Klousule 77:

Klousule 77 maak voorsiening vir die instelling deur die Kommissie van komitees ten einde die Kommissie by te staan in die verrigting van enige van sy bevoegdhede, pligte of werksaamhede of om navorsing te doen.

Klousule 78:

Klousule 78 magtig die Kommissie om persone te koöpteer om van bystand te wees rakende enige van die bevoegdhede, werksaamhede en pligte van die Kommissie. Gekoöpteerde persone kan nie stem by 'n vergadering van die Kommissie of 'n komitee nie. Die klousule handel ook oor die besoldiging van gekoöpteerde persone, hul toelae en vergoeding van uitgawes.

Klousule 79:

Klousule 79 handel oor die personeel verbonde aan die Kommissie en maak voorsiening dat die Direkteur-generaal van die Provincie staatsamptenare, in diens geneem ingevolge die Staatsdienswet, 1994, moet aanwys om die Kommissie by te staan met die bykomende sekretariële en administratiewe werk in die uitoefening van sy bevoegdhede, die uitvoering van sy pligte en die verrigting van sy werksaamhede.

Klousule 80:

Klousule 80 beoog om persone te verhinder om vertroulike inligting oor die Kommissie openbaar te maak, tensy sodanige openbaarmaking ingevolge die wet of 'n hofbevel is.

Klousule 81:

Klousule 81 maak voorsiening daarvoor dat die Kommissie slegs deur 'n Wet van die Provinciale Wetgewer ontbind kan word.

Klousule 82:

Klousule 82 beoog om die ongemagtigde gebruik van die naam, akroniem, logo's, ontwerpe of materiaal in besit van, of gebruik deur, die Kommissie te voorkom.

Klousule 83:

Klousule 83 magtig sekere delegering van bevoegdhede en pligte deur die Kommissie.

Klousule 84:

Klousule 84 kriminaliseer sekere gedrag deur Kommissaris, personeel verbonde aan die

Kommissie en privaat individue.

Klousule 85:

Klousule 85 maak voorsiening vir strawwe vir persone wat skuldig bevind word aan oortreding van die Wet (verwys ook na klousule 84 wat sekere gedragkriminaliseer).

Klousule 86:

Klousule 86 maak voorsiening vir oorgangsreëlings ten opsigte van die Kommissie.

HOOFSTUK 13

ALGEMENE BEPALINGS

Klousule 87:

Klousule 87 bemagtig die Premier om regulasies te maak betreffende aangeleenthede wat nodig of wenslik mag wees vir die doeltreffende uitvoering of bevordering van die bepalings en oogmerke van die Wetsontwerp of ten einde administratiewe probleme wat ervaar kan word in die toepassing van die Wetsontwerp te verwyder.

Klousule 88:

Klousule 88 maak voorsiening vir die delegering van bevoegdhede en pligte deur die Premier aan die Direkteur-generaal, behalwe die bevoegdheid om kennisgewings te publiseer, die bevoegdheid om proklamasies uit te vaardig en die bevoegdheid om regulasies te maak.

Klousule 89:

Klousule 89 bevat die kort titel van die Wet.

BYLAE

Die Bylae tot die Wet bevat die voorgenome verklaring deur kandidate op die kortlys vermeld in klousule 25(2)(b) van die Wetsontwerp. Die Premier is gemagtig om die Bylae, ingesluit in die verklaring, te wysig of vervang deur kennisgewing in die Koerant.

3. ORGANISATORIESE EN PERSONEELIMPLIKASIES VIR PROVINSIALE REGERING

Daar is organisatoriese en personeelimplikasies ten opsigte van die instelling van die Kantoor van die Ombudsman. Onderhewig aan 'n organisatoriese ontwerps- en werkstudie-oefening, sal die struktuur van die Kantoor en die vlak en getal poste nodig om geskep te word ten einde die effektiewe funksionering van die Kantoor van die Ombudsman te verseker, bepaal word.

Daar is soortgelyke organisatoriese en personeelimplikasies ten opsigte van die KwaZulu-Natal Provinciale Beplanningskommissie

4. FINANSIËLE IMPLIKASIES VIR PROVINSIALE REGERING

Daar is finansiële implikasies ten opsigte van die instelling van die Kantoor van die Ombudsman ingevolge die struktuur van die Kantoor en die vlak en getal poste nodig om die doeltreffende funksionering van die Kantoor van die Ombudsman te verseker. Die Kantoor van die Ombudsman sal sy eie begroting en kantoorruimte benodig. Vir die doeltreffendheid van die Kantoor, moet kantoorruimte geïdentifiseer en bekom word wat maklik toeganklik sal wees tot persone wat gebruik maak van openbare vervoer, fisies gestremdes en bejaardes.

Daar is 'n soortgelyke finansiële implikasies ten opsigte van die KwaZulu-Natal Provinciale Beplanningskommissie.

5. DEPARTEMENTE/ LIGGAME/ PERSONE GERAADPLEEG

Die aanvanklike bepalings van die Wetsontwerp het vir die eerste keer in 2006 die lig gesien, nadat dit geformuleer is as 'n *voorlegging* aan die KwaZulu-Natal Openbare Sektor Prokureursforum deur die Hoofdirektoraat: Staatsregsadviesdienste in die Kantoor van die Premier, KwaZulu-Natal, *slegs vir besprekingsdoeleindes* as reaksie op kwessies voortspruitend uit die KwaZulu-Natal Proses vir Rasionalisering van Wette. Hierdie 2013 weergawe van die Wetsontwerp sluit wyer kwessies in soos die KwaZulu-Natal Kantoor van die Ombudsman en die KwaZulu-Natal Provinciale Beplanningskommissie.

Die bepalings van die Wetsontwerp wat handel oor die Ombudsman (Hoofstuk 11, bestaande uit artikels 44 – 66) was geformuleer in oorlegpleging met –

- (a) *Mnr VIV Made* (Ombudsman, Kantoor van die Premier, KwaZulu-Natal), en *Mnr MC Msomi* (Algemene Bestuurder: Integriteitsbestuur, Kantoor van die Premier, KwaZulu-Natal);
- (b) die KwaZulu-Natal Provinciale Ombudsmansforum; en
- (c) die Openbare Beskermer (Nasionaal).

LET WEL: Ingevolge artikel 154(2) van die **Grondwet**, moet Nasionale- of provinsiale konsepwetgewing wat die status, instellings, bevoegdhede of werksaamhede van plaaslike regering raak gepubliseer word vir openbare kommentaar voordat dit by die Parlement of 'n Provinciale Wetgewer ingedien word op 'n wyse wat georganiseerde plaaslike regering,

munisipaliteite en ander belanghebbende persone 'n geleentheid bied om voorleggings te maak met betrekking tot die konsepwetgewing.

Omdat sekere bepalings in die voorgestelde Wetsontwerp munisipaliteite raak, word dit aanbeveel dat die Wetsontwerp gepubliseer moet word vir kommentaar soos beoog in artikel 154 (2) van die Grondwet voordat dit by die Provinciale Wetgewer ingedien word.

Dit word verder aanbeveel dat die Wetsontwerp verwys word na georganiseerde plaaslike regering in KwaZulu-Natal vir kommentaar en om oorlegpleging te inisieer voor die indiening van die Wetsontwerp by die Provinciale Wetgewer.

6. VRAE OOR WETLIKE BEVOEGDHEID VAN PROVINSIALE WETGEWER OM TE HERHAAL, HERVERKLAAR OF VERWYS NA BEPALINGS IN DIE GRONDWET EN ANDER NASIONALE WETGEWING IN PROVINSIALE WETGEWING

Hierdie vraag is oop vir bespreking.

In hierdie opsig, kan die volgende uittreksels uit die *Certification of the Constitution of the Western Cape, 1997* (Case CCT 6/97 - 1997 (4) SA 795 CC) van nut wees –

"[21] The ANC objected to the repetition in the WCC [Western Cape Constitution] of provisions in the NC [National Constitution] which relate to matters falling outside the competence of the provincial legislature ... the question still arises whether the provincial legislature has the power even to repeat such provisions in its own constitution ...

[22] What appeared in the KZN constitutional text [1996 text] was the repetition of matters which had nothing to do with provincial powers or competence. Those matters were contained principally in the bill of rights of the KZN constitutional text ... such repetition was not germane to the constitution-making process.

[23] By contrast, in the WCC all of the provisions of the NC that are repeated relate to matters which directly affect governance within the province, that is, the provincial legislature and the members of the provincial executive or legislature ... It would indeed have been difficult for the WCC to be coherent and comprehensible without the repetition of those NC provisions which form the matrix for the related provisions of the WCC. We can find no fault with such provisions.

[25] The challenged clause merely mirrors ... the source of the power ... It is not an attempt at usurpation of power such as disqualified the KZN constitutional text.".

Daar word voorgestel dat dieselfde beginsels verkondig deur die Konstitusionele Hof ten opsigte van 'n provinciale grondwet (as provinsiale wetgewing) uitgebrei kan word tot die Wetsontwerp

byderhand om te verseker dat KwaZulu-Natal, met die uitvaardiging van hierdie Wetsontwerp, beskik oor 'n volledige samestelling of kodifisering van die betrokke bepalings vir goeie regering (insluitend dié wat in die Grondwet gevind word) rakende die Provinsie in een wetgewende instrument of dokument.

Die herhaling en herverklaring in die Wetsontwerp van sommige bepalings te vinde in die Grondwet is bloot 'n "weerspieëeling van die bron van die krag" [eie vertaling] in 'n poging om 'n omvattende en samehangende dokument saam te stel sonder die bedoeling om die nasionale wetgewende bevoegdheid toe te eien.

7. KONTAKPERSONE

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CONTINUES ON PAGE 194—PART 2



KWAZULU-NATAL PROVINCE
KWAZULU-NATAL PROVINSIE
ISIFUNDAZWE SA KWAZULU-NATALI

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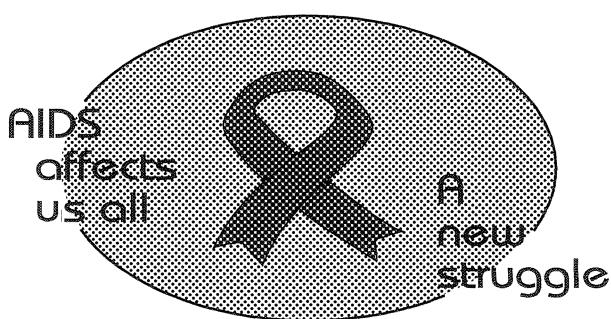
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PART 2 OF 2



No. 41**29 kuNhlaba 2013****IHHOVISI LIKANDUNANKULU**

**UKUSHICILELWA KOMTHETHOSIVIVINYO WOKUGQUGQUZELA UKUBUSA OKUHLE
WAKWAZULU-NATALI, 2013, NGOKUHAMBISANA NESIGABA 154(2)
SOMTHETHOSISEKELO WERIPHABHULIKHI YASENINGIZMU AFRIKA, 1996**

1. Ngokuhambisana nesigaba 154(2) soMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, 1996 (uMthetho No. 108 ka 1996), **uMthethosivivinyo wokuGqugquzela ukuBusa oKuhle waKwaZulu-Natali, 2013**, ngalokhu uyashicilelwa ukuze umphakathi ubeke izimvo zawo.

2. Izinhlangano zohulumeni basekhaya, omasipala nabanye abantu abathintekayo bayamenywa ukuba bathumele noma balethe izimvo zabo ezibhalwe phansi ngoMthethosivivinyo ohlongozwayo ezinsukwini ezingama-30 ngemuva kokuba ushicilelwe –

- (a) ngeposi kwi-Chief State Law Advisor, Private Bag X9037, Pietermaritzburg, 3200;
- (b) ngesandla e-3rd Floor, Moses Mabhida Building, 300 Langalibalele Street, Pietermaritzburg, Zibhekiswe ku: Adv. J Wolmarans;
- (c) ngefeksi ku (033) 394 4153;
- (d) nge-imeyili ku: jacques.wolmarans@kznpremier.gov.za.

Sikhishwe ngaphansi kweSandla sami eMgungundlovu mhla zingama-22 kuMbasu, oNyakeni weziNkulungwane eziMbili naNtathu.

DKT. ZL MKHIZE

uNdunankulu wesifundazwe saKwaZulu-Natali

UMTHETHOSIVIVNYO

WOKUGQUGQUZELA UKUBUSA OKUHLE WAKWAZULU-NATALI, 2013

UMTHETHOSIVIVINYO

Wokugqugquzel a nokuqinisekisa ukubusa okuhle nokubusa ngokubambisana esifundazweni, ukuze –

- (a) kulawulwe ubudlelwane obukhona phakathi kwamazinga ehlukene kahulumeni kanjalo nobudlelwane isiFundazwe esinabo namanye amazwe;**
- (b) kulawulwe izivumelwano zokusebenzisana namanye amazwe uHulumeni wesiFundazwe anazo noma ayingxenye yazo;**
- (c) kuhlinzekelwe imigomo yokulawula iNqubomgom o yesiFundazwe;**
- (d) kuhlinzekelwe ukwamukelwa ngokusemthethweni kweSu lokuKhula neNtuthuko lesiFundazwe kanye neSu lesiFundazwe;**
- (e) kulawulwe ukubusa okuhle kuHulumeni wesiFundazwe;**
- (f) kuhlinzekelwe ukubuyekezwa nokuphuculwa kwemithetho emva kwesikhathi esithile;**
- (g) kuhlinzekelwe imigomo yokubusa ngendlela enokubonisana nokuhlanganyela;**
- (h) kuhlinzekelwe imigomo yokuhlol a nokuqapha ukusebenza kukaHulumeni wesiFundazwe;**
- (i) kulawulwe ukubusa okuhle nokubusa ngokubambisana komasipala;**
- (j) kuhlinzekelwe, futhi kulawulwe ukwabiwa nokudluliselwa kwamandla, kwamajoka nemisebenzi komasipala;**
- (k) kuhlinzekelwe ukubuyekezwa nokuphuculwa kwemithetho yomasipala emva kwesikhathi esithile;**
- (l) kulawulwe ukubusa okuhle nokubusa ngokubambisana ebuholini bomdabu nasezikhungweni zobuholi bomdabu;**
- (m) kuhlinzekelwe ukwamukelwa ngokusemthethweni kwaSomqulu weZakhamizi uHulumeni wesiFundazwe;**
- (n) kuhlinzekelwe ukusungulwa kweHhovisi loMxazululi lesiFundazwe; futhi**
- (o) kuhlinzekelwe ukusungulwa kweKhomishana yokuhlela yesiFundazwe saKwaZulu-Natali,**

nokuhlinzekela okunye okupathelene nalokho.

ISENDLALELO

NJENGOBA –

- (a) ukuLawula koMthetho kuyisisekelo somthetho waseNingizimu Afrika;
- (b) ukuLawula koMthetho kuyiNhlinzeko eBophezelayo eqhakanjiswe kwiSahluko sokuqala nasesigabeni sokuqala soMthethosisekelo;
- (c) isigaba 1(c) soMthethosisekelo sihlinzekela “*ukuba phezu konke koMthethosisekelo nokuLawula koMthetho*”;
- (d) siphila ngaphansi kwentando yeningi esuselwa kwimigomo engokoMthethosisekelo nangokuLawula koMthetho;
- (e) sesihambe ibanga elide ukufezekisa lo mbono, kodwa kusenezinselelo eziningi esisazobhekana nazo;
- (f) “*ukuLawula koMthetho*” kumele kwehlukaniswe noma “*nokubusa ngentando yomuntu*”;
- (g) ukuhambisana nokuLawula koMthetho kusho ukuthi kumele kube nesisekelo somthetho noma negunya lomthetho lokusetshenziswa kwawo wonke amandla nokwenziwa kwayo yonke imisebenzi yisikhungo noma umsebenzi, ngamanye amazwi, ukuthi wonke amalungelo namajoka kumele asuselwe emthethweni, kumele lokho kucaciswe emthethweni, kunganciki ezimweni ezithile, emandleni okuzinqumela;

UKULANDELA le migomo engokoMthethosisekelo nokuLawula koMthetho, uHulumeni wesiFundazwe saKwaZulu-Natali, ngokuphasisa lo Mthetho, uhlose ukusungula uhlaka lomthetho nohlaka lokulawula ukuze kube nezindlela, nezinhlelo kanjalo nezinhlaka zokubusa okuhle esiFundazweni.

NGAKHO-KE MAWUMISWE yisiShayamthetho sesiFundazwe saKwaZulu-Natali, kanje:-

UKUHLELEKA KWEZIGABA

/sigaba

ISAHLUKO 1**IZINCAZELO**

1. Izincazelolo

ISAHLUKO 2**IZINHLOSO ZOMTHETHO**

2. Izinhloso zoMthetho

ISAHLUKO 3

UBUDLELWANE PHAKATHI KOHULUMENI, AMAZWE OKUXHUNYANWA NAWO,
IZIVUMELWANO NAMAZWE ANGAPHANDLE, IZIVUMELWANO NEZINHLELO
ZOKUSEBENZISANA

3. Ukubusa ngokubambisana

4. Ukusungulwa kwesigungu sokusebenzisana phakathi koHulumeni sikaNdunankulu

5. Ezinye izigungu zokusebenzisana phakathi kohulumeni zesifundazwe

6. Ukusungulwa kwezigungu zokusebenzisana phakathi kohulumeni zesifunda

7. Ijoka lokudidiyela ubudlelwane phakathi kohulumeni

8. Ukubamba iqhaza eMkhandlwini weziFundazwe kaZwelonke

9. Ukuhumana namazwe angaphandle

10. Izivumelwano namazwe angaphandle, izivumelwano nezinhlelo zokusebenzisana

ISAHLUKO 4

IMIGOMO EYIMIKHOMBANDLELA YENQUBOMGOMO YESIFUNDAZWE, YESU LOKHULA
NENTUTHUKO LWESIFUNDAZWE KANYE NESU LESIFUNDAZWE

11. Imigomo eyimikhombandlela yenqubomgomo yesifundazwe

12. Isimo semigomo eyimikhombandlela yenqubomgomo yesifundazwe

13. UMkhandlu oPhethe kumele wamukele ngokusemthethweni iSu lokuKhula neNtuthuko lesiFundazwe

14. Isikhathi, ukuqapha, ukuhlolola nokubuyekeza iSu lokuKhula neNtuthuko lesiFundazwe

15. Ukushicilelwa kweSu lokuKhula neNtuthuko lesiFundazwe

16. ISu lokuKhula neNtuthuko lesiFundazwe kumele libhekelelwe ezinhlelweni, kwizabelomali nasekusungulweni kwemithetho yeminyango ehlukahlukene

17. Isimo seSu lokuKhula neNtuthuko lesiFundazwe

18. Izinhlinzuko zesikhashana mayelana neSu lokuKhula neNtuthuko lesiFundazwe
19. UMkhandlu oPhethe kumele ucubungule futhi wamukele ngokusemthethweni iSu lesiFundazwe
20. Isikhathi, ukuqapha, ukuhlola nokubuyekeza iSu lesiFundazwe
21. Ukushicilelw kaWeSu lesiFundazwe
22. ISu lesiFundazwe kumele libhekelelw ezinhlelwani, kwizabelomali nasekusungulweni kwemithetho yeminyango ehlukahlukene
23. Isimo seSu lesiFundazwe

ISAHLUKO 5

UHULUMENI WESIFUNDAZWE

24. INhloko-hhovisi kaHulumeni wesifundazwe
25. Abasebenzi bahulumeni wesifundazwe
26. Ubuqotho nemigomo ejwayelekile elawula uhulumeni
27. Iminyango kaHulumeni wesifundazwe kumele ibuyekeze futhi iphucule imithetho
28. UHulumeni wesifundazwe nomnyango ngamunye kaHulumeni wesifundazwe kumele usungule iwebhusayithi esemthethweni

ISAHLUKO 6

UKUBUSA NGENDLELA ENOKUBONISANA NOKUHLANGANYELA

29. Imigomo yokubusa ngendlela enokubonisana nokuhlanganyela

ISAHLUKO 7

UKUQAPHA NOKUHLOLA AMAZINGA OKUSEBENZA KUHULUMENI WESIFUNDAZWE

30. Imigomo yokuqapha nokuhlol amazinga okusebenza kuhulumeni wesifundazwe

ISAHLUKO 8

UKUBUSA OKUHLE NOKUBUSA NGOKUBAMBISANA KOMASIPALA

31. Imigomo yokubusa okuhle nokubusa ngokubambisana ephathelene nomasipala
32. Ukwabiwa noma ukudluliselwa kwamandla, kwamajoka noma kwemisebenzi komasipala uNdunankulu
33. Ukwabiwa kwamandla, kwamajoka noma kwemisebenzi komasipala amalungu oMkhandlu oPhethe

34. OMasipala kumele babuyekeze futhi baphucule imithetho yomasipala
35. Amandla ezakhamizi zikamasipala okuthatha izinqumo emihlanganweni yomphakathi

ISAHLUKO 9

UKUBUSA OKUHLE NOKUBUSA NGOKUBAMBISANA EBUHOLINI BOMDABU NASEZIKHUNGWENI ZOBUHOLI BOMDABU

36. Ukuhlonishwa kobuholi bomdabu nezikhungo zobuholi bomdabu

ISAHLUKO 10

USOMQULU WEZAKHAMIZI WAKWAZULU-NATALI

37. Ukwamukelwa ngokusemhethweni kwaSomqulu weZakhamizi
38. Okuqukethwe uSomqulu weZakhamizi
39. Ukushicilelwu kwaSomqulu weZakhamizi
40. Isikhathi, ukuqapha, ukuhlola nokubuyekeza uSomqulu weZakhamizi
41. USomqulu weZakhamizi kumele ubhekelelwu ezinhlelwani, kwizabelomali nasekusungulweni kwemithetho yeminyango
42. Isimo sikaSomqulu weZakhamizi
43. Izinhlinzuko zesikhashana mayelana noSomqulu weZakhamizi

ISAHLUKO 11

IHHOVISI LOMXAZULULI LAKWAZULU-NATALI

44. Ukusungulwa kweHhovisi loMxazululi laKwaZulu-Natali
45. Izinhloso zeHhovisi loMxazululi
46. Ukuqokwa koMxazululi
47. Amandla, imisebenzi namajoka oMxazululi
48. Ukufakwa kwezikhalo kuMxazululi
49. Uphenyo lokwendlalela loMxazululi
50. Uphenyo loMxazululi
51. Ukudingidwa kophenyo neLungu loMkhandlu oPhethe noma nosodolobha kamasipala
52. Ukwephulwa komthetho noma ukuziphatha budlabha komsebenzi womnyango, kamasipala noma wohlaka lukahulumeni
53. Ukushicilelwu kwemiphumela nokwethulwa kwemibiko uMxazululi
54. Amandla oMxazululi okucela ulwazi

55. Ukunquma koMxazululi ukungaphenyi ngezinye izikhalo
56. Abasebenzi beHhovisi loMxazululi
57. Ukungafaneleki ukuqokelwa esikhundleni soMxazululi
58. Ukudalula ukuhlomula ngokwezezimali nokunye ukuhlomula koMxazululi
59. Ukumiswa okwesikhashana koMxazululi
60. Ukwesulwa nokuxoshwa koMxazululi
61. Ukuvikelwa kolwazi oluyimfihlo olugcinwe uMxazululi
62. Ukuisetshenziswa kwegama leHhovisi loMxazululi
63. Ukudluliselwa kwamandla nguMxazululi
64. Amacala ejwayelekile ngokwezinhoso zeSahluko 11
65. Izigwebo ngokwezinhoso zeSahluko 11
66. Izinhlinzezo zesikhashana mayelana noMxazululi

ISAHLUKO 12

IKHOMISHANA YOKUHLELA YESIFUNDAZWE SAKWAZULU-NATALI

67. Ukuusungulwa kweKhomishana yokuHlela yesiFundazwe saKwaZulu-Natali
68. Izinhoso zeKhomishana
69. Amandla, amajoka nemisebenzi yeKhomishana
70. Ukuubunja kweKhomishana
71. Isikhathi sokuba sesikhundleni nokuqokwa kabusha koKhomishana
72. Izikhala zomsebenzi, ukuxoshwa nokwesula koKhomishana
73. Ukumiswa okwesikhashana kukaKhomishana
74. Imihlangano nezinqubo zemihlangano yeKhomishana
75. Ukuhoxa kukaKhomishana emihlanganweni nasezinhllelweni zeKhomishana
76. Amaholo oKhomishana
77. Ukuusungulwa kwamakomidi azosiza iKhomishana
78. Ukuqokelwa kwabantu kwiKhomishana noma kumakomidi eKhomishana
79. Abasebenzi beKhomishana
80. Ukuvikelwa kolwazi oluyimfihlo olugcinwe iKhomishana
81. Ukuhlakazwa kweKhomishana
82. Ukuisetshenziswa kwegama leKhomishana
83. Ukudluliselwa kwamandla eKhomishana
84. Amacala ejwayelekile ngokwezinhoso zeSahluko 12

85. Izigwebo ngokwezinhloso zeSahluko 12
86. Izinhlinzezo zesikhashana mayelana neKhomishana

ISAHLUKO 13
IZINHLINZEKO EZEJWAYELEKILE

87. Imithethonqubo
88. Ukudluliselwa kwamandla nguNdunankulu
89. Isihloko esifingqiwe

UHLELO

Ukudalula ukuhlomula ngandlela thile umuntu OBIZELWE KWINHLOLOKHONO (Isigaba 25(2)(b))

ISAHLUKO 1
IZINCAZELO

Izincazelolo

1. Kulo Mthetho, ngaphandle uma ingqikithi isho okwehlukile –

“**Batho Pele**” kushiwo ukuhlinzekwa kwezidingo okuphuculiwe ngendlela egxile ekusebenzeleni abantu egqugquzelabasebenzi bakahulumeni ukuba bazibophezele “emgomweni” we-**Batho Pele**: “**Sizinikele, Siyanakekela, Sihlinzeke izidingo**”;

“**imigomo ye-Batho Pele**” kushiwo imigomo eyamukelwa uMnyango wemiSebenzi kaHulumeni nezokuPhatha kaZwelonke yokugquqquzelabasebenzi bahulumeni ukuba bahlinzeke izidingo ngendlela efanele, ukuba balwele ukuhlinzeke izidingo ngendlela eseizingeni eliphezulu nokuthi bazinikele njalo ekwenzeni ngcono ukuhlinzekwa kwezidingo;

“**uSomqulu weZakhamizi**” kushiwo uSomqulu weZakhamizi okukhulunywe ngawo kwiSahluko 10 (izigaba 37 – 43);

“**iKhomishana**” kushiwo iKhomishana yokuHlela yesiFundazwe saKwaZulu-Natali esungulwe ngokwesigaba 67(1);

“**uKhomishana**” kushiwo uKhomishana okukhulunywe ngaye esigabeni 70(1);

“**isikhalo**” ngokwezinhoso zesigaba 11 (izigaba 44 – 66), kushiwo isikhalo esiphathelene nanoma imuphi umsebenzi noma udaba oluyingxenye yemisebenzi yomnyango, kamasipala noma yesikhungo sikahulumeni futhi kungabandakanya izikhalo eziphathelene nokuhlinzekwa kwezidingo, nokungalandelwa kwemithetho noma ukwephulwa kwemigomo kaSomqulu weZakhamizi, ukuphatha budlabha, inkohlakalo nokukhwabanisa;

“**uMthethosisekelo**” kushiwo uMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, 1996 (uMthetho 108 ka 1996);

“**umnyango**” kushiwo umnyango kahulumeni wesifundazwe osungulwe ngokwesigaba 7(2)(b) soMthetho wemiSebenzi kaHulumeni, 1994 (Isimemezelo No .103 sika 1994), wesiFundazwe saKwaZulu-Natali futhi obalulwe oHlwini 2 loMthetho wemiSebenzi kaHulumeni, 1994: Kuncike ekutheni, ngokwezinhoso zeSahluko 11, uma uMxazululi engene esivumelwaneni esibhalwe phansi nomnyango kazwelonke onehhovisi lesifunda esiFundazweni njengoba kuhlongozwe esigabeni 5(2)(b) soMthetho wemiSebenzi kaHulumeni, 1994, igama “**umnyango**” libandakanya lowo mnyango kazwelonke ngendlela osebenza ngayo esiFundazweni;

“**imigomo eyimikhombandlela yenqubomgomoyesifundazwe**” kushiwo imigomo eyimikhombandlela yenqubomgomoyesifundazwe okukhulunywe ngayo esigabeni 11;

“**uMkhandlu oPhethe**” kushiwo uMkhandlu oPhethe esiFundazweni saKwaZulu-Natali njengoba kuhlongozwe esigabeni 132 soMthethosisekelo;

“**iGazethi**” kushiwo iGazethi yesiFundazwe saKwaZulu-Natali esemthethweni;

“inhloko yomnyango” kushiwo umuntu oqokwe njengeNhloko yoMnyango othile ngokwesigaba 12 soMthetho wemiSebenzi kaHulumeni, 1994 (Isimemezelo No. 103 sika 1994);

“iNdlu yabaHoli boMdabu yesiFunda” kushiwo iNdlu yabaHoli boMdabu yesiFunda njengoba kuchazwe esigabeni 1(1) soMthetho wobuHoli boMdabu nokuBusa waKwaZulu-Natali, 2005 (uMthetho No. 5 ka 2005);

“izinga lohulumeni basekhaya” kushiwo izinga lohulumeni basekhaya okukhulunywe ngalo esigabeni 40 soMthethosisekelo;

“iLungu loMkhandlu oPhethe elibhekele ezeziMali” kushiwo iLungu loMkhandlu oPhethe esiFundazweni saKwaZulu-Natali elibhekele ezeziMali;

“umkhandlu kamasipala” noma **“umkhandlu”** kushiwo umkhandlu kamasipala okukhulunywe ngawo esigabeni 157(1) soMthethosisekelo;

“umasipala” kushiwo umasipala okukhulunywe ngawo esigabeni 155 soMthethosisekelo, futhi osungulwe ngaphansi kwezigaba 11 no 12 zoMthetho weziNhla ka zoMasipala woHulumeni baseKhaya, 1998 (uMthetho No. 117 ka 1998), sifundwa nesigaba 3, 4 no 5 soMthetho wokuNqunywa kweziNhlobo zoMasipala, 2000 (uMthetho No. 7 ka 2000), kanti igama **“uMasipala wesiFunda”** kanye **“noMasipala woMkhandludolobha”** linencazelo efanayo;

“iHhovisi loMxazululi” kushiwo iHhovisi loMxazululi laKwaZulu-Natali elisungulwe ngokwesigaba 44(1);

“inhlangu yohulumeni basekhaya” kushiwo iNhlangu yoHulumeni baseKhaya yaKwaZulu-Natali esungulwe ngokwesigaba 2(1) soMthetho weNhlangano yoHulumeni baseKhaya, 1997 (uMthetho No. 52 ka 1997), emele iningi lomasipala esiFundazweni;

“uNdunankulu” kushiwo uNdunankulu wesiFundazwe saKwaZulu-Natali okukhulunywe ngaye esigabeni 125(1) soMthethosisekelo;

“**okunquniwe**” kushiwo okunqunywe umthethonqubo ngokwesigaba 87(1), kanti igama “**ukunquma**” linencazelo efanayo;

“**isiFundazwe**” kushiwo isiFundazwe saKwaZulu-Natali okukhulunywe ngaso esigabeni 103 soMthethosisekelo, futhi igama “**okwesifundazwe**” linencazelo efanayo;

“**uHulumeni wesiFundazwe**” kushiwo uHulumeni wesiFundazwe saKwaZulu-Natali ngaphandle uma ingqikithi isho okwehlukile, kubandakanya yonke iminyango kuHulumeni wesiFundazwe;

“**iSu lokuKhula neNtuthuko lesiFundazwe**” kushiwo iSu lokuKhula neNtuthuko lesiFundazwe (i-PGDS) okukhulunywe ngalo esigabeni 13;

“**i-Provincial Hotline**” kushiwo uphiko okubikwa kulona ngocingo izikhalo nokungagculiseki ngokuhlinzekwa kwezidingo oluseHhovisi likaNdunankulu esiFundazweni;

“**iNdlu yabaHoli boMdabu yesiFundazwe**” kushiwo iNdlu yabaHoli boMdabu yesiFundazwe njengoba kuchazwe esigabeni 1(1) soMthetho wobuHoli boMdabu nokuBusa waKwaZulu-Natali, 2005 (uMthetho No. 5 ka 2005);

“**isiShayamthetho sesiFundazwe**” kushiwo isiShayamthetho sesiFundazwe saKwaZulu-Natali okukhulunywe ngaso esigabeni 105 soMthethosisekelo esinamandla okushaya imithetho yesiFundazwe njengoba kuhlongozwe esigabeni 104(1) soMthethosisekelo;

“**iSu lesiFundazwe**” kushiwo iSu lesiFundazwe okukhulunywe ngalo esigabeni 19;

“**izinga likahulumeni wesifundazwe**” kushiwo izinga likahulumeni wesifundazwe okukhulunywe ngalo esigabeni 40 soMthethosisekelo;

“**ibhizinisi likahulumeni**” kushiwo “**ibhizinisi likahulumeni wesifundazwe**” –

- (a) njengoba kuchazwe esigabeni 1 soMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999);
- (b) elisungulelwwe isiFundazwe saKwaZulu-Natali; futhi
- (c) elibalulwe kwiNgxenye C yoHlelo 3 loMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999);

“uMvikeli woMphakathi” kushiwo isikhungo okukhulunywe ngaso esigabeni 181(1)(a) soMthethosisekelo futhi esisungulwe yisigaba 1A soMthetho woMvikeli woMphakathi, 1994 (uMthetho No. 23 ka 1994);

“imithethonqubo” kushiwo imithethonqubo esungulwe ngokwesigaba 87(1);

“lo Mthetho” kubandakanya nemithethonqubo.

