

NORTHERN CAPE PROVINCE

PROFENSI YA KAPA-BOKONE

NOORD-KAAP PROVINSIE

IPHONDO LOMNTLA KOLONI

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GENERAL NOTICE

NOTICE 31 OF 2009

NORTHERN CAPE PROVINCIAL LEGISLATURE NORTHERN CAPE PETITIONS BILL, 2009

The Northern Cape Petitions Bill, 2009, contained in this Notice, is hereby published for public comment. **Written representation** may be made to the Northern Cape Provincial Legislature and must be directed to:

Adv H Botha
Legal Services Department
Private Bag X 5006
KIMBERLEY
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no later than 10 March 2009

**SJK LEGODI
ACTING SECRETARY**

BILL

To define a petition in respect of amongst others, purpose and requirements; provide for the general principles, processes and procedures within which a person may exercise the constitutional right to petition the Legislature; to provide for the powers and functions of the Committee of the Legislature assigned to consider petitions; to provide for the role and functions of the Petitions Office; to provide for the right to appeal the outcome of a petition to an appeal authority; and to provide for incidental matters.

PREAMBLE

WHEREAS section 17 of the Constitution guarantees a person's right to petition;

AND WHEREAS section 115 of the Constitution states that a provincial Legislature or any of its committees may receive petitions, representations or submissions from any interested person;

AND WHEREAS section 116 of the Constitution is not prescriptive in respect of process and procedure to be followed upon receipt of a petition by a Legislature;

AND with due regard to the status, and recognition of the role and function of Chapter 9 Constitutional Institutions and any other investigative body in terms of any legislation.

BE IT THEREFORE ENACTED by the Northern Cape Provincial Legislature as follows –

ARRANGEMENT OF SECTIONS

Section

1. Definitions
2. Right to petition
3. Purpose of a petition
4. Petition
5. Requirements for a petition
6. Petitions Office
7. Role and function of the Petitions Office in respect of a petition

8. Role and function of the Committee
9. Powers of the Committee
10. Meeting of the Committee
11. Delegation
12. Right of appeal
13. Appeal authority
14. Accountability of the Committee
15. Regulations
16. Short title and commencement

Definitions

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

“**appeal**” means an appeal contemplated in section 12 ;

“**appeal authority**” means an appeal authority appointed in terms of section 13;

“**Chairperson**” means the chairperson of the Committee;

“**Committee**” means a Committee of the Legislature in accordance with the Standing Rules, responsible for the consideration of petitions in terms of this Act;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**day**” means a working day with exclusion of a Saturday, Sunday or public holiday;

“**Executive Council**” means the Executive Council of the Province contemplated in section 132 of the Constitution;

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

“**House**” means the Northern Cape Legislature;

“**Legislature**” means the Provincial Legislature of the Northern Cape Province contemplated in section 104 of the Constitution;

“**member**” means a member of the Provincial Legislature;

“petition” means a complaint or request or a representation or a submission by a petitioner to the Speaker in terms of this Act;

“petitioner” means a person who submits a petition in terms of this Act;

“Petitions Office” means employees of the Legislature to which the effective administration and implementation of this Act have been assigned;

“Province” means the Northern Cape Province referred to in section 103 (1)(g) of the Constitution;

“provincial legislation” includes -

- (a) subordinate legislation made in terms of a provincial act; and
- (b) legislation that was in force when the Constitution took effect and that is administered by a provincial government;

“provincial organ of state” means -

- (a) an organ of state in the provincial sphere of government, or
- (b) any other functionary or institution exercising a public power or performing a public function in terms of any provincial legislation;

“public holiday” means the days as contemplated in Schedule I of the Public Holidays Act, 1994 (Act No. 36 of 1994);

“Public Protector” means the Public Protector as referred to in the Public Protector Act, 1994 (Act No. 23 of 1994);

“Secretary” means the most senior official in the Legislature appointed in terms of relevant legislation;

“Speaker” means the Speaker of the Legislature elected in terms of section 111 of the Constitution;

“Standing Rules” means the rules and orders made for the conduct of the business of the Legislature in terms of section 116 of the Constitution;

“this Act” includes any regulations made in terms thereof; and

“working language” means any official language used by the Committee for meetings or administrative purposes.

