



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

PROVINCE OF THE WESTERN CAPE

PROVINSIE WES-KAAP

IPHONDO LENTSHONA KOLONI

Provincial Gazette
Extraordinary

Buitengewone
Provinsiale Koerant

Isongezelelo
kwiGazethi yePhondo

7825

7825

7825

Monday, 11 September 2017

Maandag, 11 September 2017

uMvulo, 11 kweyoMsintsi 2017

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

Ibhaliswe ePosini njengePhephandaba

CONTENTS

INHOUD

IZIQUATHO

(*Copies are obtainable at Room M21, Provincial Legislature Building, 7 Wale Street, Cape Town 8001.)

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

(*Ushicilelo oLutsha lufumaneka kwigumbi M21, kwiSakhiwo sePhondo seNdlu yoWiso Mthetho, 7 Wale Street, eKapa 8001.)

Provincial Notice

Provinsiale Kennisgewing

ISaziso sePhondo

The following draft Bill is published for comment:

Die volgende Konsepwetsontwerp word vir kommentaar gepubliseer:

Olu Qulunqo loMthetho osaYilwayo noqulunqo lwemigaqo lupapashelwa ukufumana izimvo zoluntu:

172 Draft Western Cape Commissioner for Children Bill, 2017 2

172 Konsepwetsontwerp op die Wes-Kaapse Kommissaris vir Kinders, 2017 16

172 UQulunqo loMthetho osaYilwayo woMkhomishinala wabaNtwana weNtshona Koloni, 2017 30

Any person or organisation wishing to comment on the draft Bill is requested to submit the comments in writing before or on 31 October 2017—

Enige persoon of organisasie wat kommentaar op die Konsepwetsontwerp wil lewer, word versoek om die kommentaar skriftelik in te dien voor of op 31 Oktober 2017—

Nabani na okanye nawuphi na umbutho onqwenela ukuvakalisa izimvo ngolu Qulunqo loMthetho osaYilwayo uyacelwa ukuba afake izimvo zakhe ezibhaliweyo phambi okanye ngomhla wama-31 kweyeDwarha 2017—

(a) by posting the comments to:
The Director-General
Department of the Premier
PO Box 659
Cape Town 8000
(Attention: Ms A Kamish);

(a) deur die kommentaar te pos na:
Die Direkteur-generaal
Departement van die Premier
Posbus 659
Kaapstad 8000
(Aandag: Me. A Kamish);

(a) ngokuposela izimvo zakhe ku-:
Mlawuli Jiklelele
Department of the Premier
PO Box 659
Cape Town 8000
(Ingqale kuNks A Kamish);

(b) by delivering the comments to:
Ms A Kamish
6th Floor
4 Dorp Street
Cape Town 8001;

(b) deur die kommentaar af te lewer aan:
Me. A Kamish
6de Verdieping
Dorpstraat 4
Kaapstad 8001;

(b) ngokuthumela izimvo ku-:
Nks A Kamish
6th Floor
4 Dorp Street
Cape Town 8001;

(c) by e-mailing the comments to:
Ammaarah.Kamish@westerncape.gov.za;
or

(c) deur die kommentaar per e-pos te stuur na:
Ammaarah.Kamish@westerncape.gov.za;
of

(c) ngokuthumela izimvo nge-imeyili ku-:
Ammaarah.Kamish@westerncape.gov.za;
okanye

(d) by faxing the comments to:
021 483 3827
(Attention: Ms A Kamish).

(d) deur die kommentaar te faks na:
021 483 3827
(Aandag: Me. A Kamish).

(d) ngokufeksela izimvo ku-:
021 483 3827
(Ingqale kuNks A Kamish).

Queries can be made to Ms A Kamish,
tel.: 021 483 4373.

Navrae kan gerig word aan me. A Kamish,
tel.: 021 483 4373.

Imibuzo ingathunyelwa ngqo kuNks A Kamish,
umnxeba: 021 483 4373.

PROVINCIAL NOTICE

The following Provincial Notice is published for comment.

ADV. B. GERBER,
DIRECTOR-GENERAL

Provincial Legislature Building,
Wale Street,
Cape Town.

PROVINSIALE KENNISGEWING

Die volgende Provinsiale Kennisgewing word vir kommentaar gepubliseer.

ADV. B. GERBER,
DIREKTEUR-GENERAAL

Provinsiale Wetgewer-gebou,
Waalstraat,
Kaapstad.

ISAZISO SEPHONDO

Esi saziso silandelayo sipapashelwe ukunika izimvo.

ADV. B. GERBER,
UMLAWULI JIKELELE

ISakhiwo sePhondo,
Wale Street,
eKapa.

P.N. 172/2017

11 September 2017

DRAFT WESTERN CAPE COMMISSIONER FOR CHILDREN BILL, 2017

To provide for the appointment of a Commissioner for Children in the province of the Western Cape; to provide for the qualifications required for a person to be appointed as the Commissioner for Children; to provide for the powers, functions and accountability of the Commissioner for Children; to provide for financial matters related to the Commissioner for Children; and to provide for matters incidental thereto.

WHEREAS section 78 of the Constitution of the Western Cape, 1997, establishes the office of Commissioner for Children;

AND WHEREAS recognition is given to the need to protect and promote the rights and interests of children;

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

**CHAPTER 1
DEFINITIONS**

Definitions

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

“**child**” means a person under the age of 18 years;

“**Commissioner**” means the Commissioner for Children established by section 78 of the Provincial Constitution;

“**organ of state**” means an organ of state as defined in section 239 of the Constitution;

“**Premier**” means the Premier of the Province;

“**Province**” means the province of the Western Cape;

“**Provincial Constitution**” means the Constitution of the Western Cape, 1997 (Act 1 of 1998);

“**Provincial Parliament**” means the parliament of the Province;

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

“**this Act**” includes any regulations issued in terms thereof.

**CHAPTER 2
EMPLOYMENT AND OFFICE OF COMMISSIONER**

Appointment

2. (1) The Premier must appoint a Commissioner for a period of five years, which term is renewable once.

(2) A committee composed of all political parties represented in the Provincial Parliament that decide to participate must—

- (a) by means of notices in the media, in the official languages of the Province, call for nominations from the public of suitable persons to fill the position of Commissioner;
- (b) publish a list of the names of all nominations so received in the media, in the official languages of the Province, calling for objections from members of the public to any names appearing on the list of nominations;
- (c) consider all nominations and objections so received and may invite any nominated person for an interview;
- (d) forward copies of all the nominations and objections received to the Premier;
- (e) forward its recommendation for the appointment of the Commissioner and copies of all the nominations and objections received to the Provincial Parliament for adoption.

(3) The Provincial Parliament must forward the recommendation for the appointment of the Commissioner to the Premier after it has approved the person recommended by a resolution adopted by a majority of the votes cast.

(4) The Premier must, within 21 days of receiving the recommendation from the Provincial Parliament and after considering the nominations and objections provided by the committee—

- (a) appoint a Commissioner; or
- (b) refer the matter back to the committee for reconsideration.

Qualifications for appointment

3. (1) The Commissioner must be a South African citizen who—

- (a) is a fit and proper person; and
- (b) has proven specialised knowledge of, or relevant professional experience or an academic record in, children's issues or children's rights.

(2) In addition to the requirements in subsection (1), the Commissioner may not, after assumption of duties as Commissioner, be a member of the National Parliament or Provincial Parliament or of a municipal council or a national or provincial statutory body or be in the service of any organ of state.

Oath or affirmation

4. Before commencement of duties, the Commissioner must take an oath or make a solemn affirmation that he or she will independently and impartially exercise the powers and perform the functions of the office of Commissioner without fear, favour or prejudice.

Removal and suspension

5. (1) The Premier may remove a Commissioner from office only on—

- (a) the grounds of misconduct, incapacity or incompetence;
- (b) a finding contemplated in paragraph (a) by a committee composed of the political parties represented in the Provincial Parliament that decide to participate; and
- (c) a recommendation by the Provincial Parliament calling for the Commissioner's removal from office by a resolution adopted by a majority of the votes cast.

(2) The Premier—

- (a) may suspend a Commissioner from office at any time after the start of the proceedings of a committee of the Provincial Parliament that has to decide about the Commissioner's removal from office; and
- (b) must remove a Commissioner from office upon adoption by the Provincial Parliament of the resolution calling for the Commissioner's removal.

Vacancy in office of Commissioner

6. (1) The Premier may allow a Commissioner to vacate his or her office before the expiration of the five-year term of appointment—

- (a) on account of continued ill health that prevents the Commissioner from properly carrying out his or her functions or duties; or
- (b) at the Commissioner's written request to the Premier at least three calendar months before the date on which the Commissioner wishes to vacate office, unless the Premier allows a shorter period in a specific case.

(2) A vacancy in the office of Commissioner arises if the Commissioner—

- (a) dies;
- (b) is prevented from properly carrying out his or her functions on account of continued ill health as contemplated in subsection (1)(a);
- (c) resigns as contemplated in subsection (1)(b); or
- (d) is removed from office as contemplated in section 5.

(3) If a Commissioner is suspended as contemplated in section 5(2)(a) or a vacancy arises as contemplated in subsection (2), the Premier may appoint an acting Commissioner in consultation with the Provincial Parliament until such time as the suspension is removed or a new Commissioner is appointed as contemplated in section 2(4)(a).

Principles governing Commissioner

7. In the exercise and performance of his or her powers and functions, the Commissioner must—

- (a) have regard to the principles laid down in the United Nations Convention on the Rights of the Child, 1989, the African Charter on the Rights and Welfare of the Child, 1990, and any other international treaties, conventions or agreements affecting children that have been ratified by the President of the Republic of South Africa;
- (b) strive to promote the rights, needs and interests of children in the Province in all areas of society;
- (c) ensure that the interests of children in the Province are given full consideration by public and private authorities, individuals and organisations; and
- (d) promote awareness of legislation, projects and programmes affecting children in the Province by providing sufficient information concerning children's rights, needs and interests to the public and private sectors.