ISAHLUKO 2
IZINHLOSO ZOMTHETHO

Izinhloso zoMthetho

2. Izinhloso zalo Mthetho –

- (a) ukugqugquzel nokuqinisekisa ukubusa okuhle;
- (b) ukuthola nokusebenzisa amasu adingekayo ukuphucula ukubusa;
- (c) ukuhlinzekela izinhlaka zokwenza kube nokubusa okuhle; kanye
- (d) nokusungula isisekelo somthetho negunya lomthetho mayelana nezindlela, nezinhlelo kanye nezinhlaka zokubusa okuhle,
esiFundazweni.

ISAHLUKO 3
UBUDLELWANE PHAKATHI KOHULUMENI, AMAZWE OKUXHUNYANWA NAWO,
IZIVUMELWANO NAMAZWE ANGAPHANDLE, IZIVUMELWANO NEZINHLELO
ZOKUSEBENZISANA

Ukubusa ngokubambisana

3. Njengengxene yezinga lesifundazwe kuhulumeni weRiphabhulikhi yaseNingizimu Afrika, uHulumeni wesiFundazwe kumele –

- (a) usebenze ngokulandela imigomo yokubusa ngokubambisana nobudlelwane phakathi kohulumeni ebekwe kuMthethosisekelo kukho konke ukusebenzisana onakho nohulumeni kazwelonke, nohulumeni bezinye izifundazwe nomasipala esiFundazweni;
- (b) ubambe iqhaza ezinhlakeni nasezikhungweni zokugqugquzelwa nokulungiselela ubudlelwane phakathi kohulumeni, ezsungulwe ngokoMthethosisekelo; futhi
- (c) usebenzise izinhlelo nezinquo zokuxazulula ukungaboni ngasolinye phakathi kohulumeni, ezsungulwe ngokoMthethosisekelo.

Ukusungulwa kwesiGungu sikaNdunankulu esibhekeli ubudlelwane phakathi kohulumeni

4.(1) Kunesigungu esibhekeli ubudlelwane phakathi kohulumeni sikaNdunankulu, eisisungulwe ngokwesigaba 16 soMthetho owuMkhombandela wobuDlelwane phakathi koHulumeni, 2005 (uMthetho No. 13 ka 2005), sokugqugquzelwa nokuqinisekisa ubudlelwane phakathi kukaHulumeni wesiFundazwe nohulumeni basekhaya esiFundazweni.

(2) Izigaba 17, 18, 19 no 20 zoMthetho owuMkhombandela wobuDlelwane phakathi koHulumeni, 2005, zilawula ukubunjwa, iqhaza, imihlangano nokubika kwesigungu esibhekeli ubudlelwane phakathi kohulumeni sikaNdunankulu.

Ezinye izigungu zesifundazwe ezibhekeli ubudlelwane phakathi kohulumeni

5. UNdunankulu angasungula ezinye izigungu ezibhekeli ubudlelwane phakathi kohulumeni okukhulunywe ngazo esigabeni 21 soMthetho owuMkhombandela wobuDlelwane phakathi koHulumeni, 2005.

Ukusungulwa kwezigungu ezibhekeli ubudlelwane phakathi kohulumeni zezifunda

6.(1) Kunesigungu esibhekeli ubudlelwane phakathi kohulumeni endaweni engaphansi kwesifunda ngasinye esiFundazweni, eisisungulwe ngokwesigaba 24 soMthetho owuMkhombandela wobuDlelwane phakathi koHulumeni, 2005, sokugqugquzelwa

nokulungiselela ubudlelwane phakathi kukamasipala wesifunda nomasipala basekhaya abangaphansi kwaleso sifunda.

(2) Izigaba 25, 26, 27 no 28 zoMthetho owuMkhombandlela wobuDlelwane phakathi koHulumeni, 2005, zilawula ukubunjwa, iqhaza nemihlangano yezigungu zezifunda ezibhekele ubudlelwane phakathi kohulumeni.

Ijoka lokudidiyela ubudlelwane phakathi kohulumeni

7. UNdunankulu, ngokwesigaba 37 soMthetho owuMkhombandlela wobuDlelwane phakathi koHulumeni, 2005, nguye onejoka lokuqinisa ubudlelwane phakathi kohulumeni kuHulumeni wesiFundazwe –

- (a) noHulumeni kaZwelonke; kanye
- (b) nohulumeni basekhaya esiFundazweni,

ngokuhambisana nezinhlinzezo zoMthetho owuMkhombandlela wobuDlelwane phakathi koHulumeni, 2005.

Ukubamba iqhaza eMkhandlwini weziFundazwe kaZwelonke

8. Izithunywa eMkhandlwini weziFundazwe kaZwelonke kumele zibambe iqhaza elibonakalayo eMkhandlwini ukuze ziqhakambise izifiso zesiFundazwe nezesizwe sonke ngokuhambisana nemigomo yokubusa ngokubambisana nobudlelwane phakathi kohulumeni ezibekwe kuMthethosisekelo.

Ukuxhumana namazwe angaphandle

9. Uma kuxhunyanwa –

- (a) nezithunywa;
- (b) nohulumeni;
- (c) nezinhlaka zombuso neminye imigwamanda kahulumeni;
- (d) nezinhlaka zomphakathi;
- (e) namabhizinisi azimele; noma
- (f) nabantu,

bamazwe angaphandle, uHulumeni wesiFundazwe kumele alandele uMthethosisekelo, imithetho kazwelone, inqubomgomu yokusebenzisana namazwe angaphandle nanoma imuphi omunye umgomo noma umkhombandlela kaHulumeni kaZwelone.

Izivumelwano namazwe angaphandle, izivumelwano nezinhlelo zokusebenzisana

10.(1) NgokoMthethosisekelo, ukudingidwa nokusayinwa kwezivumelwano namazwe angaphandle kuyijoka loMkhandlu oPhethe kuZwelone.

(2) Isivumelwano noma uhlelo lokusebenzisana esisayinwe uHulumeni wesiFundazwe noma egameni likaHulumeni wesiFundazwe nanoma iluphi uhlaka oluncane lwamazwe angaphandle ngenhloso yokugqugquzelu ukusebenzisana –

(a) asisho ukuthi sekunesivumelwano namazwe angaphandle;

(b) kumele siveze ngokucacile ukuthi –

(i) isivumelwano noma uhlelo lokusebenzisana akusho ukuthi sekunesivumelwano namazwe angaphandle;

(ii) ababambe iqhaza kuleso sivumelwano noma kulolo hlelo lokusebenzisana abamele umbuso noma uhulumeni kazwelone; futhi

(iii) isivumelwano noma uhlelo lokusebenzisana asibophezeli isizwe noma uhulumeni kazwelone,

ngokwanoma imuphi umthetho wamazwe omhlaba;

(c) kumele sisebenzise igama –

(i) “ababambe iqhaza” kunegama “izinhlangothi”;

(ii) “izindima” kunegama “izigaba zomthetho”;

(iii) “isivumelwano sokusebenzisana nohulumeni wesifundazwe” kunegama –

(aa) “isivumelwano sokusebenzisana”;

(bb) “amaminithi”; noma

(cc) “isivumelwano”;

(d) angeke sibe nemigomo noma nemibandela ebophezelayo ebeka amalungelo, amajoka nemisebenzi yohlangothi ngalunye olubambe iqhaza, kubandakanya nemigomo nemibandela yevezimali nezibopho mayelana nokungasebenzi kahle kanye nokungalandelwa kwemithetho;

(e) kumele sibe nezinhlinzeko mayelana nokuthi –

- (i) ababambe iqhaza kumele bazise ohulumeni bamazwe abo nganoma ikuphi ukusebenzisana abakuhlosile;
 - (ii) ababambe iqhaza kumele benze imizamo yokugqugquzel a ukuthi kube nezingxoxo mayelana nezivumelwano ezithile phakathi kohulumeni babo ukuze baphawule futhi bavumele lokho kusebenzisana okuhlosiwe, kuncike ezinhlakeni ezisetshenziswayo zomthethosikelelo, zomthetho, zemigomo nezezinqbomgomo zohulumeni bazwelonek bamazwe abo ngokwahlukana;
 - (iii) iminyango kazwelonek yalawo mazwe ebhekele inqbomgomo yamazwe angaphandle nezangaphandle, kumele yasiswe ngezivumelwano ezihlosiwe okukhulunye ngazo endimeni (ii) futhi kumele inikezwe ithuba elanele lokuphawula ngaphambi kokuba kuphothulwe futhi kusayinwe lezo zivumelwano futhi
- (f) kumele sigunyazwe noma siqinisekiswe uMkhandlu oPhethe.

(3) Isivumelwano noma uhlelo lokusebenzisana –

- (a) olusayinwe uHulumeni wesiFundazwe noma egameni lakhe nanoma iluphi uhlaka lwamazwe angaphandle;
- (b) ngemuva noma ngaphambi kokuqala kokusebenza kwalo Mthetho; futhi
- (c) esingahambisan nezinhlinzeko zesigaba (2),

asikho emthethweni.

ISAHLUKO 4

IMIGOMO EYIMIKHOMBANDLELA YENQUBOMGOMO YESIFUNDAZWE, YESU LOKHULA NENTUTHUKO LESIFUNDAZWE KANYE NESU LESIFUNDAZWE

Imigomo eyimikhombandlela yenqubomgomo yesifundazwe

11. UHulumeni wesiFundazwe kumele asungule futhi asebenzise izinqubomgomo zokugqugquzel a intando yeningi emphakathini ezincike ekuhlonishweni kwabantu, ekulinganeni nakwinkululeko, kubandakanya izinqubomgomo okuhloswe ngazo ukufeza lokhu okulandelayo –

- (a) ukugqugquzel a nokugcina inhlalakahle yabantu besiFundazwe;
- (b) ukugqugquzel a ukubekwa kwezinto obala, ukubandakanya komphakathi nokubonisana nawo;

- (c) ukuggugquzel a ukuphepha nokuvikeleka;
- (d) ukunqanda ubugebengu, ukuphatha budlabha, ukukhwabanisa nenkohlakalo, kanye nokuhlomula ngokungemthetho;
- (e) ukuggugquzel a ukungacwasani ngokobuhlanga;
- (f) ukuvikelwa noma ukuthuthukiswa kwabantu, noma kwabantu abathile, abahlukumezeka ngokucwaswa ngokungafanele;
- (g) ukuggugquzel a ukuhlonishwa kwamalungelo emiphakathi aphathelene namasiko, nenkolo kanye nolimi;
- (h) ukusimamisa nokuggugquzel a ukuthuthukiswa komnotho, kwezimboni kanye nezindawo zasemakhaya;
- (i) ukusungulwa kwamathuba emisebenzi nenhlalakahle emphakathini;
- (j) ukuggugquzel a uthando lokusebenza nemiphumela ebonakalayo;
- (k) ukuggugquzel a ukuvuselela kwezimilo;
- (l) ukuggugquzel a umnotho ogxile ekubhekeleleni izimakethe;
- (m) ukuqinisekisa ilungelo labantu lokuthola –
 - (i) izindlu ezifanele;
 - (ii) usizo lwezempi louyisisekelo;
 - (iii) ukudla namanzi okwanele;
 - (iv) ukuphepha emphakathini, kubandakanya usizo olufanele kubantu abangakwazi ukuzisiza nalabo abancike kubo;
 - (v) imfundu eyisisekelo; kanye
 - (vi) nemisebenzi eseizingeni kanye nenhlalakahle emphakathini;
- (n) isimo senhlalo lapho zonke izingane –
 - (i) zinikezw a amathuba nezinsiza zokuba zikhule ngendlela enempilo nasezimweni ezinenkululeko nokuhlonipheka;
 - (ii) zivikelwa ekuxhashazweni, ekunganakekelweni, ekuhlukunyezweni nasekulahlweni; futhi
 - (iii) zithola imfundu eyisisekelo ngaphansi kohlelo olukhethwe abazali bazo;
- (o) ukuhlelwa kabusha komhlaba;
- (p) ukuhlelwa kabusha kwezolimo, ukuthuthukiswa kwemiphakathi yasemakhaya nokuggugquzel a kwenhlalakahle kubasebenzi basemakhaya;
- (q) uhlelo lokukhokhwa kwentela nokukhokhelwa kwezidingo olungenzeleli, olusobala futhi olubhekelela ukuthi abantu banawo yini amandla okukhokha;

- (r) isimo senhlalo lapho abantu ababuthaka noma abadala –
 - (i) benakekelwa yiminden i noma okunye ukunakekelwa okufanele uma bengekho ngaphansi kweminden;
 - (ii) behlinzekwa ngokudla, ngezindawo zokuhlala, ngosizo lwezempi kanye nangosizo lwezenhlalakahle olufanele; futhi
 - (iii) bevikelwa ekuphathweni kabi, ekunganakekelweni, ekuhlukunyezweni, ekubukeleweni phansi noma ekushiyweni bodwa;
- (s) ukuvikelwa nokongiwa kwemvelo esiFundazweni, kubandakanya imvelo yasehlathini nezitshalo, ukuze kuhlomule lesi sizukulwane nesizukulwane esizayo;
- (t) ukuvikelwa nokongiwa kwamagugu emvelo, kwamagugu amasiko, kwamagugu ezindawo zezigameko zasemandulo nezakhiwo ezingamagugu ukuze kuhlomule lesi sizukulwane nesizukulwane esizayo; kanye
- (u) nokugqugquzel a nokuphucula ukuthuthukiswa kwentsha.

Isimo semigomo eyimikhombandlela yenqubomgomo yesifundazwe

12. Imigomo eyimikhombandlela yenqubomgomo yesifundazwe esigabeni 11, kuncike kuMthethosisekelo, ayivumeli ukuthi izakhamizi ziphoqe ngokomthetho uHulumeni wesiFundazwe, kodwa isiza futhi ibonisa uHulumeni wesiFundazwe uma –

- (a) enquma inqubomgomo;
- (b) ehlela, kubandakanya ukuhlelwa kwemikhakha ethile;
- (c) esungula futhi esebezisa imithetho;
- (d) nalapho eqalisa izinhlelo nemisebenzi yakhe.

UMkhandlu oPhethe kumele wemukele iSu lokuKhula neNtuthuko lesiFundazwe

13.(1) UMkhandlu oPhethe kumele –

- (a) udingide, usungule futhi wemukele iSu lokuKhula neNtuthuko lesiFundazwe (i-PGDS) oludidiyele nolusimeme; futhi
- (b) ugqugquzele, futhi uqinisekise ukubandakanya komphakathi uma kudingidwa, kusungulwa futhi kuqaliswa nalapho kubuyekezwa iSu lokuKhula neNtuthuko lesiFundazwe.

(2) iSu lokuKhula neNtuthuko lesiFundazwe kumele –

(a) lisuselwe futhi lihambisane –

(i) nemigomo eyimikhombandlela yeNqubomgomoyesiFundazwe;

(ii) neSu lesiFundazwe; kanye

(iii) namasu adidiyele entuthuko (ama-IDPs) omasipala abehlukahlukene akhona okukhulunywe ngawo emithethweni kazwelonke ethinta izinhlelo zomasipala nentuthuko (ikakhulukazi iSahluko 5 (izigaba 23 – 37) zoMthetho weziNhlaka zoMasipala woHulumeni baseKhaya, 2000 (uMthetho No. 32 ka 2000));

(b) libhekelele ngokufanele iziNjongo zeNtuthuko zeKhuluminyaka (ama-MDGs) ezihamisanayo kanjalo nalokho okuseqhulwini esifundazweni; futhi

(c) liqukathe uhlelo lokusebenza olunezimpokophelo ezicacile nezikhathi ezinqunyiwe zokuqala ukusebenza kweminyango kaHulumeni wesiFundazwe.

Isikhathi sokusebenza, ukuqapha, ukuhlola nokubuyekeza iSu lokuKhula neNtuthuko lesiFundazwe

14. UMkhandlu oPhethe kumele –

(a) unqume isikhathi sokusebenza;

(b) uqaphe ukuqaliswa;

(c) uhlole; futhi

(d) ubuyekeze,

iSu lokuKhula neNtuthuko lesiFundazwe.

UkushicilelwakweSu lokuKhula neNtuthuko lesiFundazwe

15.(1) Ngemuva kokuba uMkhandlu oPhethe wemukele iSu lokuKhula neNtuthuko lesiFundazwe, uNdunankulu kumele, ngesikhathi esifanele, ashicilele iSu lokuKhula neNtuthuko lesiFundazwe ngesaziso kwiGazethi ukuze kwaziswe umphakathi.

(2) iSu lokuKhula neNtuthuko lesiFundazwe liyoqala ukusebenza uma sekushicilelwaisaziso okukhulunywe ngaso kwisigatshana (1).

(3) UNdunankulu, ngokugunyazwa uMkhandlu oPhethe egameni likaHulumeni wesiFundazwe, nangesaziso kwiGazethi –

- (a) angachibiyela;
- (b) angashintsha; noma
- (c) angahoxisa,

iSu lokuKhula neNtuthuko lesiFundazwe.

ISu lokuKhula neNtuthuko lesiFundazwe kumele libhekelelw ezhinhlelweni, kwizabelomali nasekusungulweni kwemithetho yeminyango ehlukahlukene

16. Amalungu oMkhandlu oPhethe kumele aqinisekise ukuthi –

- (a) ISu lokuKhula neNtuthuko lesiFundazwe, kanjalo nalezi zinhlelo ezibalulwe ngokukhethekile esigabeni 13(2)(c), liyabhekelelw ezhinhlelweni zeminyango, kwizabelomali nalapho kusungulwa imithetho; nokuthi
- (b) izivumelwano zamazinga okusebenza zezinhloko zeminyango ngokwahlukana kwazo zinejoka nezikathathi ezinqunyiwe zokuqalisa izinhlelo ezibalulwe esigabeni 13(2)(c) yileyo minyango kaHulumeni wesiFundazwe njengemisebenzi noma amajoka abalulekile okuyolinganiswa ngawo amazinga okusebenza kwenhloko yomnyango ngayinye.

Isimo seSu lokuKhula neNtuthuko lesiFundazwe

17. ISu lokuKhula neNtuthuko lesiFundazwe (i-PGDS), kuncike kuMthethosisekelo, alivumeli ukuthi izakhamizi ziphoqe ngokomthetho uHulumeni wesiFundazwe, kodwa liwumhlahlandlela futhi lisiza uHulumeni wesiFundazwe uma –

- (a) enquma inqubomgommo;
- (b) ehlela, kubandakanya ukuhlelwa kwemikhakha ethile;
- (c) esungula futhi esebezisa imithetho; nalapho
- (d) eqalisa izinhlelo nemisebenzi yakhe.

Izinhlinzeko zesikhashana mayelana neSu lokuKhula neNtuthuko lesiFundazwe

18.(1) Noma iluphi iSu lokuKhula neNtuthuko lesiFundazwe elikhona elamukelwe ngaphambi kokuqala kokusebenza kwalo Mthetho, kuncike kwizinhlinzeko zesigatshana (2), lithathwa njengelamukelwe ngokusemthethweni ngokwezinhlinzeko zalo Mthetho.

(2)(a) Uhlelo lokubuyekeza iSu lokuKhula neNtuthuko lesiFundazwe okukhulunywe ngalo kwisigatshana (1) kumele luqale ukusebenza ezinyangeni eziyi-12 ngemuva kokuqala kokusebenza kwalo Mthetho.

(b) UHulumeni wesiFundazwe kumele, ezinyangeni ezingama-36 kuqale ukusebenza kwalo Mthetho, wamukele futhi ushicilele iSu lokuKhula neNtuthuko lesiFundazwe njengoba kuhlongozwe kulo Mthetho.

UMkhandlu oPhethe kumele ucubungule futhi wamukele iSu lesiFundazwe

19.(1) UMkhandlu oPhethe kumele –

- (a) ucubungule iSu lesiFundazwe elethulwe yiKhomishana futhi wamukele iSu lesiFundazwe lichitshiyelwe noma lingachitshiyelwe;
- (b) ugqugquzele, futhi uqinisekise ukubandakanya komphakathi uma kusungulwa, kuqualiswa noma kubuyekezwa iSu lesiFundazwe.

(2) ISu lesiFundazwe kumele –

- (a) libhekelele –
 - (i) izinto ezibalulekile okudingeka zifezekiswe esiFundazweni ngokweziNjongo zeNtuthuko zeKhuluminyaka (ama-MDGs);
 - (ii) ezomnotho, ezezimboni nokuthuthukiswa kwezindawo zasemakhaya;
 - (iii) ukulungiswa nokwakhiwa kwemigwaqo, kwemizila kaloliwe namachweba kanjalo nezokuxhumana;
 - (iv) ukuthuthukiswa kwezolimo nokutholakala kokudla;
 - (v) ukusetsheniswa ngendlela enenzuso kwezinsiza zemvelo kubandakanya umhlaba namanzi;
 - (vi) ukugqugquzelwa nokuthuthukiswa kwezokuvakash;
 - (vii) ukuphepha komphakathi;
 - (ix) ezokuthutha zomphakathi; kanye
 - (x) nokuthuthukiswa kwamakhono;

- (b) libhekelele, futhi lihloniphe amasu entuthuko adidiyele (ama-IPDs) omasipala avele akhona okukhulunywe ngawo emithethweni kazwelonke ethinta izinhlelo zomasipala nokuthuthukiswa komasipala; futhi
- (c) luqukathe isu lokusebenza elinezimpokophelo nezikhathi ezinqunyiwe zokuqaliswa kwemisebenzi iminyango kaHulumeni wesiFundazwe.

Isikhathi sokusebenza, ukuqapha, ukuhlola nokubuyekeza iSu lesiFundazwe

20. UMkhandlu oPhethe kumele –

- (a) unqume isikhathi sokusebenza;
- (b) uqaphe ukuqaliswa;
- (c) uhlole; futhi
- (d) ubuyekeze,

iSu lesiFundazwe.

Ukushicilelw kaWeSu lesiFundazwe

21.(1) Uma uMkhandlu oPhethe sewamukele iSu lesiFundazwe, uNdunankulu kumele, ngesikhathi esifanele, ashicilele iSu lesiFundazwe ngesaziso kwiGazethi ngenhlosa yokwazisa umphakathi.

(2) ISu lesiFundazwe liqala ukusebenza uma sekushicilelw isaziso okukhulunywe ngaso kwisigatshana (1).

(3) UNdunankulu, ngokugunyazwa uMkhandlu oPhethe egameni likaHulumeni wesiFundazwe, ngesaziso kwiGazethi –

- (a) angachibiyela;
- (b) angashintsha; noma
- (c) angahoxisa,

iSu lesiFundazwe.

ISu lesiFundazwe kumele libhekeleni, kwizabelomali nasekusungulweni kwemithetho yeminyango ehlukahlukene

22. Amalungu oMkhandlu oPhethe kumele aqinisekise ukuthi –

- (a) iSu lesiFundazwe, kanjalo nezinyathelo okukhulunywe ngazo esigabeni 19(2)(c), ziybhekelelwa ezinhlelweni, kwizabelomali nasemithethweni yeminyango ehlukahlukene; futhi
- (b) izivumelwano zamazinga okusebenza zezhinkloko zeminyango ngokwahlukana kwazo zinejoka nezikathathi ezinqunyiwe zokuqalisa izinhlelo ezibalulwe esigabeni 19(2)(c) zaleyo minyango kaHulumeni wesiFundazwe njengemisebenzi noma amajoka abalulekile okuyohlolwa ngawo amazinga okusebenza kwenhloko yomnyango ngayinye.

Isimo seSu lesiFundazwe

23. ISu lesiFundazwe, kuncike kuMthethosisekelo, alivumeli ukuthi izakhamizi ziphoqe ngokomthetho uHulumeni wesiFundazwe, kodwa liwumhlahlandlela futhi lisiza uHulumeni wesiFundazwe uma –

- (a) enquma inqubomgommo;
- (b) enquma amasu emikhakha ethile;
- (c) esungula futhi esebezisa imithetho; nalapho
- (d) eqalisa izinhlelo nemisebenzi yakhe.

ISAHLUKO 5

UHULUMENI WESIFUNDAZWE

INhlokohhovisi kaHulumeni wesiFundazwe

24.(1) Inhlokohhovisi kaHulumeni wesiFundazwe izinze eMgungundlovu.

(2) Ngenhoso yokuqinisekisa ukuhlinzekwa kwezidingo ngendlela efanele nesheshayo, iLungu loMkhandlu oPhethe ngalinye linganquma noma liyalele inhloko yomnyango kuHulumeni wesiFundazwe ukuba ivule futhi isebezise amahhovisi ahlukahlukene noma amahhovisi ezifunda ezindaweni ezifanele esiFundazweni.

Abasebenzi bahulumeni wesiFundazwe

25.(1) UHulumeni wesiFundazwe ubhekele ukuqasha, ukukhuphula ezikhundleni, ukudlulisela nokuxosha abasebenzi bahulumeni kuhulumeni wesiFundazwe ngaphansi kohlaka lwezinqubo namazinga afanayo asetshenziswa kuhulumeni.

(2)(a) UHulumeni wesiFundazwe kumele aqinisekise ukuthi bonke abantu abafanelekile abazoqashwa kuhulumeni wesiFundazwe bayabhekisiswa futhi bayahlolisawa.

(b) Noma imuphi umuntu ofanelekile ukuqashwa obizelwe kwinhlolokhono kumele, ngemuva kokuphothulwa kwenhlolokhono, agcwalise futhi asayine isibophezelo ngendlela ebekwe oHlelweni Iwalo Mthetho.

(c) UNdunankulu, ngesaziso kwGazethi futhi kusukela ngosuku olubekwe kuleso saziso –

(i) angachibiyela; noma

(ii) ashintshe,

uHlelo Iwalo Mthetho.

(3) UHulumeni wesiFundazwe kumele agqugquzele, eseke futhi enze ukuthi –

(a) kwenyuke amazinga okukhiqiza, okuhlinzekwa kwezidingo nawokusebenza;

(b) kube nohlelo lokuqequesha nokuthuthukiswa kwamakhono; futhi

(c) kwensiwe izinto ngendlela esezingeni,

kubasebenzi bakahulumeni wesiFundazwe.

Ubuqotho nemigomo ejwayelekile elawula uhulumeni

26.(1) UHulumeni wesiFundazwe kumele alawulwe ngobuqotho nangemigomo yentando yeningi eqhakambiswe kuMthethosisekelo.

(2) UHulumeni wesiFundazwe kumele, ngezinsiza anazo, athathe izinyathelo ezifanele ngenhloso yokunqanda nokulwa –

(a) nokuphatha budlabha;

(b) nokukhwabanisa nenkohlakalo; kanye

(c) nokuhlomula ngendlela engafanele.

