Western Cape Government • Wes-Kaapse Regering • URhulumente weNtshona Koloni

PROVINCE OF THE WESTERN CAPE

Provincial Gazette Extraordinary

7249

Monday, 7 April 2014

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OFFICE OF THE PREMIER OF THE PROVINCE OF THE WESTERN CAPE

P.N. 98/2014 7 April 2014

It is hereby notified that the Premier of the Province of Western Cape has assented to the following Act which is hereby published for general information:—

No. 2 of 2014: Western Cape Independent Health Complaints Committee Act, 2014.

PROVINSIE WES-KAAP

Buitengewone Provinsiale Koerant

7249

Maandag, 7 April 2014

As 'n nuusblad by die Poskantoor geregistreer

*(*Afskrifte is verkrygbaar by Kamer M21, Provinsiale Wetgewer-gebou, Waalstraat 7, Kaapstad 8001.)*

KANTOOR VAN DIE PREMIER VAN DIE PROVINSIE WES-KAAP

P.K. 98/2014 7 April 2014

Hiermee word bekend gemaak dat die Premier van die Provinsie Wes-Kaap die onderstaande Wet, wat hierby ter algemene inligting gepubliseer word, bekragtig het:—

Nr. 2 van 2014: Wes-Kaapse Wet op die Onafhanklike Gesondheidsklagtekomitee, 2014.

PHONDO LENTSHONA KOLONI

Tsongezelelo kwiGazethi yePhondo

7249

Mvulo, 7 Epreli 2014

Ibhaliswe ePosini njengePhephandaba

*(*Iikopi zifumaneka kwigumbi M21, kwiSakhiwo seNdlu yoWiso Mthetho yePhondo, e7 Wale Street, eKapa 8001.)*

I-OFISI YENKULUMBUSO YEPHONDO LENTSHONA KOLONI

I.S. 98/2014 7 Epreli 2014

Kwenziwa isaziso apha sokuba iNkulumbuso yePalamente yePhondo leNtshona Koloni iwamkele ngokusemthethweni lo Mthetho ulandelayo opapashelwe ulwazi gabalala apha:—

Nomb 2 ka-2014: UMthetho weKomiti yeZikhalazo yezeMpilo eziMeleyo weNtshona Koloni, 2014.

(Afrikaans text signed by the Premier)
(Assented to 31 March 2014)

ACT

To provide for the establishment of the Independent Health Complaints Committee; to make provision for a system for the referral of complaints to the Committee for consideration; and to provide for matters incidental thereto.

BE IT ENACTED by the Provincial Parliament of the Province of the Western Cape, as follows:—

Definitions

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

"Chairperson" means the chairperson of the Committee designated in terms of section 3(5);

"Committee" means the Independent Health Complaints Committee established by section 2;

"complainant" means a person or body that lodges a complaint;

"complaint" means a complaint by any person or body regarding the rendering of health-care services at a health-care establishment;

"Department" means the provincial department responsible for health in the Province;

"family member" means a person's spouse, child, parent, brother or sister, whether the relationship results from birth, marriage or adoption;

"health-care establishment" means the whole or part of a public institution or public facility that provides inpatient or outpatient treatment, diagnostic or therapeutic interventions, nursing, rehabilitation, palliative, convalescent, preventative or mental health-care services or other health services and that is operated or controlled, by the Department;

"member" means a member of the Committee appointed in terms of section 3(1);

"Minister" means the Provincial Minister responsible for health in the Province;

"office bearer" means an office bearer as defined in section 1 of the Remuneration of Public Office Bearers Act, 1998 (Act 20 of 1998);

"personal information" means personal information as defined in section 1 of the Promotion of Access to Information Act, 2000 (Act 2 of 2000);

"prescribed" means determined by the Minister by regulation;

"Province" means the province of the Western Cape;

"spouse" includes life partner;

"this Act" includes regulations made under section 20.

Establishment of Independent Health Complaints Committee

2. The Independent Health Complaints Committee is hereby established.

Appointment of members of Committee

3. (1) Subject to subsection (2), the Minister must appoint three persons as members of the Committee.

(2) The Minister must appoint the members only after—

(a) a notice has been published in the Provincial Gazette, and in the media which the Minister regards appropriate, inviting all interested persons to nominate, within the period specified in the notice, candidates who in the opinion of the interested persons are fit to be appointed as members and to state the grounds upon which the opinion rests; and

(b) consulting the Head of Department on the suitability of the nominated candidates.

(3) If the required number of suitable candidates referred to in subsection (1) is not nominated in terms of subsection (2), the Minister must, after consultation with the Head of Department, appoint an appropriate person or persons, as the case may be.

(4) The appointments to the Committee must be made with racial and gender sensitivity.

(5) The Minister must designate one of the members as Chairperson of the Committee.

Eligibility for appointment as member of Committee

4. To be eligible for appointment as a member a person must—

(a) be a citizen of the Republic and be permanently resident in the Province;

(b) not be disqualified in terms of section 7; and

(c) possess appropriate knowledge of, or experience in, one or more of the following fields:

(i) healthcare;

(ii) human rights; or

(iii) the public service.

Term of office and reappointment of members

5. (1) A member—

(a) must be appointed for a period of up to three years on a part-time basis; and

(b) may be reappointed for a maximum of one term.

(2) When the term of office of a member expires, that member may remain in office until a successor is appointed, but not for more than six months from the date that his or her term of office has expired.

Vacancies

6. (1) A vacancy occurs in the Committee if a member—

(a) dies;

(b) resigns from office in terms of section 8(1);

(c) whether in the Republic or elsewhere, during his or her term of office, is convicted of—

(i) an offence for which the member is sentenced to imprisonment without the option of a fine; or

(ii) theft, fraud, forgery, the uttering of a forged document, perjury, any offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004), or any offence of which dishonesty is an element; or

(d) becomes disqualified in terms of section 7.

(2) The Minister must appoint another person in accordance with section 3 to fill a vacancy whenever it occurs.