CHAPTER 3 FUNCTIONS AND DUTIES

Monitoring

8. The Commissioner must—

- (a) require the heads of the provincial departments responsible for community safety, social services, health, education and sport to maintain a close liaison with the Commissioner in order for the Commissioner to monitor—
 - (i) the interests of children in the Province;
 - (ii) provincial projects intended to enhance public awareness of issues relating to the rights of children contained in section 28(1) of the Constitution;
 - (iii) the implementation of the United Nations Convention on the Rights of the Child, 1989, the African Charter on the Rights and Welfare of the Child, 1990, and any other international treaties, conventions or agreements affecting children that have been ratified by the President of the Republic of South Africa;
 - (iv) the rights, needs and interests of children in home care, foster care and child and youth care centres;
 - (v) hospitals and health care facilities with regard to the treatment of children;
 - (vi) schools; and
 - (vii) provincial projects launched in aid of children;
- (b) maintain a close liaison with the Commissioner for Correctional Services in the Province in order for the Commissioner to monitor the availability of health, social welfare and educational services and recreational facilities for children in prison and children who are in official custody;
- (c) maintain a close liaison with the Commissioner for Police Service in the Province in order for the Commissioner to monitor—
 - (i) the reported number of crimes committed against children; and
 - (ii) the reported number of crimes committed by children,to optimise co-operation between the South African Police Service and provincial departments that deal with or render a service to children who come into conflict with the law or against whom a crime has been committed;
- (d) maintain a close liaison with the Department of Justice to optimise cooperation between the Department of Justice and provincial departments that deal with or render a service to—
 - (i) child victims of crime;
 - (ii) the office of the Family Advocate;
 - (iii) Family Courts;
 - (iv) Children's Court Commissioners;
 - (v) prosecutors dealing with children; and
 - (vi) criminal courts dealing with all matters involving children in conflict with the law;

- (e) maintain a close liaison with private organisations, institutions and agencies that deal with or render a service to children in the Province to monitor common practices and promote cooperation between provincial organs of state and the private sector on matters relating to the protection of the rights and interests of children; and
- (f) maintain a close liaison with relevant national departments regarding legislation that affects children, to ensure that the Commissioner optimally utilises measures provided for in national legislation to protect the interests of children in the Province.

Investigations

9. The Commissioner may conduct or initiate investigations and inquiries with regard to any matter falling within the scope of his or her functions.

Research

10. (1) The Commissioner must, upon appointment as contemplated in section 2(4)(a), conduct an audit of all existing or proposed legislation affecting or likely to affect the rights and interests of children in the Province and must make the audit available to the Premier and the Provincial Parliament.

(2) The Commissioner may—

- (a) conduct or initiate research—
 - (i) with regard to any matter falling within the scope of his or her functions; and
 - (ii) aimed at informing the development of policy or practice that is in the interests of children; and
- (b) facilitate cooperation with, and provide for input from, the public sector, private sector, civil society and academic institutions with regard to identifying, undertaking and implementing research.

Education

11. The Commissioner may conduct and develop information programmes to educate the public about, and foster public understanding and awareness of—

- (a) this Act;
- (b) the United Nations Convention on the Rights of the Child, 1989;
- (c) the African Charter on the Rights and Welfare of the Child, 1990;
- (d) section 28(1) of the Constitution;
- (e) other relevant international treaties, conventions or agreements affecting children; and
- (f) any other matter falling within the scope of his or her functions.

Lobbying

12. The Commissioner may—

- (a) lobby members or groups of members of the Provincial Parliament or National Parliament and make recommendations concerning—
 - (i) any existing or proposed policy that affects or is likely to affect the rights of children;
 - (ii) any system of family law;
 - (iii) any system of indigenous law, customs or practice; or
 - (iv) any other existing or proposed legislation that affects or is likely to affect the rights of children;
- (b) request cooperation and input from the public and private sectors when lobbying for legislative review.

Advising

13. The Commissioner may advise and make recommendations to any person or organ of state in the Province whose policies and practices relating to children have been monitored, investigated or researched by the Commissioner.

Application for matters to be monitored, investigated or researched

14. (1) Any person may request the Commissioner to take up a matter for monitoring, investigation or research in terms of the powers and functions conferred in terms of this Act.

(2) The Commissioner may also of his or her own initiative take up a matter for monitoring, investigation or research in terms of the powers and functions conferred in terms of this Act.

(3) An application for a matter to be taken up by the Commissioner for monitoring, investigation or research must, as far as possible, be in writing and in the format provided for by the office of the Commissioner.

(4) An application contemplated in subsection (3) must contain—

- (a) the names and addresses of the person requesting a matter be taken up;
- (b) reasons why the Commissioner should monitor, investigate or research the matter;
- (c) a summary of the evidence supporting the belief that the matter should be monitored, investigated or researched;
- (d) the names and addresses of persons or organs of state alleged to be involved, to the extent that such information is available;
- (e) a description of any document or material that should be considered; and
- (f) a copy of the document referred to in paragraph (e).

(5) An application contemplated in subsection (3) must be sworn or solemnly affirmed before a Commissioner of Oaths.

(6) The Commissioner may in his or her discretion dispense with the requirements contemplated in subsections (4) and (5) if the application contemplated in subsection (3) is made by a child.

(7) The decision to monitor, investigate or research a matter is entirely in the discretion of the Commissioner, subject to section 7.

(8) If, during the course of monitoring, investigating or researching a matter, the Commissioner is of the opinion that it is in the interests of a child to appoint a curator, the Commissioner may bring such application, in accordance with the Rules of Court.

Additional powers and functions

15. (1) To enable the Commissioner to exercise and perform the powers and functions conferred in terms of this Act, the Commissioner may—

- (a) on the authority of a magistrate with jurisdiction within the area within which the search is to be conducted, accompany members of the South African Police Service when exercising powers of search and seizure in respect of any matter relating to the interests and protection of children;
- (b) subpoena any person or give notice to any person to appear before him or her to give evidence, or to produce any book, report, document or object in his or her possession or under his or her control, at the time and place stipulated in the subpoena or notice;
- (c) administer an oath or affirmation to any person appearing as a witness before the Commissioner;
- (d) appoint such persons as may be necessary for the performance of the functions of the office of Commissioner, on such terms and conditions of service as determined in consultation with the Premier and the Provincial Minister responsible for finance.

(2) In the circumstances contemplated in subsection (1)(b)—

- (a) the subpoena or notice must be signed and issued by the Commissioner and served by the Commissioner or any other person authorised by the Commissioner to do so, in the same manner as a subpoena or notice, as the case may be, for a witness at a trial in the High Court;
- (b) any person appearing before the Commissioner may be assisted by a legal representative at his or her own cost.

Duties

16. The Commissioner—

- (a) must report annually to the Provincial Parliament on the measures taken by the Western Cape Government to protect and promote the interests of children in the Province; and
- (b) may submit a special report to the Provincial Parliament at any other time, on any matter relating to this Act that, in the opinion of the Commissioner, should not be deferred until the annual report.

Liability

17. The Commissioner or any person appointed by him or her will not be liable in respect of anything done in good faith under any provisions of this Act or the Provincial Constitution.

CHAPTER 4
OBLIGATIONS OF ORGANS OF STATE AND ACCESS TO INFORMATION
AND INSTITUTIONS

Obligations of organs of state

18. (1) All organs of state must assist the Commissioner and ensure the independence, impartiality, dignity and effectiveness of the office of the Commissioner.

(2) No person or any organ of state may interfere with the functioning of the Commissioner or his or her staff or obstruct the functioning of the Commissioner or his or her staff.

(3) When the Commissioner makes recommendations to any person or organ of state, that person or organ of state must report in writing to the Commissioner on his or her or its actions in response to the recommendations within a reasonable time stipulated by the Commissioner.

(4) Any person or organ of state who or which, either wholly or in part, refuses or fails to implement the Commissioner's recommendations must, upon request by the Commissioner, furnish the Commissioner with written reasons for such refusal or failure within a reasonable time stipulated by the Commissioner.

Access to information and institutions

19. (1) All organs of state and public and private institutions that deal with or render a service to children must, at the Commissioner's request, provide information with regard to any matter falling within the scope of the Commissioner's functions.

(2) All public institutions that deal with or render a service to children must allow the Commissioner access to their premises for the purpose of carrying out any function or duty contemplated in Chapter 3 of this Act.

CHAPTER 5
ADMINISTRATION OF THE OFFICE OF COMMISSIONER

Administrative functions

20. The administrative functions of the office of the Commissioner may be performed by officials in the service of the Western Cape Government.

Funding

21. The Provincial Parliament may allocate funds within the Province's resources to enable the Commissioner to perform his or her functions in terms of this Act.

Remuneration of Commissioner

22. The Premier, in consultation with the Provincial Minister responsible for finance, must, from time to time, determine the remuneration and other terms and conditions of employment of the Commissioner, bearing in mind the available resources of the Province.

Donations

23. The office of the Commissioner may receive donations, subject to Treasury regulations and instructions and other applicable financial prescripts.

**CHAPTER 6
GENERAL PROVISIONS****Regulations**

24. The Premier may make regulations regarding any matter that he or she considers necessary in order to achieve the objectives of this Act.

Offences and penalties

25. Any person who—

- (a) contravenes or fails to comply with any provision of this Act;
- (b) obstructs the Commissioner in the performance of functions or duties contemplated in this Act;
- (c) refuses or fails to furnish information or an explanation in regard to a request for information by the Commissioner, or furnishes information that is false and misleading knowing that it is false and misleading,

is guilty of an offence and on conviction liable to a fine not exceeding R10 000.