Right to petition

2. (1) Any person may, subject to sections 3 and 4, submit a petition in terms of this Act.

- (2) A petition may be submitted by a person acting –
 - (a) in his or her own interest;
 - (b) in the interest of another person who is for whatever reason not in a position to submit a petition in his, her or its own name;
 - (c) as a member of or in the interest of a group or class of persons; or
 - (d) in the public interest.
- (3) A member who submits a petition must recuse himself or herself from consideration thereof in committee.
- (4) The Petitions Office must render all reasonable assistance, excluding financial assistance, to any person who wishes to lodge a petition and ensure that the petition meets the requirements imposed by this Act.
- (5) The Petitions Office must in writing, direct a person with a petition with a subject matter that falls outside the subject matter referred to in section 4(1), to the correct institution or organ of state to render appropriate assistance to that person.

Purpose of a petition

- 3. The purpose of a petition is to seek relief from the Legislature where all appropriate or lawful avenues for relief have been exhausted by a petitioner.

Petition

- 4. (1) A petition is a complaint or request of which the subject matter –
 - (a) falls within the legislative authority of the Province;
 - (b) falls within the executive authority of the Province;
 - (c) is assigned to a member of the Executive Council;
 - (d) relates to provincial supervision of local government; or
 - (e) relates to a provincial organ of state

in terms of the Constitution.

- (2) A petition may be –
 - (a) a single petition, which is an individual submission from a single petitioner, concerning a particular complaint or request;
 - (b) an association petition, which is an individual submission from an association or single petitioner mandated by an association to submit that petition, concerning a particular complaint or request;

- (c) a collective petition, which is a collection of signatures from a number of petitioners, concerning a particular complaint or request; or
 - (d) a mass or group petition, which is made up of individual or group submissions from a number of petitioners, concerning the same or substantially similar complaints or requests.
- (3) A petition must comply with the requirements set out in section 5.
- (4) A petition must be directed to the Speaker and lodged with the Secretary.
- (5) Every petition that complies with the requirements of this section and section 5 must be tabled in the House before consideration thereof by the Committee.

Requirements for a petition

5. (1) A petition must –
- (a) fall within the scope of matters contemplated in section 4(1);
 - (b) not concern a matter pending in a court of law or other tribunal or forum contemplated in the Constitution or any other law;
 - (c) not be in connection with the conviction and sentencing of a person by a criminal court or a judgement made by a civil court of law;
 - (d) not address a matter which falls within the scope of or pending in any investigative body or investigative institution in terms of the Constitution or any other law;
 - (e) comply with all requirements set out in this Act; and
 - (f) if submitted by a member, not deal with a matter which is already before a Committee of the Legislature.
- (2) A petition must furthermore –
- (a) be legible;
 - (b) not contain a defamatory statement or improper language;
 - (c) contain a carefully worded request that the Legislature takes or refrain from taking certain action in response to the complaint or request;
 - (d) be signed by the petitioner, except in the case of a petitioner who is unable to write; and –
 - (i) who has made a mark on the petition as a symbol of his or her authority to submit the petition; and
 - (ii) that mark was made in the presence of two witnesses who are able to write and who by signing that petition certify that the mark is that of the petitioner;

- (e) not have been considered by the Committee previously, except if that petition, in the opinion of the Chairperson, contains new information that may materially impact on the outcome of a re-consideration of the matter; and
 - (f) not be in respect of a matter that the petitioner has not yet brought to the attention of the relevant authority, or if the petitioner has brought it to the attention of the relevant authority, the relevant authority has not been afforded reasonable time to consider the matter.
- (3) The Committee may, subject to section 2(4), refuse to consider a petition that does not comply with subsections (1) and (2) and in writing inform the petitioner of that fact as well as reasons for its decision.

Petitions Office

6. (1) A Petitions Office in the Legislature is charged with the responsibility to ensure the effective administration and implementation of this Act.
- (2) The Petitions Office must, subject to section 15, determine its own administrative procedure in respect of receipt, investigation and conclusion of the petition process.

