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GENERAL NOTICE

NOTICE 36 OF 1996

DRAFT BILL ON COMMISSIONS OF ENQUIRY

The Provincial Secretary hereby makes known that a Northern Cape Commissions of Enquiry Bill, 1996, attached as Annexure A, is intended for submission to the Legislature.

The objects of the Bill are explained in a Memorandum, attached as Annexure B.

All persons and bodies wishing to comment on the proposed Bill are requested to do so before **16 August 1996**.

Comments should be addressed to the Deputy Provincial Secretary: Parliamentary Services, Private Bag X5066, Kimberley, 8300.

ANNEXURE A**DRAFT BILL ON COMMISSIONS OF ENQUIRY**

To provide, in terms of section 147 (1) (d) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), for the appointment of commissions of enquiry; and for matters connected therewith

Definitions

1. In this Act and in any regulations made in terms thereof, unless the context otherwise indicates—

- (i) "chairperson" shall mean the chairperson of a commission designated under section 3(2);
- (ii) "commission" shall mean a commission appointed under section 2;
- (iii) "Constitution" shall mean the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);
- (iv) "examiner" shall mean an examiner appointed under section 11;
- (v) "government" shall mean the Provincial Government of the Northern Cape;
- (vi) "interested party" shall mean a person who has, in the opinion of the chairperson, an interest in any subject to which the enquiry relates, but does not include any person who by way of memorandum or otherwise satisfied the commission that he or she should be called as a witness;
- (vii) "local authority" shall mean an authority established in terms of section 174 of the Constitution;
- (viii) "person" in section 2 shall mean either a natural person or a juristic person and shall include government;
- (ix) "Premier" shall mean the Premier or Acting Premier of the Province of the Northern Cape;
- (x) "Province" shall mean the Province of the Northern Cape;
- (xi) "Supreme Court" shall mean a Division of the Supreme Court of South Africa having jurisdiction over the territory of the Province of the Northern Cape.

Appointment of commission

2. (1) Whenever any matter relating to a subject in respect of which the Provincial Government has competence, is referred to the Premier by any person or institution and is, in the opinion of the Premier, a matter of important public concern requiring investigation, he or she may, by proclamation in the *Provincial Gazette* appoint a commission to enquire into and report upon such matter.

(2) Matters contemplated in subsection (1) may be referred to the Premier by any person.

Personnel of commission

3. (1) A commission shall consist of one or more persons who have, in the opinion of the Premier, experience or skill in any subject to which the enquiry relates.

(2) The Premier shall designate one member of the commission as chairperson: Provided that if the commission consists of one member only, such member shall *ipso facto* be chairperson.

(3) Should the chairperson resign, die or for any other reason permanently or temporarily become incapacitated or unable to perform his or her functions, the Premier may designate any other member of the commission as chairperson.

(4) Should any member of the commission resign, die or for any other reasons permanently or temporarily become incapacitated or unable to perform his or her functions, the Premier may in his or her discretion either authorise the remaining members to proceed with the enquiry or appoint some other person as a new member of the commission, and in either case the commission shall remain in existence and all its proceedings, reports, recommendations and other acts shall be as valid and have full force and effect as if the resignation, death or other incapacity or inability of the member concerned had not occurred: Provided that where a new member is appointed the chairperson may at his or her discretion or at the request of any member recall any witnesses who have already given evidence.

(5) The Premier shall after consultation with the chairperson appoint a secretary to the commission and such other officials as may be necessary to enable the commission to perform its functions.

(6) Any member, secretary or other official of a commission who is not in the service of the State shall be entitled to payment of such remuneration, and when absent from his ordinary place of residence in connection with the business of the commission, to such subsistence allowance as may be prescribed by regulation made under section 18 or as the Premier may in special cases determine.

Terms of reference

4. The Premier shall by proclamation in the *Provincial Gazette* define the matter to be investigated by the commission, the scope of its investigations, and the matters on which it should report and make recommendations, and he or she may in a like manner amend, vary, add to, or cancel, any of such terms of reference.