Short title and commencement

26. This Act is called the Western Cape Commissioner for Children Act, 2017, and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE DRAFT WESTERN CAPE
COMMISSIONER FOR CHILDREN BILL, 2017**

1. BACKGROUND

- 1.1 A Commissioner for Children is established by section 78(1) of the Constitution of the Western Cape, 1997 (Act 1 of 1998)(the Provincial Constitution). The Commissioner for Children (the Commissioner) must assist the Western Cape Government in protecting the interests of children in the Western Cape, in particular regarding—
- (a) health services;
 - (b) education;
 - (c) welfare services;
 - (d) recreation and amenities; and
 - (e) sport.
- 1.2 The Provincial Constitution envisages the passing of provincial legislation to regulate the powers of the Commissioner.

2. OBJECTS OF DRAFT BILL

The Draft Western Cape Commissioner for Children Bill, 2017 (the Draft Bill), provides for the appointment of the Commissioner in the Province of the Western Cape. Furthermore, the Draft Bill provides for the powers, functions and duties of the Commissioner enabling him or her to meet the constitutional mandate provided for in section 79 of the Provincial Constitution to monitor, investigate, research, educate, lobby, advise and report on matters pertaining to children. The Draft Bill also provides for the administration of the office of the Commissioner.

3. CONTENTS OF DRAFT BILL

3.1 Clause 1

This clause provides for the definition section of the Draft Bill.

3.2 Clause 2

This clause provides for the appointment of the Commissioner for a five (5) year term, renewable once. The appointment is made on recommendation by the Provincial Parliament.

3.3 Clause 3

This clause provides for the qualifications for the appointment of the Commissioner.

- 3.4 **Clause 4**
This clause provides that the Commissioner must take an oath of office prior to commencement of duties.
- 3.5 **Clause 5**
This clause provides for the removal and suspension of the Commissioner upon recommendation by the Provincial Parliament.
- 3.6 **Clause 6**
This clause provides for the filling of a vacancy in the office of the Commissioner. The Premier may appoint an acting Commissioner in consultation with the Provincial Parliament.
- 3.7 **Clause 7**
This clause provides for the principles that govern the Commissioner in the exercise and performance of his or her powers and functions.
- 3.8 **Clause 8**
This clause provides for the monitoring function of the Commissioner. The Commissioner is required to maintain a close liaison with the heads of various provincial departments as well as the Commissioner for Correctional Services in the Province, the Commissioner for Police Service in the Province, the Department of Justice, private organisations, institutions and agencies that render a service to children, and relevant national departments regarding legislation that affects children, in order to monitor the rights and interests of children.
- 3.9 **Clause 9**
This clause provides for the Commissioner to conduct or initiate investigations and inquiries with regard to any matter falling within the scope of his or her functions.
- 3.10 **Clause 10**
This clause provides for the Commissioner to conduct and initiate research with regard to any matter falling within the scope of his or her functions and to facilitate cooperation with the public sector, private sector, civil society and academic institutions with regard to research.
- 3.11 **Clause 11**
This clause provides for the Commissioner to educate the public about various legislative and other instruments that promote the rights and interests of children.
- 3.12 **Clause 12**
This clause provides for the Commissioner to lobby the Provincial or National Parliament and make recommendations concerning policy and law that affects or is likely to affect the rights of children.

3.13 Clause 13

This clause provides for the Commissioner to advise and make recommendations to any person or organ of state in the Province whose policies and practices relating to children have been monitored, investigated or researched by the Commissioner.

3.14 Clause 14

This clause provides for the process that must be followed when an application is made for a matter to be monitored, investigated or researched by the Commissioner.

3.15 Clause 15

This clause provides for additional powers and functions of the Commissioner. The Commissioner may accompany the South African Police Service when exercising powers of search and seizure in respect of any matter relating to the interests and protection of children, subpoena any person or give notice to any person to appear before him or her, administer an oath or affirmation to any person appearing as a witness before him or her, and appoint such persons as may be necessary for the performance of the functions of the office of the Commissioner.

3.16 Clause 16

This clause provides for the duties of the Commissioner to report annually to the Provincial Parliament and to submit special reports to the Provincial Parliament at any other time.

3.17 Clause 17

This clause provides that neither the Commissioner nor any person appointed by him or her will be liable in respect of anything done in good faith under the provisions of the Act or the Provincial Constitution.

3.18 Clause 18

This clause provides that all organs of state must assist the Commissioner and no person or organ of state may interfere with the functioning of the Commissioner. When the Commissioner makes a recommendation to any person or organ of state, that person or organ of state must report in writing to the Commissioner on his, her or its actions in response to the recommendations.

3.19 Clause 19

This clause provides that all organs of state and public and private institutions that render a service to children must, at the Commissioner's request, provide any information to the Commissioner that falls within the scope of the Commissioner's functions. All public institutions that render a service to children must allow the Commissioner access to their premises for the purpose of carrying out a function or duty of the Commissioner.

3.20 Clause 20

This clause provides that the administrative functions of the office of the Commissioner may be performed by officials in the service of the Western Cape Government.

3.21 Clause 21

This clause provides that the Provincial Parliament may allocate funds to enable the Commissioner to perform his or her functions.

3.22 Clause 22

This clause provides for the remuneration of the Commissioner.

3.23 Clause 23

This clause provides that the office of the Commissioner may receive donations subject to Treasury regulations and instructions and other applicable financial prescripts.

3.24 Clause 24

This clause provides for the Premier to make any regulations in order to achieve the objectives of the Act.

3.25 Clause 25

This clause provides for offences and penalties for the contravention of any provision of the Act, for obstruction of the Commissioner in the performance of his or her functions and duties, a refusal or failure to furnish information or an explanation to the Commissioner or for deliberately furnishing false and misleading information.

3.26 Clause 26

This clause provides for the short title of the Act.

4. CONSULTATION

In the compilation of this Draft Bill, the following role-players were consulted:

- (a) Department of the Premier: Legal Services; and
- (b) Department of the Premier: Policy and Strategy.

5. PERSONNEL IMPLICATIONS

It is recommended that the office of the Commissioner for Children be located in the Department of the Premier. The office of the Commissioner would require a support structure to carry out its functions. These functions will be fleshed out through an Organisational Development process.

6. FINANCIAL IMPLICATIONS

The estimated budget for the office of the Western Cape Commissioner for Children is eight million rand (R8 m) per annum including accommodation requirements.

7. LEGISLATIVE COMPETENCE

The Premier of the Western Cape is satisfied that all the provisions in the Draft Bill fall within the Province's legislative competence.

KONSEPWETSONTWERP OP DIE WES-KAAPSE KOMMISSARIS VIR KINDERS, 2017

Om voorsiening te maak vir die aanstelling van 'n Kommissaris vir Kinders in die provinsie van die Wes-Kaap; om voorsiening te maak vir die vereiste kwalifikasies vir 'n persoon om aangestel te word as Kommissaris vir Kinders; om voorsiening te maak vir die bevoegdhede, werksaamhede en rekenpligtigheid van die Kommissaris vir Kinders; om voorsiening te maak vir finansiële aangeleenthede rakende die Kommissaris vir Kinders; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

NADEMAAL artikel 78 van die Grondwet van die Wes-Kaap, 1997, die amp van Kommissaris vir Kinders instel;

EN NADEMAAL die behoefte om die regte en belange van kinders te beskerm erken word;

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

HOOFSTUK 1 WOORDOMSKRYWING

Woordoms krywing

1. In hierdie Wet, tensy dit uit die samehang anders blyk, beteken—
 - “**die Grondwet**” die Grondwet van die Republiek van Suid-Afrika, 1996;
 - “**hierdie Wet**” ook enige regulasies uitgereik ingevolge daarvan;
 - “**kind**” ’n persoon onder die ouderdom van 18 jaar;
 - “**Kommissaris**” die Kommissaris vir Kinders ingestel by artikel 78 van die Provinsiale Grondwet;
 - “**Premier**” die Premier van die Provinsie;
 - “**Provinsiale Grondwet**” die Grondwet van die Wes-Kaap, 1997 (Wet 1 van 1998);
 - “**Provinsiale Parlement**” die parlement van die Provinsie;
 - “**Provinsie**” die provinsie van die Wes-Kaap;
 - “**staatsorgaan**” ’n staatsorgaan soos omskryf in artikel 239 van die Grondwet.

HOOFSTUK 2 INDIENSNEMING EN AMP VAN KOMMISSARIS

Aanstelling

2. (1) Die Premier moet ’n Kommissaris vir ’n tydperk van vyf jaar aanstel, welke termyn eenmalig hernubaar is.

(2) ’n Komitee saamgestel uit alle politieke partye wat in die Provinsiale Parlement verteenwoordig word en besluit om deel te neem, moet—

- (a) deur middel van kennisgewings in die media, in die amptelike tale van die Provinsie, ’n beroep op die publiek doen vir benoemings van geskikte persone om die betrekking van Kommissaris te vul;

- (b) 'n lys van die name van alle benoemings aldus ontvang in die amptelike tale van die Provinsie in die media publiseer, waarby besware van lede van die publiek aangevra word teen enige name wat op die lys benoemings verskyn;
- (c) alle benoemings en besware aldus ontvang oorweeg en kan enige benoemde persoon vir 'n onderhoud uitnooi;
- (d) afskrifte van alle benoemings en besware ontvang na die Premier aanstuur;
- (e) sy aanbeveling vir die aanstelling van die Kommissaris en afskrifte van alle benoemings en besware ontvang na die Provinsiale Parlement vir aanneming aanstuur.

(3) Die Provinsiale Parlement moet die aanbeveling vir die aanstelling van die Kommissaris na die Premier aanstuur nadat hy die aanbevole persoon goedgekeur het deur 'n resoluëie aangeneem deur 'n meerderheid van die stemme wat uitgebring is.