Role and function of the Petitions Office in respect of a petition

7. (1) The Petitions Office must take all reasonable steps to enable the Committee to consider a petition.
- (2) The Petitions Office must in writing, inform the Chairperson within 7 days of receipt of a petition.
- (3) The Petitions Office must inform a petitioner timeously -
- (a) of progress in respect of the consideration of a petition;
 - (b) if the petitioner has been invited by the Committee to make an oral submission or call a witness;
 - (c) of the date, time and venue when the petition is to be considered and that the petitioner may attend that meeting of the Committee;
 - (d) of any referral of the petition to any person or body contemplated in this Act;
 - (e) of any other remedy available to the petitioner;
 - (f) that the petitioner has access to the petition file at all reasonable times; and
 - (g) of any decision taken by the Committee in respect of a petition and the reasons for that decision.

Role and function of the Committee

8. The Committee must –

- (a) receive every petition submitted to the Secretary in terms of this Act;
- (b) subject to section 4(1), consider every petition properly submitted in terms of this Act;
- (c) record the oral submission of a petitioner or evidence of a witness in terms of section 10(a);
- (d) if a petition has been referred to a member of the Executive Council, a municipal council or a provincial organ of state in terms of section 10(g) –
 - (i) direct the person or body to whom the petition was referred to, to consider that petition, make a decision or recommendation in respect of that petition or otherwise dispose of the request or complaint raised in that petition; and
 - (ii) require the person or body to whom that petition was referred to furnish the Committee within four weeks of that referral, or such other period as determined by the Committee in writing, with a detailed report on the steps taken by that person or body to address the complaint, request, recommendation or instruction by the Committee, as the case may be, and the reasons for those particular steps;
- (e) on a quarterly basis, report to the Legislature on the petitions submitted to it during that period and all its activities in respect thereof, including:
 - (i) the responsiveness, efficiency and timeousness with which petitions were dealt with; and
 - (ii) the efficiency of the petitions process and procedures.

Powers of the Committee

9. The Committee may –

- (a) invite a petitioner to –
 - (i) supplement a petition with additional oral or written submissions;
 - (ii) call a witness to present oral or written evidence to the Committee;
- (b) subject to provincial legislation or the Standing Rules, require the attendance of any person before the Committee by way of invitation, instruction or summons and require the production of any paper, book, record or document under his, her or its control;
- (c) make a recommendation to an appropriate person or body with a view to settling the request or complaint

- contained in the petition in order to do justice to the petitioner;
- (d) make a recommendation to an appropriate person or body in respect of the general approach to be followed in future in settling a request or complaint;
 - (e) if requested to do so by the petitioner, resolve a dispute or complaint, reverse an action, rectify an omission, regarding matters other than those prescribed by legislation by means of mediation or negotiation;
 - (f) refer the petition and a recommendation, if any, to a member of the Executive Council, a municipal council, a body supporting constitutional democracy as established by Chapter 9 of the Constitution, or the National Prosecuting Authority, for consideration and decision in respect of the complaint or request contained in the petition as envisaged in section 8(d);
 - (g) conclude its consideration of a petition if it resolves that no steps, or no further steps, as the case may be, can be taken to settle that matter to the satisfaction of the petitioner;
 - (h) if a petition has been referred to a member of the Executive Council, a municipal council or a provincial organ of state in terms of section 8(d) and that person or body has failed to comply or that person or body's conduct or response is unsatisfactory –
 - (i) report such failure or dissatisfactory response to the House; or
 - (ii) take any other appropriate steps that the Committee may lawfully take;
 - (i) if the complaint or request in the petition has since its submission been settled to the satisfaction of the petitioner, close the petition file;
 - (j) delegate any of its functions or powers in terms of section 11.

