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PROVINCIAL NOTICE

P.N. 396/1997 7 November 1997

The following Bill is hereby published for general information:—

Western Cape Commission Bill, 1997

Any person or organisation wishing to comment on the said Bill is requested to lodge such comment in writing before or on 28 November 1997:

(a) by posting it to:
The Secretary
P.O. Box 648
Cape Town
8000

(b) by handing it in at:
Room 4-96
Provincial Building
Wale Street
Cape Town

P. J. C. Pretorius
Secretary

INHOUD

PROVINSIALE KENNISGEWING

P.K. 396/1997 7 November 1997

Die volgende Wetsontwerp word hierby vir algemene inligting gepubliseer:—

Wes-Kaapse Kommissiewetsontwerp, 1997

Enige persoon of organisasie wat kommentaar oor die genoemde Wetsontwerp wens te lewer, word versoek om sodanige kommentaar skriftelik te lewer voor of op 28 November 1997:

(a) deur dit te pos aan:
Die Sekretaris
Posbus 648
Kaapstad
8000

(b) deur dit in te handig by:
Kamer 4-96
Provinsiale-gebou
Waalstraat
Kaapstad

P. J. C. Pretorius
Sekretaris

BILL

To make provision for the functioning of commissions of inquiry appointed by the Premier, and to provide for matters incidental thereto

WHEREAS the Premier of a province is authorized in terms of section 127(2)(e) of the Constitution of the Republic of South Africa to appoint commissions of inquiry;

BE IT ENACTED by the Provincial Legislature of the province of Western Cape as follows:—

Appointment of commission

1. (1) The Premier may by proclamation in the official gazette of the Province—

(a) appoint a commission of inquiry;

(b) define the matter to be investigated by the commission and its other terms of reference;

(c) make regulations—

(i) providing for the procedure to be followed at the investigation and for the preservation of confidentiality;

(ii) providing generally for all matters which he or she considers necessary or expedient for the proper performance by a commission of its functions;

(d) appoint a secretary to the commission, and such other officials as he or she may deem necessary to assist the commission; and

(e) designate any member of the commission as the chairperson of that commission.

(2) Any regulation made under subsection (1)(c) may provide for penalties for any contravention thereof or failure to comply therewith, by way of a fine not exceeding six thousand rand or imprisonment for a period not exceeding six months or both.

Sittings of commission

2. (1) A commission may sit at any time and place in the Province determined by the chairperson for the purpose of hearing evidence or addresses, or of deliberating.

(2) All the evidence and addresses shall be heard by a commission in public, unless it is reasonable and justifiable in an open and democratic society to rule otherwise.

(3) The chairperson shall give notice of every sitting of such a commission in the official gazette of the Province and in two daily newspapers in circulation in the Province.

Witnesses

3. (1) For the purposes of ascertaining any matter relating to the subject of its investigation, a commission shall have the power to:—

(a) subpoena any person to attend a sitting of the commission in order to give evidence, or produce any book, document or object, before the commission at the time and place specified in the subpoena; and

(b) to call as a witness any person present at a sitting of the commission and—

(i) cause an oath or affirmation to be administered to him or her;

WETSONTWERP

Om voorsiening te maak vir die werking van kommissies van ondersoek wat deur die Premier aangestel is, en vir sake wat daarmee in verband staan

AANGESIEN die Premier van 'n provinsie ingevolge artikel 127(2)(e) van die Grondwet van die Republiek van Suid-Afrika by magte is om kommissies van ondersoek aan te stel;

DERHALWE BEPAAL die Provinsiale Wetgewer van die provinsie Wes-Kaap as volg:—

Aanstelling van kommissie

1. (1) Die Premier kan by proklamasie in die amptelike koerant van die Provinsie—

(a) 'n kommissie van ondersoek aanstel;

(b) die aangeleentheid wat deur die kommissie ondersoek moet word en die opdrag van die kommissie omskryf;

(c) regulasies uitvaardig—

(i) wat voorsiening maak vir die prosedure wat by die ondersoek gevolg moet word en vir die behoud van vertroulikheid;

(ii) wat in die algemeen voorsiening maak vir alle aangeleenthede wat hy of sy nodig of wenslik ag vir die behoorlike uitvoering deur 'n kommissie van sy funksies;

(d) 'n sekretaris vir die kommissie aanstel en sodanige ander amptenare as wat hy of sy nodig mag ag om die kommissie behulpsaam te wees; en

(e) enige lid van die kommissie as voorsitter van daardie kommissie aanwys.