(4) Die Premier moet binne 21 dae vandat hy of sy die aanbeveling van die Provinsiale Parlement ontvang het en na oorweging van die benoemings en besware verskaf deur die komitee—

- (a) 'n Kommissaris aanstel; of
- (b) die aangeleentheid vir heroorweging na die komitee terugverwys.

Kwalifikasies vir aanstelling

3. (1) Die Kommissaris moet 'n Suid-Afrikaanse burger wees wat—

- (a) 'n geskikte en gepaste persoon is; en
- (b) oor bewese gespesialiseerde kennis van, of toepaslike ondervinding of 'n akademiese rekord in, kinderkwessies of kinderreëte beskik.

(2) Benewens die vereistes in subartikel (1) mag die Kommissaris nie na diensaanvaarding as Kommissaris 'n lid van die Nasionale Parlement of Provinsiale Parlement of van 'n munisipale raad of 'n nasionale of provinsiale statutêre liggaam wees of in diens van 'n staatsorgaan wees nie.

Eed of plegtige verklaring

4. Voordat die Kommissaris se pligte 'n aanvang neem moet hy of sy 'n eed of plegtige verklaring aflê dat hy of sy die bevoegdhede en werksaamhede van die amp van Kommissaris onafhanklik en onpartydig sal uitoefen en verrig.

Onthefing en skorsing

5. (1) Die Premier kan 'n Kommissaris van sy of haar amp onthef slegs—

- (a) op grond van wangedrag, onbevoegdheid of onbekwaamheid;
- (b) by 'n bevinding beoog in paragraaf (a) deur 'n komitee saamgestel uit die politieke partye wat in die Provinsiale Parlement verteenwoordig word en besluit om deel te neem; en
- (c) by 'n aanbeveling deur die Provinsiale Parlement wat die onthefing van die Kommissaris uit sy of haar amp eis, aangeneem deur die meerderheid van stemme wat uitgebring is.

(2) Die Premier—

- (a) kan 'n Kommissaris uit sy of haar amp skors te eniger tyd na die aanvang van die verrigtinge van 'n komitee van die Provinsiale Parlement wat moet besluit oor die ontheffing van die Kommissaris uit sy of haar amp; en
- (b) moet 'n Kommissaris uit sy of haar amp onthef by die aanneming deur die Provinsiale Parlement van die resoluëie wat die ontheffing van die Kommissaris eis.

Vakature in amp van Kommissaris

6. (1) Die Premier kan 'n Kommissaris toelaat om sy of haar amp te ontruim voor die verstryking van die vyfjaar- aanstellingstermyn—

- (a) weens voortdurende swak gesondheid wat die Kommissaris verhoed om sy of haar werksaamhede of pligte behoorlik uit te voer; of
- (b) op die Kommissaris se skriftelike versoek aan die Premier ten minste drie kalendermaande voor die datum waarop die Kommissaris die amp wil ontruim, tensy die Premier in 'n bepaalde geval 'n korter tydperk toelaat.

(2) 'n Vakature in die amp van Kommissaris ontstaan indien die Kommissaris—

- (a) sterf;
- (b) verhoed word om sy of haar werksaamhede uit te voer weens voortdurende swak gesondheid soos beoog in subartikel (1)(a);
- (c) bedank soos beoog in subartikel (1)(b); of
- (d) uit sy of haar amp onthef word soos beoog in artikel 5.

(3) Indien 'n Kommissaris geskors word soos beoog in artikel 5(2)(a) of 'n vakature soos beoog in subartikel (2) ontstaan, kan die Premier in oorleg met die Provinsiale Parlement 'n waarnemende Kommissaris aanstel totdat die skorsing gelig word of 'n nuwe Kommissaris aangestel word soos beoog in artikel 2(4)(a).

Beginsels wat Kommissaris lei

7. By die uitoefening en verrigting van sy of haar bevoegdhede en werksaamhede moet die Kommissaris—

- (a) die beginsels wat neergelê is in die Verenigde Nasies se Konvensie oor die Regte van die Kind, 1989, die Afrika-handves oor die Regte en Welsyn van die Kind, 1990, en enige ander internasionale verdrae, konvensies of ooreenkomste wat kinders raak en wat deur die President van die Republiek van Suid-Afrika bekragtig is, in ag neem;
- (b) daarna streef om die regte, behoeftes en belange van kinders in die Provinsie in alle gebiede van die samelewing te bevorder;
- (c) toesien dat die belange van kinders in die Provinsie ten volle deur openbare en privaat owerhede, individue en organisasies oorweeg word; en
- (d) bewustheid van wetgewing, projekte en programme wat kinders in die Provinsie raak, bevorder deur voldoende inligting rakende die regte, behoeftes en belange van kinders aan die staat- en privaat sektore te verskaf.

HOOFSTUK 3 WERKSAAMHEDE EN PLIGTE

Monitering

8. Die Kommissaris moet—

- (a) van die hoofde van die provinsiale departemente verantwoordelik vir gemeenskapsveiligheid, maatskaplike dienste, gesondheid, onderwys en sport vereis om 'n noue verbinding met die Kommissaris te handhaaf sodat die Kommissaris die volgende kan monitor:
- (i) die belange van kinders in die Provinsie;
 - (ii) provinsiale projekte wat daarop gemik is om die publiek se bewustheid te verhoog van kwessies wat met die regte van kinders vervat in artikel 28(1) van die Grondwet verband hou;
 - (iii) die implementering van die Verenigde Nasies se Konvensie oor die Regte van die Kind, 1989, die Afrika-handves oor die Regte en Welsyn van die Kind, 1990, en enige ander internasionale verdrae, konvensies of ooreenkomste wat kinders raak en deur die President van die Republiek van Suid-Afrika bekragtig is;
 - (iv) die regte, behoeftes en belange van kinders in tuissorg, voogsorg en kinder- en jeugsorgsentrusms;
 - (v) hospitale en gesondheidsorgfasiliteite ten opsigte van die behandeling van kinders;
 - (vi) skole; en
 - (vii) provinsiale projekte ten bate van kinders wat van stapel gestuur word;
- (b) 'n noue verbinding met die Kommissaris vir Korrektiewe Dienste in die Provinsie handhaaf sodat die Kommissaris die beskikbaarheid van gesondheids-, maatskaplikewelsyns- en onderwysdienste en ontspanningsgeriewe vir kinders in die gevangenis en kinders in aanhouding kan monitor;
- (c) 'n noue verbinding met die Kommissaris van Polisie in die Provinsie handhaaf om die volgende te monitor:
- (i) die aangemelde getal misdade gepleeg teen kinders; en
 - (ii) die aangemelde getal misdade gepleeg deur kinders,
- om die samewerking tussen die Suid-Afrikaanse Polisie en provinsiale departemente wat werk met of 'n diens lewer aan kinders wat bots met die gereg of teen wie 'n misdaad gepleeg is, te optimeer;
- (d) 'n noue verbinding met die Departement van Justisie handhaaf om die samewerking te optimeer tussen die Departement van Justisie en provinsiale departemente wat werk met of 'n diens lewer aan—
- (i) kinderslagoffers van misdaad;
 - (ii) die kantoor van die Gesinsadvokaat;
 - (iii) Gesinshowe;
 - (iv) Kommissaris van die Kinderhof;
 - (v) aanklaers wat met kinders werk; en
 - (vi) strafhowe wat alle sake hanteer waarby kinders wat bots met die gereg, betrokke is;

- (e) 'n noue verbinding handhaaf met privaat organisasies, instellings en agentskappe wat werk met of wat 'n diens lewer aan kinders in die Provinsie om algemene praktyke te monitor en samewerking tussen provinsiale staatsorgane en die privaat sektor te bevorder ten opsigte van aangeleenthede wat verband hou met die beskerming van die regte en belange van kinders; en
- (f) 'n noue verbinding handhaaf met tersaaklike nasionale departemente rakende wetgewing wat kinders raak, om toe te sien dat die Kommissaris maatreëls waarvoor daar in nasionale wetgewing voorsiening gemaak word om die belange van kinders in die Provinsie te beskerm optimaal benut.

Ondersoeke

9. Die Kommissaris kan ondersoeke doen, begin en instel ten opsigte van enige aangeleentheid wat binne die bestek van sy of haar werksaamhede val.

Navorsing

10. (1) Die Kommissaris moet, by aanstelling soos beoog in artikel 2(4)(a), 'n oudit doen van alle bestaande of voorgestelde wetgewing wat die regte en belange van kinders in die Provinsie raak of waarskynlik sal raak en moet die oudit aan die Premier en die Provinsiale Parlement beskikbaar stel.

(2) Die Kommissaris kan—

- (a) navorsing doen of begin—
 - (i) ten opsigte van enige aangeleentheid wat binne die bestek van sy of haar werksaamhede val; en
 - (ii) wat daarop gemik is om ten grondslag te lê aan die ontwikkeling van beleid of praktyke wat in die belang van kinders is; en
- (b) samewerking fasiliteer met, en voorsiening maak vir insette van, die staatsektor, privaat sektor en akademiese instellings ten opsigte van die identifisering, onderneming en implementering van navorsing.

Onderwys

11. Die Kommissaris kan inligtingsprogramme lei en ontwikkel om die publiek te leer van, en begrip en bewustheid by die publiek te kweek oor—

- (a) hierdie Wet;
- (b) die Verenigde Nasies se Konvensie oor die Regte van die Kind, 1989;
- (c) die Afrika-handves oor die Regte en Welsyn van die Kind, 1990;
- (d) artikel 28(1) van die Grondwet;
- (e) ander tersaaklike internasionale verdrae, konvensies of ooreenkomste wat kinders raak; en
- (f) enige ander aangeleentheid binne die bestek van sy of haar werksaamhede.