Iminyango kaHulumeni wesiFundazwe kumele ibuyekeze futhi iphucule imithetho

27.(1) Umnyango kuHulumeni wesiFundazwe kumele, ezinyangeni eziyisithupha kusukela osukwini lokuqala kokusebenza kwalo Mthetho naminyaka yonke ngemuva kwalokho, ubuyekeze izinhlinzuko zayo yonke imithetho engaphansi kwawo ngenhloso –

(a) yokwenza izincomo kwiLungu loMkhandlu oPhethe mayelana nanoma isiphi isichibiyelo noma ukuchithwa komthetho okudingekayo noma okubonakala kudingeka ukuze kuqinisekiswe ukuthi lowo mthetho uyahambisana –

- (i) noMthethosisekelo;
- (ii) nanoma imuphi umthetho wezwe okhona, ngokwesigaba 146 – 150 soMthethosisekelo, othathwa njengomthetho omkhulu;
- (iii) neNqubomgomo kaZwelonke neyesiFundazwe;
- (iv) neSu lokuKhula neNtuthuko lesiFundazwe; kanye
- (v) neSu lesiFundazwe;

(b) yokwenza izincomo kwiLungu loMkhandlu oPhethe mayelana nanoma imuphi umthetho omusha, okungaba omkhulu noma ongaphansi kwalowo omkhulu, odingekayo noma obonakala ufanele ngokwemithetho yesifundazwe ukuze kuqinisekiswe ukuthi kusungulwa isisekelo somthemtho, igunya lomtetho nohlaka olufanele lomthetho IweNqubomgomo ekhona yesiFundazwe oluhambisana –

- (i) noMthethosisekelo;
- (ii) nanoma imuphi umthetho wezwe okhona, ngokwesigaba 146 – 150 soMthethosisekelo, othathwa njengomthetho okuyiwona osebenzayo;
- (iii) neNqubomgomo kaZwelonke neyesiFundazwe;
- (iv) neSu lokuKhula neNtuthuko lesiFundazwe; kanye
- (v) neSu lesiFundazwe; kanye

(c) nokuqinisekisa ukuhambisana nokuphuculwa kwemithetho engaphansi kwalowo nalowo mnyango.

(2) Amalungu oMkhandlu oPhethe kumele aqinisekise ukuthi izivumelwano zamazinga okusebenza zezinhloko zeminyango ngokwahlukana kwazo ziukethe izibopho zomnyango ngamunye okukhulunywe ngazo kwisigatshana (1)(a), (b) no (c) njengemisebenzi noma amajoka abalulekile okuyohlolwa ngayo ukusebenza kwenhloko yomnyango ngayinye.

UHulumeni wesiFundazwe nomnyango ngamunye kuHulumeni wesiFundazwe kumele usungule Iwebhusayithi esemthethweni

28.(1) UHulumeni wesiFundazwe nomnyango ngamunye kuHulumeni wesiFundazwe kumele –

- (a) usungule i-webhusayithi yawo esemthethweni; futhi
- (b) ufake kuleyo webhusayithi lonke ulwazi okudingeka ludalulwe emphakathini ngokwanoma imuphi umthetho.

(2) UMqondisi-Jikelele kanye nenhloko yomnyango ngayinye kumele bagcine kahle futhi bafake ulwazi olusha ngazikhathi zonke amawebhusayithi eminyango yabo.

ISAHLUKO 6

UKUBUSA NGENDLELA ENOKUBONISANA NOKUHLANGANYELA

Imigomo yokubusa ngendlela enokubonisana nokuhlanganyela

29.(1) UHulumeni wesiFundazwe kumele, ngezinsiza anazo –

- (a) abe nesiko lokubusa ngendlela egquqquzelu ukuthi uhulumeni alawule ngendlela evulelekile, enokubonisana futhi enokuhlanganyela; futhi
- (b) athathe izinyathelo ezifanele zokugquqquzelu nokuhlinzekela ukuxhumana nokubonisana nokuhlanganyela –
 - (i) komphakathi; kanye
 - (ii) nabantu noma nemikhakha ethintekayo kubandakanya phakathi kokunye –
 - (aa) osomabhizinisi nezentengiselwano;
 - (bb) osozimboni;
 - (cc) ezolimo;
 - (dd) izinhlangano ezingekho ngaphansi kukahulumeni;
 - (ee) izinhlangano zomphakathi;
 - (ff) izinhlangano zezenkolo;
 - (gg) izinhlangano nemigwamanda yezamasiko nezesintu;
 - (hh) izinhlaka noma imikhakha yomphakathi;
 - (ii) izinhlangano zomphakathi;
 - (jj) imiphilandawonye;
 - (kk) ama-ejensi entuthuko nosizo;

(ll) izinhlangano zezemidlalo noma imigwamanda emele imidlalo ehlukahlukene;

(mm) izinhlangano noma imigwamanda yemikhakha ethile; kanye

(nn) nezinhlangano ezisemthethweni noma eminye imigwamanda esemthethweni,

ezinhlelweni zikahulumeni esiFundazweni.

(2) UHulumeni wesiFundazwe –

- (a) angabonisana; futhi
- (b) emukele izimvo, izethulo, ukuphawula noma izicelo (ezenziwa ngomlomo noma ngencwadi noma ngendlela eqoshwe noma ebhalwe ngomshini) ezivela, emphakathini nakunoma imuphi umuntu noma umkhakha othintekayo mayelana nanoma iluphi udaba oluthinta –
 - (i) amasu kahulumeni;
 - (ii) inqubomgomu kahulumeni;
 - (iii) imithetho esewuhlaka noma ekhona, lapho ukuxhumana nomphakathi, nabantu abathintekayo noma nemikhakha ethile kungadingeki ngokomthetho;
 - (iv) ukutholakala nokuhlanganiswa kwemisebenzi, kwezinhlelo noma kwamajoka kahulumeni;
 - (v) ukuqaliswa kwemisebenzi, kwezinhlelo namajoka kahulumeni;
 - (vi) ukuhlolwa kwemisebenzi, kwezinhlelo namajoka kahulumeni; kanye
 - (vii) nokuhlolwa kokusebenza kukahulumeni.

(3) Uma uHulumeni wesiFundazwe ekhipha isimemo sokuba kulethwe izimvo ezibhalwe phansi, izethulo, kuphawulwe noma kulethwe izicelo mayelana nanoma iluphi udaba, kumele acacise kuleso simemo ukuthi noma imuphi umuntu ongakwazi ukubhala, angaya kumuntu osebenzela uHulumeni wesiFundazwe obhalwe kuleso simemo endaweni asebenzela kuyo nangamahora okusebenza, oyomsiza ngokubhala uvo, isethulo, ukuphawula noma isicelo.

(4) UHulumeni wesiFundazwe angabiza futhi engamele –

- (a) umhlangano noma isigcawu somphakathi;
- (b) isithangami sokubonisana esihlanganisa abantu noma umkhakha othile; futhi
- (c) abike ngemihlangano noma ngezithangami ezibanjiwe.

(5)(a) UHulumeni wesiFundazwe kumele akhiphe isaziso ngesikhathi esifanele sanoma imuphi umhlangano noma isigcawu kwabezindaba, emaphethabeni okungenani amabili afundwa kakhulu kanye nasesiteshini somsakazo.

(b) Noma imuphi umhlangano womphakathi noma isigcawu sivulelekile kwabezindaba.

(c) UHulumeni wesiFundazwe kumele athathe izinyathelo ezifanele zokulawula ukungena kanjalo nokuziphatha kwabantu emihlanganweni noma ezigcawini zomphakathi.

ISAHLUKO 7

UKUQAPHA NOKUHLOLA UKUSEBENZA KUKAHULUMENI WESIFUNDAZWE

Imigomo yokuqapha nokuhlolola ukusebenza kukahulumeni wesifundazwe

30.(1) UHulumeni wesiFundazwe kumele ngezikhathi zonke uqaphe futhi uhlole ukusebenza kwawo uma –

- (a) kuhlinzekwa izidingo;
- (b) kuqaliswa izinhlelo zawo;
- (c) kusetshenziswa amandla awo;
- (d) kwenziwa imisebenzi yavo; futhi
- (e) kufezekiswa amajoka nezibopho zawo.

ISAHLUKO 8

UKUBUSA OKUHLE NOKUBUSA NOKUBAMBISANA KOMASIPALA

Imigomo yokubusa okuhle nokubusa nokubambisana okupathelene nomasipala

31.(1)(a) Izinga lohulumeni basekhaya esiFundazweni lakhwiwe omasipala abasungulwe ngokoMthethosisekelo.

(b) Imithetho yesiFundazwe kumele inqume izinhlobo ezahlukahlukene zomasipala okumele basungulwe esiFundazweni, njengoba kuchaziwe emthethweni kazwelonke.

(2) Omasipala –

- (a) banamandla, namajoka nemisebenzi ehlongozwe kuMthethosisekelo, kubandakanya amandla, amajoka nemisebenzi njengoba kunqunywe futhi kuhlinzekelwe ngokoMthetho wePhalamende noma ngokoMthetho wesiShayamthetho sesiFundazwe; futhi

(b) bananoma imaphi amandla, amajoka nemisebenzi abajutshelwe noma abanikezwe yona njengomasipala, kulowo masipala noma kulowo mkhakha noma kulolo hlobo lukamasipala ngokoMthethosisekelo, ngokoMthetho wePhalamende noma ngokoMthetho wesiShayamthetho sesiFundazwe.

(3) Ikhono noma ilungelo likamasipala lokusebenzia amandla noma lokwenza imisebenzi yawo angeke kucindezelwe noma kuphazanyiswe.

(4) UHulumeni wesiFundazwe, ngokomthetho nangezinye izindlela, kumele eseke futhi asimamise amakhono omasipala ukuze bakwazi ukuziphathela izindaba zabo, ukusebenzia amandla abo nokwenza imisebenzi yabo.

(5) UHulumeni wesiFundazwe kumele anikeze umasipala, ngesivumelwano futhi kuncike kunoma imiphi imibandela, ukuphathwa kwezindaba ezibalulwe kwiNgxenye A yoHlelo 4 noma kwiNgxenye A yoHlelo 5 loMthethosisekelo eziphathelene nohulumeni basekhaya, uma –

- (a) lezo zindaba ziyophathwa ngendlela efanele umasipala wasekhaya; futhi
- (b) umasipala unalo ikhono lokuziphatha.

(6) Imithetho esewuhlaka yesifundazwe ethinta isimo, izikhungo, amandla noma imisebenzi yohulumeni basekhaya kumele ishicilelwwe ukuze umphakathi ubeke izimvo zawo ngaphambi kokuba yethulwe kwisiShayamthetho sesiFundazwe, ngendlela evumela ukuthi ohulumeni basekhaya, omasipala nabanye abantu abanentshisekelo bathole ithuba lokwenza izethulo mayelana nalowo mthetho osewuhlaka.

(7) UHulumeni wesiFundazwe kumele ushicilele imithetho yomasipala kwiGazethi uma kuba nesicelo esivela kumasipala.

(8) Uma umasipala esiFundazweni engakwazi noma ehluleka ukufeza izibopho eziphathelene nomsebenzi wawo ngokomthetho, uMkhandlu oPhethe ungangenelela ngokuthatha izinyathelo ezifanele ngokoMthethosisekelo, noma ngokomthetho kaZwelonke ukuze kuqinisekiswe ukuthi lezo zibopho ziyafezwa.

Ukwabiwa noma ukudluliselwa kwamandla, kwamajoka noma kwemisebenzi komasipala uNdunankulu

32.(1) UNdunankulu –

- (a) ngesimemezelo kwiGazethi;
- (b) ngokuvumelana neLungu loMkhandlu oPhethe elibhekele noma imuphi umnyango kuHulumeni wesiFundazwe;
- (c) nangemuva kokubonisana kweLungu loMkhandlu oPhethe elithintekayo –
 - (i) nohulumeni basekhaya esiFundazweni;
 - (ii) nomasipala;
 - (iii) nomasipala othile; noma
 - (iv) nomkhakha noma nohlobo oluthile lomasipala,

njengoba kungaba njalo, angaba noma adlulisele noma imaphi amandla, amajoka noma imisebenzi yalowo mnyango, kubandakanya nanoma imaphi amandla, amajoka noma imisebenzi yeNhloko noma yesikhulu noma yomsebenzi walowo mnyango, komasipala, kumasipala othile noma emkhakheni noma ohlotsheni oluthile lukamasipala.

(2) Ukwabiwa noma ukudluliselwa kwamandla ngokwesigatshana (1) kumele kuhambisane –

- (a) nokudluliselwa kwempahla, kubandakanya izimali; kanye
- (b) nokudluliselwa, nokusiswa noma nokudedelwa kwabasebenzi, njengoba kungaba njalo, abazosebenzisa lawo mandla noma benze leyo misebenzi noma lawo majoka, besuka emnyangweni eya kumasipala.

(3) Umnyango kuHulumeni wesiFundazwe okukhulunywe ngawo kwisigatshana (1) kumele usize umasipala okukhulunywe ngawo kulesi sigatshana ukuthuthukisa amakhono ukuze umasipala ukwazi ukwenza imisebenzi ojutshelwe yona noma edluliselwe kuwo okukhulunywe ngayo kulesi sigaba.

(4) UHulumeni wesiFundazwe, kubandakanya nanoma imuphi umnyango okhona kuHulumeni wesiFundazwe noma isikhulu noma umsebenzi walowo mnyango, angeke asebenzise noma imaphi amandla adluliselwe noma imisebenzi noma amajoka okukhulunywe ngawo kwisigatshana (1) endaweni engaphansi kolawulo lwalowo masipala: Kuncike ekutheni lesi sigatshana asisebenzi kunoma isiphi isikhulu noma umsebenzi kaHulumeni wesiFundazwe,

ngokwemithetho esebenzayo, odedelwe, osiselwe noma odluliselwe ukuba asebenze kulowo masipala.

(5) Ukudluliselwa kwamandla ngokwesigatshana (1) akuvimbeli umnyango noma isikhulu noma umsebenzi woMnyango ukusebenzisa lawo mandla noma ukwenza leyo misebenzi noma ukufeza lawo majoka.

Ukwabelwa komasipala imisebenzi yiLungu loMkhandlu oPhethe

33.(1) ILungu loMkhandlu oPhethe lingabela noma lidlulisele amandla noma imisebenzi okumele yenziwe yilelo Lungu loMkhandlu oPhethe ngokoMthetho wePhalamende noma ngokoMthetho wesiShayamthetho sesiFundazwe, emkhandlwini kamasipala.

(2) Ukudluliselwa okukhulunywe ngakho kwisigatshana (1) –

- (a) kumele kube ngokwesivumelwano phakathi kwalelo Lungu loMkhandlu oPhethe kanye nomkhandlu kamasipala;
- (b) kumele kuhambisane noMthetho ngendlela okusetshenziswa ngayo lawo mandla nokwenziwa ngayo leyo misebenzi; futhi
- (c) kwenzeke ngokuthi uNdunankulu akhiphe isimemezelo kwiGazethi.

Omasipala kumele babuyekeze futhi baphucule imithetho yabo

34.(1) Ngokuhambisana nesigaba 15 soMthetho weziNhlelo zoMasipala woHulumeni baseKhaya, 2000 (uMthetho No. 32 ka 2000), umkhandlu kamasipala kumele, ezinyangeni eziyisithupha kuqale ukusebenza kwalo Mthetho naminyaka yonke ngemuva kwalokho, ubuyekeze izinhlinzeko zayo yonke imithetho yomasipala elawulwa yilowo masipala ngenhoso –

- (a) yokuchibiyela noma yokuchitha okudingekayo noma okubonakala kufanele ukuze kuqinisekiswe ukuthi inhlinzeko ngayinye yomthetho kamasipala iyahambisana –
 - (i) noMthethosisekelo;
 - (ii) nanoma imuphi umthetho osebenzayo, ngokwezigaba 146 – 150 zoMthethosisekelo, ongathathwa njengomthetho omkhulu;
 - (iii) nomthetho wesiFundazwe (omkhulu nongaphansi kwawo);

- (iv) neNqubomgomu kaZwelonekwe neyesiFundazwe;
 - (v) neSu lokuKhula neNtuthuko lesiFundazwe;
 - (vi) neSu lesiFundazwe; kanye
 - (vii) neSu eliDidiyele leNtuthuko (i-IDP) elikhona nelisebenzayo lalowo masipala okukhulunye ngalo emthethweni kaZwelonekwe osebenzayo mayelana nezinhlelo zomasipala kanjalo nentuthuko;
- (b) nokuqinisekisa ukuthi imithetho yomasipala iyahambisana futhi iyaphuculwa.

(2) Umkhandlu kamasipala kumele uqinisekise ukuthi isivumelwano sokusebenza semenenja ngayinye kamasipala siqukethe izibopho okukhulunye ngazo kwisigatshana (1)(a) no (b) njengemisebenzi noma amajoka abalulekile okuyohlolwa kuqhathaniswe ngawo amazinga okusebenza kwemenenja kamasipala.

Amandla ezakhamizi zikamasipala okuthatha izinqumo emhlanganweni womphakathi

35.(1) Ngokwenhloso yokudingida nokunquma nganoma iluphi udaba oluthinta umasipala noma oluthinta izakhamizi zikamasipala, usodolobha kamasipala –

- (a) uma ecelwa ngencwadi –
 - (i) amakhansela angaphezu kwengxenye eyodwa kokuthathu yamakhansela alowo masipala;
 - (ii) izakhamizi ezingaphezu kwephesenti elilodwa lesibalo sezakhamizi ezibhaliswe njengabavoti balowo masipala;
 - (iii) izakhamizi ezingama-50 ezibhaliswe njengebavoti ngaphansi kwalowo masipala;
- noma ikuphi okungaba nesibalo esikhulu kunokunye; futhi
- (b) kumele, uma eyalelw –
 - (i) ngesivumelwano somkhandlu kamasipala; noma
 - (ii) ngencwadi yiLungu loMkhandlu oPhethe elibhekeli ohulumeni basekhaya, ngesaziso esishicilelwem maphephandabeni okungenani amabili afundwa kakhulu emphakathini ongaphansi kwalowo masipala, angabiza umhlangano wezakhamizi ezibhaliswe njengabavoti ngaphansi kwalowo masipala ngosuku nangesikhathi esibekwe kuleso saziso: Kuncike ekutheni, leso isaziso kumele sicacise ukuthi iluphi udaba noma izindaba ezizokwethulwa noma ezizodingidwa kulowo mhlangano.

(2) Yonke imihlangano ehlongozwe kwisigatshana (1) ivulelekile kwabezindaba.

(3) Isibalo sabangabamba umhlangano obizwe ngokwesigatshana (1) abantu abangama-50 abayizakhamizi ezibhalise njengabavoti kulowo masipala.

(4) Usodolobha kumele engamele umhlangano futhi kumele enze zonke izinhlelo ezidingekayo ukuze konke kuhambe kahle, kubandakanya ukuthathwa kwamaminithi alowo mhlangano nokuqinisekisa ukuthi izakhamizi ezibhalise njengabavoti balowo masipala kuphela ezibamba iqhaza: Kuncike ekutheni usodolobha angavumela umsebenzi womkhandlu noma omunye umuntu ukuba abe yingxene yalowo mhlangano ngenhoso yokuthi asize ngolwazi mayelana nanoma iluphi udaba oludingidwayo emhlanganweni.

(5)(a) Yonke imibuzo ebuzwayo emhlanganweni iyonqunywa yiningi lezakhamizi ezibhaliswe njengabavoti futhi ezikhona emhlanganweni.

(b) Kuyovotwa ngokuthi kuphakanyiswe izandla.

(c) Isimemezelo sikasodolobha mayelana nemiphumela yokuvota kanjalo nokuqoshwa kwayo emaminithini omhlangano kungubufakazi obuphelele banoma isiphi isinqumo esithathiwe noma banoma imuphi umbuzo obuziwe emhlanganweni.

(d) Usodolobha kumele ngemuva kwalokho athumele amaminithi omhlangano nazo zonke izinqumo ezithathiwe emkhandlwini kamasipala ukuze uzcubungule.

(6) Umkhandlu kamasipala kumele, ngesikhathi esifanele, ucubungule zonke lezo zinqumo futhi –

(a) unga –

- (i) qinisekisa;
- (ii) guqula;
- (iii) chibiyela; noma
- (iv) beka eceleni,

noma isiphi kulezo zinqumo;

(b) kumele unlikeze izizathu uma uguqula, uchibiyela noma ubeka eceleni leso sinqumo; futhi

(c) kumele, uma uvemelana nanoma isiphi isinqumo, ngesikhathi esifanele ufezekise noma uqalise leso sinqumo sengathi isinqumo esithathwe umkhandlu kamasipala.

(7) Zonke izindleko eziphathelene –

- (a) nemihlangano ebanjwe ngokwalesi sigaba; kanye
- (b) nokufezekiswa noma nokuqaliswa kwesinqumo esihlongozwe kwisigatshana (6)(c), kumele zikhokhwe umasipala.

(8) Ngokwezinhloso zalesi sigaba –

- (a) amagama “**isakhamuzi**” noma “**izakhamizi**” anencazelo ayinikezwe esigabeni 1 soMthetho weziNhlelo zoMasipala woHulumeni baseKhaya, 2000 (uMthetho No. 32 ka 2000); futhi
- (b) amagama “**ababhaliswe njengabavoti**” kushiwo abavoti ababhalise njengabavoti ohlwini Iwabavoti lukamasipala ezifundeni zokuvota ezingaphansi kukamasipala njengoba kuhlongozwe esigabeni 5 soMthetho woKhetho koMasipala woHulumeni baseKhaya, 2000 (uMthetho No. 27 ka 2000), kanti amagama “**umvoti**”, “**uhlu Iwabavoti**” kanye “**nezifunda zokuvota**” ancazelo okunikezwe yona esigabeni 1 salowo Mthetho.

ISAHLUKO 9

UKUBUSA OKUHLE NOKUBUSA NGOKUBAMBISANA EBUHOLINI BOMDABU NASEZIKHUNGWENI ZOBUHOLI BOMDABU

Ukuhlonishwa kobuholi bomdabu nezikhungo zobuholi bomdabu

36.(1) Isikhungo, isimo kanye neqhaza lobuholi bomdabu ngokomthetho wesintu kuyahlonishwa, kuncike –

- (a) kuMthethosisekelo; kanye
- (b) nasohlakeni lomthetho kaZwelone olusebenzayo kwezobuholi bomdabu nokubusa.

(2) Umthetho wesiFundazwe kumele uhlizzekele –

- (a) ukuhlonishwa kwemiphakathi yomdabu;
- (b) ukusungulwa nokubunjwa kwemikhandlu yomdabu, kubandakanya –
 - (i) amaqhaza, amandla namajoka ayo; kanye
 - (ii) ubudlelwane bayo nomasipala;
- (c) ukuhlonishwa kobuholi bomdabu, kuncike kuMthethosisekelo nomthetho kaZwelone, kanjalo –
 - (i) namaqhaza, namandla, nemisebenzi namajoka obuholi bomdabu;

- (ii) nobudlelwane phakathi kobuholi bomdabu nomasipala; kanye
- (iii) nokusebenzisana phakathi kobuholi bomdabu nemikhandlu yomasipala;
- (d) ukusungulwa nokubunjwa kweNdlu yabaHoli boMdabu yesiFundazwe, kubandakanya amaqhaza, amandla, imisebenzi namajoka eNdlu yabaHoli boMdabu yesiFundazwe; kanye
- (e)okusungulwa nokubunjwa kweziNdlu zabaHoli boMdabu zeziFunda kubandakanya amaqhaza, amandla, imisebenzi namajoka eziNdlu zabaHoli boMdabu zeziFunda.

ISAHLUKO 10

USOMQULU WEZAKHAMIZI WAKWAZULU-NATALI

Ukwamukewa kwaSomqulu weZakhamizi

37. UHulumeni wesiFundazwe kumele –

- (a) wamukele uSomqulu weZakhamizi njengombhalo obophezelelayo okhishwe uHulumeni wesiFundazwe futhi ohlonishwa uHulumeni wesiFundazwe nezakhamizi ezihlala esiFundazweni njengohlelo okumele lusetshenziswe ukwazisa izakhamizi esiFundazweni ukuthi ikuphi okumele zikulindele kuHulumeni wesiFundazwe mayelana namazinga namaqophelo emisebenzi ezihilinzekwa yona noma izidingo ezizilethelwa uHulumeni wesiFundazwe; futhi
- (b) agqugquzele, futhi aqinisekise ukuthi umphakathi ubamba iqhaza ezingxoxweni, ekusungulweni, ekuqalisweni nasekubuyekezweni kwaSomqulu weZakhamizi.

Okuqukethwe uSomqulu weZakhamizi

38. USomqulu weZakhamizi kumele –

- (a) uhambisane –
 - (i) noMthethosisekelo;
 - (ii) nanoma imuphi umthetho osebenzayo kazwelonke, ngokwezigaba 146 – 150 zoMthethosisekelo, ongathathwa njengomthetho omkhulu;
 - (iii) nomthetho wesiFundazwe;
 - (iv) neNqubomgomu yesiFundazwe nekaZwelonke;
 - (v) neSu lokuKhula neNtuthuko lesiFundazwe; kanye
 - (vi) neSu lesiFundazwe;

- (b) usebenze kuyona yonke imisebenzi ehlizekwa nezidingo ezilethwa uHulumeni wesiFundazwe;
- (c) unqunywe ngokubambisana nangokubonisana phakathi kwezakhamizi zesiFundazwe noHulumeni wesiFundazwe;
- (d) uveze ngokusobala –
 - (i) amajoka nezibopho zikaHulumeni wesiFundazwe mayelana namazinga namaqophelo emisebenzi ehlizekwayo noma izidingo ezilethwayo uHulumeni wesiFundazwe; kanye
 - (ii) namalungelo namajoka ezakhamizi zesiFundazwe; futhi
- (e) ushicilelw ukuze kutholakale izimvo zomphakathi ngaphambi kokuba wamukelwe ngokusemthethweni uMkhandlu oPhethe egameni likaHulumeni wesiFundazwe, ngendlela enikeza izinhlaka zombuso, umphakathi kanye nabanye abantu abathintekayo ithuba lokwenza izethulo mayelana noSomqulu weZakhamizi osewuhlaka.

Ukushicilelw kwaSomqulu weZakhamizi

39.(1) Ngemuva kokugunyazwa kokwamukelwa kwaSomqulu weZakhamizi uMkhandlu oPhethe egameni likaHulumeni wesiFundazwe, uNdunankulu kumele ashicilele uSomqulu weZakhamizi ngesaziso kwiGazethi ngesikhathi esifanele ukuze kwaziswe umphakathi.

(2) USomqulu weZakhamizi uqala ukusebenza uma sekushicilelw isaziso okukhulunywe ngaso kwisigatshana (1).

(3) UNdunankulu, ngesaziso kwiGazethi ngemuva kokubonisana nangemuva kokushicilela uSomqulu weZakhamizi ukuze kutholakale izimvo zomphakathi okukhulunywe ngazo ezindimeni (c) no (e) zesigaba 38 nangemuva kokugunyazwa uMkhandlu oPhethe egameni likaHulumeni wesiFundazwe –

- (a) angachibiyela;
- (b) angashintsha; noma
- (c) angahoxisa,

uSomqulu weZakhamizi.

Isikhathi, ukuqapha, ukuhlola nokubuyekezwa kwaSomqulu weZakhamizi

40. UMkhandlu oPhethe kumele –

- (a) unqume isikhathi sokusebenza;
- (b) uqaphe ukuqaliswa;
- (c) uhlole; futhi
- (d) ubuyekeze,

uSomqulu weZakhamizi.

USomqulu weZakhamizi kumele ubhekelelw ezhinhlelweni, kwizabelomali nasemithethweni yeminyango

41. Amalungu oMkhandlu oPhethe kumele aqinisekise ukuthi –

- (a) uSomqulu weZakhamizi, namaSu oKwenza Ngcono ukuHlinzekwa kweziDingo eminyango, ayabhekelelw ezhinhlelweni, kwizabelomali nasemithethweni yeminyango; futhi
- (b) izivumelwano zamazinga okusebenza zezinhloko zeminyango ngokwehlukana kwayo ziukethe izinjongo nezikhathi zokuqalisa amaSu oKwenza Ngcono ukuHlinzekwa kweziDingo alowo mnyango kuHulumeni wesiFundazwe njengemisebenzi noma njengamajoka abalulekile okuyohlolwa ngayo ukusebenza kwenhloko yomnyango ngayinye.

Isimo sikaSomqulu weZakhamizi

42.(1) Izakhamizi ezihlala esiFundazweni zingakwazi ukuphoqa ngokomthetho uHulumeni wesiFundazwe ukuba ahloniphe uSomqulu weZakhamizi.

(2)(a) Izakhamizi zingafaka izikhalo mayelana nokungahlonishwa, noma mayelana nokwephulwa kwemiyalelo kaSomqulu weZakhamizi kuMxazululi ukuze kwenziwe uphenyo.

(b) UNdunankulu angagqugquzelaphinde ahlele ezinye izinhlelo ezifanele nezingabizi zokuthi izakhamizi zikwazi ukubika ngoHulumeni wesiFundazwe.

(3) Ngokwezinhloso zalesi sigaba, “izakhamizi” kubandakanya wonke umuntu ohlala esiFundazweni noma okhona esiFundazweni noma ngabe unesikhathi esingakanani.

Izinhlinzuko zesikhashana mayelana noSomqulu weZakhamizi

43.(1) Noma imuphi uSomqulu weZakhamizi okhona owamukelwa ngaphambi kosuku lokuqala kokusebenza kwalo Mthetho, ngokwesigatshana (2), uthathwa njengowamukelwe ngokusemthethweni ngokwezinhlinzuko zalo Mthetho.

(2)(a) Uhlelo lokubuyekeza uSomqulu weZakhamizi okukhulunywe ngawo kwisigatshana (1) kumele luqale ezinyangeni ezintathu ngemuva kokuqala kokusebenza kwalo Mthetho.