Disqualification from appointment as member

7. A person is disqualified from being appointed as, or remaining, a member if he or she—

(a) is in the employ of an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996;

(b) at any time has been convicted, whether in the Republic or elsewhere, of—

(i) an offence for which he or she was sentenced to imprisonment without the option of a fine; or

(ii) theft, fraud, forgery, the uttering of a forged document, perjury, any offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004, or any offence of which dishonesty is an element;

(c) is an unrehabilitated insolvent person;

(d) is incapacitated by mental illness or mental disability;

(e) is a political office bearer; or

(f) whether personally or through his or her family member, partner or associate has any interest in any business or enterprise that may conflict or interfere with the proper performance of his or her duties as a member.

Resignation and removal from office

8. (1) A member may resign from the Committee—

(a) by giving one month's written notice to the Minister; or

(b) by giving less than one month's written notice with the approval of the Minister.

(2) The Minister may remove a member from office—

(a) if the member becomes disqualified in terms of section 7;

(b) if the member has contravened section 9;

(c) if the member has been absent from three consecutive meetings of the Committee without the permission of the Chairperson; or

(d) on any other reasonable grounds, including misconduct, incapacity or incompetence.

Declaration of interest

9. (1) A member may not attend, vote on or in any other manner participate in proceedings of the Committee when the Committee is considering a complaint if the member—

(a) is a family member, partner or business associate of any of the parties involved in the complaint;

(b) or his or her family member, partner or business associate has a financial or other interest in the complaint; or

(c) has any other interest which precludes him or her from performing his or her functions as a member in a fair, unbiased and proper manner in respect of that complaint.

(2) If at any stage during the consideration by the Committee of a complaint it appears that a member has or may have any interest as contemplated in subsection (1), the member must immediately fully disclose the nature of that interest and leave the proceedings of the Committee.

(3) The disclosure in terms of subsection (2) must be recorded in the minutes of the proceedings in question.

Functions and powers of Committee

10. The Committee—

(a) must consider all complaints referred to it by the Minister or Head of Department;

(b) must make recommendations to the Minister or the Head of Department, as the case may be, regarding such complaints;

(c) may not consider any complaints referred to it directly by the public;

(d) may request any of the parties involved in a complaint to meet with the Committee in order to obtain any additional information that may assist in its consideration of the complaint;

(e) may visit a health establishment in order to verify information provided to the Committee or to obtain any additional information that may assist in its consideration of the complaint; and

(f) may, subject to section 18 and all relevant laws relating to the protection of personal information, request from the Department and the complainant additional documents and information that may assist the Committee in its consideration of the complaint.

Scheduling of meetings of Committee

11. (1) The Head of Department must determine the time and place for the first meeting of the Committee.

(2) The Committee must thereafter determine the time and place of meetings.

Procedure at meetings of Committee

12. (1) The procedure at a meeting of the Committee must be determined by the Committee, subject to the directives of the Minister.

(2) A quorum of at least two members must be present at a meeting when the Committee conducts its business.

(3) If the Chairperson is absent from a meeting at which a quorum is present, the Head of Department must designate one of the members present to act as the Chairperson at that meeting.

(4) A decision of the Committee must be by consensus, but in the absence of consensus, a decision of a majority of the members present at the meeting is a decision of the Committee.

(5) In the event of an equality of votes on any matter, the Chairperson must cast a deciding vote.

(6) The Committee may, with the approval of the Minister, request or permit any person to participate in a meeting in an advisory capacity.

(7) The Chairperson must ensure that—

(a) a proper record is kept of the attendance and minutes of every meeting; and

(b) a copy of the record referred to in paragraph *(a)* is signed by the Chairperson and sent to the Head of Department if requested by the Head of Department.

Reports and recommendations on complaints

13. (1) The Committee must, within the prescribed period after the referral of a complaint to it in terms of section 10*(a)*, render a report containing its recommendations to the Minister or the Head of Department, as the case may be.

(2) The Committee may, on reasonable grounds, request an extension of the period contemplated in subsection (1) from the Minister or the Head of Department, as the case may be.

(3) The report of the Committee must—

(a) contain a factual background of the complaint;

(b) contain an evaluation by the Committee of the complaint;

(c) contain as annexures copies of all documents relied on by the Committee in its evaluation;

(d) recommend to the Minister or Head of Department a resolution of the complaint; and

(e) be signed by the Chairperson.

Notice to complainant

14. The Minister or the Head of Department, as the case may be, must within 60 days of receipt of the report referred to in section 13(1), furnish the complainant with a written response.

Administrative support

15. (1) The Head of Department must provide the Committee with general support and the necessary resources to perform its functions, including—

(a) administrative support; and

(b) infrastructure support.

(2) The Head of Department must designate officials in the employ of the Department to assist the Committee.

Remuneration and allowances

16. The members may be paid the remuneration and allowances determined by the Minister in consultation with the Provincial Minister responsible for finance in the Province.

Reporting

17. The Chairperson must report to the Minister on the activities of the Committee—
(a) at least once every six months; and
(b) when requested by the Minister.

Confidentiality and safe keeping of documents and information

18. (1) The Committee may, for the purposes of considering a complaint referred to it, obtain copies of any records relating to the complaint that are in the possession of a health-care establishment.

(2) The Committee—
(a) must take all reasonable steps to ensure that all information and records it receives are kept confidential and are secured against unauthorised access; and
(b) may not record or deal with any such information or records other than for the purposes of this Act and must record or deal with such information or records in accordance with any law relating to the protection of personal information.

Limitation of liability of members

19. A member is not liable for anything done in good faith in the performance of a function in terms of this Act.

Regulations

20. (1) The Minister may make regulations regarding—
(a) the procedure to be followed by the Committee when visiting a health establishment;
(b) the procedure to be followed by the Committee when requesting additional information from the Department or any person involved in a complaint;
(c) the procedure to be followed by the Committee when requesting a person involved in a complaint to meet with it in order to obtain additional information;
(d) the timeframes within which the Committee must consider a complaint referred to it; and
(e) any other matter which is necessary or expedient to prescribe in order to implement or administer this Act.