(2) Enige regulasie wat kragtens subartikel (1)(c) uitgevaardig is kan voorsiening maak vir strawwe vir enige oortreding daarvan of versuim om daaraan te voldoen, by wyse van 'n boete van hoogstens sesduisend rand of tronkstraf vir 'n tydperk van hoogstens ses maande of beide 'n boete en tronkstraf.

Sittings van kommissie

2. (1) 'n Kommissie kan op enige tyd en plek in die Provinsie sit soos deur die voorsitter bepaal ten einde getuienis of betoë aan te hoor, of te beraadslaag.

(2) Al die getuienis en betoë sal deur 'n kommissie in die openbaar aangehoor word, tensy dit in 'n oop en demokratiese samelewing redelik en regverdigbaar is om andersins te gelas.

(3) Die voorsitter moet kennis gee van elke sitting in die amptelike koerant van die Provinsie en in twee dagblaaie wat in die Provinsie versprei word.

Getuies

3. (1) Ten einde enige aangeleentheid wat op die onderwerp van sy ondersoek betrekking het, vas te stel, besit 'n kommissie die bevoegdheid om:—

(a) enige persoon te dagvaar om 'n sitting van die kommissie by te woon om getuienis te lewer, of enige boek, dokument of voorwerp aan die kommissie te oorhandig op die tyd en plek wat in die getuiedagvaarding bepaal word; en

(b) om enige persoon wat teenwoordig is by 'n sitting van die kommissie as getuie te roep en—

(i) 'n eed of bevestiging van hom of haar te laat afneem;

(ii) examine him or her; and

(iii) call him or her to produce any book, document or object.

(2) A subpoena contemplated in subsection (1)(a) shall be signed and issued by the secretary of the commission, and shall be served by the secretary, or any person authorized by the secretary to do so, in the same manner as a subpoena for a witness at a criminal trial in the High Court.

(3) A witness shall, before giving evidence, take an oath or make an affirmation administered by the chairperson or such official of the commission as designated by the chairperson.

(4) Any interested person shall have the right to appear before the commission in order to give evidence, or produce any book, document or object.

(5) Any person who has been subpoenaed to attend any sitting of a commission as a witness or has given evidence before a commission shall be entitled to the same witness fees as if the said person is a witness in a High Court.

(6) Any person, who appears before a commission as a witness, shall have the right to legal representation at his or her own cost.

Offences by witnesses

4. (1) Any person subpoenaed as witness by a commission who, without sufficient cause—

(a) fails to attend at a time and place specified in the subpoena; or

(b) fails to remain in attendance until the completion of the investigation before the commission or until he or she is excused by the chairperson from further attendance, shall be guilty of an offence.

(2) Any person called as a witness by a commission who, without sufficient cause—

(a) refuses to be sworn in or to make an affirmation as a witness after he or she has been requested by the chairperson to do so;

(b) having been sworn in or having made an affirmation, fails to answer reasonably and satisfactorily any question lawfully put to him or her; or

(c) fails to produce any book, document or object in his or her possession or custody or under his or her control, which he or she has been called to produce, shall be guilty of an offence.

(3) Any witness who, after having been sworn in or having made an affirmation, gives false evidence before a commission on any matter, knowing such evidence to be false or not believing it to be true, shall be guilty of an offence.

(4) Any person convicted of an offence in terms of subsection (1), (2) or (3) shall be liable to a fine not exceeding twelve thousand rand or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment.

Offences in respect of witnesses

5. Any person who—

(a) by any means whatsoever causes any witness to refrain from giving evidence or to give false evidence before a commission;

(b) by any means whatsoever prevents a witness from attending any sitting of a commission; or

(c) destroys or conceals any book, document or object which to his or her knowledge might be of assistance to a commission in any matter relating to the subject of its investigation,

shall be guilty of an offence, and on conviction be liable to a fine not exceeding forty thousand rand or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment.