(b) UHulumeni wesiFundazwe kumele, ezinyangeni eziyi-12 ngemuva kokuqala kokusebenza kwalo Mthetho, wamukele ngokusemthethweni futhi ushicielele uSomqulu weZakhamizi njengoba kuhlongozwe kulo Mthetho.

ISAHLUKO 11**UMXAZULULI WESIFUNDAZWE SAKWAZULU-NATALI****Ukusungulwa kweHhovisi IoMxazululi IaKwaZulu-Natali**

44.(1) Ngalokhu kusungulwa iHhovisi IoMxazululi IaKwaZulu-Natali, ngemuva kwalokhu elizobizwa ngeHhovisi IoMxazululi.

(2) IHhovisi IoMxazululi aliyena umuntu ngokomthetho.

(3)(a) Mayelana nokusebenza, nangokwesabelomali nangokulawulwa kwezimali, iHhovisi IoMxazululi lingaphansi kweHhovisi likaNdunankulu kuHulumeni wesiFundazwe.

(b) UMqondisi-Jikelele kaHulumeni wesiFundazwe uyena isikhulu esinesibopho sokubika eHhovisi IoMxazululi.

Izinhloso zeHhovisi IoMxazululi

45. Izinhloso zeHhovisi IoMxazululi –

(a) ukuphenya ngezikhalo ezibhekiswe eminyangweni, komasipala nasezinhlakeni zikahulumeni;

(b) ukugqugquzelu nokukhuthaza ukuhlinzekwa kwezidingo; kanye

(c) nokugqugquzelu isiko lokuhlonishwa –

(i) kwemigomo ye-Batho Pele; kanye

(ii) noSomqulu weZakhamizi,
abasebenzi bahulumeni esiFundazweni.

Ukuqokwa koMxazululi

46.(1)(a) UNdunankulu kumele, ngemuva kokulandela uhlelo olusobala lokukhangisa, aqoke uMxazululi waKwaZulu-Natali, ngemuva kwalokhu ozobizwa ngoMxazululi.

(b) UMxazululi kumele kube isakhamuzi saseNingizimu Afrika esingumuntu okufanele nokulungele ukuphatha leso sikhundla, futhi –

- (i) owemukelwe njengommeli wasemajajini noma njengommeli waseNkantolo ePhakeme yaseNingizimu Afrika futhi eminyakeni okungenani eyishumi eyedlule obekade esebenza njengommeli wasemajajini noma njengommeli;
- (ii) ongemukelwa njengommeli wasemajajini noma njengommeli futhi, eminyakeni eyishumi eyedlule obengemukelwa kanjalo, ofundise umthetho esikhungweni semfundo ephakeme;
- (iii) eminyakeni okungenani eyishumi eyedlule, oqokelele ulwazi noma isipiliyon'i mayelana nokuphatha kwezobulungiswa, kuhulumeni noma nokuphathwa kwezimali zikahulumeni;
- (iv) eminyakeni okungenani eyishumi eyedlule, obeyilungu lePhalamende noma lesiShayamthetho sesiFundazwe; noma
- (v) oqokelele isipiliyon'i sakho konke okubalulwe endimeni (i) kuya ku (iv) eminyakeni eyishumi eyedlule.

(2) UMxazululi uqokelwa esikhundleni iminyaka engeqile kweyisihlanu, kanti angaphinde aqokwe elinye ihlandla elingeqile eminyakeni emihlanu.

(3)(a) Ukuqokwa koMxazululi kuncike ekusayinweni kwesivumelwano esibhalwe phansi sokusebenza phakathi kwakhe noNdunankulu.

(b) UNdunankulu noMxazululi, ngokubhalwe phansi nangesivumelwano, bangachibiyela isivumelwano sokusebenza.

(c) UMxazululi angeke, ngaphandle uma egunyazwe ngencwadi uNdunankulu, enze noma imuphi omunye umsebenzi oholelayo ngaphandle komsebenzi wakhe osemthethweni.

(4) UNdunankulu, ngale kwezinhlinzezo zesigatshana (1)(a), angasebenzisa usizo lomuntu odluliselwe noma osisiwe ngokuhambisana nezinhlinzezo zoMthetho wabaSebenzi bakaHulumeni, 1994 (Isimemezelo No. 103 sika 1994).

(5)(a) UMxazululi kumele azimele futhi engenzeleli kanti kumele enze umsebenzi wakhe, asebenzise amandla akhe, afeze namajoka akhe ngokulandela uMthethosisekelo nomthetho kuphela.

(b) UMxazululi unamandla namagunya anikezwe wona ngokwalesi sahluko ngokwenhloso yokuqinisekisa ukuzimela nokungenzeleli uma esenza imisebenzi yakhe futhi esebezisa amandla akhe.

(c) Yonke iminyango, omasipala nezinhlaka zombuso kumele bahlinzeke ngosizo olungase ludingeke ukuze kuvikelwe ukuzimela, ukungenzeleli, isithunzi kanye nokusebenza koMxazululi uma enza imisebenzi yakhe futhi esebezisa amandla akhe.

(d) UMxazululi nanoma iliphi ilungu leHovisi oMxazululi angeke libophezeleke kunoma yini eyenziwe ngezinhloso ezinhle ngaphansi kwezinhlinzezo zalo Mthetho noma zoMthethosisekelo.

Amandla, imisebenzi namajoka oMxazululi

47.(1) UMxazululi kumele –

(a) aphene noma isiphi isikhalo esiphathelene –

- (i) nokuhlinzekwa kwezidingo;
- (ii) nokungalandelwa noma nokungahlonishwa kwaSomqulu weZakhamizi;
- (iii) nokuphatha budlabha;
- (iv) nenkohlakalo; noma
- (v) nokukhwabanisa,

esivele ngemuva noma ngaphambi kokuqala kokusebenza kwalo Mthetho, emnyangweni, kumasipala noma ohlakeni lombuso, isikhalo esifakiwe kuMxazululi esiphathelene nawo;

(b) aziphenyele yena ngokwakhe noma uma ethola isikhalo, mayelana nanoma iziphi izinsolo –

- (i) zokuphatha budlabha mayelana nezindaba zikahulumeni ezingeni lesifundazwe noma lohulumeni basekhaya;

- (ii) zokusetshenziswa budlabha noma ngendlela engafanele kwamandla noma zokuphatha ngendlela engamukelekile, engaqondakali, engenanhlonipho noma engafanele noma ngokwehluleka komuntu ukwenza umsebenzi wakhe ngesikhathi;
- (iii) zesenko esingafanele, sokunethembeki noma sokungenzi okuthile noma senkohlakalo mayelana nezimali zomphakathi;
- (iv) zokuzicebisa okungafanele nokungekho emthethweni, noma zokwenzelelwa okungafanele noma zokwethenjiswa ukuceba noma ukwenzelelwa umuntu ngenxa yokwenza noma yokungenzi okuthile kuhulumeni noma ezindabeni zikahulumeni ezingeni likahulumeni wesifundazwe noma umuntu owenza umsebenzi kahulumeni;
- (v) nanoma isiphi isenzo noma ukungenzi okuthile komuntu oqashwe uhulumeni ezingeni lesifundazwe, ezingeni lohulumeni basekhaya noma umuntu owenza umsebenzi kahulumeni, okuholela ekucindezelweni komunye umuntu;
- (c) asungule futhi agcine kahle izindlela zokuxhumana namahhovisi abaxazululi beminye iminyango ngenhloso yokuqinisekisa ukuthi –
 - (i) kunokuhambisana nokusebenzisana mayelana namajoka alawo mahhovisi abaxazululi ahlukahlukene; futhi
 - (ii) akuphindaphindwa umsebenzi mayelana nemisebenzi eyenziwa amanye amahhovisi abaxazululi ahlukahlukene;
- (d) adidiyele imisebenzi yawo wonke amahhovisi abaxazululi eminyango, omasipala nawezinhlaka zombuso esiFundazweni;
- (e) alawule *i-Provincial Hotline*;
- (f) ahambele zonke iziMbizo zikaMengameli nezesiFundazwe ezibanjwe esiFundazweni ngezinhlolo zokuzitholela mathupha imininingwane mayelana nezikhalo noma nezimvo zezakhmizi mayelana nokuhlinzekwa kwezidingo uHulumeni wesifundazwe; futhi
- (g) asungule ihhovisi esifundeni ngasinye nakumasipala womkhandludolobha ngenhloso yokuzama ukufinyelela kuzona zonke izakhmizi esiFundazweni ukuze afezekise ajutshelwe kona.

(2) UMxazululi –

- (a) ngokubona kwakhe, angaphenya noma isiphi isikhalo esiphathelene –
 - (i) nokuhlinzekwa kwezidingo;

- (ii) nokungalandelwa noma nokungahlonishwa kwaSomqulu weZakhamizi;
 - (iii) nokuphatha budlabha;
 - (iv) nenkohlakalo; noma
 - (v) nokukhwabanisa,
- esivele ngaphambi noma ngemuva kokuqala kokusebenza kwalo Mthetho, soMnyango, sikamasipala noma sohlaka lombuso;
- (b) ngokuthola imvume ebalwe phansi kuqala kuNdunankulu, angangena esivumelwaneni noma ohlelweni lapho uMxazululi engaphenya khona isikhalo esihlongozwe endimeni (a) mayelana nomnyango kaHulumeni kaZwelonke onamahhovisi esiFundazweni;
 - (c) angakhipha umyalelo wokuba kulandelwe umthetho obhekiswe emnyangweni, kumasipala noma ohlakeni lombuso uma isikhalo esimayelana nalowo mnyango, nalowo masipala noma nalolo hlaka lombuso singacutshungulwa ngesikhathi esifanele;
 - (d) angenza izincomo kuHulumeni wesiFundazwe, kuNdunankulu, eMkhandlwini oPhethe noma kwisiShayamthetho sesiFundazwe, mayelana nezindaba ezithinta ukugqugquzelwa nokwenziwa ngcono kokuhlinzekwa kwezidingo esiFundazweni;
 - (e) angangena ezivumelwaneni nanoma imuphi umuntu onolwazi olunzulu emkhakheni othile, ukuse asize noma eluleke uMxazululi mayelana nanoma iluphi udaba oluphathelene nezinhoso zakhe, namandla akhe, nemisebenzi yakhe kanye namajoka akhe; futhi
 - (f) angenza noma yini edingekayo ukuze afezekise izinhoso zalesi Sahluko.

Ukufakwa kwezikhalo kuMxazululi

48.(1) Noma ubani onesikhalo ngomnyango, ngomasipala noma ngohlaka lombuso, angafaka leso sikhalo sakhe kuMxazululi.

(2) Isikhalo okukhulunywe ngaso kwisigatshana (1) singafakwa ngomlomo noma ngencwadi.

(3) Uma isikhalo senziwe ngomlomo kuMxazululi, uMxazululi angasibhala phansi leso sikhalo noma acele ofaka isikhalo ukuba asibhale phansi futhi, uma uMxazululi ecele lokho, uyolinda kuze kube ofaka isikhalo ubhala isikhalo sakhe phansi ngaphambi kokuba aqhubeke nophenyo.

(4) Isikhalo –

- (a) kungaba isikhalo esisodwa, esilethwe umuntu oyedwa, esiphathelene nesikhalo noma nesicelo esithile;
- (b) kungaba isikhalo senhlangano, okuyisikhalo esisodwa esivela enhlanganweni noma kumuntu othunywe yinhlangano ukuba alethe leso sikhalo, esiphathelene nesikhalo noma nesicelo esithile;
- (c) kungaba isikhalo esihlanganye, esisayinwe abantu abehlukene ngokuhlanganyela, esiphathelene nesikhalo noma nesicelo esithile;
- (d) kungaba yisikhalo sabantu abanigi noma abayiqembu, esihlanganisa izikhalo noma izicelo ezahlukene eziningi, esiphathelene nezikhalo ezifanayo noma ezicishe zifane; noma
- (e) kungaba esingabhaliwe ukuthi siphuma kubani.

(5) Isikhalo singafakwa umuntu –

- (a) egameni lakhe;
- (b) egameni lomunye umuntu, ngasizathu simbe, ongeke akwazi yena ukuzifakela isikhalo egameni lakhe;
- (c) njengelungu, noma egameni leqembu noma labantu abathile; noma
- (d) egameni lomphakathi.

(6) Isikhalo, kuncike kwisigatshana (7), singaba mayelana nanoma iluphi udaba –

- (a) olungaphansi kolawulo IwesiShayamthetho sesiFundazwe oluhlongozwe kwisigaba 104 soMthethosisekelo;
- (b) olungaphansi kolawulo lukaNdunankulu wesiFundazwe oluhlongozwe kwisigaba 125 soMthethosisekelo;
- (c) olunikezwe noma oludluliselwe kwiLungu IoMkhandlu oPhethe ngokwezigaba 128, 132(2), 137 noma 138 zoMthethosisekelo; noma
- (d) oluthinta ukuqapha kukahulumeni wesiFundazwe nokungenelela kohulumeni basekhaya okuhlongozwe esigabeni 139 soMthethosisekelo.

(7) UMxazululi kumele angasamukeli isikhalo –

- (a) esingangeni ohlwini Iwezinto ezihlongozwe kwisigatshana (6);

- (b) esithinta udaba olusezithebeni zenkantolo yomthetho noma zesinye isigungu esihlongozwe kuMthethosisekelo;
- (c) esithinta ukuboshwa nokugwetshwa yinkantolo yomthetho komuntu ukuba abhadle ejele; noma
- (d) esithinta udaba, olungaphansi kweKhomishana yophenyo, esungulwe ngokoMthetho wamaKhomishana KwaZulu-Natali, 1999 (uMthetho No. 3 ka 1999).

(8) UMxazululi angenqaba ukwamukela isikhalo –

- (a) esingazwakali;
- (b) kuncike kwisigatshana (3), esingenawo amagama nemininingwane yokuxhumana eqondile yommangali, futhi esingavezi igama lenhlangano noma labantu isikhalo esifakwa egameni labo;
- (c) uma kudingeka ukuba sibhalwe phansi ngokwesigatshana (3), esingasayinwanga ofaka isikhalo, ngaphandle uma ofaka isikhalo engakwazi ukubhala futhi –
 - (i) efake uphawu kuleso sikhalo njengophawu olusemthethweni lokuthi uyena ofake isikhalo; futhi
 - (ii) lolo phawu lufakwe phambi kofakazi ababili abakwaziyo ukubhala futhi ngokusayina leso sikhalo, abaqinisekisayo uphawu lolo lufakwe ofaka isikhalo;
- (d) esimayelana ngodaba oseluke lwacutshungulwa uMxazululi, ngaphandle uma isikhalo sinemininingwane emisha engaba nomthelela kwimiphumela yokucutshungulwa kodaba;
- (e) esibhalwe ngendlela ehlambalazayo noma esinamagama alumelayo; noma
- (f) esikhulumu ngodaba ofaka isikhalo angalwethula ohlakeni olufanele uma luhkona ngaphakathi emnyangweni, kumasipala noma ohlakeni lombuso, noma uma ofaka isikhalo eselwethulile udaba ohlakeni olufanele kodwa ngokubona koMxazululi, uhlaka olufanele lunganikezwanga isikhathi esanele sokucubungula udaba.

Uphenyo lokwendlalela IoMxazululi

49. Uma sekufakwe isikhalo kuMxazululi mayelana nomnyango, nomasipala noma nohlaka lombuso, uMxazululi angenza uphenyo lokwendlalela nenhloko yomnyango, nemenenja kamasipala noma nesiKhulu esiPhezulu sohlaka lombuso ngenhloso yokuthi udaba luxazululwe ngomlomo ngokushesha.

Uphenyo IoMxazululi

50.(1) UMxazululi kumele, ngaphambi kokuqala uphenyo ngokwalesi sahluko, azise inhloko yomnyango, imenenja kamasipala noma isiKhulu esiPhezulu sohlaka lombuso, njengoba kungaba njalo, mayelana nesikhalo nokuthi kuzophenywa ngaleso sikhalo.

(2) UMxazululi, ngaphambi kokuqala uphenyo ngesikhalo, anganikeza umnyango, umasipala noma uhlaka lombuso isikhathi esithile sokuba babhekane naleso sikhalo.

(3) Indlela nenqubo okumele ilandelwe uma sekwenziwa noma iluphi uphenyo kumele inqunywe uMxazululi ngokubhekelela izimo zesikhalo ngasinye: Kuncike ekutheni lonke uphenyo olwenziwe ngokwalesi sahluko kumele lwenziwe ngasese futhi lube yimfihlo.

(4) Ngokwezinhloso zokuqhube uphenyo ngokwalesi sahluko, uMxazululi angathola imininingwane kubantu, futhi angabiza izigcawu ngendlela abona ifanele ngokubhekelela izinsolo, amaqiniso nezimo.

(5) Asikho isidingo sokuba ofaka isikhalo noma omunye umuntu anikezwe ithuba lokuvela phambi koMxazululi noma komunye umuntu mayelana nophenyo olwenziwa uMxazululi: Kuncike ekutheni uMxazululi angangawenza umbiko mayelana nophenyo ngokwalesi sahluko lapho ebeka khona izimvo eziveza noma ezikhombisa ukugxeka umnyango, umasipala noma uhlaka lombuso, noma umuntu, ngaphandle uma, ngaphambi kokuphuthulwa uphenyo –

(a) enikeze umnyango, umasipala noma uhlaka lombuso oluphenwayo ithuba lokuvela phambi kwakhe, lwenze izethulo ngomlomo noma ngencwadi mayelana nodaba, uma izimvo ziphathelene nomnyango, nomasipala noma nohlaka lombuso; noma

(b) enikeze umuntu ithuba lokuvela phambi kwakhe enze izethulo ngomlomo noma ngencwadi mayelana nodaba, uma izimvo ziphathelene nomuntu.

Ukudingidwa kophenyo neLungu IoMkhandlu oPhethe noma noSodolobha kamasipala

51. UMxazululi, ngaphambi noma ngemuva kokuphuthulwa uphenyo ngokwalesi sahluko, angadingida noma iluphi udaba oluphenwayo –

(a) nelungu IoMkhandlu oPhethe elibhekele umnyango, umasipala noma uhlaka lombuso oluthintekayo;

- (b) nanoma iliphi iLungu loMkhandlu oPhethe elithintekayo kulolo daba; noma
- (c) nosodolobha kamasipala.

Ukwephulwa komthetho noma ukuziphatha budlabha komsebenzi womnyango, kamasipala noma wohlaka lukahulumeni

52.(1) Uma uMxazululi, ngemuva noma ngaphambi kokuphuthula uphenyo ngokwalesi sahluko, ebona ukuthi kunobufakazi obuphathekayo ukuthi umsebenzi woMnyango, kamasipala noma wohlaka lukahulumeni, wephule umthetho noma uziphathe budlabha, uMxazululi kumele alethe ubufakazi obesekayo –

- (a) kwilLungu loMkhandlu oPhethe elibhekele umnyango, umasipala noma uhlaka lombuso uma lowo msebenzi kuyiNhloko yomnyango, kuyisiKhulu esiPhezulu noma kuyimenenja kamasipala; noma
- (b) kwinhloko yomnyango, esiKhulwini esiPhezulu noma kwiminenja kamasipala uma lowo muntu kungumsebenzi woMnyango, kamasipala noma wohlaka lukahulumeni kodwa engeyona inhloko yomnyango, isiKhulu esiPhezulu noma imenenja kamasipala.

(2) Uma uMxazululi, ngemuva noma ngaphambi kokuphuthula uphenyo ngokwalesi sahluko, ebona ukuthi ubufakazi buveza ukuthi kukhona umuntu ophule umthetho, kumele lolololo daba alwedlulisele ohlakeni lwezomthetho olufanele, noma uma kufanele, alwedlulisele kuMvikeli woMphakathi, ukuba aqhubeke nophenyo.

Ukushicilelwka kwemiphumela nokwethulwa kwemibiko uMxazululi

53.(1) UMxazululi, kuncike ezinhlinzekweni zesigatshana (3), ngendlela abona ifanele, angabikela noma imuphi umuntu ofanele nganoma imiphi imiphumela, izimvo noma izincomo mayelana nanoma iluphi udaba obeluphenhya nguye.

(2)(a) Umbiko wonyaka obhalwe phansi mayelana nemisebenzi yehhovisi loMxazululi kumele wethulwe uNdunankulu kwisiShayamthetho sesiFundazwe.

(b) UMxazululi, noma nini, angethula umbiko eMkhandlwini oPhethe mayelana nemiphumela yophenyo oluthile uma –

- (i) ebona kufanele;

- (ii) ebona ukuthi udaba oluthinta umphakathi;
- (iii) kuwudaba oludinga ukubhekwa noma ukungenelela okuphuthumayo koMkhandlu oPhethe;
- (iv) ecelwa uMkhandlu oPhethe ukuba enze njalo; noma
- (v) ecelwa uNdunankulu ukuba enze njalo.

(3) Imiphumela yophenyo loMxazululi kumele, uma ebona kufanele, futhi ngokushesha, yasiswe ofaka isikhalo kanye nanoma imuphi umuntu othintekayo.

(4) UMxazululi kumele ahlinzeke uMvikeli woMphakathi ngombiko wanyanga zonke –

- (i) obalula futhi ochaza uhlui lwezikhalo ezitholakele nezisacutshungulwa uMxazululi;
- (ii) oveza okuqhubekayo ngesikhalo ngasinye;
- (iii) oveza uhlui lwezikhalo eseziphothuliwe zadlula ezandleni zoMxazululi;
- (iv) oqukethe okutholwe uMxazululi mayelana nezikhalo eseziphothuliwe zadlula ezandleni zoMxazululi.

(5) UMxazululi kumele acele uMvikeli woMphakathi ukuba amhlinzeke ngombiko wenyanga ochaza ngezikhalo ezithinta isiFundazwe –

- (i) abhekene nazo uMvikeli woMphakathi;
- (ii) oveza okuqhubekayo mayelana nesikhalo ngasinye;
- (iii) oveza uhlui lwezikhalo eseziphothuliwe zadlula ezandleni zoMvikeli woMphakathi;
- (iv) oqukethe okutholwe uMvikeli woMphakathi mayelana nezikhalo eseziphothuliwe zadlula ezandleni zoMvikeli woMphakathi.

Amandla kaMxazululi okucela ulwazi

54.(1)(a) Ngokwezinhoso zokuqhube uphenyo, uMxazululi angayalela noma imuphi umuntu ukuba alethe incwadi efunzelwe noma isiqinisekiso noma avele phambi kwakhe azokwethula ubufakazi noma alethe umbhalo othile anawo noma ogcinwe nguye odingekayo mayelana nodaba oluphenywayo, futhi angahloma lowo muntu ngemibuzo.

(b) Umxazululi nanoma imuphi omunye umuntu ogunyazwe nguye angacela incazeloo kunoma imuphi umuntu amsolayo ukuthi angaba nolwazi oludingekayo mayelana nodaba oluphenywayo noma oluzophenywa.

(2) Umyalelo okukhulunywe ngawo kwisigatshana (1)(a) kumele ube yincwadi yokubizela esigcawini equkethe imininingwane yodaba lowo muntu abizelwe lona esigcawini ukuba –

- (a) alethe incwadi efunzelwe noma isiqinisekiso;
- (b) avele phambi koMxazululi;
- (c) athule ubufakazi; noma
- (d) alethe noma imuphi umbhalo anawo noma ogcinwe nguye,

futhi leyo ncwadi yokubizelwa esigcawini kumele isayinwe uMxazululi futhi ithunyelwe kulowo muntu obizelwe esigcawini kungaba incwadi erejistiwe ethunyelwe ngeposi noma ehanjiswe ngesandla umuntu ogunyazwe uMxazululi.

(3) UMxazululi anganxusa noma imuphi umuntu ovela njengofakazi phambi kwakhe ngokwesigatshana (1) ukuba ethule ubufakazi ngemuva kokufunga nokuqinisa.

(4) UMxazululi nanoma imuphi omunye umuntu ogunyazwe nguye ngencwadi angenzisa isifungo noma amukele isiqinisekiso kunoma imuphi umuntu ohlongozwe kwisigatshana (1) futhi lowo muntu uthola imihlomulo efanayo nomuntu ongufakazi ecaleni elisezithebeni zenkantolo eyingxene yeNkantolo ePhakeme yaseNingizimu Afrika.

(5) Noma imuphi umuntu ovela phambi koMxazululi ngokwezinhlizeko zesigatshana (1) angasizwa ummeli wasemajajini noma ummeli kulokho kuphekwa ngwemibuzo futhi uvumelekile ukubheka leyo mibhalo namarekhodi okukhulunywe ngawo kwisigatshana (1) njengoba kungadingeka ukuze azikhumbuze.

(6) UMxazululi, ngemuva kokuba esekhiphe isaziso ngesikhathi sokusebenza, angangena noma agunyaze omunye umuntu ukuba angene kunoma isiphi isakhiwo noma izakhiwo ukuze ayokwenza uphenyo ngendlela angabona inesidingo, futhi athathe noma yini kulezo zakhiwo ngokubona kwakhe engaba wusizo ngokwezinhliso zophenyo.

(7) Uma uMxazululi ethola ngesikhathi kusaqhutshwa uphenyo ukuthi kukhona umuntu othintekayo odabeni oluphenywayo, uMxazululi kumele anikeze lowo muntu ithuba lokuba alalelwu ngokuthi athule ubufakazi, futhi lowo muntu noma ummeli wakhe angakwazi ukuphonsa imibuzo, esebezisa uMxazululi, kofakazi abanqunywe uMxazululi abavele phambi koMxazululi ngokwalesi sigaba.

(8) Noma ubani owenqaba noma owehluleka ukulandela umyalelo ngokwesigatshana (1), noma owenqabayo ukuphendula noma imuphi umbuzo abuzwe wona ngokwalesi sigatshana, noma onikeza impendulo aziyu ukuthi ingamanga, noma owenqabayo ukuthatha isifungo noma ukwenza isiqinisekiso uma eyalelwa uMxazululi ngokwesigatshana (3), uyothweswa icala.

(9) Umxazululi, uma enquma ukuqhube uphenyo ngokwalesi sahluko, noma nini ngaphambi noma ngesikhathi sophenyo angacela noma imuphi umuntu osebenzela uMbuso noma owenza umsebenzi kahulumeni ukuba ase uMxazululi, aqashwe futhi alawulwe uMxazululi, uma enza imisebenzi yakhe.

(10) Umxazululi nanoma imuphi umsebenzi wakhe bangakwazi, kodwa abaphoqelekile, ukuphendula imibuzo kunoma isiphi isigcawu secala ngaphambi kweNkantolo yomthetho noma kwanoma isiphi isikhungo noma umgwamanda osungulwe ngaphansi kwanoma imuphi umthetho, mayelana nanoma iluphi ulwazi, abalutholile ophenyweni lwabo.

(11) Isisombululo soMxazululi, noma ukusebenzisa kwakhe amandla noma ukwenza imisebenzi noma amajoka akhe, akuvimbeli ukusebenza kwenkantolo yomthetho ekutheni nayo ilalele noma iluphi udaba noma icala.

Isinqumo soMxazululi ukungaphenyi izikhalo ezithile

55.(1) UMXAZULULI ANGANQUMA UKUNGAPHENYI NGESIKHALO UMA NGOKUBONA KWAKHE –

- (a) isikhalo asizwakali noma siwumdlalo futhi singenziwanga ngezinhloso ezifanele;
- (b) ofaka isikhalo engathinteki ngokwanele odabeni afake ngalo isikhalo; noma
- (c) kungadingeki ukuba kwensiwe uphenyo noma olunye uphenyo, mayelana nesikhalo uma kubhekwa izinsolo, amaqiniso nezimo.

(2) UMXAZULULI ANGANQUMA UKUNGAPHENYI NGESIKHALO UMA UDABA OKUKHALAZWA NGALO OFAKA ISIKHALO ENGAZANGE ALWETHULE EMNYANGWEKI, KUMASIPALA NOMA OHLAKENI LOMBUSO OLUTHINTEKAYO KUQALA.

(3) Uma umuntu okhalazayo kuMxazululi ebekade ekhalaze emnyangweni, kumasipala noma ohlakeni lombuso oluthintekayo, uMxazululi, ngokubona kwakhe, anganquma ukungaphenyi ngesikhalo kuze kube ofaka isikhalo wazisa uMxazululi ukuthi –

- (a) kungekho okwenziwe ukulungisa lokho akhalaza ngakho; noma
- (b) kukhona okwenziwe, kodwa ngokubona kofaka isikhalo, kungagculisi.

(4) Uma isikhalo singena ngaphansi kwesigatshana (3), futhi uMxazululi ebona ukuthi –

- (a) uma kungekho okwenziwe, sekwedlule isikhathi eside kungenzeki lutho; noma
- (b) kukhona okwenziwe, kodwa ngokubona kofaka isikhalo, kungagculisi, uMxazululi kumele aphenye ngesikhalo.

(5) Uma ofaka isikhalo esebeenzisa noma esebeenzise ilungelo lakhe lokubuyekezwa kodaba lwakhe yinkantolo noma umaziphath, uMxazululi akumele aphenye isikhalo, noma aqhubeke nokuphenya, njengoba kungaba njalo, ngaphandle uma uMxazululi ebona ukuthi kunezimo ezithile noma kunezizathu ezibambekayo zokuphenya isikhalo.

(6) Uma uMxazululi ebona ukuthi ofaka isikhalo unelungelo lokubuyekezwa kodaba lwakhe yinkantolo noma isigungu kodwa akalisebeenzisi lelo lungelo, uMxazululi anganquma ukungaphenyi ngesikhalo, uma ebona ukuthi, ngenxa yezizathu nezimo ezithile, kufanele ukuthi ofaka isikhalo alisebeenzise lelo lungelo.

(7) Uma, ngaphambi kokuba uMxazululi aqale noma emuva kokuba equalile ukuphenya isikhalo, ebona ukuthi kunezinhlinzeko ezanele zokuba kubuyekezwe isenzo noma okungenziwanga okwadala ukuba kube nesikhalo, uMxazululi anganquma ukungaphenyi ngaleso senzo noma ngalokho okungenziwanga uma –

- (a) isenzo noma okungenziwanga kubuyekezwa noma kuzobuyekezwa uma kucela ofaka isikhalo; noma
- (b) uMxazululi enelisekile ukuthi ofaka isikhalo kufanele ukuba abuyekezelwe isenzo noma okungenziwanga futhi kuzobe kufanele ukuthi ofaka isikhalo acele ukuthi lokho kubuyekezwe.