Meeting of the Committee

- 10.(1) The Committee may for purposes of hearing evidence and considering a petition meet at a date and time and at a place in the Province determined by the Chairperson.
- (2) The Chairperson may give public notice of a meeting in accordance with the Standing Rules.
 - (3) The Petitions Office must timeously –
 - (a) ensure that an invitation, instruction or summons to appear before the Committee has been properly issued and served;

- (b) inform the petitioner in writing of any matter that the petitioner is entitled to be informed of in terms of this Act, any other law or the Standing Rules;
 - (c) if necessary, ensure that the contents of a petition file is translated into any working language of the Committee;
 - (d) perform any additional duty, which will enable the Committee to properly consider a petition and exercise its other functions in terms of this Act.
- (4) Evidence presented before the Committee must be heard in public unless it is -
 - (a) in the interest of justice; or
 - (b) in the interest of the safety of the petitioner or a witness that the evidence be heard behind closed doors.
- (5) The Committee must have due regard for the provisions of the Powers, Privileges and Immunities of Parliament and Provincial Legislature Act, 2004 (Act No. 4 of 2004) and any other relevant law.
- (6) The Petitions Office must at each meeting of the Committee provide the Chairperson with a list of submitted petitions, which have not been finalised by the Committee.

Delegation

- 11.(1) The Committee may delegate any of its responsibilities in respect of a particular petition to a member.
- (2) The Chairperson in consultation with the Committee, must provide that member with a written and signed authorization to consider a particular petition.
 - (3) The Chairperson in consultation with the Committee may at any time before or whilst the member has already commenced his or her consideration of a particular petition, withdraw such authorization.
 - (4) The member must after he or she has concluded such consideration of a petition, in writing report the outcome of his or her consideration of that petition to the Committee.
 - (5) Nothing contained in this section prevents the Committee from exercising any power or performing any duty delegated in terms of this section.
 - (6) A member appointed in terms of this section has all powers by implication necessary to enable him or her to fulfil the delegated function.

Right of appeal

- 12.(1) A petitioner may within 21 days after being informed of the outcome of a petition, in writing, appeal to the Speaker against –
- (a) a refusal by the Committee to consider a petition;
 - (b) where applicable, a determination by the Chairperson to consider the petition submitted by that petitioner behind closed doors; or
 - (c) any recommendation, referral to another person or other decision of the Committee after consideration of the petition submitted by him or her.
- (2) An appeal must set out –
- (a) the reasons for the appeal;
 - (b) the matters in respect of which the Committee or the Chairperson erred; and
 - (c) the decision, recommendation or conclusion the Committee should, in the opinion of the petitioner, have made or arrived at.

Appeal authority

13. (1) The Speaker must within 21 days from receipt of an appeal, from amongst members or any other person with required expertise, from time to time, in writing appoint an appeal authority comprising of three persons to consider an appeal in terms of section 12.
- (2) No member of the Committee may be appointed to the appeal authority and the appeal authority must always comprise of not less than two members.
- (3) The appeal authority must determine its own operations and procedure.
- (4) The appeal authority must within 21 days of receipt of the appeal either –
- (a) dismiss the appeal;
 - (b) uphold the appeal;
 - (c) refer it back to the Committee for re-consideration; or
 - (d) make any other determination which it is competent in law to make.
- (5) The appeal authority must submit its finding in writing to the Speaker, who must without delay, inform the petitioner.

Accountability of Committee

14. (1) The Committee must report to the Legislature as contemplated in section 8(e).

- (2) A debate on an issue raised in a report of the Committee must take place if more than four members of the Committee so demand.
- (3) The Legislature may refer any matter contained in a report submitted to the Legislature by the Committee back to the Committee for reconsideration.
- (4) A member of the Legislature has subject to section 2(3) access to a petition file at any reasonable time.
- (5) The Legislature may whilst the Committee is considering a petition, only conduct an interpellation in respect of the merits thereof.
- (6) A member of the Legislature may, whilst the Committee is considering a petition, only put a question in respect of that petition relating to the process of considering the petition and not on the merits thereof.

Regulations

- 15. The Speaker may, in consultation with the Committee, make regulations providing for the better achievement of the objectives and the better administration of the provisions of this Act.

Short title and commencement

- 16. This Act is called the Northern Cape Petitions Act, 2009, and comes into operation on a date determined by the Premier by proclamation in the *Gazette*.
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