Sittings of commission

5. (1) A commission may sit at anywhere in the Republic of South Africa for the purpose of hearing evidence or addresses or to deliberate and or anywhere outside the Republic of South Africa for the purpose of conducting its business.

(2) The place and time of the first sitting of a commission shall be determined by the Premier and notified by him by notice in the *Provincial Gazette* and in such other manner as he or she may think fit, and the place and time of every subsequent sitting shall be determined by the chairperson and notified by him or her in such manner as he or she may think fit.

Commission's powers as to witnesses

6. (1) (a) For the purposes of ascertaining any matter relating to the subject of its enquiry, a commission shall in respect of witnesses have the power—

- (i) to summon witnesses;
- (ii) to cause an oath or affirmation to be administered to them;
- (iii) to examine them; and

(b) to call for the production of books, documents and objects.

(2) A summons for the attendance of a witness or a warrant for the production of any book, document or object before a commission shall be signed and issued by the secretary of a commission in a form prescribed by regulations made under section 18 and shall be served by a person duly authorised thereto by the chairperson under his or her hand, in such manner as may be prescribed by regulations made under section 18.

(3) Before giving evidence before a commission, a witness shall take an oath or make an affirmation which shall be administered by the secretary of the commission.

Witness fees

7. (1) Any person who has in compliance with a summons attended any sitting of, or who has given evidence before, a commission shall be entitled to the same witness fees and transport expenses as if he or she had been summoned to attend or had given evidence at a trial in the Supreme Court held at the place of such sitting.

(2) In connection with the giving of evidence or the production of any book, document or object before a commission, the law relating to privilege as applicable to a witness giving evidence or summoned to produce a book, document or object in the Supreme Court shall apply.

Right to give evidence and address commission

8. Any interested party including the Premier and the Government shall be entitled, either personally or by counsel or an attorney, to appear and to adduce or cause to be adduced evidence before a commission and to examine or cross-examine witnesses and address the commission at any of its sittings on any matter which is in the opinion of the chairperson relevant to any subject matter of the commission's investigation, in the same manner as if such sitting were a trial in the Supreme Court.

Sittings to be public

9. (1) All the evidence and addresses before a commission shall be heard in public: Provided that if the chairperson is satisfied that the hearing of any evidence or address or the production of any book, document or object in public would for any reason be contrary to the public interest or would prejudicially affect any person he or she may, in his or her discretion, order the exclusion from such sitting of all persons whose presence is, in his or her opinion, not necessary or desirable and direct that no matter disclosed or produced at such sitting shall be made public.

(2) Any person who fails to comply with or disobeys any order or direction made by the chairperson under the proviso to subsection (1) shall be guilty of an offence.

Offences by witnesses

10. (1) Any person summoned to attend and give evidence or produce any book, document or object before a commission who, without sufficient cause (the onus of proof whereof shall rest upon him or her)—

- (a) fails to attend at the time and place specified in the summons, or to remain in attendance until the conclusion of the enquiry or until he or she is excused by the chairperson; or
- (b) fails to produce any book, document or object in his or her possession or custody or under his or her control; or
- (c) refuses to be sworn or to make affirmation as a witness; or
- (d) having been sworn or having made affirmation, fails to answer fully and satisfactorily any question lawfully put to him or her, shall be guilty of an offence.

(2) Any person who under oath or affirmation knowingly gives false evidence before a commission shall be guilty of an offence.

Examination of articles or records by expert

11. (1) Whenever a commission deems it desirable to ascertain any fact which in its opinion requires expert skill or knowledge, or which cannot be ascertained without a detailed examination of books, documents or objects which cannot be conveniently produced an examined before the commission, it may appoint a competent examiner to carry out an examination and to report thereon to the commission.

(2) The commission may submit the examiner's report or a copy thereof to the Premier.

(3) An examiner shall be appointed in writing by the chairperson and may at all reasonable times, on production of his or her letter of appointment, enter upon any place where any article specified in his or her letter of appointment is known or upon reasonable grounds suspected to be, and may there examine and copy or take extracts from any book or document and examine all objects which relate or are upon reasonable grounds suspected to relate to the subject of the examiner which he or she is authorised to carry out, and he or she may require any person in whose possession or custody or under whose control any such book, document or object is known or upon reasonable grounds suspected to be to produce such article and he or she may also require any such person or a person who has dealt with such article to explain any entry therein or any matter relating thereto.