Abasebenzi behhovisi loMxazululi

56.(1) UMqondisi-Jikelele wesiFundazwe kumele aqoke abantu, abaqashwe uHulumeni wesiFundazwe ngokoMthetho wabaSebenzi bakaHulumeni, 1994 (Isimemezelo No. 103 ka 1994), njengoba kungadingeka, abazosiza uMxazululi –

- (a) ekusebenziseni amandla akhe, ekwenzeni imisebenzi yakhe nasekufezekiseni amajoka akhe ngokwalesi sahluko;
- (b) nangemisebenzi yezobubhalane neminye imisebenzi yasehhovisi ehambisana nokusetshenziswa kwamandla, nokwenziwa kwemisebenzi nokufezekisa amajoka.

(2) UMxazululi, ngale kwesigatshana (3)(b), angasebenzisa usizo kwabantu abadluliselwe noma abasisiwe kuye ngokuhambisana nezinhlinzeko zoMthetho wabaSebenzi bakaHulumeni, 1994.

(3) Umsebenzi weHhovisi loMxazululi kumele –

- (a) asebenze ngokwethembeka nangokuzimela futhi enze imisebenzi yakhe ngokwethembeka ngaphandle kokwesaba, kokwenzelela, kokuchema noma kokukhetha; futhi
- (b) asebenze ngokugcwele ngaphandle kokwenza eminye imisebenzi noma izibopho ezivela komunye umsebenzi noma kwesinye isikhundla.

(4) Umsebenzi weHhovisi loMxazululi kumele, ezinsukwini eziyi-14 eqokiwe, athumele kuMxazululi, isitativende esibhalwe phansi esishoyo ukuthi lowo msebenzi uyahlomula yini ngandlela thile, ngokwezimali noma ngenye indlela, -

- (a) okungaholela ekuhlomulen i ngokungafanele uma kubhekwa amandla, amajoka nemisebenzi yakhe njengomsebenzi weHhovisi loMxazululi; noma
- (b) okungaholela ekutheni kuphazamiseke iHhovisi loMxazululi ekutheni lenze imisebenzi yalo ngindlela, lisebenzise amandla alo noma lifeze amajoka alo.

(5) Uma umsebenzi weHhovisi loMxazululi eqala ukuhlomula njengoba kuhlongozwe kwisigatshana (4), kumele ezinsukwini eziyi-7 adalule lokho kuhlomula kuMxazululi.

(6) UMxazululi kumele agcine kahle irejista yokuhlomula kwabasebenzi beHhovisi lakhe okudalulwe ngokwalesi sigaba futhi kumele avuselele leyo rejista minyaka yonke.

(7) Izinhlinzeko zezigatshana (3) – (6) zisebenza, nezinguuko ezidingekayo, kumuntu odluliselwe noma osiselwe eHhovisi loMxazululi ngokwesigatshana (2).

Ukungafaneleki ukuqokelwa esikhundleni soMxazululi

57. Umuntu akafanelekile ukuqokelwa esikhundleni soMxazululi noma ukuqhube ka nokuba uMxazululi, uma –

- (a) ecwile noma ecwila ezikweletini ngokungenakuhlengeka;
- (b) emenyezelwa noma emenyezelwe yinkantolo yomthetho njengongaphilile kahle engqondweni;
- (c) efuna ukuhlomula ngandlela thile kwinkontileka neHhovisi loMxazululi kodwa ehluleka ukudalula lokho kuhlomula nohlobo lwakho ngendlela edingeka kulesi sahluko;
- (d) engaphansi kokubhekelwa izinto zakhe umthetho;
- (e) eke waxoshwa esikhundleni ngenxa yokuziphatha budlabha okubandakanya ukuntshontsha noma ukukhwabanisa, futhi engakabuyiselwa kuleso sikhundla; noma
- (f) eke watholakala enecala wagwetshwa ukuba abhadle ejele ngaphandle kokubonelelwa ngenhlawulo, ngaphandle kokuthi uNdunankulu, uma ethola incwadi efungelwe eveza imininingwane ephelele mayelana namacala alowo muntu, angahoxisa lokho kugwetshwa ngendlela ehambisana nesigaba 106(1)(e) soMthethosisekelo: Kuncike ekutheni ukungafaneleki ngokwalesi sigatshana kuphela uma sekwedlule iminyaka emihlanu umuntu edonse isigwebo sakhe.

Ukudalulwa kokuhlomula ngokwezezimali nokunye ukuhlomula koMxazululi

58.(1) Umuntu oqokelwe ukuba ngoMxazululi ngokwesigaba 46 kumele, ezinsukwini eziyi-14 eqokiwe, athumele kuNdunankulu isitativende esibhalwe phansi esidalula ukuthi ngabe uyahlomula yini ngandlela thile ngokwezezimali noma okunye ukuhlomula –

- (a) okungaholela ekuhlomuleni ngokungafanele uma kubhekwa amandla, amajoka nemisebenzi yakhe njengoMxazululi; noma
- (b) okungaholela ekutheni kuphazamiseke uMxazululi ekutheni enze ngedlela efanele imisebenzi yakhe, asebenzise amandla akhe noma afeze amajoka akhe.

(2) Uma uMxazululi kwenzeka eqala ehlomula njengoba kuhlongozwe kwisigatshana (1), kumele ezinsukwini eziyi-7, adalule lokho kuhlomula kuNdunankulu ngencwadi.

(3) UNdunankulu kumele agcine kahle irejista yokuhlomula koMxazululi okudalulwe ngokwalesi sigaba futhi kumele avuselele leyo rejista minyaka yonke.

(4) Ukwehluleka ngasohlangothini loMxazululi ukudalula ukuhlomula kwakhe njengoba kuhlongozwe kwisigatshana (1) no (2), kunikeza izizathu ezifanele zokuba axoshwe ngokwesigaba 60(2).

Ukumiswa okwesikhashana koMxazululi

59. UNdunankulu, ngemuva kokubonisana noMkhandlu oPhethe, angamisa uMxazululi ngokuhambisana nomthetho osebenzayo wezokuqasha nezabasebenzi ngenkathi uNdunankulu esaphenya ngezinsolo, okungathi uma kutholakala ukuthi ziyyiqiniso, ziholele ekuxoshweni koMxazululi ngokwesigaba 60(2).

Ukwesula nokuxoshwa koMxazululi

60.(1) UMxazululi uyasishiya isikhundla sakhe –

- (a) uma eba ongafanelekile njengoba kuhlongozwe esigabeni 57;
- (b) ngokunikeza uNdunankulu isaziso esibhalwe phansi sezinsuku ezingama-30: Kuncike ekutheni uNdunankulu angasamukela noma asichithe leso saziso; noma
- (c) uma exoshwa esikhundleni ngokwesigatshana (2).

(2) UNdunankulu, ngokubonisana noMkhandlu oPhethe, ngezizathu ezifanele nezizwakalayo, angaxosha uMxazululi ngokuhambisana nomthetho osebenzayo wezokuqasha nowezabasebenzi.

Ukuphepha kolwazi oluyimfihlo olugcinwe uMxazululi

61.(1) Kuncike kuMthethosisekelo naseMthethweni wokuGqugquzela ukuTholakala koLwazi, 2000 (uMthetho No. 2 ka 2000), akekho umuntu ongadalula noma imiphi imininingwane elethwe kuMxazululi mayelana nanoma isiphi isikhalo, ngaphandle uma –

- (a) eyalelwé kanjalo yinkantolo yomthetho; noma
- (b) kuvume umuntu ofake isikhalo ngencwadi.

(2) Akekho umuntu ongadalula imininingwane egcinwe kwirejista ehlongozwe kwizigaba 56(6) no 58(3) ngaphandle uma lokho kudalula –

- (a) kwenziwa ngokwanoma imuphi umthetho ophoqa noma ogunyaza lokho kudalula;
- (b) kunesidingo ukuze kusebenze kahle iHhovisi loMxazululi; noma
- (c) kwenzelwa izinhloso zokuqapha, zokuhlola, zokuphenya noma zokucubungula noma imuphi umsebenzi othinta iHhovisi loMxazululi, noma wanoma imuphi umsebenzi eHhovisi loMxazululi.

(3) Noma imuphi umuntu owephula isigatshana (1) noma (2) uyothweswa icala.

Ukusebenzisa igama leHhovisi loMxazululi

62.(1) Akekho umuntu, ngaphandle kokuthola imvume ebhalwe phansi kuqala kuMxazululi, nganoma iyiphi indlela veza noma oyosebenzisa igama, isifinyezo, uphawu, imidwebo noma impahla esetshenziswa noma okungeyeHhovisi loMxazululi.

(2) Akekho umuntu oyoqamba amanga athi wenza okuthile egameni loMxazululi noma leHhovisi lakhe.

(3) Noma imuphi umuntu owephula isigatshana (1) noma (2) uyothweswa icala.

Ukudlulisewa kwamandla oMxazululi

63.(1) UMxazululi angadlulisela kubasebenzi beHhovisi loMxazululi abahlongozwe kwisigaba 56(1)(a), noma imaphi amandla noma amajoka anikezwe uMxazululi yilesi sahluko.

(2) Noma imaphi amandla noma amajoka adluliselwe ngokwesigatshana (1) kumele asetshenziswe noma afezekiswe ngemibandela uMxazululi ayibona ifanele.

(3) Ukudluliselwa kwamandla okukhulunywe ngakho kwisigatshana (1) –

- (a) kumele kubhalwe phansi;
- (b) akuvimbeli uMxazululi ukuba asebenzise amandla akhe noma enze imisebenzi yakhe; futhi
- (c) kungahoxiswa noma kuchitshiyelwe ngencwadi uMxazululi noma nini.

Amacala ejwalelekile ngokwezinhoso zeSahluko 11

64.(1) UMXAZULULI, UMSEBENZI WEHHOVISI LOMXAZULULI, UMELULEKI, I-EJENTI NANOMA IMUPHI OMUNYE UMUNTU OSEBENZA, OQASHWE NOMA OWENZA OKUTHILE EGAMENI LEHHOVISI LOMXAZULULI UYOTHOLAKALA ENECALA UMA EVUMA NGANDLELA THILE UKUGWAZELWA NOMA EMUKELA IZIMALI EZINGAGUNYAZIWE NOMA UMKLOMELO KUNOMA IMUPHI UMUNTU MAYELANA NANOMA ILUPHI USIZO OLULINZEKWA YIHHOVISI LOMXAZULULI.

(2) Noma imuphi uyotholakala enecala uma, mayelana nanoma yini eyenziwa noma ehlizrekwa iHhovisi loMxazululi, egwazela noma ezama ukugwazela noma eyenga noma ezama ukuyenga uMxazululi, umsebenzi, umeluleki, i-ejenti nanoma imuphi omunye umuntu osebenza, oqashwe nomo Owenza okuthile egameni leHhovisi oMxazululi.

(3) Noma imuphi umuntu oqamba amanga athi ugonyazwe ukufuna imali noma ukuqoqa izimali, iminikelo egameni noma ngomyalelo weHhovisi oMxazululi uyothweswa icala.

(4) Noma imuphi owejhula noma owejhuleka ukulandela izinhlinzeko zalesi sahluko nezanoma imuphi umthethonqubo ophathelene nokubekwe kulesi sahluko uyothweswa icala.

Izinhlawulo ngokwezinhoso zeSahluko 11

65. Noma imuphi umuntu olahlwa yicala ngokwalesi sahluko uyohlawulisa noma agqunywe ejele isikhathi esingeqile eminyakeni emihlanu noma akhokhiswe inhlawulo aphinde agqunywe ejele.

Izinhlinzeko zesikhashana mayelana noMxazululi

66.(1) IHHovisi IoMxazululi liyindlalifa ngokomthetho weHHovisi IoMxazululi elasungulwa ngaphakathi eHhovisi likaNdunankulu ngaphambi kosuku lokuqala kokusebenza kwalo Mthetho.

(2) Umuntu, ngosuku lokuqala kokusebenza kwalo Mthetho, obesebenza noma obeqashwe njengoMxazululi, uyaqhube ka ukuba uMxazululi futhi uthathwa njengomuntu oqokwe ngokwesigaba 46 salo Mthetho kusukela ngosuku lokuqala kokusebenza kwalo Mthetho.

(3) Umumntu, ngosuku lokuqala kokusebenza kwalo Mthetho, obengumsebenzi weHHovisi IoMxazululi uthathwa njengomuntu oqokwe ngokwesigaba 56(1) salo Mthetho futhi ugcina wonke amalungelo ache nemihlomulo yakhe.

ISAHLUKO 12**IKHOMISHANA YOKUHLELA YESIFUNDAZWE SAKWAZULU-NATALI****Ukusungulwa kweKhomishana yokuHlela yesiFundazwe saKwaZulu-Natali**

67.(1) Ngalokhu kusungulwa iKhomishana yesiFundazwe, ezokwaziwa njengeKhomishana yokuHlela yesiFundazwe saKwaZulu-Natali.

(2) IKhomishana ayiyena umuntu ngokomthetho.

(3)(a) Ngokomsebenzi, nangokwesabelomali kanjalo nangokuphathwa kwezimali zayo, iKhomishana ingaphansi kweHHovisi likaNdunankulu kuHulumeni wesiFundazwe.

(b) UMqondisi-Jikelele kaHulumeni wesiFundazwe nguyena oyisikhulu esinesibopho sokubika seKhomishana.

Izinjongo zeKhomishana

68. Izinjongo zeKhomishana –

- (a) ukugqugquzela nokulungiselela ukuhlelwa kwentuthuko, amasu azosetshenziswa kanye nokusungulwa kwenqbomgommo esiFundazweni;
- (b) ukusungula inqubomgommo enkulu esiFundazweni;

(c) nokuqinisekisa ukuthi inqubomgommo enkulu yesiFundazwe iyahambisana nenqubomgommo enkulu enquunye kuzwelonke, ngokuhambisana nemigomo eyimikhombandlela yeNqubomgommo yesiFundazwe equkethwe esigabeni 11.

Amandla, amajoka nemisebenzi yeKhomishana

69.(1) IKhomishana kumele –

(a) ibheke –

- (i) izinsiza;
- (ii) impahla;
- (iii) izimali; kanye
- (iv) nezabasebenzi,

esiFundazweni;

(b) isungule iSu lesiFundazwe okukhulunye ngalo esigabeni 18, ezoluhambisa eMkhandlwini oPhezulu ukuze ulucubungule, oluzosiza ekutheni kusetshenziswe ngendlela efanele, elungle, elinganayo futhi esimeme izinsiza okukhulunye ngazo endimeni (a);

(c) igqugquzele, futhi iqinisekise ukuthi umphakathi ubamba iqhaza ekusungulweni, ekuqalisweni nasekubuyekezweni kweSu lesiFundazwe;

(d) inqume izinto ezibalulekile okuzogxilwa kuzo, ibeke izigaba zokusebenza nezikhathi zakhona futhi yenze izicelo zokwabiwa kwezinsiza ukuze kuqaliswe iSu lesiFundazwe;

(e) ihlonze izingqinamba ezikhubaza –

- (i) ukuthuthuka kwesiFundazwe kwezomnotho, kwezezimboni nasezindaweni zasemakhaya;

- (ii) nokuqaliswa ngempumelelo kweSu lesiFundazwe;

(f) inqume uhlobo lwezinquo, lwezinlelo nolwamasu adingekayo noma afanele ukuze –

- (i) kusimamiswe futhi kugqugquzelwe ukuthuthuka kwesiFundazwe kwezomnotho, kwezezimboni nasezindaweni zasemakhaya; futhi

- (ii) kuqaliswe ngempumelelo iSu lesiFundazwe;

(g) ngezikhathi zonke iqaphe futhi ibuyekeze inqubekelaphambili kanjalo nemiphumela mayelana –

- (i) nokusimamiswa nokugqugquzelwa kwentuthuko yesiFundazwe kwezomnotho, kwezezimboni nasezindaweni zasemakhaya;
 - (ii) nokuqaliswa ngempumelelo kweSu lesiFundazwe;
- (h) igqugquzele futhi ilungiselele ukuhlelwa kwentuthuko, amasu okusebenza kanye nokusungulwa kwenqbomgomo esiFundazweni ukuqinisekisa, phakathi kokunye, ukuthi kusungulwa nokuqaliswa amasu athile adidiyele efuthi emikhakha ehlukahlukene, izinqubomgomo kanye nezinhlelo ukuze kusebenze iSu lesiFundazwe;
- (i) isungule inqubomgomo enkulu esiFundazweni;
- (j) iqinisekise ukuhambisana kwenqbomgomo enkulu yesiFundazwe nenqubomgomo enkulu enquunywe kuzwelone;
- (k) yenze ucwaningo kuyona yonke imikhakha yokuhlela nasekusungulweni kwenqbomgomo;
- (l) ngokubonisana noNdunankulu, yakhe ubudlelwano futhi iqale izinhlelo zokusebenzisana neKhomishana yokuHlela kaZwelone eseHHovisi likaMengameli;
- (m) yakhe ubudlelwano nezinhlelo zokuxhumana nezokudidiyela negatsha esebeenzisana nalo kanye nezimpiko eHhovisi likaNdunankulu ezibhekele –
- (i) ukusungulwa, ukubunjwa kanye nokudidiyelwa kwezinqbomgomo;
 - (ii) ukuqapha nokuhlola; kanye
 - (iii) nokuhlola ngezamabhisini neziNhlelo zoLwazi zeziNdawo (GIS), ngokujwayelekile okwaziwa ngokuthi “i-Provincial Nerve Centre”;
- (n) ihlanganise imininingwane egciniwe, futhi ihlinzeke imininingwane mayelana –
- (i) neNqubomgomo yesiFundazwe;
 - (ii) namaSu okuHlela esiFundazwe;
- (o) yeluleke uHulumeni wesiFundazwe, uNdunankulu kanye noMkhandlu oPhethe –
- (i) ngokusimamiswa nokugqugquzelwa kwentuthuko yesiFundazwe kwezomnotho, kwezezimboni nasezindaweni zasemakhaya;
 - (ii) ngokwakhiwa nokuqaliswa kweSu lesiFundazwe;
 - (iii) ngeSu lokuKhula neNtuthuko lesiFundazwe (i-PGDS) okukhulunywe ngalo esigabeni 13;
 - (iv) ngoSomqulu wezaKhamizi okukhulunywe ngawo esigabeni 37;
 - (v) ngezindaba zamasu okuhlela nezinqbomigomo;
 - (vi) ngemithetho yesiFundazwe ehlongozwayo noma esewuhlaka, kubandakanya imithetho emincane engaphansi kwayo (imithethonqubo);

(vii) nokubuyekezwa kanye nokuphuculwa kwemithetho yesiFundazwe nemithetho yomasipala okukhulunywe ngayo ezigabeni 27 no 34, ngokwahlukana kwazo; futhi

(p) yethule umbiko njalo ngekota yonyaka eMkhandlwini oPhethe, noma njalo uma kuba nesidingo njengoba uMkhandlu oPhethe unganquma, ngenqubekelaphambili yeKhomishana ezinhlosweni zayo, ekusebenziseni amandla ayo, ekwenzeni imisebenzi yayo kanye nasekufezelekiseni amajoka ayo, ngokwalo Mthetho.

(2) Ukuze kugqugquzelwe ukusebenza ngendlela efanayo nokusebenzisana phakathi kwazo zonke izinhlaka zombuso ezingeni likahulumeni wesiFundazwe nohulumeni basekhaya ezintweni eziphathelene neSu oluwuMkhombandlela lwesiFundazwe, neNqubomgomomo yesiFundazwe nokuhunyushwa kanye nokuqaliswa kweSu lesiFundazwe nokuqinisekisa phakathi kokunye ukuthi kusungulwa futhi kuqaliswa amasu adidiyele futhi agxile emikhakheni ethile, izinqubomgomomo kanye nezinhlelo ukuze iSu lesiFundazwe lusebenze, iKhomishana kumele, okungenani kanye ngonyaka, ibambe imihlangano ehlanganisa izinhlaka zombuso ezingeni likaHulumeni wesiFundazwe nakwelohulumeni basekhaya ebandakanya –

- (a) iminyango yesiFundazwe, izimpiko noma izinhlaka zikaHulumeni wesiFundazwe;
- (b) omasipala;
- (c) izinhlaka zombuso esiFundazweni;
- (d) amabhzinisi kaHulumeni wesiFundazwe;
- (d) iNdlu yabaHoli boMdabu yesiFundazwe; kanye
- (e) neziNdlu zabaHoli boMdabu zeziFunda.

(3) IKhomishana –

(a) ingenza izincomo kuHulumeni wesiFundazwe, kuNdunankulu, eMkhandlwini oPhethe noma kwisiShayamthetho sesiFundazwe mayelana –

- (i) nokufukulwa nokugqugquzelwa kwezomnotho, kwezezimboni nokuthuthukiswa kwezindawo zasemakhaya esiFundazweni;
- (ii) nokusungulwa nokuqaliswa kweSu lesiFundazwe;
- (iii) neSu IokuKhula neNtuthuko lesiFundazwe (i-PGDS) okukhulunywe ngalo esigabeni 13;
- (iv) ngoSomqulu wezaKhamizi okukhulunywe ngawo esigabeni 37;
- (v) ngezindaba zamasu okuhlela nezinqubomigomo;

- (vi) nemithetho yesiFundazwe esewuhlaka noma ehlongozwayo (kubandakanya imithethonqubo); kanye
- (vii) nokubuyekezwa nokuphuculwa kwemithetho yesiFundazwe nemithetho yomasipala okukhulunywe ngayo ezigabeni 27 no 34, ngokwehlukana kwazo; futhi
- (b) ingenza izincomo kumaLungu oMkhandlu oPhethe naseMinyangweni kaHulumeni wesiFundazwe saKwaZulu-Natali ngezindaba eziphathelene namasu okuhlela nezinqugomomo, kubandakanya izinqugomomo nemithetho yeminyango, kanjalo nemithetho engaphansi kwayo (imithethonqubo);
- (c) ngokubonisana, nokuvumelana noMkhandlu oPhethe, ingenza izincomo mayelana –
- (i) namabhizinisi;
 - (ii) nezinhlangano ezingekho ngaphansi kukahulumeni;
 - (iii) nezinhlangano zomphakathi;
 - (iv) nezinhlangano zezenkolo;
 - (v) nezinhlanga namaqembu asungulwe umphakathi;
 - (vi) nezinhlangano zomphakathi;
 - (vii) nemiphila ndawonye;
 - (viii) nezinhlangano nemigwamanda yemikhakha ethile; kanye
 - (ix) nezinhlangano zongoti noma imigwamanda yongoti,
- mayelana nanoma iluphi udaba oluphathelene namasu okuhlela, nezinqugomomo nokuqaliswa kweSu lweSiFundazwe neSu lokuKhula neNtuthuko lesiFundazwe (i-PGDS); futhi
- (d) ngokubonisana nokuvumelana noMkhandlu oPhethe –
- (i) ingenza izincomo nganoma iluphi uhlaka noma umgwamanda okukhulunywe ngawo ezinhlamvini (aa) – (ff) zendinyana (ii) ngezansi; futhi
 - (ii) ngemva kokubonisana nohlaka noma nomgwamanda okukhulunywe ngawo ezinhlamvini (aa) – (ff), ngezansi, inikeze imikhombandlela noma imiyalelo –
 - (aa) yeminyango yesiFundazwe, yezimpiko zikaHulumeni wesiFundazwe noma nama-ejensi kaHulumeni wesiFundazwe;
 - (bb) yomasipala;
 - (cc) yezinhlaka zombuso esiFundazweni;
 - (dd) yamabhizinisi kaHulumeni wesiFundazwe;

(ee) yeNdlu yabaHoli boMdabu yesiFundazwe; kanye

(ff) neyeziNdlu zabaHoli boMdabu zeziFunda,

mayelana nanoma iluphi udaba oluphathelene namasu okuhlela, nezinqubomigomo nokuqaliswa kweSu lesiFundazwe neSu lokuKhula neNtuthuko lesiFundazwe (i-PGDS);
 (e) ingangena ezivumelwaneni nanoma imuphi umuntu ongungoti emkhakheni othile, ukuze asize noma eluleke iKhomishana maqondana nanoma iluphi udaba oluphathene nezinhloso, namandla namajoka ayo;

(f) ingasungula futhi irejiste –

(i) ilogo; noma

(ii) ibheji njengoba kubekiwe ngokoMthetho oChaza ngeziMpawu zesiZwe, 1962

(uMthetho No. 18 ka 1962);

(g) ingaqala, isungule futhi isebeenzise i-webhusaythi;

(h) ingadweba futhi isungule –

(i) ilethahedi, okumele ngokoMthetho oChaza ngeziMpawu zesiZwe, 1962, neminye imigomo esebeenzayo yezimpawu, ibe nesiPhandla sesiFundazwe; kanye

(ii) nezinye izinto zokufunda nokubhala;

(i) ingabamba izingqungquethela, imihlangano yokucobelelana ngolwazi nemihlangano;

(j) ingahambela izingqungquethela, imihlangano yokucobelelana ngolwazi kanye nemihlango yemigwamanda efanayo, kuzwelonke nasemazweni angaphandle; futhi

(k) ngokwejwayelekile, ingenza yonke into edingekayo ukufeza izinhloso zayo.

(4) IKhomishana ayinalo iqhaza elibambilie ngqo noma umsebenzi ewenzayo othinta ukuhlela intuthuko ngokwezindawo, ngokusesikweni okuwumsebenzi weLungu loMkhandlu oPhethe elibhekele ezoHulumeni baseKhaya.

(5) Imigomo nemibandela yokusebenza “ukuHlelwa nokuThuthukiswa kweziFunda” kwiNgxenye A yoHlelo 4, kanye “nokuHlelwa kwesiFundazwe” kwiNgxenye A yoHlelo 5, kuMthethosisekelo, kusho ukuhlela kwentuthuko ngokwezindawo nangokwebalazwe, ngokwesiko okuwumsebenzi weLungu loMkhandlu oPhethe elibhekele ezoHulumeni baseKhaya.

Ukubunjwa kweKhomishana**70.(1) IKhomishana yakhiwe –**

(a) uKhomishana oyedwa osebenza ngokugcwele; kanye

(b) noKhomishana okungenani abahlalu, kodwa abangeqile kwabayisishiyagalombili, abazosebenza ngezikhathi ezithile,

abaqokwe uNdunankulu.

(2) OKhomishana okukhulunywe ngabo kwisigatshana (1) kumele kube ngabantu abakufanele nabakulungele ukusebenzela isiFundazwe, bebonke babe nolwazi, nesipiliyonI namakhono adingekayo emikhakheni yokuhlela nokusungula inqu bomgomO.

(3) UNdunankulu kumele aqoke –

(a) uKhomishana ozosebenza ngokugcwele okukhulunywe ngaye esigatshaneni (1)(a) njengoSihlalo weKhomishana; kanye

(b) noKhomishana oyedwa ozosebenza ngezikhathi ezithile okukhulunywe ngaye esigatshaneni (1)(b) njengeSekela likaSihlalo weKhomishana.

(4) USihlalo weKhomishana okukhulunywe ngaye kwisigatshana (3)(a) kumele –

(a) axhumanise uNdunankulu neKhomishana; futhi

(b) abike ngezikhathi zonke kuNdunankulu ngezinto azibona zifanele.

(5) UNdunankulu kumele ashicilele amagama oKhomishana abaqokelwe kwiKhomishana okukhulunywe ngabo kwisigatshana (1) kwiGazethi nasemaphephandabeni okungenani amabili atholakala esiFundazweni, ngokushesha ngemva kokuthi labo bantu sebazisiwe ngencwadi, ngokuqokelwa kwabo kwiKhomishana.

(6) UNdunankulu kumele, ezinyangeni ezimbili kuqokwe oKhomishana okukhulunywe ngabo kwisigatshana (1), azise uMkhandlu oPhethe neKomidi lesiShayamthetho elifanele amagama oKhomishana kubandakanya nezikhathi abaziqokelwe.

(7) Lesi sigaba sisebenza nezinguuko ezidingekayo uma kugcwaliswa izikhala kwiKhomishana.

Isikhathi sokuba sesikhundleni nokuqokwa kabusha koKhomishana

71. OKhomishana baqokelwa esikhundleni isikhathi esiyiminyaka emihlanu noma ngaphansi kwalokho njengoba kunganquma uNdunankulu futhi bangakwazi ukuphinde baqokwe uma kuphela leso sikhathi: Kuncike ekutheni akekho uKhomishana ongaphinde aqokwe uma esesebenze iminyaka eyishumi elandelanayo kwiKhomishana.

Izikhala zomsebenzi, ukuxoshwa nokwesula esikhundleni koKhomishana

72.(1) UNdunankulu, ngemva kokunikeza uKhomishana ithuba lokubeka uhlangothi lwakhe, noma nini angaxosha lowo Khomishana uma, ngokubona kukaNdunankulu, kunezizathu ezizwakalayo nezifanele zokwenze njalo.

(2) UKhomishana angazesulela esikhundleni ngokunikeza uNdunankulu isaziso esibhalwe phansi sezinsuku ezingama-30: Kuncike ekutheni uNdunankulu angasamukela noma asichithe saziso.

(3) Uma kwenzeka kuvela isikhala somsebenzi kwiKhomishana, uNdunankulu kumele, kuncike esigabeni 70, aqoke umuntu ozovala leso sikhala somsebenzi leyo ngxenye yesikhathi esisasele salowo Khomishana oshiyayo esikhundleni.

Ukumiswa okwesikhashana kukaKhomishana

73. UNdunankulu angamisa uKhomishana ngesikhathi esaphenya ngezinsolo okungathi, uma kutholakala ukuthi ziyyiqiniso ziholele ekuxoshweni kukaKhomishana ngokwesigaba 72(1).

Imihlangano kanye nezinqubo zemihlangano yeKhomishana

74.(1) Umhlangano wokuqala weKhomishana kumele ubanjwe ngosuku, ngesikhathi nasendaweni enqunywe uNdunankulu, ngemva kwalokho yonke eminye imhlangano eyolandela kumele inqunywe uSihlalo: Kuncike ekutheni iKhomishana kumele ihlangane okungenani kahlanu njalo ngonyaka wezimali.