Obstructing a commission

6. Any person who, at any sitting of a commission, wilfully—

(a) interrupts the proceedings of a commission; or

(b) hinders or obstructs a commission in the performance of its functions,

shall be guilty of an offence, and on conviction be liable to a fine not exceeding six

(ii) hom of haar te ondervra; en

(iii) te eis dat hy of sy enige boek, dokument of voorwerp oorhandig.

(2) 'n Getuiedagvaarding beoog in subartikel (1)(a) moet onderteken en uitgereik word deur die sekretaris van die kommissie, en moet deur die sekretaris, of enige persoon wat deur die sekretaris daartoe gemagtig is, op dieselfde wyse as 'n getuiedagvaarding by 'n kriminele verhoor in die Hoë Hof gedien word.

(3) 'n Getuie moet, alvorens getuienis afgelê word, 'n eed aflê of 'n bevestiging maak wat deur die sekretaris of sodanige amptenaar van die kommissie deur die voorsitter aangewys afgeneem word.

(4) Enige belanghebbende persoon het die reg om voor die kommissie te verskyn om getuienis af te lê, of enige boek, dokument of voorwerp te oorhandig.

(5) Enige persoon wat gedagvaar is om enige sitting van 'n kommissie as getuie by te woon of getuienis voor 'n kommissie gelewer het, is geregtig op dieselfde getuiegelde asof die genoemde persoon 'n getuie in 'n Hoë Hof is.

(6) Enige persoon wat voor 'n kommissie as getuie verskyn is geregtig op regsverteenwoordiging op sy of haar eie koste.

Misdrywe deur getuies

4. (1) Enige persoon wat as getuie deur 'n kommissie gedagvaar is, wat sonder genoegsame rede—

(a) versuim om op die tyd en plek in die getuiedagvaarding vermeld teenwoordig te wees; of

(b) versuim om aanwesig te bly tot die afhandeling van die ondersoek voor die kommissie of tot hy of sy deur die voorsitter verskoon word van verdere bywoning, is skuldig aan 'n misdryf.

(2) Enige persoon wat as 'n getuie deur 'n kommissie geroep word wat sonder genoegsame rede—

(a) weier om as getuie 'n eed af te lê of 'n bevestiging te maak nadat hy of sy deur die voorsitter daartoe versoek is;

(b) nadat hy of sy 'n eed afgelê of 'n bevestiging gemaak het, versuim om enige vraag wat wettiglik aan hom of haar gestel word, redelikerwys en bevredigend te antwoord; of

(c) versuim om enige boek, dokument of voorwerp in sy besit of bewaring of onder sy toesig te oorhandig nadat hy of sy daartoe versoek is, is skuldig aan 'n misdryf.

(3) Enige getuie wat, nadat hy of sy 'n eed afgelê het of 'n bevestiging gemaak het, valse getuienis voor 'n kommissie aflê, terwyl hy of sy weet dat sodanige getuienis vals is of nie glo dat dit waar is nie, is skuldig aan 'n misdryf.

(4) Enige persoon wat skuldig bevind word aan 'n misdryf ingevolge subartikel (1), (2) of (3) is strafbaar met 'n boete van hoogstens twaalfduisend rand of met tronkstraf vir 'n tydperk van hoogstens twaalf maande, of beide 'n boete en tronkstraf.

Misdrywe met betrekking tot getuies

5. Enige persoon wat—

(a) op enige wyse hoegenaamd veroorsaak dat enige getuie versuim om getuienis af te lê of valse getuienis voor 'n kommissie aflê; of

(b) 'n getuie op watter wyse ook al verhoed om enige sitting van 'n kommissie by te woon; of

(c) enige boek, dokument of voorwerp wat na sy of haar wete 'n kommissie tot nut kan wees in enige aangeleentheid wat met die onderwerp van die ondersoek in verband staan, vernietig of verberg

is skuldig aan 'n misdryf, en by skuldigbevinding strafbaar met 'n boete van hoogstens veertigduisend rand of met gevangenisstraf vir 'n tydperk van hoogstens twee jaar, of beide 'n boete en gevangenisstraf.