(2) The Minister must make regulations regarding any matter in respect of which this Act requires regulations.

Short title and commencement

21. This Act is called the Western Cape Independent Health Complaints Committee Act, 2014, and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette.*

(Afrikaanse teks deur die Premier geteken)
(Bekragtig op 31 Maart 2014)

WET

Om voorsiening te maak vir die stigting van die Onafhanklike Gesondheidsklagtekomitee; om voorsiening te maak vir 'n stelsel vir die verwysing van klagtes na die Komitee vir oorweging; en om voorsiening te maak vir aangeleenthede wat daarmee verband hou.

DAAR WORD BEPAAL deur die Provinsiale Parlement van die Provinsie Wes-Kaap, soos volg:—

Woordomskrywing

1. In hierdie Wet, tensy dit uit die samehang anders blyk—

"ampsbekleër" beteken 'n ampsbekleër soos omskryf in artikel 1 van die Wet op die Besoldiging van Openbare Ampsbekleërs, 1998 (Wet 20 van 1998);

"Departement" beteken die provinsiale departement verantwoordelik vir gesondheid in die Provinsie;

"familielid" beteken 'n persoon se gade, kind, ouer, broer of suster, hetsy die verhouding uit geboorte, huwelik of aanneming spruit;

"gade" sluit 'n lewensmaat in;

"gesondheidsorginstelling" beteken die hele of gedeelte van 'n openbare instelling of openbare fasiliteit wat binnepasiënt- of buitepasiëntbehandeling, diagnostiese of terapeutiese ingrypings, verpleeg-, rehabilitasie-, palliatiewe, herstellings-, voorkomende of geestesgesondheidsorgdienste of ander gesondheidsdienste verskaf, en wat deur die Departement bedryf of beheer word;

"hierdie Wet" sluit regulasies in wat kragtens artikel 20 gemaak is;

"klaer" beteken 'n persoon of liggaam wat 'n klagte indien;

"klagte" beteken 'n klagte deur 'n persoon of liggaam rakende die lewering van gesondheidsorgdienste by 'n gesondheidsorginstelling;

"Komitee" beteken die Onafhanklike Gesondheidsklagtekomitee wat by artikel 2 gestig is;

"lid" beteken 'n lid van die Komitee wat ingevolge artikel 3(1) aangestel is;

"Minister" beteken die Provinsiale Minister verantwoordelik vir gesondheid in die Provinsie;

"persoonlike inligting" beteken persoonlike inligting soos omskryf in artikel 1 van die Wet op die Bevordering van Toegang tot Inligting, 2000 (Wet 2 van 2000);

"Provinsie" beteken die provinsie van die Wes-Kaap;

"voorgeskryf" beteken deur die Minister bepaal by regulasie;

"Voorsitter" beteken die voorsitter van die Komitee wat ingevolge artikel 3(5) aangewys is.

Instelling van Onafhanklike Gesondheidsklagtekomitee

2. Die Onafhanklike Gesondheidsklagtekomitee word hierby ingestel.

Aanstelling van lede van Komitee

3. (1) Behoudens subartikel (2), moet die Minister drie persone as lede van die Komitee aanstel.

(2) Die Minister moet die lede aanstel slegs nadat—

(a) ’n kennisgewing in die Provinsiale Koerant, en in die media wat die Minister as toepaslik beskou, gepubliseer is wat alle belanghebbende persone uitnooi om, binne die tydperk wat in die kennisgewing gespesifiseer word, kandidate te benoem wat na die mening van die belanghebbende persone geskik is om as lede aangestel te word en om die gronde waarop die mening berus, te vermeld; en

(b) hy of sy die Departementshoof geraadpleeg het oor die geskiktheid van die benoemde kandidate.

(3) Indien die vereiste getal geskikte kandidate bedoel in subartikel (1) nie ingevolge subartikel (2) benoem is nie, moet die Minister, na oorlegpleging met die Departementshoof, ’n toepaslike persoon of persone, na gelang van die geval, aanstel.

(4) Die aanstellings in die Komitee moet met ras- en geslagsensitiwiteit gemaak word.

(5) Die Minister moet een van die lede as Voorsitter van die Komitee aanwys.

Benoembaarheid vir aanstelling as lid van Komitee

4. Om vir aanstelling as ’n lid benoembaar te wees, moet ’n persoon—

(a) ’n inwoner van die Republiek en permanent in die Provinsie woonagtig wees;

(b) nie ingevolge artikel 7 gediskwalifiseer wees nie; en

(c) toepaslike kennis van, of ondervinding in, een of meer van die volgende gebiede besit:

(i) gesondheidsorg;

(ii) menseregte; of

(iii) die staatsdiens.

Ampstermyn en heraanstelling van lede

5. (1) ’n Lid—

(a) moet vir ’n tydperk van tot drie jaar op ’n deeltydse grondslag aangestel word; en

(b) kan vir ’n maksimum van een termyn heraangestel word.

(2) Wanneer ’n lid se ampstermyn verstryk, mag daardie lid in die amp bly totdat ’n opvolger aangestel is, maar nie vir meer as ses maande vanaf die datum waarop sy of haar ampstermyn verstryk het nie.

Vakatures

6. (1) ’n Vakature ontstaan in die Komitee indien ’n lid—

(a) sterf;

(b) ingevolge artikel 8(1) uit die amp bedank;

(c) gedurende sy of haar ampstermyn, hetsy in die Republiek of elders, skuldig bevind word aan—

(i) ’n oortreding waarvoor die lid tot gevangenisstraf sonder die keuse van ’n boete gevonnis word; of

(ii) diefstal, bedrog, vervalsing, die in omloop bring van ’n vervalste dokument, meineed, enige oortreding ingevolge die Wet op die Voorkoming en Bestryding van Korrupte Bedrywighede, 2004 (Wet 12 van 2004), of enige oortreding waarvan oneerlikheid ’n element is; of

(d) ingevolge artikel 7 gediskwalifiseer word.