(2) Isibalo sabangabamba umhlangano weKhomishana yiningi lamalungu eKhomishana.

(3) Izinqubo zomhlangano weKhomishana kumele, kuncike ezinhlinzekweni zalesi sigaba, zinqunywe uSihlalo kubandakanya nelungelo lokunquma ukuthi noma iluphi udaba oludingidwayo lungahoxiswa ngaphambi kokuba luvotelwe.

(4) USihlalo angahola yonke imihlangano yeKhomishana: Kuncike ekutheni uma engekho iSekela likaSihlalo kumele lihole umhlangano kanti uma uSihlalo neSekela likaSihlalo bengekho bobabili emhlanganweni weKhomishana, amalungu akhona angaqoka, phakathi kwawo umuntu ozobamba njengoSihlalo kuze kuphele lowo mhlangano.

(5) Isinqumo seKhomishana kumele sithathwe ngeningi lamavoti amalungu akhona emhlanganweni, uma kwenzeka amavoti elingana kunoma iluphi udaba, uSihlalo unevoti eliwiujuqu ngaphezu kwevoti lakhe elejwayelekile.

(6) IKhomishana kumele iqinisekise ukuthi amaminithi emihlangano yayo ayagcinwa.

(7) Akukho sinqumo seKhomishana esingasebenzi ngenxa yokuba khona kwesikhala somsebenzi kwiKhomishana: Kuncike ekutheni isinqumo sithathwa iningi loKhomishana abakhona futhi abanegunya lokuhlala njengoKhomishana.

(8) USihlalo noma iningi lamalungu eKhomishana angabiza umhlangano weKhomishana ophuthumayo lapho izinhlinzezo zalesi sigaba zisebenza nezinguquko ezidingekayo.

Ukuhoxa kwelungu emihlanganweni nasemisebenzini yeKhomishana

75.(1) UKhomishana kumele azihoxele yena odabeni oluphenywa, olucutshungulwa noma oluvotelwa yiKhomishana uma kunezinye sale zimo ezilandelayo –

- (a) uma ethinteka ngandlela thile kulolo daba; noma
- (b) uma kunokwenzeka ukuthi athinteka ngandlela thile kulolo daba.

(2) Uma noma ingasiphi isikhathi kunodaba olusezithebeni zeKhomishana kubonakala ukuthi uKhomishana osemhlanganweni uyathinteka noma angase athinteka njengoba kubalulwe

kwisigatshana (1), lwo Khomishana kumele adalule ukuthi uthinteka ngayiphi indlela bese eshiya umhlangano.

(3) Noma ikuphi ukudalula ngokwesigatshana (1) kumele kuqoshwe emaminithini omhlangano othintekayo.

(4) Uma ngemva kwesikhathi kuvela ukuthi iKhomishana ithathe isinqumo ngodaba oluphathelene noKhomishana owehlulekile ukudalula ukuthinteka okuhlongozwe kwisigatshana (1) salesi sigaba, leso sinqumo seKhomishana angeke sisebenze.

(5) Ngokwezinhoso zalesi sigaba “**ukuthinteka ngandlela thile**”, kubandakanya phakathi kokunye, ukuthinteka kwanoma imuphi –

- (a) umlingani kaKhomishana kwezamabhizinisi, umuntu asebenza naye noma umqashi wakhe, ngaphandle kukaHulumeni;
- (b) umuntu ashade naye, ashade naye ngokwesintu, umuntu ongumasihalisane noma abahlala naye sabantu abashadile; noma
- (c) ingane, umzali noma umfowabo noma udadewabo.

Ukukhokhelwa koKhomishana

76.(1)(a) Kuncike kwizigatshana (1)(b) no (2)(a), uKhomishana angakhokhelwa lelo holo nalezo zibonelelo ezinganqunywa uNdunankulu ngokubonisana neLungu IoMkhandlu oPhethe elibhekeli ezeziMali.

(b) UKhomishana othola iholo, izibonelelo noma eminye imihlomulo ngokwesikhundla sakhe, ngokomsebenzi noma ngenxa yokuqashwa –

- (i) uHulumeni kaZwelonke;
- (ii) uhulumeni wesifundazwe;
- (iii) umasipala; noma
- (iv) inhlango, umgwamanda noma isikhungo esilawulwa uHulumeni wesifundazwe noma kaZwelonke,

futhi oqhube kayo nokuthola lelo holo, lezo zibonelelo noma leyo mihlomulo ngesikhathi esebeenza njengoKhomishana, angathola kuphela iholo kanye nezibonelelo okukhulunywe

ngakho endimeni (a) ngendlela edingekayo ukuze lowo Khomishana abe sesimweni sezimali abevele ezokuba kuso ukuba ubengekho kuleso kuleso sikhundla.

(c) Kunganqunywa amaholo kanye nemihlomulo eyehlukene ngokusebenzisa lemikhakha elandelayo yoKhomishana –

- (i) uKhomishana osebenza ngokugcwele kanye noSihlalo; kanye
- (ii) noKhomishana abasebenza ngezikhathi ezithile.

(2)(a) UKhomishana maqondana nemisebenzi yakhe njengoKhomishana, angakhokhelwa izindleko ezifanele zokuhamba ngokomsebenzi ngenxa yokwethamela imihlangano yeKhomishana.

(b) ILungu loMkhandlu oPhethe elibhekele ezeziMali kumele linqume izinqubo, kubandakanya nezindlela zokulawula, ukuze lulawulwe, kuphathwe izicelo zokukhokhelwa izindleko zokuhamba ngokomsebenzi ezhlongozwe endimeni (a).

Ukusungulwa kwamakomidi azosiza iKhomishana

77.(1) IKhomishana ingasungula amakomidi anelungu elilodwa noma ngaphezulu kumalungu ayo –

- (a) azoyisiza ekusebenziseni nanoma yimaphi amandla ayo ekufezeni amajoka nasekwzeneni imisebenzi yeKhomishana ebalulwe esigabeni 69; noma
- (b) azokwenza ucwaningo mayelana nanoma iluphi udaba oluyingxenye yemisebenzi yeKhomishana ngokwalo Mthetho.

(2) Uma kusungulwa ikomidi okukhulunywe ngalo kwisigatshana (1), iKhomishana kumele –

- (a) inqume imisebenzi ezokwenziwa yilelo komidi kubandakanya, phakathi kokunye, ukuthi kumele yini lelo komidi lihlakazwe uma seliphothule umsebenzi noma imisebenzi ebelyijutshelwe yiKhomishana;
- (b) iqoke uSihlalo walelo komidi okumele abe yilungu leKhomishana; futhi
- (c) inqume ukuthi ngabe lelo komidi lingaqoka abantu abangewona amalungu eKhomishana, futhi uma kunjalo, ngaphansi kwayiphi imigomo nemibandela.

(3) IKhomishana, noma nini, ingahlakaza ikomidi nanoma iyekise lelo komidi umsebenzi ebelijutshelwe wona, noma ngabe lelo komidi seliwuqedile noma lingakawuqedile lwo msebenzi ebelijutshelwe wona iKhomishana.

Ukwengezwa kwabantu kwiKhomishana noma kumaKomidi eKhomishana

78.(1) Uma iKhomishana inombono wokuthi umuntu othile angayisiza maqondana nanoma imaphi mandla, imisebenzi namajoka ayo, ingamengeza lwo muntu kwiKhomishana noma kwikomidi leKhomishana ngenxa yaleso sizathu isikhathi esinganqunywa iKhomishana.

(2) Umuntu owengezwe ngokwesigatshana (1) akanalo ilungelo lokuvota kunoma yimuphi umhlangano weKhomishana noma wekomidi leKhomishana.

(3)(a) Umuntu owengezwe ngokwesigatshana (1) angakhokhelwa iholo njengoba kunganquma uNduNankulu ngokubonisana neLungu loMkhandlu oPhethe elibhekele ezeziMali.

(b) Noma imuphi umuntu othola iholo, izibonelelo noma eminye imihlomulo ngokwesikhundla sakhe, ngokomsebenzi noma ngenxa yokuqashwa –

- (i) uHulumeni kaZwelonke;
- (ii) uhulumeni wesifundazwe;
- (iii) umasipala; noma
- (iv) inhlango, umgwamanda noma isikhungo esilawulwa uhulumeni kaZwelonke noma wesifundazwe,

futhi oqhube kayo nokuthola lelo holo, lezo zibonelelo noma eminye imivuzo ngesikhathi eseberna njengelungu elengeziwe leKhomishana noma lekomidi leKhomishana, angathola kuphela iholo kanye nezibonelelo okukhulunywe ngakho endimeni (a) ngendlela efanele ukuze lwo muntu abe sesimweni sezimali abevele ezoba kuso ukuba ubengetho kuleso kuleso sikhundla, kulowo msebenzi noma engaqashiwe.

(4)(a) Umuntu owengezwe ngokwesigatshana (1) maqondana nemisebenzi yakhe, njengelungu elengeziwe leKhomishana noma lekomidi leKhomishana, angakhokhelwa izindleko ezilingene zokuhamba ngokomsebenzi eyokwethamela imihlangano yeKhomishana noma yekomidi leKhomishana, njengoba kungaba njalo.

(b) ILungu loMkhandlu oPhethe elibhekele ezeziMali kumele linqume izinqubo, kubandakanya nezindlela zokulawula, ukuze lulawulwe, kuphathwe futhi kukhokhelwe izindleko zokuhamba ngokomsebenzi ezihlongozwe endimeni (a).

Abasebenzi beKhomishana

79.(1) Umgondisi-Jikelele wesiFundazwe kumele aqoke abantu, abaqashwe uHulumeni wesiFundazwe ngokoMthetho wemiSebenzi kaHulumeni, 1994 (Isimemezelu No. 103 sika 1994), njengoba engabona kufanele, abazosiza iKhomishana –

- (a) ekusebenziseni amandla ayo, ekwenzeni imisebenzi yayo nasekufezekiseni amajoka ayo ngokwalo Mthetho;
- (b) nangokwenza imisebenzi yezobubhalane neyezokuphatha ephathelene nokusebenzisa amandla ayo, nokwenza imisebenzi yayo nokufeza amajoka ayo.

(2) IKhomishana ingasebenzisa abantu abasiswe noma abadluliselwe kuyo ngokuhambisana nezinhlinzeko zoMthetho wemiSebenzi kaHulumeni, 1994.

Ukuvikelwa kolwazi oluyimfihi olugcinwe iKhomishana

80.(1) Kuncike kuMthethosisekelo naseMthethweni wokuGquqquzelu ukuThola uLwazi, 2000 (uMthetho No. 2 ka 2000), akukho muntu ongadalula noma yiluphi ulwazi olulethwe kwiKhomishana maqondana nanoma imuphi umyalelo womthetho, ngaphandle –

- (a) uma eyalelwu ukuthi enze njalo yinkantolo yomthetho; noma
- (b) ngaphandle uma umuntu okhiphe lololwazi evuma ngokubhalwe phansi.

(2) Noma yimuphi umuntu ophula isigatshana (1) uyothweswa icala.

Ukuhlakazwa kweKhomishana

81. IKhomishana ingahlakazwa kuphela ngokoMthetho wesiShayamthetho sesiFundazwe.

Ukusetshenziswa kwegama leKhomishana

82.(1) Akukho muntu, ngaphandle kwemvume ebhalwe phansi yeKhomishana, nganoma iyiphi indlela oyosebenzisa igama, isifinyezo, ilogo, izimpawu noma impahla esetshenziswa iKhomishana noma okungeye Khomishana.

(2) Akukho muntu ongaqamba amanga athi wenza okuthile egameni leKhomishana.

(3) Noma yimuphi umuntu ophula izigatshana (1) no (2) uyothweswa icala.

Ukudlulisewa kwamandla iKhomishana

83.(1) IKhomishana ngesisombululo esikhethekile, ingadlulisela kumsebenzi ohlongozwe esigabeni 79, noma yimaphi amandla noma umsebenzi onikezwe iKhomishana ngokwalo Mthetho.

(2) Nanoma yimaphi amandla noma umsebenzi odluliselwe ngokwesigatshana (1) kumele asetshenziswe noma wenziwe ngaphansi kwaleyo mibandela njengoba iKhomishana ingabona kufanele.

(3) Ukudlulisewa kwamandla okukhulunywe ngakho kwisigatshana (1) –

- (a) kumele kubhalwe phansi;
- (b) akuvimbeli iKhomishana ekusebenziseni lawo mandla noma ekwenzeni lwo msebenzi; futhi
- (c) noma yingasiphi isikhathi kungahoxiswa noma kuchitshiyelwe ngokubhalwe phansi iKhomishana.

Amacala ajwayelekile ngokwezinhoso zeSahluko 12

84.(1) IKhomishana, umsebenzi, umeluleki, i-ejenti nanoma yimuphi omunye umuntu oqashwe noma osebenza egameni leKhomishana uyothweswa icala uma egwazelwa ngandlela thile noma ethola imali engagunyaziwe noma umvuzo kunoma yimuphi umuntu maqondana nanoma yini eyenziwa noma ehlinzekwe iKhomishana.

(2) Noma yimuphi umuntu uyothweswa icala uma, maqondana nanoma yini eyenziwe noma ehlinzekwe iKhomishana, egwazisa noma ezama ukugwazisa noma eyenga noma ezama ukuyenga ilungu leKhomishana, umsebenzi, umeluleki, i-ejenti nanoma yimuphi umuntu oqashwe noma osebenza egameni leKhomishana.

(3) Noma yimuphi umuntu oqamba amanga athi ugunityaziwe ukukhokhisa noma ukuqoqa izimali noma iminikelo egameni leKhomishana, noma ngomyalelo weKhomishana uyothweswa icala.

(4) Noma yimuphi umuntu owePhula noma owehluleka ukuhambisana nezinhlinzeko zalesi sahluko noma zanoma yimuphi umthethonqubo ophathelene nalesi sahluko, uyothweswa icala.

Izinhlawulo ngokwezinhloso zeSahluko 12

85. Noma yimuphi umuntu otholakale enecala ngokwalesi sahluko uyohlawuliswa noma abhadle ejele isikhathi esingeqile eminyakeni emihlanu noma akhokhiswa inhlawulo aphinde abhadle ejele.

Izinhlinzeko zesikhashana maqondana neKhomishana

86.(1) I^Khomishana ingundlalifa osemthethweni weKhomishana yokuHlela yesiFundazwe esungulwe eHhovisi likaNdunankulu ngaphambi kokuqala kokusebenza kwalo Mthetho.

(2) Abantu ngaphambi kosuku lokuqala kokusebenza kwalo Mthetho, ababeqokwe njengoKhomishana noSihlalo abazosebenza ngokugcwele kanjalo nabanye oKhomishana abasebenza ngezikhathi ezithile, bayaqhube ka njengoSihlalo kanye noKhomishana futhi bathathwa njengabaqokwe ngokwesigaba 70 salo Mthetho kusukela ngosuku lokuqala kokusebenza kwalo Mthetho.

(3) Umuntu, ngaphambi kosuku lokuqala kokusebenza kwalo Mthetho, obesebenzela iKhomishana uthathwa njengoqokwe ngokwesigaba 79 salo Mthetho futhi uqhubeka nawo wonke amalungelo kanye nemihlomulo.

ISAHLUKO 13
IZINHLINZEKO EZEJWAYELEKILE

Imithethonqubo

87.(1) UNdunankulu, ngesaziso kwiGazethi angasungula imithethonqubo ephathelene –

- (a) nanoma yiluphi udaba olunganqunywa noma okumele lunqunywe ngokwalo Mthetho;
- (b) nanoma iluphi udaba Iwezokuphatha noma Iwenqubo okumele ilandelwe ukuze kuqaliswe izinhlinzuko zalo Mthetho: Kuncike ekutheni –
 - (i) imithethonqubo ephathelene nezindaba eziqondene neSahluko 11 (izigaba 44 – 66) salo Mthetho kumele isingulwe ngemva kokubonisana noMxazululi; kanti
 - (ii) imithethonqubo ephathelene nezindaba eziqondene neSahluko 12 (izigaba 67 – 86) salo Mthetho kumele isungulwe ngemva kokubonisana neKhomishana.

(2) Imithethonqubo ingahlinzeka ngokuthi nanoma yimuphi umuntu owePhula noma imuphi umthethonqubo noma owehluleka ukuwulandela uyothweswa icala futhi ahlawuliswe noma abhadle ejele isikhathi esingeqile eminyakeni emihlanu.

Ukudlulisewa kwamandla uNdunankulu

88.(1) UNdunankulu angadlulisela kuMqondisi-Jikelele –

- (a) nanoma yimaphi amandla anikezwe uNdunankulu ngokwalo Mthetho, ngaphandle kwamandla –
 - (i) okushicilela isaziso;
 - (ii) okwenza Isimemezel; kanye
 - (iii) nawokwenza imithethonqubo;
- (b) nanoma yimuphi umsebenzi owethweswe uNdunankulu ngokwalo Mthetho, ngaphandle komsebenzi omayelana nokuqokwa kanye nokususwa esikhundleni –
 - (i) koMxazululi ohlongozwe ezigaben 46 no 60(2); kanye
 - (ii) noSihlalo noma oKhomishana abahlongozwe ezigaben 70 no 72(1).

(2) Nanoma yimaphi amandla noma umsebenzi odlulisewa ngokwesigatshana (1), kumele asetshenziswe noma wenziwe ngokwaleyo migomo njengoba uNdunankulu engabona kufanele.

(3) Ukudluliselwa kwamandla ngokwesigatshana (1) –

- (a) kumele kubhalwe phansi;
- (b) akuvimbeli uNdunankulu ekusebenziseni lawo amandla noma ukwenza leyo misebenzi; futhi
- (c) noma yingasiphi isikhathi kungahoxiswa noma kuchitshiyelwe ngokubhalwe phansi uNdunankulu.

Isihloko esifingqiwe

89. Lo Mthetho ubizwa ngoMthetho wokuGqugquzelu ukuBusa okuHle waKwaZulu-Natali, 2013.

UHLELO**Isiqinisekiso somuntu obizelwe kwinhlolokhono***(Isigaba 25(2)(b))***ISIQINISEKISO****SOMUNTU OBIZELWE KWINHLOLOKHONO*****IMIYALELO:***

1. UMUNTU ngamunye obizelwe kwinhlolokhono KUMELE, ngokushesha ngemuva kwenhlolokhono –

- (a) agcwali *lesi SIQINISEKISO ngokuphelele umbuzo ngamunye (ngokuthi afake uphawu Iwesiphambano ebhokisini elino “Yebo” noma “Cha” eliqondene nombuzo);*
- (b) afake *ama-inishiyali amagama akhe ekhasini ngalinye lalesi SIQINISEKISO;*
- (c) asayne *ikhasi lokugcina lalesi SIQINISEKISO; futhi*
- (d) athole *ikhophi esayiniwe yalesi SIQINISEKISO.*

2. Uma kudingeka iminininingwane ebhaliwe, OBIZELWE KWINHLOLOKHONO kumele ayithumele kwiThimba lenhlolokhono ezinsikwini ezinhlanu kube nenhlolokhono. Uma OBIZELWE KWINHLOLOKHONO ehluleka ukuthumela imininignwane ebhaliwe edingwa iThimba lenhlolokhono noma OBIZELWE KWINHLOLOKHONO engenzi okumele akwenze lokho kungaholela ekutheni iThimba lenhlolokhono limbone njengomuntu ongafanelekile ukuba aqashwe kungakhatholeki ukuthi imiphumela yenhlolokhono ithini.

3. Uma OBIZELWE KWINHLOLOKHONO egcina eqashiwe ngemva kwalokho bese kutholakala ukuthi uhlinkeze ngezimpendulo ezingelona iqiniso noma ezikhohlisayo kunoma imuphi umbuzo kulena engezansi, lokho kungethembeki noma kukohlisa kukhombisa inkohlakalo nokwephula imigomo yokwethembana phakathi komsebenzi nomqashi futhi lokho kungaba yimbangela yokuthi aqondiswe izigwegwe okungaholela ekutheni axoshwe noma kuthathwe ezinye izinyathelo zomthetho ezigunyaziwe ngokweMigomo neziNqubo zokuQondisa iziGwegwe kaHulumeni.

**4. OBIZELWE KWINHLOLOKHONO kumele, ezinsukwini ezinhlanu kube nenhlolokhone,
adalule ngokubhalwe phansi kwiThimba lenhlolokhone noma yiliphi**

*ibhizinisi noma ukuhlomula ngokwezezimali noma imisebenzi ayenzayo ukuzuza
ngokwezezimali okungenza ukuhlomula kwakhe kushayisana nemigomo yokuqashwa
kuHulumeni, wonke, noma kulowo mnyango othile azoqashwa kuwona.*

OBIZELWE KWINHLOLOKHONO	ISIKHUNDLA	USUKU LWENHLOLOKHONO
Igama:
Inombolo kaMazisi:	

1. Wake wabekwa icala iwanoma iluphi uhlobo lokwephula umthetho?

Yebo	Cha
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Uma kunjalo, imininingwane egcwale ebhalwe phansi mayelana necala kanye
nesinqumo senkantolo kumele ithunyelwe kwiThimba lenhlolokhone ezinsukwini
ezinhlanu kubanjwe inhlolokhono.

2. Ingabe njengamanje –

- (a) ubhekene; noma
- (b) ungase ubekwe,

icala elithile?

Yebo	Cha
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Uma kunjalo, imininingwane egcwale ebhalwe phansi mayelana necala obekwe lona
kumele ithunyelwe kwiThimba lenhlolokhone ezinsukwini ezinhlanu kubanjwe
inhlolokhono.

3. Wake walahlwa yicala lokungaziphathi kahle lapho owawusebenza khona noma lapho usebenza khona njengamanje?

Yebo	Cha
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Uma kunjalo, imininingwane egcwele ebhalwe phansi mayelana nokungaziphathi kahle kanye nesinqumo sikasihlalo/sesikhulu esasihola uphenyo/icala kumele ithunyelwe kwithimba lenholokhono ezinsukwini ezinhlanu kubanjwe inhlolokhono.

4. Ingabe njengamanje –

- (a) umisiwe emsebenzini;
- (b) ubhekene nokuqondiswa kwezigwegwe; noma
- (c) ungase ugondiswe izigwegwe,

umqashi wakho?

Yebo	Cha
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Uma kunjalo, imininingwane egcwele ebhalwe phansi mayelana nokumiswa noma nezinyathelo zokuqondiswa izigwegwe kumele ithunyelwe kwithimba lenholokhono nezinsukwini ezinhlanu kubanjwe inhlolokhono.

5. Wake waxoshwa emsebenzini –

- (a) ngecala lobugebengu;
- (b) ngenxa yokungaziphathi kahle okuphathelene –
 - (i) nokungathobeli umthetho;
 - (ii) nokuphatha budlabha;
 - (iii) nokweba;
 - (iv) nokukhwabanisa; noma
 - (v) nenkohlakalo; noma
- (c) ngelinye icala, kubandakanya, phakathi kokunye –
 - (i) ukungethembeki;
 - (ii) ukuphuza ngokweqile, ukusebenzisa izidakamizwa; noma
 - (iii) ukushaya noma ukuba nodlame,
owawubekwe lona?

Yebo	Cha
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Uma kunjalo, imininingwane egcwele ebhalwe phansi mayelana nalokho kuxoshwa kanye nesinqumo sikasihlalo/sesikhulu esasihola uphenyo/icala, njengoba kugaba njalo, kumele ithunyelwe kwiThimba lenhlolokhono ezinsukwini ezinhlanu kubanjwe inhlolokhono.

6. Wake wesula emsebenzini ngemuva kwezinsolo –

(a) **zecala lobugebenqu; noma**

(b) **zokungaziphathi kahle okuphathelene –**

(i) **nokungathobeli umthetho;**

(ii) **nokuphatha budlabha;**

(iii) **nokweba;**

(iv) **nokukhwabanisa; noma**

(v) **nenkohlakalo; noma**

(c) **zelinye icala, kubandakanya, phakathi kokunye –**

(i) **ukungethembeki;**

(ii) **ukuphuza ngokweqile, ukusebenzisa izidakamizwa; noma**

(iii) **ukushaya noma ukuba nodlame,**

owawubhekene nazo?

Yebo	Cha
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Uma kunjalo, imininingwane egcwele ebhalwe phansi mayelana nalezo zinsolo kumele ithunyelwe kwiThimba lenhlolokhono ezinsukwini ezinhlanu kubanjwe inhlolokhono.

7. Ingabe njengamanje, noma ngesinye isikhathi, uzohlomula ngasese noma ube namasheya kwinkontileka, esivumelwaneni, kwithenda, empahleni noma kutshalomali oluthinta noma oluhiangane noHulumeni, nanoma imuphi uMnyango kaHulumeni kaZwelonke noma wesifundazwe, noma kunoma imuphi umasipala noma uhlaka lombuso?

Yebo	Cha
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Uma kunjalo, imininingwane egcwele ebhalwe phansi mayelana nalokho kuhlomula noma lokho kuba namasheya kumele ithunyelwe kwiThimba lenhlolokhono ezinsukwini ezinhlanu kubanjwe inhlolokhono.

8. Ingabe eminyakeni emihlanu eyedlule –

- (a) uke wathola imali noma umhlomulo ovela; noma
- (b) uke wahlomula ngasese noma ngamasheya,

kunoma iyiphi inkontileka, isivumelwano, ithenda, impahla noma kutshalomali oluvela, noma oluhiangene noHulumeni, nanoma imuphi uMnyango kaHulumeni kaZwelonke noma wesiFundazwe, nakunoma imuphi umasipala noma uhlaka lombuso?

Yebo	Cha
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Uma kunjalo, imininingwane egcwele ebhalwe phansi mayelana naleyo mali, nalokho kuhlomula noma namasheya kumele ithunyelwe kwiThimba lenhlolokhono ezinsukwini ezinhlanu kubanjwe inhlolokhono.

9. Ingabe njengamanje, noma esikhathini esizayo uzoba –

- (a) umqondisi;
- (b) ilunqu; noma
- (c) uphathina,

kunoma iyiphi inkampani, inkampani ezimele noma ebhizinisi?

Yebo	Cha
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Uma kunjalo, imininingwane egcwele ebhalwe phansi mayelana nalobo buqondisi, nalobo bulungu noma lobo bulingani kwezebhizinisi (kubandakanya ukudalula ngokubhalwe phansi ukuthi ngabe leyo nkampani, noma lelo bhizinisi, lingenza imisebenzi noHulumeni nanoma imuphi umnyango kaHulumeni kaZwelonke noma wesiFundazwe, noma nanoma imuphi umasipala noma uhlaka lombuso, manje noma esikhathini esizayo) kumele ithunyelwe kwiThimba lenhlolokhono ezinsukwini ezinhlanu kubanjwe inhlolokhono.

10. Ingabe njengamanje uthola, noma ufake isicelo sokuthola –

- (a) isibonelelo sezingane; noma
 (b) isibonelelo sezindlu sabahola kancane?

Yebo	Cha
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Uma kunjalo, imininingwane egcwele ebhalwe phansi mayelana naleso sibonelelo sezingane noma leso sibonelelo sezindlu sabahola kancane kumele ithunyelwe kwithimba lenhlolokhono ezinsukwini ezinhlanu kubanjwe inhlolokhono.

11. Ingabe njengamanje ubhalisile no-SARS njengomkhokhi wentela?

Yebo	Cha
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Uma kungenjalo, imininingwane egcwele ebhalwe phansi mayelana nokungabhalisi kwakho njengomkhokhi wentela kumele ithunyelwe kwithimba lenhlolokhono ezinsukwini ezinhlanu kubanjwe inhlolokhono.

12. Ingabe njengamanje –

- (a) ubhekene; noma
 (b) ukhishelwe,
icala elingaphathelene nobugebengu noma umyalelo wenkantolo ophathelene –
 (i) nesikweletu;
 (ii) namademeshe; noma
 (iii) nesondlo sowayengowakwakho yakho noma sengane yakho?

Yebo	Cha
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Uma kunjalo, imininingwane egcwele ebhalwe phansi mayelana necala elingaphathelene nobugebengu noma nomyalelo wenkantolo (kubandakanya nesamba sesikweletu, samademeshe noma sesondlo) kumele ithunyelwe kwithimba lenhlolokhono ezinsukwini ezinhlanu kubanjwe inhlolokhono.

13. Ingabe ikhona into ephathelene –

- (a) nesicelo sakho (kubandakanya imininingwane eqondene neziqu zakho kanye nesipiliyon onaso); noma
 (b) nezimo eziqondene nawe ugobo,

wena ngokwakho, obona ukuthi ngokomthetho, njengemfanelo noma ngokwanembeza wakho kumele ukudalule kwiThimba lenhlolokhono?

Yebo	Cha
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Uma kunjalo, imininingwane egcwele ebhalwe phansi mayelana nalokho kumele ithunyelwe kwiThimba lenhlolokhono ezinsukwini ezinhlanu kubanjwe inhlolokhono.

14. Ingabe njengamanje unenkinga –

- (a) yophuzo oludakayo noma yokusebenzisa izidakamizwa; noma
- (b) yokuba nodlame (lwasekhaya noma lolunye uhlobo),

wena ngokwakho, obona ukuthi ufisa ukuyidalula kwiThimba lenhlolokhono?

Yebo	Cha
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Uma kunjalo, imininingwane egcwele ebhalwe phansi mayelana nalezo zinkinga okumele ithunyelwe kwiThimba lenhlolokhono ezinsukwini ezinhlanu kubanjwe inhlolokhono. IThimba lingacela ukuba ulihlinzeke ngombiko kadokotela noma womsebenzi wezempiro, womeluleki noma kasonhlalakahle.

15. Ingabe ukhubazekile noma awuphilile kahle (emzimbeni, enggondweni noma emoyeni), wena, ngokwakho, obona ukuthi ufisa ukukudalula kwiThimba lenhlolokhono, ngenhlosa –

- (a) yemigomo yokuqasha ebhekele ukulingana; noma
- (b) yokuthi umqashi athathe izinyathelo zokukuhlelela indlela ozosebenza ngayo noma indawo ozosebenzela kuyo.