Uitoefening van invloed

12. Die Kommissaris kan—

- (a) lede of groepe lede van die Provinsiale Parlement of Nasionale Parlement bearbei en aanbevelings maak rakende—
 - (i) enige bestaande of voorgestelde beleid wat die regte van kinders raak of waarskynlik sal raak;
 - (ii) enige stelsel van gesinsreg;
 - (iii) enige stelsel van inheemse reg, gebruike of praktyk; of
 - (iv) enige ander bestaande of voorgestelde wetgewing wat die regte van kinders raak of waarskynlik sal raak;
- (b) samewerking en insette van die staat- en privaat sektore aanvra wanneer invloed uitgeoefen word vir die hersiening van wetgewing.

Raadgewing

13. Die Kommissaris kan aan enige persoon of staatsorgaan in die Provinsie wie se beleide of praktyke rakende kinders deur die Kommissaris gemonitor, ondersoek of nagevors is, raad gee en aanbevelings maak.

Aansoeke dat aangeleentede gemonitor, ondersoek of nagevors word

14. (1) Enige persoon kan die Kommissaris versoek om 'n aangeleentheid vir monitering, ondersoek of navorsing op te neem ingevolge die bevoegdhede en werksaamhede ingevolge hierdie Wet verleen.

(2) Die Kommissaris kan ook uit sy of haar eie beweging 'n aangeleentheid vir monitering, ondersoek of navorsing opneem ingevolge die bevoegdhede en werksaamhede ingevolge hierdie Wet verleen.

(3) 'n Aansoek dat 'n aangeleentheid deur die Kommissaris opgeneem word vir monitering, ondersoek of navorsing moet, so ver moontlik, op skrif en in die formaat verskaf deur die kantoor van die Kommissaris wees.

(4) 'n Aansoek beoog in subartikel (3) moet die volgende bevat:

- (a) die name en adresse van die persoon wat vra dat die aangeleentheid opgeneem word;
- (b) redes waarom die Kommissaris die aangeleentheid behoort te monitor, te ondersoek of na te vors;
- (c) 'n opsomming van die bewys ter staving van die opvatting dat die aangeleentheid gemonitor, ondersoek of nagevors behoort te word;
- (d) die name en adresse van persone of staatsorgane wat vermoedelik betrokke is, in die mate waartoe sodanige inligting beskikbaar is;
- (e) 'n beskrywing van enige dokument of materiaal wat oorweeg behoort te word; en
- (f) 'n afskrif van die dokument bedoel in paragraaf (e).

(5) 'n Aansoek beoog in subartikel (3) moet beëdig of plegtig verklaar word voor 'n Kommissaris van Ede.

(6) Die Kommissaris kan na sy of haar goëddunke van die vereistes beoog in subartikels (4) en (5) afsien indien die aansoek beoog in subartikel (3) deur 'n kind gemaak word.

(7) Die besluit om 'n aangeleentheid te monitor, te ondersoek of na te vors berus volkome by die Kommissaris, behoudens subartikel 7.

(8) Indien, gedurende die verloop van die monitering, ondersoek of navorsing van 'n aangeleentheid, die Kommissaris van mening is dat dit in die belang van 'n kind is om 'n kurator aan te stel, kan die Kommissaris sodanige aansoek ooreenkomstig die Hofreëls loods.

Bykomende bevoegdhede en werksaamhede

15. (1) Ten einde die Kommissaris in staat te stel om sy of haar bevoegdhede en werksaamhede verleen ingevolge hierdie Wet uit te oefen en te verrig, kan die Kommissaris—

- (a) op gesag van 'n landdros met jurisdiksie binne die gebied waarin die deursoeking uitgevoer staan te word, lede van die Suid-Afrikaanse Polisie diens vergesel wanneer bevoegdhede van deursoeking en beslaglegging uitgeoefen word ten opsigte van enige aangeleentheid wat met die belange en beskerming van kinders verband hou;
- (b) enige persoon as getuie dagvaar of kennis aan enige persoon gee om voor hom of haar te verskyn om te getuig, of om enige boek, verslag, dokument of voorwerp in sy of haar besit of onder sy of haar beheer te verskaf, op die tyd en plek uiteengesit in die dagvaarding of kennisgewing;
- (c) enige persoon wat as getuie voor die Kommissaris verskyn, 'n eed of plegtige verklaring oplê;
- (d) sodanige persone aanstel soos nodig kan wees vir die verrigting van die werksaamhede van die kantoor van die Kommissaris, op die bepalings en diensvoorwaardes wat in oorleg met die Premier en die Provinsiale Minister verantwoordelik vir finansies bepaal word.

(2) In die omstandighede beoog in subartikel (1)(b)—

- (a) moet die dagvaarding om te getuig of kennisgewing onderteken en uitgereik word deur die Kommissaris en deur die Kommissaris, of enige ander persoon deur die Kommissaris aldus gemagtig, beteken word op dieselfde wyse as 'n dagvaarding om te getuig of kennisgewing, na gelang van die geval, vir 'n getuie by 'n verhoor in die Hoë Hof;
- (b) enige persoon wat voor die Kommissaris verskyn, kan bygestaan word deur 'n regsvertegenwoordiger op sy of haar eie onkoste.

Pligte

16. Die Kommissaris—

- (a) moet jaarliks aan die Provinsiale Parlement verslag doen oor die maatreëls wat deur die Wes-Kaapse Regering getref is om die belange van kinders in die Provinsie te beskerm en te bevorder; en

- (b) kan op enige ander tyd 'n spesiale verslag aan die Provinsiale Parlement voorlê oor enige aangeleentheid wat met hierdie Wet verband hou wat, na die mening van die Kommissaris, nie tot die jaarverslag uitgestel behoort te word nie.

Aanspreeklikheid

17. Die Kommissaris of enige persoon aangestel deur hom of haar sal nie aanspreeklik wees ten opsigte van enigiets wat te goeder trou kragtens enige bepalings van hierdie Wet of die Provinsiale Grondwet gedoen is nie.

HOOFSTUK 4

VERPLIGTINGE VAN STAATSORGANE EN TOEGANG TOT INLIGTING EN INSTELLINGS

Verpligtinge van staatsorgane

18.(1) Alle staatsorgane moet die Kommissaris bystaan en die onafhanklikheid, onpartydigheid, waardigheid en doeltreffendheid van die kantoor van die Kommissaris verseker.

(2) Geen persoon of enige staatsorgaan mag die funksionering van die Kommissaris of sy of haar personeel hinder of die funksionering van die Kommissaris of sy of haar personeel belemmer nie.

(3) Wanneer die Kommissaris enige aanbevelings aan enige persoon of staatsorgaan maak, moet daardie persoon of staatsorgaan binne 'n redelike tydperk vermeld deur die Kommissaris skriftelik aan die Kommissaris verslag doen van sy of haar optrede in reaksie op die aanbevelings.

(4) Enige persoon of staatsorgaan wat hetsy volkome hetsy gedeeltelik weier of versuim om die aanbevelings van die Kommissaris te implementeer, moet, op versoek deur die Kommissaris, die Kommissaris binne 'n redelike tyd bepaal deur die Kommissaris van skriftelike redes vir sodanige weiering of versuim voorsien.

Toegang tot inligting en instellings

19.(1) Alle staatsorgane en openbare en privaat organisasies wat werk met of 'n diens lewer aan kinders moet op versoek van die Kommissaris inligting verstrek ten opsigte van enige aangeleentheid wat binne die bestek van die werksaamhede van die Kommissaris val.

(2) Alle openbare instellings wat werk met of 'n diens lewer aan kinders moet die Kommissaris toegang gee tot hul perseel vir die doel om enige werksaamheid of plig beoog in Hoofstuk 3 van hierdie Wet uit te voer.

HOOFSTUK 5

ADMINISTRASIE VAN DIE KANTOOR VAN DIE KOMMISSARIS

Administratiewe werksaamhede

20. Die administratiewe werksaamhede van die kantoor van die Kommissaris kan deur beamptes in die diens van die Wes-Kaapse Regering verrig word.

Befondsing

21. Die Provinsiale Parlement kan fondse binne die Provinsie se hulpbronne toewys om die Kommissaris in staat te stel om sy of haar werksaamhede ingevolge hierdie Wet te verrig.

Vergoeding van Kommissaris

22. Die Premier, in oorleg met die Provinsiale Minister verantwoordelik vir finansies, moet, van tyd tot tyd, die vergoeding en ander bepalinge en diensvoorwaardes van die Kommissaris bepaal, met inagneming van die beskikbare hulpbronne van die Provinsie.

Skenkings

23. Die kantoor van die Kommissaris kan skenkings ontvang behoudens Tesourieregulasies en -instruksies en ander toepaslike finansiële voorskrifte.

HOOFSTUK 6 DIVERSE BEPALINGS

Regulasies

24. Die Premier kan regulasies maak rakende enige aangeleentheid wat hy of sy nodig ag om die oogmerke van hierdie Wet te bereik.

Misdrywe en strawwe

25. Enige persoon wat—

- (a) enige bepaling van hierdie Wet oortree of versuim om daaraan te voldoen;
- (b) die Kommissaris in die verrigting van sy of haar werksaamhede of pligte beoog in hierdie Wet hinder;
- (c) weier of versuim om inligting of 'n verduideliking te verskaf ten opsigte van 'n versoek om inligting deur die Kommissaris, of wat inligting verskaf wat onwaar en misleidend is met die wete dat dit onwaar en misleidend is,

is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete van hoogstens R10 000.

Kort titel en inwerkingtreding

26. Hierdie Wet heet die Wet op die Wes-Kaapse Kommissaris vir Kinders, 2017, en tree in werking op 'n datum bepaal deur die Premier by proklamasie in die *Provinsiale Koerant*.