(2) Die Minister moet ’n ander persoon ooreenkomstig artikel 3 aanstel om ’n vakature te vul wanneer dit voorkom.

Diskwalifikasie om as lid aangestel te word

7. ’n Persoon is gediskwalifiseer om aangestel te word as ’n lid of om ’n lid te bly indien hy of sy—

(a) in die diens is van ’n staatsorgaan soos in artikel 239 van die Grondwet van die Republiek van Suid-Afrika, 1996, omskryf;

(b) te eniger tyd skuldig bevind is, hetsy in die Republiek of elders, aan—

(i) ’n oortreding waarvoor hy of sy tot gevangenisstraf sonder die keuse van ’n boete gevonnis is; of

(ii) diefstal, bedrog, vervalsing, die in omloop bring van 'n vervalste dokument, meineed, enige oortreding ingevolge die Wet op die Voorkoming en Bestryding van Korrupte Bedrywighede, 2004, of enige oortreding waarvan oneerlikheid 'n element is;

(c) 'n ongerehabiliteerde insolvente persoon is;

(d) deur geestessiekte of geestesgestremdheid onbevoeg gemaak is;

(e) 'n politieke ampsbekleër is; of

(f) hetsy persoonlik of deur sy of haar familielid, vennoot of genoot enige belange in enige besigheid of onderneming het wat kan bots of inmeng met die behoorlike uitvoering van sy of haar pligte as 'n lid.

Bedanking en verwydering uit amp

8. (1) 'n Lid kan uit die Komitee bedank—

(a) deur een maand skriftelike kennis aan die Minister te gee; of

(b) deur minder as een maand skriftelike kennis te gee met die goedkeuring van die Minister.

(2) Die Minister kan 'n lid uit die amp verwyder—

(a) indien die lid ingevolge artikel 7 gediskwalifiseer is;

(b) indien die lid artikel 9 oortree het;

(c) indien die lid van drie agtereenvolgende vergaderings van die Komitee sonder die toestemming van die Voorsitter afwesig was; of

(d) op enige ander redelike gronde, insluitend wangedrag, onbevoegdheid of onbekwaamheid.

Verklaring van belange

9. (1) 'n Lid mag nie verrigtinge van die Komitee bywoon, daaroor stem of op enige ander manier daaraan deelneem wanneer die Komitee 'n klagte oorweeg indien die lid—

(a) 'n familielid, vennoot of sakegenoot is van enige van die partye wat by die klagte betrokke is nie;

(b) of sy of haar familielid, vennoot of besigheidsgenoot 'n finansiële of ander belang by die klagte het nie; of

(c) enige ander belang het wat hom of haar verhinder om sy of haar funksies as 'n lid op 'n regverdige, onbevooroordeelde en behoorlike wyse ten opsigte van daardie klagte te verrig nie.

(2) Indien dit in enige stadium gedurende die oorweging deur die Komitee van 'n klagte blyk dat 'n lid enige belang soos beoog in subartikel (1) het of kan hê, moet die lid onmiddellik die aard van daardie belang volledig openbaar en die verrigtinge van die Komitee verlaat.

(3) Die openbaarmaking ingevolge subartikel (2) moet in die notule van die betrokke verrigtinge aangeteken word.

Funksies en magte van Komitee

10. Die Komitee—

(a) moet alle klagtes wat deur die Minister of Departementshoof na hom verwys word, oorweeg;

(b) moet aanbevelings aan die Minister of Departementshoof maak, na gelang van die geval, rakende sodanige klagtes;

(c) mag geen klagtes wat direk aan hom gerig word deur die publiek, oorweeg nie;

(d) kan enige van die partye wat by 'n klagte betrokke is, versoek om met die Komitee te vergader ten einde enige bykomende inligting te bekom wat kan help in sy oorweging van die klagte;

(e) kan 'n gesondheidsinstelling besoek om inligting te verifieer wat aan die Komitee verskaf word of om enige bykomende inligting te bekom wat met sy oorweging van die klagte kan help; en

(f) kan, behoudens artikel 18 en alle tersaaklike wette wat met die beskerming van persoonlike inligting verband hou, bykomende dokumente en inligting van die Departement en die klaer versoek wat die Komitee met sy oorweging van die klagte kan help.

Skedulering van vergaderings van Komitee

11. (1) Die Departementshoof moet die tyd en plek vir die eerste vergadering van die Komitee bepaal.

(2) Die Komitee moet daarna die tyd en plek vir vergaderings bepaal.

Prosedure by vergaderings van Komitee

12. (1) Die prosedure by ’n vergadering van die Komitee moet deur die Komitee bepaal word, behoudens die voorskrifte van die Minister.

(2) ’n Kworum van minstens twee lede moet by ’n vergadering teenwoordig wees wanneer die Komitee sy sake verrig.

(3) Indien die Voorsitter afwesig is van ’n vergadering waar ’n kworum teenwoordig is, moet die Departementshoof een van die lede teenwoordig aanwys om as die Voorsitter by daardie vergadering waar te neem.

(4) ’n Besluit van die Komitee moet deur konsensus wees, maar by gebrek aan konsensus is ’n besluit van ’n meerderheid van die lede by die vergadering teenwoordig ’n besluit van die Komitee.

(5) In die geval van ’n staking van stemme oor enige aangeleentheid, moet die Voorsitter ’n beslissende stem uitbring.

(6) Die Komitee kan, met die goedkeuring van die Minister, enige persoon versoek of toelaat om in ’n raadgewende hoedanigheid aan ’n vergadering deel te neem.

(7) Die Voorsitter moet verseker dat—

(a) ’n behoorlike rekord gehou word van die bywoning en notule van elke vergadering; en

(b) ’n afskrif van die rekord in paragraaf *(a)* bedoel deur die Voorsitter onderteken word en aan die Departementshoof gestuur word indien dit deur die Departementshoof versoek word.