Yebo	Cha
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Uma kunjalo, imininingwane egcwele ebhalwe phansi mayelana nokukhubazeka, noma nokungaphili kahle onakho kumele ithunyelwe kwiThimba lenhlolokhono ezinsukwini ezinhlanu kudlule inhlolokhono. IThimba lingacela ukuba ulihlinzeke ngombiko kadokotela noma womsebenzi wezempiro, womeluleki noma kasonhlalakahle.

16. Ingabe wenelisekile –

- (a) ngokubumbeka nangokumeleleka kweThimba lenhlolokhono; kanye

(b) *nangokuthi inhlolokhono yakho, ngokwakho, iThimba lenhlolokhono liyenze ngendlela enobulungiswa futhi efanele.*

Yebo	Cha
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Uma, nganoma ngasiphi isizathu ungenelisekile ngeThimba lenhlolokhono noma ngenhlolokhono imininingwane egcwele ebhalwe phansi echaza ngokungeneliseki kwakho kumele ithunyelwe kwiThimba lenhlolokhono ezinsukwini ezinhlanu kubanjwe inhlolokhono.

17. Ngiyakwazi futhi ngiyakuqonda ukuthi –

(a) uma ngihlinzeka ngezimpendulo ezingamanga noma ezidukisayo kunoma imuphi umbuzo okukhulunywe ngawo ngenhla, lokho kungethembeki noma kukohlisa kungukukhohlakala futhi kuzoholela ekutheni ngishushiswe ngecala lokwephula umthetho;

(b) uma ngigcina ngokuqashwa emva kwalokho kutholakale ukuthi ngihlinzeke ngezimpendulo ezingelona iqiniso noma ezidukisayo kunoma imuphi umbuzo okukhulunywe ngawo ngenhla, lokho kungethembeki noma kukohlisa kungukukhohlakala futhi kuzoholela ekutheni kungabe kusaba khona ukwethembana phakathi kwami njengomsebenzi kanye nomqashi futhi lokho kungasetshenziswa ekutheni ngiqondiswe izigwegwe okungadala ukuthi ngixoshwe noma kusetshenziswa ezinye izindlela ezigunyaziwe ngokweMigomo neziNqubo zokuQondisa iziGwegwe zikaHulumeni;

(c) kumele, ezinsukwini ezinhlanu kudlule inhlolokhono, ngidalule ngokubhalwe phansi kwiThimba lenhlolokhono nganoma yiliphi ibhizinisi noma ukuhlomula ngokwezezimali noma imisebenzi engiyenzayo ukuze ngizuze imali nalokho okungadala ukushayisana kwimisebenzi yami nengiqashelwe yona kuHulumeni, noma kulowo Mnyango othintekayo engiqashwe kuwo;

(d) uma ngingayithumeli imininingwane ebhaliwe efunekayo yanoma iziphi izimpendulo noma yalesi SIQINISEKISO esibhaliwe okumele ngiyithumele kwiThimba lenhlolokhono ezinsukwini ezinhlanu kudlule inhlolokhono, lokho

kwehluleka kwami kungaholela ekutheni iThimba lenhlolokhono lingibone njengomuntu ongakufanele ukuqashwa kungakhatheliki ukuthi imiphumela yenhlolokhoni ithini;

(e) uma ngenqaba noma ngiziba ukugcwalisa nokusayina lesi SIQINISEKISO, lokho kwenqaba noma kuziba kwami kungaholela ekutheni iThimba lenhlolokhono lingibone njengomuntu ongakufanele ukuqashwa kungakhatheliki ukuthi imiphumela yenhlolokhono ithini; futhi

(f) kumele ngithole ikhophi esayiniwe yalesi SIQINISEKISO.

ISAYINWE E NGALOLU SUKU MHLA ZI KU, ONYAKENI
KA-20

OFAKAZI:

1.

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OBIZELWE KWINHLOLOKHONO

2.

IMEMORANDAMU**NGEZINHLOSO****ZOMTHETHOSIVIVINYO WOKUGQUGQUZELA UKUBUSA OKUHLE WAKWAZULU-NATALI, 2013****1. ISENDLALELO**

UkuLawula koMthetho kuyisisekelo soMthetho waseNingizimu Afrika. Kuqhakanjiswe kwisahluko sokuqala nasesigabeni sokuqala soMthethosisekelo. KuyiNhlinzeko eyisiSekelo ebophezelayo. Isigaba 1(c) soMthethosisekelo sihlinzekela “ukuba phezu konke koMthethosisekelo nokuLawula koMthetho”.

Siphila esikhathini sentando yeningi esuselwa kwimigomo yokubusa ngokoMthethosisekelo nangokuLawula koMthetho. Sesihambe ibanga elide emizamweni yokufezekisa lo mbono, futhi kusenezinselelo eziningi esisazohlangabezana nazo.

“UkuLawula koMthetho” kumele kwehlukaniswe “nokulawula komuntu” noma nokubusa “ngokwentando yomuntu”. Ukuhambisana nokuLawula koMthetho kusho ukuthi kumele kube nesisekelo somthetho noma segunya lokusebenzisa wonke amandla nelokwenza yonke imisebenzi noma wonke amajoka esikhungo noma omsebenzi ophethe noma olawulayo. Ngamanye amazwi, kuchaza ukuthi amalungelo namajoka awo wonke umuntu kumele asuselwe emthethweni, kumele ancike emthethweni hhayi kumuntu, noma kumuntu ezimweni ezithile kuphela, ngokwamandla anawo.

Ukuhlonipha le migomo yokubusa ngokoMthethosisekelo nokuLawula koMthetho, uHulumeni wesiFundazwe saKwaZulu-Natali, ngokwethula kwakhe lo Mthethosivivinyo, uhlose ukusungula isisekelo negunya lomthetho elizobhekelela izindlela, izinhlelo nezinhlaka zokubusa okuhle esiFundaweni.

La mazwi ayavela kwiSandulelo soMthethosivivinyo.

Umbono wokusungulwa kwalo Mthethosivivinyo usukela oHlelweni lokuPhuculwa kwemiThetho IwaKwaZulu-Natali (olulawulwa uPhiko oluKhulu olubhekelle uKweluleka uMbuso kwezoMthetho eHhovisi likaNdunankulu), olunhloso yalo ukusungula uHlaka lwemiThetho yesiFundazwe –

- (a) oluhambisanayo noMthethosisekelo;
- (b) olubhekellela izidingo ezikhona zesiFundazwe ngendlela ecacile nebanzi;
- (c) olungenazo izingxenye nezinkomba zokwedlulelwya yisikhathi nokususelwa emicabangweni yabantu;
- (d) oluthokakala kalula; futhi
- (e) oluzogqugquzelisa iqiniseko somthetho, ukubusa okuhle, ukupaththa ngendlela futhi lusimamise ukuhlinzekwa kwezidindo.

Izhloso zoMthethosivivinyo –

- (a) ukuqinisekisa imigomo nezindlela zokubusa okuhle ezikhona;
 - (b) ukusungula imigomo nezindlela ezintsha zokubusa okuhle ezihlongozwayo; kanye
 - (c) nokusungula isisekelo somthetho kanye negunya lomthetho maqondana namasu, nezinhlelo nezinhlaka zokubusa okuhle,
- esiFundazweni ngokusebenzisa umthetho wesiFundazwe.

Njengoba KwaZulu-Natali singenawo uMthethosisekelo wesiFundazwe, uMthethosisekelo uqukethe izinhlinzezo zohlobo nezinga okumele ngabe zifakiwe kuMthethosisekelo wesiFundazwe futhi ezithathwe njengezidinge kayo nezifanele ukufakwa emthethweni wesiFundazwe. Ezinye izinhlinzezo zigcizelela futhi ziqinisekisa izinhlinzezo ezingokoMthethosisekelo ezikhona ezipathelene nezfundazwe (isibonelo, isigaba somthetho 3 – 9, 31, 33 no 36) kanti ezinye izinhlinzezo ezihlongozwayo yilezo ezintsha lapho iKwaZulu-Natali iqala khona izinto ezintsha (isibonelo, isigaba somthetho 10-23, 25, 26, 27, 29, 30, 32, 34 no 35 noHlelo).

UMthethosivivinyo osewuhlaka uphinde usungule isisekelo somthetho negunya lomthetho, phakathi kokunye –

- (a) kweKhomishana yokuHlela yesiFundazwe saKwaZulu-Natali (Isahluko 12: izigaba zomthetho 67 – 86);
- (b) kweSu lokuKhula neNtuthuko lesiFundazwe (i-PGDS);
- (c) lukaSomqulu wezaKhamizi waKwaZulu-Natali (Isahluko 10: isigaba somthetho

37 – 43); kanye

(d) nokweHhovisi loMxazululi laKwaZulu-Natali (Isahluko 11: isigaba somthetho 44 –66).

2. UKUCHAZWA KWESIGABA NGASINYE

Kafishane, uMthethosivivinyo uhlinzeka kanje:-

ISAHLUKO 1

IZINCAZELO

Isigaba somthetho 1

Isigaba somthetho 1 siqukethe izincazelo ezichaza kabanzi ngamagama asetshenzisiwe.

ISAHLUKO 2

IZINJONGO ZOMTHETHOSIVIVINYO

Isigaba somthetho 2

Isigaba somthetho 2 siqukethe izinjongo zoMthethosivivinyo, ngokubanzi, okungukusungula isisekelo somthetho negunya lomthetho lezindlela, lezhinlelo kanye nezinhlaka zokubusa okuhle esifundazweni.

ISAHLUKO 3

UBUDLELWANE PHAKATHI KOHULUMENI, AMAZWE OKUXHUNYANWA NAWO,

IZIVUMELWANO NAMAZWE ANGAPHANDLE, IZIVUMELWANO NEZINHLELO

ZOKUSEBENZISANA

Isigaba somthetho 3

Isigaba somthetho 3 siqinisekisa imigomo yokubusa ngokubambisana ebekwe kuMthethosisekelo ephathelene noHulumeni wesiFundazwe saKwaZulu-Natali njengengxenye yezinga likaHulumeni wesiFundazwe eNingizimu Afrika.

Isigaba somthetho 4

Isigaba somthetho 4 siqinisekisa ukusungulwa kwesiGungu sikaNdunankulu esibhekele ubuDlelwane phakathi koHulumeni ngokoMthetho owuMkhombandlela wobuDlelwane phakathi koHulumeni kaZwelonke, 2005 (uMthetho No. 13 ka 2005).

Isigaba somthetho 5

Isigaba somthetho 5 siqinisekisa ukuthi uNdunankulu angasungula ezinye izigungu ezibhekele ubudlelwane phakathi kohulumeni zesiFundazwe okukhulunywe ngazo eMthethweni owuMkhombandlela wobuDlelwano phakathi koHulumeni kaZwelone, 2005 (uMthetho No. 13 ka 2005).

Isigaba somthetho 6

Isigaba somthetho 6 siqinisekisa ukusungulwa kwezigungu esibhekele ubudlelwane phakathi kohulumeni endaweni engaphansi kukamasipala wesifunda ngamunye esiFundazweni, ngokoMthetho owuMkhombandlela wobuDlelwane phakathi koHulumeni kaZwelone, 2005 (uMthetho No. 13 ka 2005), ukuze kugqugquzelwe futhi kuqiniswe ubudlelwane phakathi kukamasipala wesifunda nomasipala basekhaya abangaphansi kwesifunda.

Isigaba somthetho 7

Isigaba somthetho 7 siqinisekisa ukuthi uNdunankulu ngokoMthetho owuMkhombandlela wobuDlelwane phakathi koHulumeni kaZwelone, 2005 (uMthetho No. 13 ka 2005), nguye onejoka lokudidiyela ubudlelwane phakathi kohulumeni kuHulumeni wesiFundazwe.

Isigaba somthetho 8

Isigaba somthetho 8 siqinisekisa iqhaza okumele libanjwe yizithunya zesifundazwe eMkhandlwi weziFundazwe kaZwelone ngokoMthethosisekelo.

Isigaba somthetho 9

Isigaba somthetho 9 sihlose ukulawula uHulumeni wesiFundazwe lapho exhumana namazwe angaphandle.

Isigaba somthetho 10

Isigaba somthetho 10 sihlose –

- (a) ukuqinisekisa ukuthi ngokoMthethosisekelo, ukudingidwa nokusayinwa kwezivumelwano namazwe angaphandle kuyijoka loMkhandlu oPhethe kaZwelone; kanye
- (b) nokulawula amandla kaHulumeni wesiFundazwe mayelana nezivumelwano nezinhlelo zokusebenzisana namazwe angaphandle.

Siveza emehluko phakathi kwezivumelwano namazwe angaphandle, kanjalo nezivumelwano noma nezinhlelo zokusebenzisana namazwe angaphandle, ngakolunye uhlangothi, nenqgikithi, kanye nezinqubo zezivumelwano noma nezinhlelo zokusebenzisana okumele zilawulwe ngokulandela umyalelo wezomthetho ovela eMnyangweni kaZwelonke obhekele ezobuDlelwane nokuSebenzisana namaZwe angaPhandle (obewaziwa ngomnyango wezangaPhandle).

ISAHLUKO 4

**IMIGOMO EYIMIKHOMBANDLELA YENQUBOMGOMO YESIFUNDAZWE, YESU LOKHULA
NENTUTHUKO LESIFUNDAZWE KANYE NESU LESIFUNDAZWE**

Isigaba somthetho 11

Isigaba somthetho 11 sibeka imigomo eyimikhombandlela yeNqubomgomo yesiFundazwe.

Isigaba somthetho 12

Isigaba somthetho 12 sinquma ngesimo semigomo eyimikhombandlela yeNqubomgomo yesiFundazwe.

Isigaba somthetho 13

Isigaba somthetho 13 sihlinzeka ngesisekelo somthetho seSu lokuKhula neNtuthuko lesiFundazwe (i-PGDS).

Isigaba somthetho 14

Isigaba somthetho 14 sihlinzekela ngesikhathi sokusebenza, ngokuqashwa, ngokuhlolwa nokubuyekezwa kwe-PGDS.

Isigaba somthetho 15

Isigaba somthetho 15 sihlinzekela ngokushicilewa kwe-PGDS ngenhlosi yokwazisa umphakathi.

Isigaba somthetho 16

Isigaba somthetho 16 sihlongoza ukuthi i-PGDS kumele ibhekelelwani ezinhlelweni zeminyango, kwizabelomali nasemithethweni futhi sihlinzeka ngokuthi amazinga okusebenza ezinhloko

zeminyango kuHulumeni wesiFundazwe kumele ahlolwe ngendlela ehambisana nokuqaliswa kwe-PGDS.

Isigaba somthetho 17

Isigaba somthetho 17 sinquma ngesimo se-PGDS.

Isigaba somthetho 18

Isigaba somthetho 18 sihlinzekela izinhlinzuko zesikhashana maqondana ne-PGDS futhi silawula isimo sanoma iyiphi i-PGDS eyamukelwa ngaphambi kosuku lokuqala kokusebenza kwalo Mthethosivivinyo njengoMthetho.

Isigaba somthetho 19

Isigaba somthetho 19 sihlinzeka ngesisekelo somthetho seSu lesiFundazwe.

Isigaba somthetho 20

Isigaba somthetho 20 sihlinzekela ngesikhathi sokusebenza, ngokuqashwa, ngokuhlolwa nangokubuyekezwa kweSu lesiFundazwe.

Isigaba somthetho 21

Isigaba somthetho 21 sihlinzekela ukushicilelwu kweSu lesiFundazwe ngenhoso yokwazisa umphakathi.

Isigaba somthetho 22

Isigaba somthetho 22 siveza umbono wokuthi iSu lesiFundazwe kumele lubhekelelwu ezinhlelwani zeminyango, kwizabelomali nasekusungulweni kwemithetho futhi sihlinzeka ngokuthi amazinga okusebenza ezinhloko zeminyango kuHulumeni wesiFundazwe kumele ahlolwe ngendlela ehambisana nokuqaliswa kweSu lesiFundazwe.

Isigaba somthetho 23

Isigaba somthetho 23 sinquma ngesimo seSu lesiFundazwe.

ISAHLUKO 5
UHULUMENI WESIFUNDAZWE

Isigaba somthetho 24

Isigaba somthetho 24 sinquma ukuthi inhlokokhovisi kaHulumeni wesiFundazwe izinze eMgungundlovu kanti siphinde sihlinzekel ukusungulwa kwamanye amahhovisi ezifunda.

Isigaba somthetho 25

Isigaba somthetho 25(1) siqinisekisa izinhlinzuko ezingokoMthethosisekelo eziphathelene nabasebenzi bakahulumeni wesifundazwe.

Isigaba somthetho 25(2) sihlongoza ukuthi noma imuphi umuntu ongaqashwa kuhulumeni wesiFundazwe futhi obizelwe kwinholokhono, kumele agcwalise futhi asayine isibophezelo esizosiza ukuthi kuhlolwe futhi kubhekwe lowo muntu. Isibophezelo esibhalwe ngokubanzi sitholakala oHlelweni lwalo Mthethosivivinyo.

Isigaba somthetho 25(3) sibophezelu uHulumeni wesiFundazwe ukuthi agquqquzele, eseke futhi aqinisekise ukwenyuka kwamazinga okukhiqiza, okuhlinzekwa kwezidingo nawokusebenza, okuqequesha nokuthuthukiswa kwamakhono nokwenyuswa kwamazinga okusebenza kubasebenzi bakahulumeni wesifundazwe.

Isigaba somthetho 26

Isigaba somthetho 26(1) siqinisekisa ubuqotho nemigomo ejwayelekile elawula uhulumeni esifundazweni etholakala kuMthethosisekelo.

Isigaba somthetho 26(2) sibophezelu uHulumeni wesiFundazwe, ngezinsiza anazo, ukuba athathe izinyathelo ezifanele ngenhloso yokunqanda nokulwa nokuphatha budlabha, ukukhwabanisa kanye nenkohlakalo nokuhlomula ngendlela engafanele.

Isigaba somthetho 27

Isigaba somthetho 27 sibophezelu iminyango yesiFundazwe ukuba ibuyekeze futhi iphucule imithetho elawulwa yileyo minyango ukuqinisekisa ukuthi isezenza ngendlela efanayo futhi ihambisana noMthethosisekelo nemithetho kazwelonke, ngokoMthethosisekelo, ethathwa njengemithetho ebusayo.

Njengoba ukuphuculwa kwemithetho kumele kwenziwe njalo, amazinga okusebenza ezinhloko zeminyango kuHulumeni wesiFundazwe kumele abuyekezwe ngokubhekelela lokho.

Isigaba somthetho 28

Isigaba somthetho 28 sibophezela uHulumeni wesiFundazwe nomnyango ngamunye kuHulumeni wesiFundazwe ukuba usungule i-webhusayithi yawo esemthethweni futhi ufake kuleyo webhusayithi lonke ulwazi okudingeka lwaziwe umphakathi ngokwanoma imuphi umthetho.

ISAHLUKO 6**UKUBUSA NGENDLELA ENOKUBONISANA NOKUHLANGANYELA****Isigaba somthetho 29**

Isigaba somthetho 29 sibeka imigomo yokubusa ngendlela enokubonisana nokuhlanganyela.

ISAHLUKO 7**UKUQAPHA NOKUHLOLA UKUSEBENZA KUKAHULUMENI WESIFUNDAZWE****Isigaba somthetho 30**

Isigaba somthetho 30 sibeka imigomo ethile yokuqapha nokuhlola ukusebenza kukaHulumeni wesiFundazwe.

ISAHLUKO 8**UKUBUSA OKUHLE NOKUBUSA NGOKUBAMBISANA KOMASIPALA****Isigaba somthetho 31**

Isigaba somthetho 31 siqinisekisa imigomo yokubusa okuhle nokubusa ngokubambisana etholakala kuMthethosisekelo naseMthethweni kazwelonke ephathelene nomasipala njengezinga lohulumeni basekhaya.

Isigaba somthetho 32

Isigaba somthetho 32 sigunyaza uNdunankulu, ngesimemezelo kwiGazethi, ukuba abele noma adlulisele amandla, amajoka noma imisebenzi yeminyango yesiFundazwe komasipala.

UMthethosisekelo uyakuveza ukuthi uhulumeni wakhiwe yizinga likahulumeni kaZwelonke, elohulumeni bezifundazwe nohulumeni basekhaya okungamazinga ehlukene, asebenza ngokuhlanganyela. Kunezinhlaka zohulumeni basekhaya ezikhethiwe kuso sonke isiFundazwe.

Lezi zinhlaka zohulumeni basekhaya ezikhethiwe (ngokujwayelekile ezibizwa "ngomasipala" kuMthethosisekelo) ngokoMthethosisekelo nangokoMthetho kaZwelonke, zigunyaziwe ukusebenzia amandla athile, ukufeza amajoka athile nokwenza imisebenzi ethile. Ukuhlinzeka izidingo kubantu abahlala ezindaweni ezingaphansi kwabo iwona msebenzi nejoka eliseqhulwini komasipala.

Ngenxa yezimo zaphambilini, imisebenzi eminingi eyenziwa uHulumeni wesiFundazwe ngokusebenzia iminyango yesiFundazwe kumele ngabe yenziwa emazingeni ezifunda noma ohulumeni basekhaya kusetshenziswa amakhono nengqalazinda yomasipala abakhethiwe.

Angeke kwezwakala kahle futhi kungaba ukumosa okungenasidingo ukuthi umnyango wesiFundazwe usungule izinhlaka ezisebenza ngokufana ezingeni lesifunda (ezifundeni) noma lohulumeni basekhaya ezizokwenza imisebenzi kulawo mazinga egameni lomnyango wesiFundazwe. Uma umnyango wesiFundazwe ngamunye wenza lokho, ukusebenza kwezinhlaka ezingeni lesifunda nelohulumeni basekhaya angeke kudidiyeleke kahle, kungaba nokudideka emazingeni aphansi futhi ukuhlinzekwa kwezidingo kungaphazamiseka futhi kungabi yimpumelelo. Inkolelo yomphakathi yokuthi izidingo zomphakathi azilethwa, nokungazi ukuthi iluphi uhlaka emazingeni ezifunda nawohulumeni basekhaya okumele baye kulo uma bedinga usizo, nokushoniswa lena nalena kungaba nomthelela ongemuhle kuhulumeni kuyo yonke imikhakha namazinga kahulumeni.

Yonke imikhakha namazinga kahulumeni, kubandakanya omasipala emazingeni ohulumeni basekhaya, kumele basimamiswe ngendlela efanele. Izincomo zokudluliselwa kwamandla, kwamajoka nemisebenzi komasipala abathile kumele zithathwe njengesinyathelo esibalulekile esiFundazweni sokusabalalisa ukuhlinzekwa kwezidingo kanti omasipala, ngaphezu kweqhaza elibalulekile abanalo lokuhlinzeka izidingo kohulumeni basekhaya, kumele bathathwe njengohlaka olubarulekile lokuhlinzekwa kwezidingo lukaHulumeni wesiFundazwe. Kuwumsebenzi kaHulumeni kuwo wonke amazinga (imikhakha) ukuhlinzeka izidingo kubantu ngendlela eyimpumelelo, efanele, esheshayo, elinganayo futhi eyongayo. Inhoso kahulumeni

kumele kube ukuletha ngokuhlanganyela izidingo mayelana nemisebenzi ethile emkhakheni noma ezingeni likahulumeni elifanele, esikhathini esiningi okuzoba yizinga elisondelene kakhulu nabantu (izinga lohulumeni basekhaya).

Lokhu akuwona nje umbono kodwa yisibophezelo esingokomthethosisekelo. Isigaba 156(4) soMthethosisekelo sikubeka ngokucacile ukuthi uHulumeni kaZwelonke noHulumeni wesiFundazwe kumele banikeze umasipala amandla okuphatha udaba oluthinta imisebenzi kahulumeni kaZwelonke nowesiFundazwe oluphathelene nemisebenzi eyenziwa uhulumeni wasekhaya uma lolo daba luzophathwa kangcono uma lumphathwe ezingeni lohulumeni basekhaya futhi uma kubonakala ukuthi umasipala uzokwazi ukuluphatha.

Lokhu kungafezekiswa –

- (a) ngesivumelwano;
- (b) uma imithetho elawulwa iminyango esiFundazweni idluliselwa eminye yemisebenzi, leyo minyango kumele ilethe izidingo ezingeni lesifunda nasemazingeni ohulumeni basekhaya komasipala abaqokiwe abafanele esikhundleni sokusungula izinhlaka ezintsha ezizokwenza lokho;
- (c) uma isiShayamthetho sesiFundazwe simisa umthetho (njengoba kuhlongozwe kulesi sigaba soMthethosivivinyo) ohlinzekela ukudluliselwa kwamandla, kwamajoka noma kwemisebenzi uHulumeni wesiFundazwe komasipala.

Kumele kucace ukuthi nanoma ikuphi ukudluliselwa kwamandla kunoma imuphi umasipala kumele, njengoba kwenziwa, kuhambisane –

- (a) ngokudluliselwa kwempahla, kubandakanya izimali; kanye
- (b) nokudluliswa noma nokusiswa kwabasebenzi, njengoba kungaba njalo, okuzosiza ekusetshenzisweni kwalawo mandla noma ekwenziweni kwaleyo misebenzi noma ekufezekisweni kwalawo majoka.

Uma kudingeka izinsiza (impahla nezimali) nabasebenzi, mayelana nalokho kudluliselwa kwamandla indlela okungenziwa ngayo lokho kudluliselwa kwamandla ukusetshenziswa kwalawo mandla noma lokwenza leyo misebenzi edluliselwe kumele lihlinzekelwe kanye nokudluliselwa kwayo. Okudingekayo uma kudluliselwa noma kusiswa abasebenzi ukuthi

abasebenzi kumele, uma kunesidingo, baqeqeshelwe ukusebenzisa lawo mandla, ukwenza leyo misebenzi noma lawo majoka adluliselwe.

Kubalulekile ukuqaphela ukuthi uMthethosisekelo ubophezelu uHulumeni kaZwelone kaZwelone nohulumeni bezifundazwe ukuba beseke futhi bathuthukise amakhono omasipala ukuze bakwazi ukuziphathela izindaba zabo, basebenzise namandla abo (okubandakanya amandla adluliselwe kubo) nokwenza imisebenzi yabo (isigaba 154 soMthethosisekelo). Akukho ukuphucwa amandla okuyovunyelwa ukuba kwensiwe uHulumeni kaZwelone noma uhulumeni wesifundazwe mayelana nalokhu.

Kubalulekile futhi ukuqaphela ukuthi uhulumeni wasekhaya awunalo ilungelo lokuthola izabelo ezithile kwingeniso evela kuzwelone (isigaba 214 soMthethosisekelo) kodwa ugunyaziwe ukuzenzela eyawo ingeniso ngokwezilinganiso ezibekwe esigabeni 229 soMthethosisekelo.

Kumele kugcizelelwu futhi ukuthi iMinyango yesiFundazwe ayivinjelwe, uma kudluliselwe amandla, ukusebenzisa amandla ayo njengoba kumele kubekwe ngokucacile uma kudluliselwa amandla ukuthi ukudluliselwa kwamandla akuvimbili umnyango noma isikhulu soMnyango noma umsebenzi womnyango ukusebenzisa lawo mandla.

Kumele kube nomehluko phakathi kwencazelo "yokudluliselwa kwamandla" "nokwabiwa kwamandla". Uma amandla, imisebenzi noma amajoka abiwa, ijoka nesibopho sokubika mayelana nalawo mandla, nalawo majoka noma naleyo misebenzi kuyahambisana nalawo mandla, nalawo majoka, naleyo misebenzi. Ngakolunye uhlangothi uma kudluliselwa amandla, amajoka noma imisebenzi, amajoka nesibopho sokubika akuvumeli ukulawula ukuqapha, ukungenelela ngisho nokuhoxisa noma nokuchaza kabusha noma imiphi imininingwane ephathelene nalokho kudluliselwa kwamandla noma ingasiphi isikhathi.

Kumele kugcizelelwu ukuthi inhoso akukhona ukwephua noma imaphi amandla, amajoka noma imisebenzi yomunye umnyango kodwa ukuqinisekisa ukuthi ukuhlinzekwa kwezidingo kuyasimamiswa esifundeni (isifunda) nakohulumeni basekhaya, ngokuhambisana nemiyalelo yoMthethosisekelo, ngokuqinisekisa ukuthi uhlaka noma uphiko olubhekele ukuhlinzekwa kwezidingo kulelo zinga ludidiyelwe lwahlanganiswa kahle, kanti ngesikhathi esifanayo, kube kwensiwe ngcono ukutholakala kwalezi zinhlaka nezimpiko ezibhekele ukuhlinzeka abantu ngezidingo. Umphakathi kumele ukwazi ukuthola uhlaka olulodwa olusobala esifundeni noma

kohulumeni basekhaya olubhekele ukubhekana nanoma iziphi izidingo nezinkinga umphakathi ohlangabezana nazo. Omasipala abakhethiwe ezingeni lezifunda neloHulumeni basekhaya banekhono nengqalasizinda enkulu futhi ibona abakufanele kahle ukubhekana naleli joka abalinikezwe uMthethosisekelo.

Le ndlela izophinde yenze kusebenze umgomu noma uhlelo olubizwa nge “*subsidiarity*”. Lolu hlelo, olusungulwe iNhlangano yamaZwe aseYurophu futhi manje oluvelayo kuMthethosisekelo wethu, luthi amandla, amajoka nemisebenzi kumele adluliselwe ezingeni eliphansi likahulumeni. Lolu hlelo lungasetshenziswa ngendlela elula nangezinguquko ezidingekayo ukuze amandla, amajoka nemisebenzi kusondezwe kubantu ukufeza izidingo zentando yabantu nokusimamiswa nokugqugquzelwa kokuthuthukiswa kwamakhono nokusimamiswa kwamakhono ezokuphatha nawomnotho ezingeni lesithathu likahulumeni.

Konke lokhu kusimamisa umbono wokubusa ngokubambisana kuhulumeni njengoba kubekwe kwiSahluko 3 soMthethosisekelo lapho wonke amazinga kahulumeni ethathwa njengahlukene kodwa asebenzisanayo nanesibopho esimqoka sokusizana nokwesekana ekwenzeni imisebenzi yawo.