MEMORANDUM VAN DIE OOGMERKE VAN DIE KONSEPWETSONTWERP OP DIE WES-KAAPSE KOMMISSARIS VIR KINDERS, 2017

1. AGTERGROND

- 1.1 'n Kommissaris vir Kinders is by artikel 78(1) van die Grondwet van die Wes-Kaap, 1997 (Wet 1 van 1998)(die Provinsiale Grondwet), ingestel. Die Kommissaris vir Kinders (die Kommissaris) moet die Wes-Kaapse Regering bystaan om die belange van kinders in die Wes-Kaap te beskerm, veral ten opsigte van—
- (a) gesondheidsdienste;
 - (b) onderwys;
 - (c) welsynsdienste;
 - (d) ontspanning en geriewe; en
 - (e) sport.
- 1.2 Die Provinsiale Grondwet beoog die aanneming van provinsiale wetgewing om die bevoegdhede van die Kommissaris te reguleer.

2. OOGMERKE VAN KONSEPWETSONTWERP

Die Konsepwetsontwerp op die Wes-Kaapse Kommissaris vir Kinders, 2017 (die Konsepwetsontwerp), maak voorsiening vir die aanstelling van die Kommissaris in die Provinsie Wes-Kaap. Verder maak die Konsepwetsontwerp voorsiening vir die bevoegdhede, werksaamhede en pligte van die Kommissaris wat hom of haar in staat stel om die grondwetlike mandaat na te kom waarvoor daar voorsiening gemaak word in artikel 79 van die Provinsiale Grondwet, te wete, om aangeleenthede rakende kinders te monitor, te ondersoek, na te vors, mense daarvoor te leer, daarvoor invloed uit te oefen, raad daarvoor te gee en verslag daarvoor te doen. Die Wetsontwerp maak ook voorsiening vir die administrasie van die kantoor van die Kommissaris.

3. INHOUD VAN KONSEPWETSONTWERP

3.1 Klousule 1

Hierdie klousule maak voorsiening vir die woordskrywingsgedeelte van die Konsepwetsontwerp.

3.2 Klousule 2

Hierdie klousule maak voorsiening vir die aanstelling van die Kommissaris vir 'n vyfjaartermyn, wat eenmalig hernubaar is. Die aanstelling word gemaak op die aanbeveling van die Provinsiale Parlement.

3.3 Klousule 3

Hierdie klousule maak voorsiening vir die kwalifikasies vir die aanstelling van die Kommissaris.

3.4 Klousule 4

Hierdie klousule bepaal dat die Kommissaris voor die aanvang van sy of haar pligte 'n ampseed moet aflê.

3.5 Klousule 5

Hierdie klousule maak voorsiening vir die ontheffing en skorsing van die Kommissaris op die aanbeveling van die Provinsiale Parlement.

3.6 Klousule 6

Hierdie klousule maak voorsiening vir die vul van 'n vakature in die amp van die Kommissaris. Die Premier mag in oorleg met die Provinsiale Parlement 'n waarnemende Kommissaris aanstel.

3.7 Klousule 7

Hierdie klousule maak voorsiening vir die beginsels wat die Kommissaris lei in die uitoefening en verrigting van sy of haar bevoegdhede en werksaamhede.

3.8 Klousule 8

Hierdie klousule maak voorsiening vir die moniteringsfunksie van die Kommissaris. Dit word van die Kommissaris vereis om 'n noue verbinding met die hoofde van verskeie provinsiale departemente te handhaaf, asook met die Kommissaris vir Korrektiewe Dienste in die Provinsie, die Kommissaris van Polisiediens in die Provinsie, die Departement van Justisie, privaat organisasies, instellings en agentskappe wat 'n diens aan kinders lewer en tersaaklike nasionale departemente aangaande wetgewing wat kinders raak, ten einde die regte en belange van kinders te monitor.

3.9 Klousule 9

Hierdie klousule maak voorsiening vir die Kommissaris om ondersoek te doen, te begin en in te stel ten opsigte van enige aangeleentheid wat binne die bestek van sy of haar werksaamhede val.

3.10 Klousule 10

Hierdie klousule maak voorsiening vir die Kommissaris om navorsing te doen en te begin ten opsigte van enige aangeleentheid wat binne die bestek van sy of haar werksaamhede val en om ten opsigte van navorsing samewerking met die staat- en privaatsektor, die burgerlike samelewing en akademiese instellings te fasiliteer.

3.11 Klousule 11

Hierdie klousule maak voorsiening vir die Kommissaris om die publiek in te lig oor verskeie wetgewende en ander instrumente wat die regte en belange van kinders bevorder.

3.12 Klousule 12

Hierdie klousule maak voorsiening vir die Kommissaris om druk uit te oefen op die Provinsiale of Nasionale Parlement en om aanbevelings te maak oor beleid en die reg wat die regte van kinders raak of waarskynlik sal raak.

3.13 Klousule 13

Hierdie klousule maak voorsiening vir die Kommissaris om raad te gee of aanbevelings te maak aan enige persoon of staatsorgaan in die Provinsie wie se beleide en praktyke rakende kinders deur die Kommissaris gemonitor, ondersoek of nagevors is.

3.14 Klousule 14

Hierdie klousule maak voorsiening vir die proses wat gevolg moet word wanneer 'n aansoek gemaak word vir 'n aangeleentheid om deur die Kommissaris gemonitor, ondersoek of nagevors te word.

3.15 Klousule 15

Hierdie klousule maak voorsiening vir bykomende bevoegdhede en werksaamhede van die Kommissaris. Die Kommissaris mag die Suid-Afrikaanse Polisie diens vergesel wanneer die bevoegdhede van deursoeking en beslaglegging uitgeoefen word ten opsigte van enige aangeleentheid wat verband hou met die belange of beskerming van kinders, mag enigiemand dagvaar om te getuig of aan enigiemand kennis gee om voor hom of haar te verskyn, mag enigiemand wat as 'n getuie voor hom of haar verskyn, 'n eed of plegtige verklaring oplê, en mag sodanige persone aanstel soos nodig mag wees vir die verrigting van die werksaamhede van die amp van die Kommissaris.

3.16 Klousule 16

Hierdie klousule maak voorsiening vir die pligte van die Kommissaris om jaarliks aan die Provinsiale Parlement verslag te doen en om op enige ander tyd spesiale verslae aan die Provinsiale Parlement voor te lê.

3.17 Klousule 17

Hierdie klousule bepaal dat nóg die Kommissaris nóg enige persoon aangestel deur hom of haar aanspreeklik sal wees ten opsigte van enigiets wat te goeder trou kragtens die bepalings van die Wet of die Provinsiale Grondwet gedoen is nie.

3.19 Klousule 18

Hierdie klousule bepaal dat alle staatsorgane die Kommissaris moet bystaan en dat geen persoon of staatsorgaan mag inmeng by die funksionering van die Kommissaris nie. Wanneer die Kommissaris 'n aanbeveling aan enige persoon of staatsorgaan maak, moet daardie persoon of staatsorgaan skriftelik aan die Kommissaris verslag doen oor sy of haar optrede in antwoord op die aanbevelings.

3.19 Klousule 19

Hierdie klousule bepaal dat alle staatsorgane en staats- en privaat instellings wat 'n diens aan kinders lewer op die versoek van die Kommissaris enige inligting wat binne die bestek van die werksaamhede van die Kommissaris val, aan die Kommissaris moet verskaf. Alle staatsinstellings wat aan kinders 'n diens lewer, moet die Kommissaris toegang gee tot hul perseel vir die doel om 'n werksaamheid of plig van die Kommissaris uit te voer.

3.20 Klousule 20

Hierdie klousule bepaal dat die administratiewe werksaamhede van die kantoor van die Kommissaris verrig mag word deur beamptes in die diens van die Wes-Kaapse Regering.

3.21 Klousule 21

Hierdie klousule bepaal dat die Provinsiale Parlement fondse mag toewys om die Kommissaris in staat te stel om sy of haar werksaamhede te verrig.

3.22 Klousule 22

Hierdie klousule maak voorsiening vir die vergoeding van die Kommissaris.

3.23 Klousule 23

Hierdie klousule bepaal dat die Kommissaris skenkings mag ontvang behoudens Tesourie-regulasies en -instruksies en ander toepaslike finansiële voorskrifte.

3.24 Klousule 24

Hierdie klousule maak voorsiening vir die Premier om enige regulasies te maak om die oogmerke van die Wet te bereik.

3.25 Klousule 25

Hierdie klousule maak voorsiening vir misdrywe en strawwe vir die oortreding van enige bepaling van die Wet, vir die hindering van die Kommissaris in die verrigting van sy of haar werksaamhede of pligte, die weiering of versuim om inligting of 'n verduideliking aan die Kommissaris te verskaf of vir die verskaffing van onwaar en misleidende inligting.

3.26 Klousule 26

Hierdie klousule maak voorsiening vir die kort titel van die Wet.

4. OORLEGPLEGING

By die opstel van hierdie Konsepwetsontwerp is daar met die volgende rolspelers oorleg gepleeg:

- (a) Departement van die Premier: Regsdienste; en
- (b) Departement van die Premier: Beleid en Strategie.

5. PERSONEELIMPLIKASIES

Dit word aanbeveel dat die kantoor van die Kommissaris vir Kinders in die Departement van die Premier geplaas word. Die kantoor van die Kommissaris sal 'n ondersteuningstruktuur benodig om sy werksaamhede te verrig. Hierdie werksaamhede sal deur 'n Organisasoriese Ontwikkeling-proses uitgelê word.

6. FINSANSIËLE IMPLIKASIES

Die geraamde begroting vir die kantoor van die Wes-Kaapse Kommissaris vir Kinders is agt miljoen rand (R8m) per jaar, met inbegrip van akkommodasievereistes.

7. WETGEWENDE BEVOEGDHEID

Die Premier van die Wes-Kaap is tevrede dat al die bepalings in die Konsepwetsontwerp binne die wetgewende bevoegdheid van die Provinsie ressorteer.