(4) Any person who refuses or fails to comply with any lawful requirement made by, or hinders or obstructs, an examiner in the exercise of his or her powers under subsection (3) shall be guilty of an offence.

(5) An examiner who, having ascertain any fact as a result of his or her appointment discloses that fact otherwise than in a report to, or in evidence before, the commission which appointed him or her, or in giving evidence in a court of law, shall be guilty of an offence.

(6) An examiner shall deemed to be an official of the commission and the provisions of section 3(6) shall apply in respect of him or her.

Commission's report

12. (1) After having heard or read and considered all evidence, addresses and reports which it deems necessary and after completing its deliberations, a commission shall prepare a report and submit it to the Premier.

(2) Any member of a commission may prepare a minority report which shall be submitted to the Premier with the commission's report: Provided that such member has within reasonable time laid his or her minority report before the commission, before the submission of its report to the Premier.

(3) The commission's report and every minority report shall before submission to the Premier be signed by the members of the commission agreeing therewith.

(4) The aforesaid reports shall, within six months of their receipt by him or her cause the report of a commission to be tabled in the Provincial Legislature.

Recommendations of the Commission

13. (1) Any authority in the Province shall, when so directed by the Premier, take all such steps as may be necessary or desirable to give effect to any recommendation which—

- (a) is contained in a report submitted to the Premier in terms of section 12, and
- (b) has been accepted by him.

(2) The Premier may reject some or all of the recommendations contained in a commission's report.

Costs of commission

14. (1) The costs of the commission shall be paid by the interested parties in such proportion as the Premier may, after consultation with the commission, decide: Provided that the Premier may direct that the full costs or any portion thereof shall be paid out of and as a charge to the Provincial Revenue Fund.

(2) The Premier shall have the power in the first instance to pay out of the Provincial Revenue Fund all current costs of the commission, and to recover such sums expended from the interested parties referred to in subsection (1).

(3) The Premier shall, and if so requested by an interested party within one month of a demand made to such interested party for payment of costs in terms of this section, have the costs of the commission taxed by the Taxing Master of the Supreme Court on the scale of fees and in terms of the Rules of such Court.

(4) All interested parties shall be notified by the Premier of the date and time of, and shall be entitled to be represented at such taxation.

(5) The costs required to be paid by an interested party in terms of this section shall be due and payable after the expiration of one month from the date of demand or if the costs have been taxed, after the expiration of one month from the date of the certificate of the Taxing Master.

(6) The costs of the commission shall include—

- (a) the remuneration, allowances and transport expenses of members and officials of the commission;
- (b) the amount repaid by the Premier to another government department or organ of state in respect of the salary and allowances of a person whose services have been made available by such department or organ of state to the Premier as a member or official of the commission;
- (c) the costs incurred by the Premier or another department in or organ of state connection with their representations by counsel or an attorney before the commission;
- (d) any fee paid for the taxation of costs; and
- (e) all other costs which the Premier and chairperson deem necessary for the proper performance by the commission of its functions, but shall not include the remuneration of a permanent official in the service of the Province or a local authority.

Interfering with witnesses and obstructing commission

15. (1) Any person who procures, induces, intimidates, corrupts or bribes any witness to refrain from giving evidence, or to give false evidence before a commission, or who by any means or contrivance whatsoever keeps a witness away from any sitting of a commission, or who destroys or conceals any book, document or object which might be of assistance to a commission in any matter relating to the subject of its enquiry, shall be guilty of an offence.

(2) Any person who wilfully interrupts the proceedings of a commission or who intentionally hinders or obstructs a commission in the performance of its functions shall be guilty of an offence.