Verslae en aanbevelings oor klagtes

13. (1) Die Komitee moet, binne die voorgeskrewe tydperk na die verwysing van ’n klagte na hom ingevolge artikel 10*(a)*, ’n verslag lewer wat sy aanbevelings aan die Minister of die Departementshoof, na gelang van die geval, bevat.

(2) Die Komitee kan, op redelike gronde, ’n verlenging van die tydperk in subartikel (1) beoog van die Minister of die Departementshoof, na gelang van die geval, versoek.

(3) Die verslag van die Komitee moet—

(a) ’n feitelike agtergrond van die klagte bevat;

(b) ’n evaluasie deur die Komitee van die klagte bevat;

(c) as bylaes afskrifte van alle dokumente waarop die Komitee in sy evaluasie gesteun het, bevat;

(d) ’n besluit oor die klagte by die Minister of Departementshoof aanbeveel; en

(e) deur die Voorsitter onderteken wees.

Kennisgewing aan klaer

14. Die Minister of die Departementshoof, na gelang van die geval, moet binne 60 dae van ontvangs van die verslag in artikel 13(1) bedoel, die klaer van ’n skriftelike antwoord voorsien.

Administratiewe steun

15. (1) Die Departementshoof moet die Komitee voorsien van algemene steun en die nodige hulpbronne om sy funksies te verrig, met inbegrip van—

(a) administratiewe steun; en

(b) infrastruktuursteun.

(2) Die Departementshoof moet amptenare in diens van die Departement aanwys om die Komitee by te staan.

Vergoeding en toelaes

16. Die lede kan die vergoeding en toelaes betaal word wat deur die Minister in oorleg met die Provinsiale Minister verantwoordelik vir finansies in die Provinsie bepaal word.

Verslaggewing

17. Die Voorsitter moet aan die Minister verslag doen van die aktiwiteite van die Komitee—
(a) minstens een keer elke ses maande; en
(b) wanneer deur die Minister versoek word.

Vertroulikheid en veilige bewaring van dokumente en inligting

18. (1) Die Komitee kan, vir die doeleindes van die oorweging van 'n klagte wat na hom verwys is, afskrifte bekom van enige rekords wat met die klagte verband hou en wat in die besit van 'n gesondheidsorginstelling is.

(2) Die Komitee—
(a) moet alle redelike stappe doen om toe te sien dat alle inligting en rekords wat hy ontvang vertroulik gehou en beveilig word teen ongemagtigde toegang; en
(b) mag nie enige sodanige inligting of rekords aanteken of hanteer buiten vir die doeleindes van hierdie Wet nie en moet sodanige inligting of rekords ooreenkomstig enige wet wat verband hou met die beskerming van persoonlike inligting aanteken en hanteer.

Beperking van aanspreeklikheid van lede

19. 'n Lid is nie aanspreeklik vir enigiets wat te goeder trou gedoen word in die uitvoering van 'n funksie ingevolge hierdie Wet nie.

Regulasies

20. (1) Die Minister kan regulasies maak rakende—
(a) die prosedure wat die Komitee moet volg wanneer hy 'n gesondheidsinstelling besoek;
(b) die prosedure wat die Komitee moet volg wanneer hy bykomende inligting van die Departement of enige persoon wat by 'n klagte betrokke is, versoek;
(c) die prosedure wat die Komitee moet volg wanneer hy 'n persoon wat by 'n klagte betrokke is, versoek om met hom te vergader ten einde bykomende inligting te bekom;
(d) die tydsraamwerke waarbinne die Komitee 'n klagte wat na hom verwys word, moet oorweeg; en
(e) enige ander aangeleentheid wat nodig of raadsaam is om voor te skryf ten einde hierdie Wet te implementeer of te administreer.

(2) Die Minister moet regulasies maak rakende enige aangeleentheid ten opsigte waarvan hierdie Wet regulasies vereis.

Kort titel en inwerkingtreding

21. Hierdie Wet heet die Wes-Kaapse Wet op die Onafhanklike Gesondheidsklagtekomitee, 2014, en tree in werking op 'n datum wat die Premier by proklamasie in die *Provinsiale Koerant* bepaal.

(Uxwebhu lwesiAfrikaans lutyikitywe yiNkulumbuso)
(Lwamkelwa ngowama-31 Matshi 2014)

UMTHETHO

Wokubonelela ngokumiselwa kweKomiti eziMeleyo yeZikhalazo yezeMpilo; olungiselela inkqubo yokuthunyelwa kwezikhalazo ukuze ziqwalaselwe yiKomiti; kwakunye nokubonelela ngayo nayiphi na eminye imiba ephathelele kwezi zinto.

Kuwiswa uMthetho ke yiPalamente yePhondo leNtshona Koloni, ngolu hlobo lulandelayo:—

Inkcazo-magama

1. Kulo Mthetho, ngaphandle kwalapho indlela elisetyenziswe ngayo igama ilinika enye intsingiselo—

"igosa elisesikhundleni" lithetha igosa elisesikhundleni njengoko kuchaziwe kwicandelo 1 lomthetho oyiRemuneration of Public Office Bearers Act, 1998 (uMthetho 20 ka-1998);

"iinkcukacha ezizezomntu" zithetha iinkcukacha ezizezomntu njengoko kuchaziwe kwicandelo 1 lomthetho oyiPromotion of Access to Information Act, 2000 (uMthetho 2 ka-2000);

"iKomiti" ithetha iKomiti eziMeleyo yeZikhalazo yezeMpilo emiselwe licandelo 2;

"iLungu" lithetha ilungu leKomiti elonyulwe ngokwecandelo 3(1);

"**iLungu loSapho"** lithetha iqabane lomntu, umntwana, umzali, umnakwabo okanye udade wabo, nokuba ukuzalana oko kwenzeke ngokokuzalwa, umtshato okanye ukuzalwa ngokomyalelo womthetho;

"iPhondo" lithetha iphondo leNtshona Koloni;

"iqabane" liquka nomntu ongundofa naye;

"iSebe" lithetha isebe lephondo elongamele ezeMpilo kwiPhondo;

"isikhalazo" sithetha isikhalazo esenziwe nguye nawuphi na umntu okanye umbutho malunga nendlela ezinikezelwa ngayo iinkonzo kwiziko lezempilo;

"lo Mthetho" ubandakanya imigaqo eyenziwe phantsi kwecandelo 20.