**UQULUNQO LOMTHETHO OSAYILWAYO WOMKHOMISHINALA
WABANTWANA ENTSHONA KOLONI, 2017**

Wenzelwa ukubonelela ngokuqeshwa koMkhomishinala wabaNtwana kwiphondo leNtshona Koloni; ukubonelela ngeziqinisekiso zemfundo ezifunekayo emntwini ukuze aqeshwe njongoMkhomishinala wabaNtwana; ukubonelela ngamandl' olawulo, imisebenzi noxanduva loMkhomishinala wabaNtwana; ukubonelela ngengemiba yezemali kuMkhomishinala wabaNtwana; nangokubonelela ngemiba yeziganeko.

NJENGOKO icandelo 78 loMgaqo-siseko weNtshona Koloni, 1997, lisungula iofisi yoMkhomishinala wabaNtwana;

NANJENGOKO uthathelo-ngqalelo lujoliswe kwisidingo sokukhusela nokukhuthaza amalungelo neemfuno zabantwana;

NGAKO OKO KE KUWISWA UMTHETHO yiPalamente yeNtshona Koloni, ngolu hlobo lulandelayo:—

**ISAHLUKO 1
INKCAZO-MAGAM**

Inkcazo-magama

1. Kulo Mthetho, ngaphandle kokuba umxholo uthetha enye into—
 - “**umntwana**” uthetha umntu oneminyaka engaphantsi kweli-18 ubudala;
 - “**UMkhomishinala**” uthetha uMkhomishinala wabaNtwana osungulwe licandelo 78 loMgaqo-siseko wePhondo;
 - “**iarhente yombuso**” ithetha iarhente yombuso njengoko kuchaziwe kwicandelo 239 loMgaqo-siseko;
 - “**INkulumbuso**” ithetha iNkulumbuso yePhondo;
 - “**IPhondo**” lithetha iphondo leNtshona Koloni;
 - “**UMgaqo-siseko wePhondo**” uthetha uMgaqo-siseko weNtshona Koloni, 1997 (uMthetho 1 ka-1998);
 - “**IPalamente yePhondo**” ithetha ipalamente yePhondo;
 - “**uMgaqo-siseko**” uthetha uMgaqo-siseko weRiphabhlikhi yoMzantsi Afrika, 1996;
 - “**lo Mthetho**” uquka nayiphi na imigaqo ekhutshwe phantsi kwalo Mthetho.

**ISAHLUKO 2
INGQESHO NEOFISI YOMKHOMISHINALA**

Uqesho

2. (1) INkulumbuso imele iqeshe uMkhomishinala kangangexesha leminyaka emihlanu, elixesha elihlaziywa kubekanye.

(2) Ikomiti eyenziwa ngawo onke amaqela ezopolitiko amelweyo kwiPalamente yePhondo agqiba ekuthatheni inxaxheba imele—

- (a) ngokwenza izaziso kumajel' eendaba, ezingeelwimi ezisemthethweni zePhondo, enze isimemo sotyumbo kuluntu ukuze kufumaneke abantu abafanelekileyo kwisikhundla sokuba nguMkhomishinala;
- (b) ipapashe ngeelwimi ezisemthethweni zePhondo kumajelo eendaba uluhlu lwamagama abo bonke abatyunjwa, imemelela ukufumana izichaso zoluntu ngalo naliphi na igama elikuluhlu lotyumbo;
- (c) iqwalasele lonke utyumbo nezichaso ezifunyenweyo kwaye ingammemela kudliwano-ndlebe umntu otyunjiweyo;
- (d) idlulisele kwiNkulumbuso zonke iikopi zotyumbo nezichaso ezifunyenweyo;
- (e) idlulisele izincomo zayo zokuqeshwa koMkhomishinala nazo zonke iikopi zotyumbo nezichaso ezifunyenweyo kwiPalamente yePhondo zizokwamkelwa.

(3) IPalamente yePhondo kufuneka idlulisele izincomo zokuqeshwa koMkhomishinala kwiNkulumbuso emva kokuba imvumile umntu onconyiweyo, ngokwesiphakamiso esamkelwe sisininzi zevoti eqhutyiweyo.

(4) INkulumbuso kufuneka, kwiintsuku ezingama-21 izifumene izincomo kwiPalamente yePhondo nasemva kokuqwalasela utyumbo nezichaso ezinikezelwe yikomiti—

- (a) iqeshe uMkhomishinala; okanye
- (b) iwubuyisele lo mba emva kwikomiti iphinde uwuqwalasele.

Okufunekayo ukuze aqeshwe

3. (1) UMkhomishinala kumele abe ngummi waseMzantsi Afrika—

- (a) osempilweni nofanelekileyo; kwaye
- (b) udume ngokuba nolwazi olukhethekileyo, okanye unamava obuchule ahambelana nalo msebenzi okanye iinkcukacha zakhe zemfundo, kwimiba okanye kumalungelo abantwana.

(2) Ukongeza kwizinto ezifunekayo kwicandelwana (1), uMkhomishinala akanakho, emva kokuqalisa ukusebenza njengoMkhomishinala, ukuba lilungu lePalamente kaZwelonke okanye lePalamente yePhondo okanye lebhunga likamasipala okanye lesigqeba esisekwe ngomthetho sephondo okanye asebenzele naliphi na isebe okanye iziko lombuso.

Isifungo okanye isiqiniseko

4. Phambi kokuqalisa umsebenzi, uMkhomishinala kufuneka enze isifungo okanye enze isiqiniseko esisulungekileyo sokuba uza kuwasebenzisa amagunya akhe ngokuzimeleyo nangokungabinacala kwaye ayenze imisebenzi yeofisi yoMkhomishinala ngaphandle koloyiko okanye kokuqal' agwebe.

Ukususwa nokurhoxiswa

5. (1) INkulumbuso ingamsusa uMkhomishinala eofisini kuphela—

- (a) phantsi kwemeko yokusiphatha kakubi, yokungawumeli okanye yokungakwazi ukuwenz' umsebenzi;
- (b) phantsi kweziphumo zophando ezichazwe kumhlathi (a) olwenziwe yikomiti eyenziwa ngamaqela ezopolitiko amelweyo kwiPalamente yePhondo agqibe ekuthatheni inxaxheba; kunye

- (c) nesindululo esenziwa yiPalamente yePhondo icela ukususwa koMkhomishinala eofisini ngesiphakamiso esamkelwe sisininzi sabavoti.
- (2) INkulumbuso—
 - (a) ingamrhexisa uMkhomishinala eofisini nanini na emva kokuqala kokuhlala kwekomiti yePalamente yePhondo eza kuthatha isigqibo esimalunga nokususwa koMkhomishinala eofisini; kwaye
 - (b) imele imsuse uMkhomishinala eofisini kwakamkelwa isiphakamiso yiPalamente yePhondo esifuna kususwe uMkhomishinala.

Isithuba kwiofisi yoMkhomishinala

- 6. (1) INkulumbuso ingamvumela uMkhomishinala ukuba aphume eofisini yakhe phambi kokuphela kwexesha lakhe lengqesho eliyiminyaka emihlanu—
 - (a) phantsi kwemeko yempilo yokuqhubeka ngokugula emthinteleyo uMkhomishinala ngokuqhuba nokwenza umsebenzi wakhe kakuhle; okanye
 - (b) ngokwesicelo esibhaliweyo soMkhomishinala esiya kwiNkulumbuso kwiinyanga ezintathu noko phambi komhla anqwenela ngawo ukuphuma eofisini uMkhomishinala, ngaphandle kokuba iNkulumbuso iyalivumela ixesha elifutshane kwimeko ethile.
- (2) Isithuba kwiofisi yoMkhomishinala sibakhona ukuba uMkhomishinala—
 - (a) uyasweleka;
 - (b) uyathinteleka ekwenzeni kakuhle umsebenzi wakhe ngenxa yempilo embi njengoko kuchaziwe kwicandelwana (1)(a);
 - (c) uyayek' emsebenzini njengoko kuchaziwe kwicandelwana (1)(b); okanye
 - (d) uyasuswa eofisini njengoko kuchaziwe kwicandelwana 5.
- (3) Ukuba uMkhomishinala urhoxisiwe njengoko kuchaziwe kwicandelo 5(2)(a) okanye kuvela isithuba njengoko kuchaziwe kwicandelwana (2) iNkulumbuso ingaqesha ibambela Mkhomishinala ngokucebisana nePalamente yePhondo de lube luyasuswa urhoxiso okanye kuqeshwe uMkhomishinala omtsha njengoko kuchaziwe kwicandelo 2(4)(a).

Imithetho-siseko elawula uMkhomishinala

- 7. Ekwenzeni nasekusebenziseni amandla akhe, uMkhomishinala kufuneka—
 - (a) athathele ingqalelo imithetho-siseko eyabekwayo kwiNgqungquthela yeZizwe Ngezizwe eziManyeneyo emalunga naMalungelo abaNtwana, 1989, kwiTshata ye-Afrika engamaLungelo wabaNtwana, 1990, nakuzo naziphi na ezinye izimbambathiso zehlabathi, iingqungquthela okanye izivumelwano ezichaphazela abantwana eziqinisekiswa nguMongameli weRiphabhliki yoMzantsi Afrika;
 - (b) azame ukukhuthaza amalungelo, izidingo neemfuno zabantwana kuzo zonke iingingqi zokuhlala kweli Phondo;
 - (c) aqinisekise ukuba iimfuno zabantwana kweli Phondo zinikwa ingqwalasela epheleleyo ngabasemagunyeni abakurhulumente nangabakumaziko abucala, abazimele ngokweziqo kunye nemibutho; kwaye

- (d) akhuthaze ukwaziswa komthetho, iiprojekthi neenkqubo ezichaphazela abantwana kweli Phondo ngokubonelela ngeengcombolo ezaneleyo ezimalunga namalungelo, izidingo kunye neemfuno zabantwana, izidingo neemfuno zoluntu nezamacandelo abucala.