Victimisation forbidden

16. (1) Any employer who dismisses an employee employed by him or her or reduces the rate of his or her remuneration or alters the conditions of his or her employment to conditions less favourable to him or her or alters his or her position relatively to other employees employed by him or her to his or her disadvantage; and

(2) Any person who procures or induces by any means whatsoever an employer to victimise any employee in the manner aforesaid, by reason of the fact that such employee has served as a member or an official of a commission or has done any act which he or she is required or lawfully entitled to do under this Act, shall be guilty of an offence.

(3) The protection afforded an employee in terms of subsection (1) shall apply *mutatis mutandis* to an employer.

Penalties

17. Any person who is convicted of an offence under this Act shall be liable to a fine not exceeding R500 or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

Regulations

18. The Premier may make regulations not inconsistent with this Act on the following matters:

- (a) The recording of evidence given and addresses delivered before a commission;
- (b) the minutes and other records to be kept by a commission and their disposal;
- (c) announcements and notices by and printing for a commission;
- (d) the form in which reports of commissions shall be framed;
- (e) the remuneration and allowances payable to members and officials of a commission;
- (f) the expenditure of funds by or on behalf of a commission;
- (g) the form of summonses or warrants issued under this Act; and
- (h) generally any other thing necessary for the proper performance by a commission of its functions, or for the effective compliance with the provisions of this Act.

Termination of commission

19. (i) The commission shall dissolve unless terminated by the Premier 30 days after the date of its submission of the report to the Premier: Provided that the Premier may if he or she is satisfied that there is sufficient reason at any stage terminate the mandate of a commission.

(ii) Provisions of 11(5) will apply *mutatis mutandis* to a dismissed member of a commission.

Repeal

20. This Act repeals all existing Provincial legislation on commissions of enquiry and hereby saves the continued existence of any commission appointed in terms of any other law before the coming into effect of this Act.

Short title

21. This Act shall be called the Northern Cape Commissions of Enquiry Act and shall come into operation on a date fixed by the Premier in the *Provincial Gazette*.

ANNEXURE B

EXPLANATORY MEMORANDUM IN TERMS OF RULE 128 (1) (b) OF THE STANDING RULES OF THE PROVINCIAL LEGISLATURE ON THE COMMISSIONS OF ENQUIRY BILL

INTRODUCTION

In terms of section 147 of the Constitution of the Republic of South Africa Act, 1993 (Act No. 200 of 1993), the Premier is given the competence to exercise certain specific powers and functions, one such power being, by virtue of subsection (1) (d) thereof, "to appoint commissions of enquiry".

With the Constitution only containing enabling provisions, there arises a need to pass a provincial Act, the singular purpose of which will be to facilitate the exercise of the power referred to hereinabove and to provide for matters connected therewith.

REASONS FOR THE BILL

The proposed Bill provides for the Premier to appoint commissions of enquiry for the investigation of any matter determined by him or her or referred to him or her by any interested person or groups of persons.

CLAUSE-BY-CLAUSE EXPLANATIONS**CLAUSE 1**

Clause 1 provides definitions of certain expressions contextually used in the Bill.

CLAUSE 2

Clause 2 provides for the Premier to appoint a commission of enquiry whenever he or she deems it to be in the public interest to do so. This clause also sets out the procedure to be followed in the appointment of a commission of enquiry.

CLAUSE 3

Clause 3 provides for the manner in which a commission shall be constituted as well as the number of persons to serve thereon.

This clause seeks in subclauses (3) and (4) to provide for the continued existence of a commission of enquiry for the duration of its mandate notwithstanding any change in its membership.

In subclause (5) provision is made for the appointment of the support staff for a commission one of whom shall, in consultation with the chairperson of a commission, be designated as secretary. Persons serving on the staff of a commission are, themselves, not members of the commission.

Subclause (6) provides for the payment of remunerations and/or allowances to any member of a commission or a member of the staff of a commission who is not in the service of the State. This subclause gives circumstances under which subsistence allowances may be paid.

CLAUSE 4

Clause 4 seeks to enable the Premier to determine the terms of reference of a commission in the *Provincial Gazette* when there is a matter to be investigated. The Premier is also given the discretion to change or withdraw any of such terms of reference.

CLAUSE 5

Clause 5 seeks to allow a commission to conduct its affairs at any place within the Province other than at the place of its first sitting. When circumstances compel that evidence be obtained from an outside source that cannot be brought into the Province, a commission may elect to sit outside the Province.