"ukumisela" kuthetha ukumisela ngomgaqo nguMphathiswa;

"ukumiselwa kweziko lezempilo" kuthetha lonke okanye indawo ethile kwiziko lezempilo loluntu okanye kwiziko loluntu elinceda izigulane ezilaliswayo okanye ezingalaliswayo, ngezonyango, ngeenkqubo zokuqonda ngesifo okanye ezokunyanga, ezokongiwa, ezokubuyiselwa kwimo yesiqhelo, uncedo lokudanjiswa kweentlungu, uncedo ngexesha lokuchacha, uncedo lokuthintela okanye uncedo kwizigulo zengqondo okanye ngezinye iinkonzo zempilo kwanokuba zenziwa okanye zilawulwa liSebe;

"umntu okhalazayo" uthetha umntu okanye umbutho ofaka isikhalazo;

"uMphathiswa" uthetha uMphathiswa owongamele ezempilo kwiPhondo;

"uSihlalo" uthetha uSihlalo weKomiti omiselwe ngokwecandelo 3(5).

Ukumiselwa kweKomiti eziMeleyo yeZikhalazo yezeMpilo

2. IKomiti eziMeleyo yeZikhalazo yezeMpilo iyamiselwa.

Ukonyulwa kwamalungu eKomiti

3. (1) Ngokwecandelwana (2), uMphathiswa kufuneka onyule amalungu amathathu njengamalungu eKomiti.

(2) Kufuneka uMphathiswa onyule amalungu kuphela emva kokuba—

(a) Isaziso sipapashiwe kwiGazethi yePhondo nakumajelo eendaba abone uMphathiswa ukuba iindawo ezifanelekileyo, emema bonke abantu abachaphazelekayo ukuba baphakamise amagama, kwisithuba esichaziweyo kwinothisi, abagqatswa abathe ngokwembono yabantu abachaphazelekayo bakufanela ukuba ngamalungu atyunjiweyo kucaciswe kanjalo ukuba ingaba amalungu lawo atyunjwa ngokuba kutheni; kananjalo

(b) ngokubonisana neNtloko yeSebe ngokufaneleka komgqatswa otyunjiweyo.

(3) Ukuba inani labagqatswa abafanelekileyo ekubhekiselelwe kubo kwicandelwana (1) alonyulwanga ngokwecandelwana (2), uMphathiswa kufuneka, emva kokubonisana neNtloko yeSebe, onyule umntu okanye abantu, njengoko kulindelekile.

(4) Ukonyulelwa kwiKomiti kufuneka kwenziwe kungakhethwanga bani ngokobuhlanga nangokwesini.

(5) UMphathiswa kufuneka amisele ilingu libe linye njengoSihlalo weKomiti.

Ukulungela ukonyulwa njengelungu leKomiti

4. Ukuze umntu alungele ukonyulwa njengelungu kufuneka—

(a) abe ngummi weRiphablikhi kwakhona abengumhlali weli Phondo;

(b) angathintelwa ngokwecandelo 7; kananjalo

(c) abenolwazi okanye amava kwinto enye okanye ezimbini kwezi nkalo zilandelayo:

(i) unonophelo ngezonyango;

(ii) amalungelo oluntu; okanye

(iii) inkonzo yoluntu.

Imigaqo yokuba sesikhundleni nokonyulwa kwamalungu kwakhona

5. (1) Ilungu—

(a) kufuneka lonyulwe kangangesithuba seminyaka emithathu, oko kusenziwa ngokungekho sigxina; kananjalo

(b) uya kuphinda anyulwe kwakhona ixesha elingayi kudlula kwixesha eliqingqelwe lo mnyaka.

(2) Xa ixesha lokuba sesikhundleni kwelungu seliphela, elo lungu liya kuhlala kuso de konyulwe umntu oya kungena endaweni yalo, lihlale iinyanga ezingayi kudlula kwezintandathu ukusuka kumhla elifikelele esiphelweni ngalo ixesha lalo lokuba sesikhundleni.

Izikhundla

6. (1) Kudaleka isikhundla xa ilungu leKomiti—

(a) liswelekile;

(b) lirhoxa esikhundleni ngokwecandelo 8(1);

(c) xa lithe lisesikhundleni lagwetywa nokuba kukwiRiphablikhi okanye kwenye indawo ngenxa—

(i) yesigqitho elisenzileyo laza lagwetyelwa ukuvalelwa linganikwanga thuba lokuba likhethe ukuhlawula; okanye

(ii) Lichaphazelaka kwizenzo zobusela, ubuqhetseba, umgunyathi, ukunika ingxelo ngoxwebhu olunobuqhetseba, ukuxoka, nasiphi na isigqitho esikhankanyiweyo kuMthetho oyiPrevention and Combating of Corrupt Activities Act, 2004 (uMthetho 12 ka-2004); okanye nasiphi isigqitho sokunganyaniseki njengonobangela; okanye

(d) athintelwe ngokwecandelo 7.

(2) UMphathiswa kufuneka onyule omnye umntu ngokwecandelo 3 ukufaka umntu kweso sikhundla.