Dwarsboming van 'n kommissie

6. Enige persoon wat by enige sitting van 'n kommissie opsetlik—

(a) die verrigtinge van 'n kommissie onderbreek; of

(b) 'n kommissie by die verrigting van sy werksaamhede hinder of dwarsboom,

is skuldig aan 'n misdryf, en by skuldigbevinding strafbaar met 'n boete van hoogstens

thousand rand or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

Report of commission

7. (1) *(a)* Any commission shall report in writing to the Premier in accordance with its terms of reference, but not later than 12 months after its appointment or such further period as may be granted by the Premier at the written request of the commission.

(b) Any disagreement among the members of the commission about its report shall be stated in such report.

(2) The Premier shall, not later than 30 days, after the report has been presented to him or her, submit the report to the Provincial Parliament for consideration by the relevant standing committee.

Procedural rules

8. A commission may, subject to the provisions of this Act, determine and control its own internal arrangements, proceedings and procedures.

Cost of commission

9. (1) The remuneration, allowances and transport expenses payable to a member or an official of the commission, shall be determined by the Provincial Treasury.

(2) The chairperson of a commission shall, not later than 30 days after such commission presented its report to the Premier, present a statement of all expenses reasonably incurred by the commission in the performance of its functions, to the Provincial Treasury.

(3) All expenses shall be paid by the instructing department out of the Provincial Revenue Fund in terms of an appropriation by the Provincial Parliament: Provided that the Premier, before appointing any commission, may require that any other person, municipality or other body requesting such a commission shall undertake to pay the whole or such portion of the costs thereof as the Premier may determine.

Repeal of Ordinance 1 of 1945

10. (1) Subject to subsection (2), the Commissions Ordinance, 1945 (Ordinance No. 1 of 1945), is hereby repealed.

(2) Any commission appointed under the said Ordinance before the commencement of this Act may be continued under that Ordinance as if such commission was appointed in terms of this Act.

Short title

11. This Act is called the Western Cape Provincial Commissions Act, 1997.

sesduisend rand of gevangenisstraf vir 'n tydperk van hoogstens ses maande, of beide sodanige boete en gevangenisstraf.

Verslag van kommissie

7. (1) *(a)* Enige kommissie moet skriftelik aan die Premier verslag doen ooreenkomstig sy opdrag, nie later nie as 12 maande na sy aanstelling of sodanige verdere tydperk as wat deur die Premier toegestaan mag word op skriftelike versoek van die kommissie.

(b) Enige meningsverskil onder die lede van die kommissie oor sy verslag moet in die verslag gemeld word.

(2) Die Premier lê die verslag voor aan die Provinsiale Parlement vir oorweging deur die toepaslike staande komitee nie later nie as 30 dae nadat die verslag aan hom of haar oorhandig is.

Prosedurereëls

8. 'n Kommissie kan, behoudens die bepalings van hierdie Wet, sy eie interne reëlings, verrigtinge en prosedures bepaal.

Koste van kommissie

9. (1) Die vergoeding, toelaes en vervoeruitgawes betaalbaar aan 'n lid of 'n amptenaar van die kommissie, word deur die Provinsiale Tesourie bepaal.

(2) Die voorsitter moet nie later nie as 30 dae nadat die kommissie sy verslag aan die Premier voorgelê het, 'n staat van alle uitgawes wat deur die kommissie aangegaan is in die uitvoering van sy werksaamhede aan die Provinsiale Tesourie oorhandig.

(3) Alle uitgawes moet deur die opdraggewende departement uit die Provinsiale Inkomstefonds ingevolge 'n toewysing deur die Provinsiale Parlement betaal word: Met dien verstande dat, voor enige kommissie aangestel word, die Premier kan vereis dat enige persoon, munisipaliteit of ander liggaam wat sodanige kommissie aanvra, onderneem om die volle koste of sodanige gedeelte van die koste wat die Premier mag bepaal, te betaal.

Herroeping van Ordonnansie 1 van 1945

10. (1) Die Ordonnansie op Kommissies, 1945 (Ordonnansie No. 1 van 1945) word behoudens subartikel (2) hiermee herroep.

(2) Enige kommissie wat voor die inwerkingtreding van hierdie Wet kragtens die genoemde Ordonnansie aangestel is, kan voortgaan kragtens daardie Ordonnansie asof sodanige kommissie ingevolge hierdie Wet aangestel is.

Kort titel

11. Hierdie Wet heet die Wes-Kaapse Provinsiale Kommissieswet, 1997.

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