CLAUSE 6

Clause 6 seeks to empower the commission to summon witnesses to testify under oath or affirmation and to produce books, documents and objects. Provision is also made for the manner in which witnesses are to be summoned.

CLAUSE 7

Clause 7 seeks to provide for the payment of witness fees. There is also provision for the scale of witness fees.

CLAUSE 8

Clause 8 seeks to enable interested parties to appear before the commission without necessarily being summoned to do so.

CLAUSE 9

Clause 9 seeks to enable members of the public access to the commission's hearings subject to restrictions where applicable.

CLAUSE 10

Clause 10 seeks to create an offence for failure without sufficient cause to appear and give evidence under oath/affirmation before a commission when summoned to do so, or to produce any book, document or object when so requested.

CLAUSE 11

Clause 11 seeks to provide for the calling of experts and the manner of their appointment to assist a commission in situations where it does not have the required skills or knowledge. An expert shall be paid remuneration and allowances in terms of subclause (6) of clause 3.

CLAUSE 12

Clause 12 provides for a commission to submit a written report to the Premier at the conclusion of its mandate. A minority report may also be submitted after it had been referred to other members of a commission. Members must sign a report either of the majority or of the minority whichever they agree with.

Subclause (4) puts a responsibility on the Premier to cause the report(s) of a commission to be tabled in the Legislature within six months of its receipt by him or her.

CLAUSE 13

Clause 13 seeks to give the Premier a discretion either to refuse or accept and cause the implementation of one or more recommendations of a commission. It also compels any authority in the Province to comply with directives of the Premier relating to the implementation of recommendations of a commission. The Premier may reject some or all of the recommendations.

CLAUSE 14

Clause 14 seeks to make provision for the costs of a commission to be paid by whoever requests the Premier to appoint it or to be shared between the State and that person requesting that it be appointed or to be paid in full by the State alone.

Provision is also made for the taxing of the costs by the Master of the Supreme Court if a request for taxing is directed to the Premier within one month of a demand for payment of costs being made to the other person who is fully or partly liable for payment of such costs.

Parties liable for the payment of costs may be represented during the taxing of costs. After the taxing the Master shall be obliged to issue a certificate accordingly.

Provision is further made for the manner in which costs of a commission are to be computed.

CLAUSE 15

Clause 15 creates an offence which is aimed at preventing any interference with witnesses or the obstruction of a commission in the performance of its functions.

CLAUSE 16

Clause 16 provides for the protection of employees and employers from victimization against each other for reasons of participating in the proceedings of a commission.

CLAUSE 17

Clause 17 makes provision for penalties that a court may impose on persons found guilty of offences against a commission.

CLAUSE 18

Clause 18 provides for the Premier to lay down regulations particularly for the conduct of any business of a commission and generally for the effective implementation of the provisions of this Act.

CLAUSE 19

Clause 19 provides for the duration of a commission's existence after the submission of its report(s).

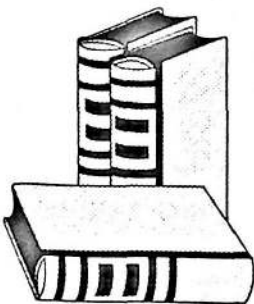
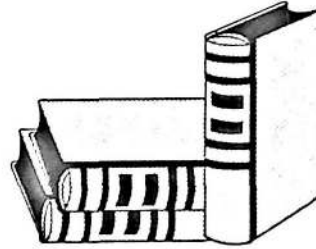
CLAUSE 20

Clause 20 provides for the repeal of existing legislation relating to commissions of enquiry and the continued existence of any commission appointed in terms of such law before the coming into operation of this Act.

CLAUSE 21

Clause 21 provides for the name of the Act.

*Where is the largest amount of
meteorological information in the
whole of South Africa available?*



*Waar is die meeste weerkundige
inligting in die hele Suid-Afrika
beskikbaar?*

Department of Environmental Affairs and Tourism
Departement van Omgewingsake en Toerisme

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