Ukuthintelwa kokonyulwa njengelungu

7. Umntu walelwa ukuba onyulwe njengelungu okanye ahlale elilungu ukuba—

(a) uqeshwe liqumrhu lorhulumente njengoko kukhankanyiwe kwicandelo 239 loMgaqo-siseko woMzantsi Afrika, 1996;

(b) ngalo naliphi na ixesha egwetyiwe, nokuba kukwiRiphablikhi okanye kwenye indawo, ngenxa—

(i) yesigqitho awayesigwetyelwe enganikwanga thuba lakukhetha ukuhlawula; okanye

(ii) echaphazeleka kwizenzo zobusela, ubuqhetseba, umgunyathi, ukunika ingxelo ngoxwebhu olunobuqhetseba, ukuxoka, naso nasiphi na isigqitho esikhankanyiweyo kumthetho oyiPrevention and Combating of Corrupt Activities Act, 2004 okanye nasiphi na isigqitho zokunganyaniseki njengonabangela;

(c) unezikweliti zemali angakwaziyo ukuzihlawula yaye engenakuncedwa ngemali naphi na;

(d) akakwazi ukuba angasebenza ngenxa yokugula ngengqondo okanye ekhubazeke ngokwasengqondweni;

(e) uligosa elisesikhundleni sezopolitiko; okanye

(f) ukuba yena okanye nokuba lilungu losapho lwakhe, iqabane okanye ihlakani lakhe unenxaxheba kulo naliphi na ushishino okanye urhwebo olungachaphazela okanye liphazamisane nendlela ayenza ngayo imisebenzi yakhe njengelungu.

Ukurhoxa nokususwa esikhundleni

8. (1) Ilungu linokurhoxa kwiKomiti—

(a) ngokungenisa isaziso esibhaliweyo kwixesha elingangenyanga kuMphathiswa; okanye

(b) ngokungenisa inothisi ebhaliweyo enobungqina boMphathiswa ingekapheli inyanga

(2) UMphathiswa angalisusa ilungu esikhundleni—

(a) xa ilungu lithintelwa ngokwecandelo 7;

(b) xa ilungu lophule okuqulethwe licandelo 9;

(c) xa ilungu lingekho kwiintlanganiso ezintathu zilandelelana ngaphandle kwemvume kaSihlalo; okanye

(d) nokuba kungaziphi na izizathu ezivakalayo, kuqukwa ukungaziphathi ngendlela, ukungabinalwazi nabuchule.

Ukudandalazisa ukuthabatha inxaxheba kweminye imisebenzi ekhuphisana nowakhe

9. (1) Ilungu aliyi kubakho okanye livote okanye lithathe inxaxheba ngayo nayiphi na indlela kwiinkqubo zeKomiti xa kuqwalaselwa isikhalazo ukuba—

(a) ilungu ililungu losapho, iqabane kwezoshishino okanye ihlakani kwezomsebenzi libandakanyeka kwisikhalazo;

(b) xa ilungu okanye ilungu losapho lwakhe, iqabane okanye ihlakani kwezomsebenzi linemali okanye linenye injongo emthintelayo enye injongo kwisikhalazo; okanye

(c) Ilungu linenye injongo emthintelayo ekubeni enze imisebenzi yakhe njengelungu ngokuphathelelene nesikhalazo esinjalo ngokwendlela efanelekileyo, engenacala, nechanekileyo.

(2) Xa lithe nangaliphi ithuba ngexesha lokuqwalaselwa kwesikhalazo yiKomiti kwabonakala ukuba ilungu elo linomsebenzi okanye liyachaphazeleka kuwo nawuphi umsebenzi njengoko kukhankanyiwe kwicandelwana (1), liya kuthi lichaze elubala ilungu uhlobo lwaloo msebenzi ze liphume lingabikho kwiinkqubo zeKomiti.

(3) Ukuchaza ngokwecandelwana (2) kufuneka okushicilelwayo kumanqaku entlanganiso ezo nkqubo ziphononongwayo.

Imisebenzi namagunya eKomiti

10. IKomiti—
(a) kufuneka iqwalasele zonke izikhalazo ezithunyelwe kuyo nguMphathiswa okanye yiNtloko yeSebe;
(b) kufuneka yenze iziphakamiso kuMphathiswa okanye kwiNtloko yeSebe, njengoko kulindelekile, malunga nezikhalazo ezo;
(c) isenokungasiqwalaseli nasiphi isikhalazo ekubhekiselelwe kuyo ngqo luluntu;
(d) iya kuwacela amaqela achaphazelekayo kwisikhalazo ukuba adibane neKomiti ukuze kufumaneke ezinye iinkcukacha;
(e) iya kuhambela iziko lezempilo ukuze iqinisekise ngezo nkcukacha bezigqithiselwe kwiKomiti okanye ukufumana ezinye iinkcukacha ezingayinceda ekuqwalaselweni isikhalazo; kananjalo
(f) ithi, ngokwemithetho yonke ebalulekileyo echaphazelekayo ephathelelene nokukhuselwa kweenkcukacha ezizezomntu necandelo 18, yenze isicelo kwiSebe nakumntu ofake isikhalazo sokufumana amaxwebhu neenkcukacha ezingaluncendo kwiKomiti xa iqwalaselwa isikhalazo.

Ukuhlela iintlanganiso zeKomiti

11. (1) INtloko yeSebe kufuneka ibe yiyo egqibayo ngexesha nendawo yentlanganiso yokuqala yeKomiti.

(2) IKomiti kufuneka ke ngoko ibe yiyo egqiba ngexesha nendawo yeentlanganiso.

Iinkqubo ezilandelwayo kwiintlanganiso zeKomiti

12. (1) Inkqubo elandelwayo xa ihleli intlanganiso yeKomiti kufuneka imiselwe yiKomiti, ngokwemiyalelo yoMphathiswa.

(2) Kufuneka kubekho ikhoram yamalungu amabini ubuncinane entlanganisweni xa iKomiti isenza umsebenzi wayo.

(3) Xa uSihlalo engekho entlanganisweni ibe ikho ikhoram, iNtloko yeSebe iya kumisela omnye wamalungu ukuba abekhona ukuze enze indima kaSihlalo waloo ntlanganiso.

(4) Isigqibo seKomiti kufuneka sibe sesithathwe ngokwemvumelwano, kodwa xa kuthe akwabikho mvumelwano, isigqibo esenziwe sisininzi samalungu ebekhona entlanganisweni sisigqibo seKomiti.

(5) Ukuba kuye kwakho ulingano ngeevoti kuwo nawuphi na umba, uSihlalo kufuneka avote ukuze ivoti yakhe ibe yeyokuthatha isigqibo.