Isigaba somthetho 33

Isigaba somthetho 33 siqinisekisa inhlinzeko engokoMthethosisekelo yokuthi iLungu loMkhandlu oPhethe lingabelu umkhandlu kamasipala nanoma imaphi amandla alo noma imisebenzi okumele yenziwe yilelo Lungu loMkhandlu oPhethe. Lokho kwabiwa kwamandla kuyokwenzeka ngesimemezelo sikaNdunankulu *kwiGazethi*.

Isigaba somthetho 34

Isigaba somthetho 34 sibophezela omasipala ukuba babuyekeze futhi baphucule yonke imithetho yomasipala elawulwa yilabo masipala ukuze kuqinisekiswe ukuthi iyahambisana noMthethosisekelo nemithetho kaZwelonke neyesiundazwe, ngokoMthethosekelo ethathwa njengemithetho emikhulu.

Isigaba somthetho 35

Isigaba somthetho 35 sinika izakhamuzi zikamasipala amandla okuthatha isinqumo nganoma yiluphi udaba oludingidwayo emhlanganweni womphakathi nokudlulisela isinqumo sazo emkhandlwini kamasipala ukuze usicubungule.

UMkhandlu kamasipala kumele ucubungule isinqumo futhi, ungaqinisekisa, ungaguqula, ungachibiyela, noma ungabeka eceleni noma isiphi isinqumo. Uma umkhandlu kamasipala uguqula, uchibiyela noma ubeka eceleni leso sinqumo kumele unikeze isizathu salokho. Uma uqinisekisa isinqumo, ngesikhathi esifanele kumele usebenzise noma ulandele leso sinqumo sengathi besithathwe umkhandlu kamasipala.

Le nhlinzeke ihlose ukunika izakhamuzi amandla nokwengeza uhlelo olucacile lokubamba iqhaza komphakathi (kanye nendlela engatheni "yokulawula abavoti" okhethweni lomasipala) ukuqinisekisa ukuthi izindaba, iningi lezakhamizi, elibona zibalulekile futhi zifanele ukubikelwa umkhandlu kamasipala zilethwa kuwona ukuze uzcubungule. Lokhu kungasiza futhi ekutheni kuqinisekiswe ukuthi izindaba ezibalulekile zokuhlinzekwa kwezidingo zomphakathi ziyethulwa emkhandlwini kamasipala ukuze uzcubungule ngesikhathi esifanayo ube usebenzela izakhamuzi kanye nomphakathi "njengomxhumanisi" njengoba sebenezindlela zokwethula izinto eziwuthintayo ngendlela enokuthula futhi usukwazi ukuthi ukuphoqa umkhandlu kamasipala ukuba ucubungule udaba (noma ulucubungule kabusha). Lolu hlelo oluhlongozwayo ngeke lophumelele uma lungasetshenziswa kahle futhi kuba neziteleka ezinodlame ngenxa yokudinwa kwezakhamizi noma yokwehluleka kwazo ukwethula izinkinga zazo emikhandlwini yomasipala. Noma isiphi isikhalo esiphathelene nodaba lokuhlinzekwa kwezidingo zophakathi singaphenywa uMxazululi wesiFundazwe sakWaZulu-Natali (bheka iSahluko 11 esiqukethe izigaba zomthetho 44 – 66).

Isigaba somthetho 35 sihlose ukuthi kungabi izakhamizi kuphela, kodwa neninki lamalungu omkhandlu kamasipala noma iLungu loMkhandlu oPhethe oHulumeni baseKhaya, abangayalela usodolobha kamasipala ukuba alandele le ndlela yokubamba imihlangano nomphakathi nokuthatha izinqumo zomhlangano azyise emkhandlwini kamasipala ukuze uzcubungule.

ISAHLUKO 9

UKUBUSA OKUHLE NOKUBUSA NGOKUBAMBISANA EBUHOLINI BOMDABU
NASEZIKHUNGWENI ZOBUHOLI BOMDABU

Isigaba somthetho 36

Isigaba somthetho 36 siqinisekisa ukuhlonishwa kobuholi bomdabu nezikhungo zobuholi bomdabu futhi sibeka izindaba okumele zibhekelelwe emthethweni wesiFundazwe.

ISAHLUKO 10

USOMQULU WEZAKHAMIZI WAKWAZULU-NATALI

Isigaba somthetho 37

Njengamanje awaukho omunye umthetho ohlinzekela ngqo, noma ogunyaza ngqo uSomqulu wezaKhamizi waKwaZulu-Natali. Ngokulandela imigomo yokubusa ngokomthethosekelo nokuLawula koMthetho, uHulumeni wesiFundazwe saKwaZulu-Natali, ngokwethula lo Mthethosivivinyo, uqonde ukusungula isisekelo somthetho kanye negunya lomthetho lokusungulwa kukaSomqulu wezaKhamizi waKwaZulu-Natali, okuqukethe kanye nenqubo ezolandelwa uma wamukelwa futhi uchitshiyelwa.

Isigaba somthetho 37 sikhuluma ngokwamukelwa kwaSomqulu weZakhamizi futhi ugcizelela ukubamba iqhaza komphakathi ezingxoxweni ngoSomqulu weZakhamizi mayelana namazinga namaqophelo emisebenzi ehlinzekwa noma elethwa uHulumeni wesiFundazwe kwizakhamizi zesiFundazwe.

Isigaba somthetho 38

Isigaba somthetho 38 sikhuluma ngokuqukethwe uSomqulu wezaKhamizi waKwaZulu-Natali futhi sihlinzekela ukushicilelwa kwawo ukuze kutholakale izimvo zomphakathi ngaphambi kokuba wamukelwe ngokusemthethweni uMkhandlu oPhethe egameni likaHulumeni wesiFundazwe.

Isigaba somthetho 39

Isigaba somthetho 39 sikhuluma ngokushicilelwa kwaSomqulu weZakhamizi ngesaziso kwiGazethi ngesikhathi esifanele ukuze kwaziswe umphakathi ngemva kokuqinisekiswa nokwamukelwa kwawo.

Isigaba somthetho 40

Isigaba somthetho 40 sikhulumu ngesikhathi sokusebenza, ngokuqashwa ngokuhlolwa nokubuyekezwa kwaSomqulu weZakhamizi.

Isigaba somthetho 41

Isigaba somthetho 41 sinquma ngokuthi uSomqulu weZakhamizi kumele ubhekelelwwe ezinhlelweni, kwizabelomali nasemithethweni yeminyango nokuthi uzodlala indima enkulu uma kuhlolwa ukusebenza kwezinhloko zeminyango.

Isigaba somthetho 42

Isigaba somthetho 42 sihlinzeka ngokuthi izakhamizi zinelungelo ngokomthetho lokuphoqa uHulumeni wesiFundazwe ukuba alandele uSomqulu weZakhamizi. Izakhamizi zingafaka izikhalo mayelana nokungalandelwa, noma nokwephulwa kwezinhlinzeko zaSomqulu weZakhamizi kuMxazululi ukuba aphenyo ngazo.

Isigaba somthetho 43

Isigaba somthetho 43 sihlinzekela izinhlinzeko zesikhashana maqondana noSomqulu weZakhamizi futhi silawula isimo sanoma imuphi uSomqulu weZakhamizi owamukelwe ngokusemthethweni ngaphambi osuku lokuqala kokusebenza kwalo Mthethosivivinyo.

ISAHLUKO 11**UMXAZULULI WESIFUNDAZWE SAKWAZULU-NATALI****Isigaba somthetho 44**

Isigaba somthetho 44 sisungula iHhovisi loMxazululi laKwaZulu-Natali, elingaphakathi eHhovisi likaNduNankulu kuHulumeni wesiFundazwe futhi elingeyena umuntu ngokomthetho.

Isigaba somthetho 45

Isigaba somthetho 45 sibeka izinhloso zeHhovisi loMxazululi.

Isigaba somthetho 46

Isigaba somthetho 46 sichaza ngohlelo lokuqokwa koMxazululi futhi sinquma izinto ezidingekayo ukuze kuqokwe uMxazululi.

Isigaba somthetho 47

Isigaba somthetho 47 sichaza ngamandla, imisebenzi namajoka uMxazululi ebandakanya amandla okuphenya noma isiphi isikhalo esiphathelene nokuhlinzekwa kwezidingo, ukuphatha budlabha, inkohlakalo noma ukukhwabanisa okwenziwe ngaphambi noma ngemva kokuqalisa kwalo Mthetho emnyangweni, kumasipala noma ohlakeni lukahulumeni.

Isigaba somthetho 48

Isigaba somthetho 48 sichaza uhlelo lokufakwa kwesikhalo, uhlobo lwsikhalo olungafakwa, nanokuthi isiphi isikhalo esingaphenywa nokuthi isiphi uMxazululi angeke akwazi ukusiphenya.

Isigaba somthetho 49

Isigaba somthetho 49 sibeka ukuthi njengophenyo lokwendlalela uMxazululi kumele aqale akhulume nenhloko yomnyango, nemenjenja kamasipala noma nesiKhulu esiPhezulu sohlaka lombuso ngenhloso yokuthi udaba luxazululwe ngomlomo ngokushesha.

Isigaba somthetho 50

Isigaba somthetho 50 sichaza ngohlelo olulandelwa uMxazululi uma enza uphenyo ngesikhalo.

Isigaba somthetho 51

Isigaba somthetho 51 sinika uMxazululi igunya lokudingida uphenyo neLungu loMkhandlu oPhethe elibhekele umnyango, umasipala noma uhlaka lukahulumeni oluthintekayo, nanoma iliphi ilungu loMkhandlu oPhethe elithintekayo kulolo daba noma nosodolobha kamasipala.

Isigaba somthetho 52

Isigaba somthetho 52 sidunga ukuba uMxazululi abike ukwephulwa komthetho okwenziwe umsebenzi woMnyango futhi abike ngalawo macala ezinhlakeni ezifanele, kubandakanya noMvikeli woMphakathi.

Isigaba somthetho 53

Isigaba somthetho 53 sidunga ukuba uMxazululi ethule umbiko wonyaka esiShayamthetho sesiFundazwe futhi simnika igunya lokubika eMkhandlwini oPhethe. Isigaba somthetho sidunga futhi ukuthi uMxazululi ahlinzeke ofake isikhalo ngemiphumela yophenyo ngesikhalo sakhe futhi abikele uMvikeli woMphakathi.

Isigaba somthetho 54

Isigaba somthetho 54 sibeka amandla kaMxazululi okucela ulwazi kubandakanya amandla okubizela esigcawini noma yimuphi umuntu nawokucela imibhalo ethile nalawo okuphenya nokuthatha impahla.

Isigaba somthetho 55

Isigaba somthetho 55 sinika uMxazululi ilungelo lokuzikhethela ukungaziphenyi izikhalo ezithile kanye nokudlulisela izikhalo nganoma iluphi udaba ukuba zibuyekezwe uma ofake isikhalo enalo lelo lungelo.

Isigaba somthetho 56

Isigaba somthetho 56 sichaza ngabasebenzi beHhovisi loMxazululi nokuthi uMqondisi-Jikelele wesiFundazwe kumele aqoke abantu, abaqashwe uHulumeni wesiFundazwe ngokoMthetho wabaSebenzi bakaHulumeni, 1994, njengoba kungadingeka, abazosiza uMxazululi ekusebenziseni amandla akhe, ekwenzeni imisebenzi yakhe nasekufezekiseni amajoka akhe ngokwalo Mthetho nangemisebenzi yezobubhalane neminye imisebenzi yasehhovisi. Isigaba somthetho sivumela futhi ukusiswa kwabasebenzi nanokuthi umsebenzi ngamunye adalule ukuhlomula kwakhe ngokwezezimali.

Isigaba somthetho 57

Isigaba somthetho 57 sibeka okwenza uMxazululi angafaneleki ukuqokelwa esikhundleni.

Isigaba somthetho 58

Isigaba somthetho 58 sidinga ukuba uMxazululi adalule ukuhlomula ngokwezezimali uma eqokwa bese emva kwalokho akwenze njalo ngonyaka. UNdunankulu kumele agcine kahle irejista enemininingwane evuselewe yokuhlomula koMxazululi.

Isigaba somthetho 59

Isigaba somthetho 59 sinika uNdunankulu amandla okumisa okwesikhashana uMxazululi ngesikhathi esaphenywa.

Isigaba somthetho 60

Isigaba somthetho 60 sibeka izimo eziholela ekusuleni koMxazululi noma ekuxoshweni kwakhe.

Isigaba somthetho 61

Isigaba somthetho 61 sichaza ngendlela yokuvikelwa kwemininingwane elethwe kuMxazululi kanye nokudalula ukuhlomula ngokwezezimali kwabasebenzi kanye nokoMxazululi.

Isigaba somthetho 62

Isigaba somthetho 62 sivimbela ukusetshenziswa ngokungemthetho kwegama, isifinyezo, uphawu, imidwebo noma impahla esetshenziswa noma okungeyeHhovisi loMxazululi nokuqamba amanga uthi unguMxazululi.

Isigaba somthetho 63

Isigaba somthetho 63 sinika uNdunankulu amandla okudlulisela amandla athile kuMqondisi-Jikelele siphinde sinike uMxazululi amandla okudlulisela nanoma imaphi amandla noma amajoka awanikezwe noma awethweswe uMthetho kubasebenzi beHhovisi loMxazululi.

Isigaba somthetho 64

Isigaba somthetho 64 sinquma amacala ngokwezinhoso zeSahluko 11.

Isigaba somthetho 65

Isigaba somthetho 65 sinquma ngezinhlawulo ngezinhloso zeSahluko 11.

Isigaba somthetho 66

Isigaba somthetho 66 sihlinzekela izinhlinzecho zesikhashana mayelana noMxazululi.

ISAHLUKO 12**IKHOMISHANA YOKUHLELA YESIFUNDAZWE SAKWAZULU-NATALI****Isigaba somthetho 67**

Njengamanje awukho omunye umthetho ohlinzekela ngqo, noma ogunyaza ngqo, iKhomishana yokuHlela yesiFundazwe saKwaZulu-Natali. Ngokulandela imigomo yokubusa ngokomthethosisekelo nokuLawula koMthetho, uHulumeni wesiFundazwe, ngokwethula lo Mthethosivivinyo, uhlose ukusungula isisekelo somthetho kanye negunya lomthetho leKhomishana yokuHlela yesiFundazwe saKwaZulu-Natali.

Isigaba 67 sihlinzekela ukusungulwa kweKhomishana yokuHlela yesiFundazwe saKwaZulu-Natali, sibeka ukuthi iKhomishana ayisiyena umuntu ngokomthetho futhi sinquma ukuthi iKhomishana ingaphakathi eHhovisi likaNdunankulu kuHulumeni wesiFundazwe ngaphansi kophiko lukaMqondisi-Jikelele kaHulumeni wesiFundazwe okunguyena oyisikhulu esinesibopho sokubika seKhomishana.

Isigaba somthetho 68

Isigaba somthetho 68 sibeka kabanzi izinhloso zeKhomishana maqondana nokuqalisa amasu okusebenza, ukuhlelwa nokuphuculwa kwezinqubomigomo, okumele kwensiwe ngokwemigomo eyimikhombandlela yeNqubomgomo yesiFundazwe equkethwe esigabeni somthetho 11.

Isigaba somthetho 69

Isigaba somthetho 69 sikhuluma kabanzi ngamandla, amajoka nemisebenzi yeKhomishana.

Imisebenzi efanayo naleyo yeKhomishana yokuHlela kaHulumeni waseNdiya ifakiwe njengemisebenzi yeKhomishana. Kunohlu olwengeziwe lwemisebenzi, lwamandla namajoka oluhlongozwayo nolubaluliwe. Kuhloswe ukuba kusungulwe uHlelo lwesiFundazwe, kuphuculwe izinqubomigomo, kusetshenziswe ngendlela efanele, esheshayo neliganayo izinsiza nokuthi kusimamiswe isiFundazwe kwezomnotho, kwezezimboni nokuthuthukiswa kwezindawo zasemakhaya.

Kuhlongozwu izinhlelo zokuxhumana nezokubonisana neKhomishana yokuHlela kaZwelonke eHhovisi likaMongameli ukuqinisekisa ukusebenzisana.

Isigaba somthetho 69 siyigaba somthetho eside, esichaza nesisemqoka okumele sifundwe kulo Mthethosivivinyo.

Isigaba somthetho 70

Isigaba somthetho 70 sinquma ukubunjwa kweKhomishana. Sihlongoza ukuthi uNdunankulu kube nguyena oqoka ilungu leKhomishana elizosebenza ngokugcweli (okumele likhethwe njengoSihlalo weKhomishana) namalungu okungenani amahlanu, kepha angeqile kwayisishagalombili, eKhomishana azosebenza ngezikathini ezithile.

Isigaba somthetho 71

Isigaba somthetho 71 sihlinzekela isikhathi sokuba sesikhundleni kwamalungu eKhomishana. OKhomishana baba sesikhundleni isikhathi esiyiminyaka emihlanu futhi banelungelo lokuthi baphinde aqokwe uma kuphela leso sikhathi, kepha angeke basebenze kwiKhomishana ngaphezu kweminyaka eyishumi elandelanayo.

Isigaba somthetho 72 no 73

Isigaba somthetho 72 no 73 zikhuluma ngezikhala zomsebenzi, ukuxoshwa nokwesula esikhundleni kukaKhomishana nokumiswa okwesikhashana kukaKhomishana ngenxa yezimo ezithile.

Isigaba somthetho 74

Isigaba somthetho 74 sikhuluma ngemihlangano kanye nezinquo zemihlangano yeKhomishana. Umhlangano wokuqala weKhomishana ubizwa uNduNankulu, ngemva kwalokho yonke imihlangano eyolandela kumele ibizwe uSihlalo weKhomishana. IKhomishana kumele ihangane okungenani kahlanu njalo ngonyaka wezimali.

Isigaba somthetho 75

Isigaba somthetho 75 sikhuluma ngokuhoxa kwelungu leKhomishana emihlanganweni nasezinqubeni zeKhomishana uma lithinteka ngandlela thile. Isigaba somthetho futhi sichaza "ukuthinteka ngandlela thile".

Isigaba somthetho 76

Isigaba somthetho 76 sikhuluma ngamaholo amalungu eKhomishana, imihlomulo kanye nokukhokhwa kwezimali zezindleko zokuhamba ngokomsebenzi.

Isigaba somthetho 77

Isigaba somthetho 77 sihlinzekela ukusungulwa kwamaKomidi eKhomishana azosiza iKhomishana ekusebenziseni nanoma imaphi amandla ayo, ekufezeni amajoka ayo noma ekwenzeni imisebenzi yayo noma ukuqhuba ucwaningo lwayo.

Isigaba somthetho 78

Isigaba somthetho 78 sigunyaza iKhomishana ukuba yengeze abazosiza mayelana nanoma yimaphi amandla, imisebenzi namajoka eKhomishana. Abantu abengezwe kwiKhomishana abanalo ilungelo lokuvota emhlanganweni weKhomishana noma wekomidi. Isigaba somthetho siphinde sikhulume ngokukhokhelwa amaholo, izibonelelo nezindleko kwabantu abengezwe kwiKhomishana.

Isigaba somthetho 79

Isigaba somthetho 79 sikhuluma ngabasebenzi beKhomishana futhi sihlinzeka ngokuthi uMqondisi-Jikelele wesiFundazwe kumele aqoke abasebenzi bahulumeni abaqashwe ngokoMthetho weMisebenzi kaHulumeni, 1994, abazosiza iKhomishana ngemisebenzi yezobubhalane neyezokuphatha ephathelene nokusebenzisa amandla ayo, nokwenza imisebenzi yayo nokufeza amajoka ayo.

Isigaba somthetho 80

Isigaba somthetho 80 sihlose ukunqanda abantu ekudaluleni ulwazi oluyimfiho olulethwe kwiKhomishana, ngaphandle uma beyalelwemthetho noma inkantolo.

Isigaba somthetho 81

Isigaba somthetho 81 sihlinzeka ngokuthi iKhomishana ingahlakazwa kuphela ngokoMthetho wesiShayamthetho sesiFundazwe.

Isigaba somthetho 82

Isigaba somthetho 82 sihlose ukunqanda ukusetshenziswa kwegama leKhomishana, ilogo, izimpawu noma impahla okungeyeKhomishana noma esetshenziswa iKhomishana.

Isigaba somthetho 83

Isigaba somthetho 83 sigunyaza ukudululiselwa kwamandla nemisebenzi ethile yiKhomishana.

Isigaba somthetho 84

Isigaba somthetho 84 senza kube yicala ukuziphatha okuthile koKhomishana, kwabasebenzi beKhomishana nokwabanye abantu abazimele.

Isigaba somthetho 85

Isigaba somthetho 85 sihlinzekela izinhlawulo kubantu abatholakale nenecala lokwephula uMthetho (okukhulunywe ngakho futhi esigabeni somthetho 84; ukuba yicala kwezenzo ezithile).

Isigaba somthetho 86

Isigaba somthetho 86 sihlinzekela izinhlinzecho zesikhashana eziphathelene neKhomishana.

**ISAHLUKO 13
IZINHLINZEKO EZEJWAYELEKILE****Isigaba somthetho 87**

Isigaba somthetho 87 sinika uNdunankulu amandla okusungula imithethonqubo ephathelene nezindaba ezidingekayo noma ezibalulekile ukuze kufezekiswe noma kuphunyeleliswe izinhlinzecho nezinhloso zoMthethosivivinyo noma yokususa izihibe kwezokuphatha ezingaqhamuka uma sekusetshenziswa uMthethosivivinyo.

Isigaba somthetho 88

Isigaba somthetho 88 sihlinzekela ukudlulisewa kwamandla namajoka uNdunankulu kuMqondisi-Jikelele, ngaphandle kwamandla okushicilela izaziso, okwenza izimemezelo kanye nawokusungula imithethonqubo.

Isigaba somthetho 89

Isigaba somthetho 89 siqukethe isihloko esifingqiwe soMthetho.

UHLELO

Uhlelo loMthetho luqukethe isibophezelo esihlongozwayo sabantu ababizelwe kwinhlolokhono okukhulunywe ngabo kwisigaba somthetho 25(2)(b) soMthethosivivinyo. UNdunankulu ugonyaziwe ukuba achibiyele noma ashintshe uhlelo oluqukethe isibophezelo ngesaziso kwiGazethi.

3. IZINGQINAMBA KWEZOKUPHATHA NEZABASEBENZI KUHULUMENI WESIFUNDAZWE

Kunezingqinamba kwezokuphatha nezabasebenzi maqondana nokusungulwa kweHhovisi loMxazululi. Kuncike kwindlela iHhovisi elizokwakheka ngayo nendlela elizosebenza ngayo, kusazonqunywa amazinga nezibalo zezikhala zomsebenzi ezidingeekayo ukuze kuqinisekiswe ukuthi iHhovisi loMxazululi lisebenza ngendlela efanele.

Kunezingqinamba ezifanayo kwezokuphatha nezabasebenzi maqondana neKhomishana yokuHlela yesiFundazwe saKwaZulu-Natali.

4. IZINGQINAMBA KWEZEZIMALI KUHULUMENI WESIFUNDAZWE

Kunezingqinamba kwezezimali maqondana nokusungulwa kweHhovisi loMxazululi mayelana nokwakheka kweHhovisi namazinga kanjalo nezikhala zomsebenzi ezikhona ukuze kuqinisekiswe ukuthi iHhovisi loMxazululi lisebenza ngendlela efanele. IHhovisi loMxazululi lizodinga isabelomali esiqondene nalo ngqo kanye nendawo yokusebenzela. Ukuze likwazi ukusebenza kahle kumele kuthokakale indawo yokusebenzela eseduze nabantu abasebenzisa izithuthi zomphakathi, abakhubazekile kanye nabantu abadala.

Kunezingqinamba ezifanayo zezimali maqondana neKhomishana yokuHlela yesiFundazwe saKwaZulu-Natali.

5. IMINYANGO/IMIGWAMANDA ETHINTIWE

Izinhlinzeko zokuqala zoMthethosisekelo zihamuke ngo 2006, kanti zazibhalwe wuPhiko lokweLuleka uMbuso kwezoMthetho eHhovisi likaNdunankulu waKwaZulu-Natali njengesicelo esigungwini sabaMeli baHulumeni KwaZulu-Natali, *ngenhloso yokuxoxisana kuphela* ukuthola izimpendulo ngezindaba ezivelayo oHlelweni lokuPhuculwa kweMithetho yaKwaZulu-Natali. Lombhalo ka 2013 woMthethosivivinyo ubandakanya izindaba eziningana njengoluthinta iHhovisi loMxazululi waKwaZulu-Natali neKhomishana yokuHlela yesiFundazwe saKwaZulu-Natali.

Izinhlinzeko zoMthethosivivinyo ezikhuluma ngoMxazululi (iSahluko 11, esakhiwe izigaba 44 - 66) zabhalwa ngokubonisana –

- (a) noMnuz. VIV Made (uMxazululi, eHhovisi likaNdunankulu waKwaZulu-Natali), no Mnuz. MC Msomi (uMphathi-Jikelele woPhiko IwezokuPhatha ngobuQotho, eHhovisi likaNdunankulu waKwaZulu-Natali);
- (b) isiGungu soMxazululi wesiFundazwe saKwaZulu-Natali; kanye
- (c) noMvikeli woMphakathi (kaZwelonke).

QAPHELA: Ngokwesigaba 154(2) **soMthethosisekelo**, imithetho kaZwelonke noma yesiFundazwe esewuhlaka ethinta isimo, izikhungo, amandla nemisebenzi yohulumeni basekhaya kumele ishicilelw ukuze umphakathi ubeke izimvo zaho ngaphambi kokuba yethulwe ePhalamende noma esiShayamthetho sesiFundazwe, ngendlela enikeza izinhlangano zohulumeni basekhaya, omasipala nabanye abantu abanentshisekelo ithuba lokwenza izethulo mayelana nomthetho osewuhlaka.

Njengoba izinhlinze ko ezithile kuMthethosisivivinyo ohlongozwayo zithinta omasipala, kunezincomo zokuthi uMthethosisivivinyo ushicilelw ukuze kutholakale izimvo njengoba kubekwe esigaben 154(2) soMthethosisivivinyo ngaphambi kokuthi wethulwe esiShayamthetho sesiFundazwe.

Kuphinde kunconye ukuthi uMthethosisivivinyo udluliselwe ezinhlanganweni zohulumeni basekhaya KwaZulu-Natali ukuze ziphawule futhi kuqalwe uhlelo lokubonisana ngaphambi kokuba uMthethosisivivinyo wethulwe esiShayamthetho sesiFundazwe.

6. IMIBUZO MAYELANA NOKUTHI ISISHAYAMTHEHO SESIFUNDAZWE SINAWO YINI AMANDLA NGOKOMTHETHO OKUPHINDA, OKUBEKA KABUSA NOMA OKUCAPHUNA IZINHLINZEKO ZOMTHETHOSISEKELO NEMINYE IMITHETHO KAZWELONKE EMTHETHWENI WESIFUNDAZWE

Lo mbuzo usezithebeni ukuba udingidwe.

Mayelana nalokhu, la mazwi acashunwe embhalweni wokuQinisekiswa koMthethosisekelo waseNtshonalanga Kapa, 1997 (Icalal CCT 6/97 – 1997 (4) SA 795 CC) angaba wusizo –

"[21] I-ANC iphikisene nokuphindwa kwezinhlinze ko ezikuMthethosisekelo kaZwelonke kuMthethosisekelo waseMpumalanga Kapa eziphathelene nodaba isishayamthetho

sesifundazwe esingenawo amandla ngokomthetho okunquma ngalo ... umbuzo wokuthi isishayamthetho sesifundazwe sinawo yini amandla okuphinda lezo zinhlinzeko kumthethosisekelo waso usamile ...

[22] Okuvela embhalweni womthethosisekelo waKwaZulu-Natali [umbhalo ka 1996] bekungukuphinda izindaba ezingahlangani namandla nelungelo lesifundazwe. Lezo zindaba ziukethwe kusomqulu wamalungelo osembhalweni womthethosisekelo waKwaZulu-Natali ... lokho kuphindwa bekungenasidingo ngenkathi kwakhiwa umthethosisekelo.

[23] Ngakolunye uhlangothi, kuMthethosisekelo waseMpumalanga Kapa zonke izinhlinzeko zoMthethosisekelo kaZwelone zithinta izindaba eziphathelene nohulumeni ngqo esifundazweni, okuyisishayamthetho sesifundazwe namalungu omkhandlu ophethe noma esishayamthetho ... Bekuzoba nzima ukuthi uMthethosisekelo waseMpumalanga Kapa ucacise futhi uzwakale kahle ngaphandle kokuthi kuphindwe lezo zinhlinzeko zoMthethosisekelo kaZwelone eziyingxenye ebalulekile yalezo zinhlinzeko uMthethosisekelo waseMpumalanga Kapa ekhuluma ngazo. Asitholi phutha kulezo zinhlinzeko.

[25] Isigaba somthetho esiphonselwa inselelo siveza nje.... umsuka wamandla... asiqondile ukuthatha amandla njengoba kuhoxiswe embhalweni womthethosisekelo waKwaZulu-Natali.”.

Kunombono wokuthi kungasetshenziswa imigomo efanayo naleyo ekhishwe iNkantolo yoMthethosisekelo mayelana nomthethosisekelo wesifundazwe (umthetho wesifundazwe) kulo Mthethosivivinyo ukuqinisekisa ukuthi iKwaZulu-Natali, ngokumiswa kwalo Mthethosivivinyo, inezinhlinzeko ezihlanganiswe zadidiyelwa kahle eziphathelene nokubusa okuhle (nalezo ezitholakala kuMthethosisekelo) ezithinta isiFundazwe ezitholakala embhalweni noma ohlakeni lomthetho olulodwa.

Ukuphindwa nokubekwa kabusha kwezinhlinzeko ezithile kuMthethosivivinyo ezitholakala kuMthethosisekelo kuhlose “ukuveza nje umsuka wamandla” ngenhloso yokuhlanganisa umbhalo owodwa womthetho ohlanganiswe kahle ngaphandle kokuthatha amandla omthetho kazwelone.

7. OKUXHUNYANWA NABO

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