(6) IKomiti iya kuthi, ngokwemvume yoMphathiswa, yenze isicelo okanye ivumele nawuphi umntu ukuba athabathe inxaxheba kwintlanganiso okwisikhundla sokunika iingcebiso.

(7) USihlalo kufuneka aqinisekise ukuba—
(a) iye igcinwe irekhodi efanelekileyo yabantu abebekho entlanganisweni kunye namanqaku eentlanganiso zonke; kananjalo
(b) ukugcinwa kuvimba kweenkcukacha ekubhekiselelwe kuzo kumhlathi *(a)* utyikitywa nguSihlalo ize ithunyelwe kwiNtloko yeSebe xa ifunwa yiNtloko yeSebe.

Iingxelo neziphakamiso zezikhalazo

13. (1) IKomiti kufuneka ithi kwisithuba sexesha elimiselweyo emva kokuthunyelwa kwesikhalazo kuyo ngokwecandelo 10*(a)*, ingenise ingxelo eneziphakamiso zayo kuMphathiswa okanye kwiNtloko yeSebe, njengoko kulindelekile.

(2) IKomiti iya kuthi, ngazo naziphi izizathu ezivakalayo, yenze isicelo sokwandiselwa ixesha elikhankanyiweyo kwicandelwana (1) kuMphathiswa okanye kwiNtloko yeSebe, njengoko kulindelekile.

(3) INgxelo yeKomiti kufuneka—
(a) ibe nenkcazelo eyintsusa yomntu okhalazayo;
(b) ibe nento echaza ukuba uphononongiwe umntu okhalazayo yiKomiti;
(c) ibe neekopi zezihlomelo zawo onke amaxwebhu enokuwathemba iKomiti xa iphononongа;

(d) siqinisekisiwe nguMphathiswa okanye yiNtloko yeSebe isisombululo somntu okhalazayo; kananjalo
(e) sityikitywe nguSihlalo.

Isaziso esithunyelwa kumntu ofake isikhalazo

14. UMphathiswa okanye iNtloko yeSebe, njengoko kulindelekile, kufuneka athi kwisithuba seentsuku ezingama-60 eyifumene ingxelo ekubhekiselelwa kuyo kwicandelo 13(1), athumele impendulo ebhaliweyo kumntu ofake isikhakazo.

Inkxaso kwezoLawulo

15. (1) INtloko yeSebe kufuneka inike iKomiti inkxaso ngokubanzi kananjalo nezixhobo ezifunekayo ukuze yenze imisebenzi yayo, equka—
(a)
inkxaso kwezolawulo; kananjalo
(b)
nenkxaso kwizibonelelo
(2) INtloko yeSebe kufuneka imisele amagosa aqeshwe liSebe ukuba ancedise iKomiti.

Umvuzo nesibonelelo

16. Amalungu asenokuhlawulwa umvuzo nezibonelelo ngokokumiselwa nguMphathiswa ebonisene noMphathiswa wePhondo osingethe ezezimali kwiPhondo.

Ingxelo

17. USihlalo kufuneka anike ingxelo kuMphathiswa malunga nemisebenzi yeKomiti—
(a) kube kanye rhoqo emva kweenyanga ezintandathu ubuncinane; kananjalo
(b) naxa ifunwa nguMphathiswa.

Ukugcinwa nokukhuseleka kwamaxwebhu neenkcukacha eziyimfihlo

18. (1) IKomiti iya kuthi, ngokweenjongo zokuqwalaselwa isikhalazo esithunyelwe kuyo, ifune iinkcukacha zamaxwebhu akuvimba eziphathelelene nesikhalazo seziko 25 lezempilo.
(2) IKomiti—
(a) kufuneka ithabathe onke amanyathelo afanelekileyo ukuqinisekisa ukuba zonke iinkcukacha amaxwebhu akuvimba ezifunyenweyo zigcinwa ngokuyimfihlo kwaye zikhuselwe ukuze bangafikeleli kuzo abangagunyaziswanga ukuba bafike kuzo; kananjalo
(b) ingashicilelwa okanye isebenzise nayiphi na into kwezo nkcukacha kungekuko okumiselwe ziinjongo zalo Mthetho kwaye ngokwawo nawuphi na umthetho ophathelelene nokukhuselwa kweenkcukacha ezizezomntu.

Umlinganiselo woxanduva lokuphendula kwamalungu

19. Ilungu alinabutyala nangayo nayiphi na into eyenziwe ngenjongo entle xa kusenziwa umsebenzi ngokwalo Mthetho.

IMimiselo

20. (1) UMphathiswa unokwenza imimiselo malunga—
(a) nenkqubo elandelwa yiKomiti xa ihambele amaziko ezempilo
(b) nenkqubo ekufuneka ilandelwe yiKomiti xa isenza isicelo sokufumana ezinye iinkcukacha kwiSebe okanye nakuwuphi na umntu obandakanyekayo kwisikhalazo;
(c) inkqubo ekufuneka iyilandele iKomiti xa icela umntu obandakanyekayo kwisikhalazo xa ifuna ukudibana nayo ukuze ifumane ezinye iinkcukacha;
(d) ixesha elimiselweyo ekumele iKomiti ithathele ngalo ingqalelo isikhalazo esidluliselwe kuyo; kananjalo

(e) ithi iqwalasele nawuphi na omnye umba obalulekileyo okanye ikhawulezise yenze ummiselo ukuze kuphunyezwe okanye kusetyenziswe lo Mthetho.

(2) Umphathiswa makenze imimiselo emalunga nayiphi na into egameni lokuba lo Mthetho ufuna imimiselo.

Isihloko esifutshane nokusungulwa

21. Lo Mthetho ubizwa ngokuba nguMthetho weNtshona Koloni weKomiti eziMeleyo yeZikhalazo yezeMpilo, 2014, uze usebenze ngomhla othe wamiselwa yiNkulumbuso ngesibhengezo *kwiGazethi yePhondo.*