ISAHLUKO 3 IMISEBENZI

Ukubek' iliso

8. UMkhomishinala kufuneka—

- (a) afune iintloko zamasebe ephondo ukuba abenoxanduva lokhuseleko loluntu, iinkonzo zoluntu, impilo, imfundo kunye nemidlalo ukugcina unxibelelwano noMkhomishinala ukuze akwazi uMkhomishinala ukubek' iliso—
- (i) kwiimfuno zabantwana kweli Phondo;
 - (ii) kwiiprojekthi zephondo ezijolise ekukhuthazeni ulwaziso loluntu ngemiba enxulumene namalungelo wabantwana equlathwe kwicandelo 28(1) loMgaqo-siseko;
 - (iii) ekuzalisekiseni kwiNgqungquthela yeZizwe Ngezizwe eziManyeneyo emalunga naMalungelo abaNtwana, 1989, kwiTshata ye-Afrika engamaLungelo wabaNtwana, 1990, nakuzo naziphi na ezinye izimbambathiso zehlabathi, iingqungquthela okanye izivumelwano ezichaphazela abantwana ezieziqinisekise nguMongameli weRiphabhliki yoMzantsi Afrika;
 - (iv) amalungelo, izidingo neemfuno zabantwana abakumaziko onakekelo lwasekhaya, unakekelo lomntwana omamkele njengowakho ngokunjalo namaziko onakekelo lwabantwana nolutsha;
 - (v) azibhedlele namaziko onakekelo lwezempilo ngokubhekiselele kunyango lwabantwana;
 - (vi) izikolo; kunye
 - (vii) neeprojekthi zephondo ezimeselwe ukunceda abantwana;
- (b) agcinele kufutshane intsebenziswano noMkhomishinala weeNkonzo zoLuleko kwiPhondo ukuze uMkhomishinala akwazi ukube' iliso kubukho bezempilo, unakekelo lwentlalo kunye namaziko olonwabo enzelwe abantwana etilongweni kunye nabantwana nabaseluvalelweni;
- (c) agcinele kufutshane intsebenziswano noMkhomishinala weeNkonzo zamaPolisa kwiPhondo ukuze akwazi uMkhomishinala ukubek' iliso—
- (i) kwinani elixeliweyo lolwaphulo-mthetho olwenziwa ebantwaneni; kunye
 - (ii) nenani elixeliweyo lolwaphulo-mthetho olwenziwe ngabantwana, ukubeka phambili intsebenziswano phakathi kweeNkonzo zamaPolisa oMzantsi Afrika kunye namasebe ephondo aqubisana nabantwana okanye anikezelela ngeenkonzo zawo ebantwaneni ebagxalatheleka kulwaphu-mthetho okanye abo babe ngamaxhoba olwaphulo-mthetho;

- (d) agcinele kufutshane intsebenziswano neSebe lezoBulungisa ukubeka phambili intsebenziswano phakathi kweSebe lezoBulungisa namasebe aqubisana okanye anikezela ngeenkondo—
- (i) kubantwana abangamakhoba olwaphulo-mthetho;
 - (ii) kwiofisi yeGqwetha leeNtsapho;
 - (iii) INkundla yeeNtsapho;
 - (iv) ooMkhomishinala beNkundla yabaNtwana;
 - (v) abatshutshisi abaqubisana nabantwana; kunye
 - (vi) neenkundla zamatyala olwaphulo-mthetho eziqubisana nemiba ebandakanya abantwana abophula umthetho;
- (e) agcinele kufutshane intsebenziswano nemibutho, amaziko neearhente zabucala eziqubisana okanye ezinikezela ngeenkondo ebantwaneni kwiPhondo ukubek' iliso kwimisebenzi yesiqhelo kwaye akhuthaze intsebenziswano phakathi kwamaziko karhulumente wephondo kunye namacondelo abucala kwimiba enxulumene nokhuseleko lwamalungelo neemfuno zabantwana; kwaye
- (f) agcinele kufutshane intsebenziswano namasebe kazwelonke afanelekileyo ngokubhekiselele kumthetho ochaphazela abantwana, ukuqinisekisa ukuba uMkhomishinala ubeka phambili ukusebenzisa imilinganiselo ekhoyo yomthetho kazwelonke yokukhusela iimfuno zabantwana kweli Phondo.

Uphengululo

9. UMkhomishinala engenza okanye angaqalisa uphengululo kwaye afake imibuzo ngokubhekiselele kuwo nawuphi na umba ephantsi kokxanduva nemisebenzi yakhe.

Uphando

10. (1) UMkhomishinala kufuneka, ekuqeshweni kwakhe njengoko kuchaziwe kwicandelo 2(4)(a), aqhube uphocotho-zincwadi lwawo wonke umthetho okhoyo okanye ondululiweyo ochaphazela amalungelo neemfuno zabantwana kwiPhondo kwaye kufanele lufikelele kwiNkulumbuso nakwiPalamente yePhondo.

(2) UMkhomishinala—

- (a) angaqhuba okanye aqalise uphando—
- (i) ngokubhekiselele kuwo nawuphi na umba ephantsi kokxanduva nemisebenzi yakhe; kwaye
 - (ii) ajolise ekwaziseni ngenkqubela yomgaqo-nkqubo okanye okwenziwayo okubonisa umdla kwiimfuno zabantwana; kwaye
- (b) alungiselele ngentsebenziswano kwaye enze igalelo kumacandelo karhulumente, awabucala, nawokuhlala ngokunjalo nawemfundo ngokubhekiselele ekwalatheni, nasekuqhubeni uzalisekiso lophando.

Imfundo

11. UMkhomishinala angaqhuba kwaye avelise iinkqubo zokunik' ulwazi ukufundisa uluntu malunga nalo, aze akhuthaze ukwazi nokuqonda koluntu malunga—

- (a) nalo Mthetho;
- (b) iNgqungquthela yeZizwe Ngezizwe eziManyeneyo emalunga naMalungelo abaNtwana, 1989;
- (c) iTshata ye-Afrika engamaLungelo wabaNtwana, 1990;
- (d) icandelo 28(1) loMgaqo-siseko;
- (e) ezinye izivumelwano, iingqungquthela zehlabathi ezichaphazela abantwana; kunye
- (f) nawo nawuphi na umba ohambelana nemisebenzi yakhe.

Ukuphembelela

12. UMkhomishinala—

- (a) angaphembelela amalungu okanye amaqela amalungu ePalamente yePhondo okanye awePalamente kaZwelonke aze enze izindululo ezinxulumene—
 - (i) nawo nawuphi umgaqo-nkqubo okhoyo okanye ondululiweyo ochaphazela okanye osengachaphazela amalungelo abantwana;
 - (ii) nayo nayiphi na inkqubo yomthetho weentsapho;
 - (iii) nayo nayiphi na inkqubo yomthetho wemveli, amasiko okanye izithethe; okanye
 - (iv) nawo nawuphi umthetho okhoyo okanye ondululiweyo ochaphazela okanye osengachaphazela amalungelo abantwana;
- (b) angacela intsebenziswano negalelo kuluntu nakumacandelo abucala xa ephembelela ukuhlaziywa komthetho.

Ukucebisa

13. UMkhomishinala angacebisa enze izindululo nakubani na okanye kwiqumrhu lombuso kwiPhondo elinomgaqo-nkqubo nemisebenzi enxulumene nabantwana ebekwe iliso, yaphengululwa okanye yaphandwa nguMkhomishinala.

Isicelo semiba emayibekwe iliso, iphengululwe okanye iphandwe

14. (1) Nabani na angamcela uMkhomishinala awuthathe ingqalelo umba othile ukuze ubekwe iliso, uphandwe ngokwamagunya nemisebenzi echazwe ngokomgaqo walo Mthetho.

(2) UMkhomishinala angawuthathela ingqalelo ngokwakhe umba wokubeka iliso, wokuphanda ngokwamagunya nemisebenzi echazwe ngokomgaqo walo Mthetho.

(3) Isicelo somba omawuthathelwe ingqalelo nguMkhomishinala ukwenzela ukub' iliso, uphando, kangangoko kunokwenzeka, simele sibhalwe kwaye sibengefomathi enikezelwe yiofisi yoMkhomishinala.

(4) Isicelo esichazwe kwicandelwana (3) kufuneka siqulathe—

- (a) amagama needilesi zomntu owenza isicelo sokuba lo mba mawuqwalaselwe;
- (b) izizathu zokuba kutheni uMkhomishinala kumele abek' iliso, aphengulule okanye aphande umba;
- (c) isishwankathelo sobungqina inkolelo yokuba umba kufanele ubekwe iliso, uphengululwe okanye uphandwe;
- (d) amagama needilesi zabantu okanye weearhente zombuso ekurhaneleka ukuba ziyabandakanyeka, kangangokuba ezo nkcukacha ziyafumaneka;
- (e) inkcazelo yalo naluphi na uxwebhu okanye into ekumele ithathelwe ingqalelo; kunye
- (f) nekopi yoxwebhu ekubhekiselwa kulo kumhlathi (e).

(5) Isicelo esichazwe kwicandelwana (3) kufuneka sifungelwe okanye siqinisekiswe ngokufungelweyo nguMkhomishinala weziFungo.

(6) UMkhomishinala ngokwezigqibo zakhe angazaba kunye neemfuno ezichazwe kwicandelwana (4) nelesi-(5) ukuba isicelo ezichazwe kwicandelwana (3) senziwe ngumntwana.

(7) Isigqibo zokubek' iliso, sokuphengulula okanye sokuphanda umba sixhomekeke ngokupheleleyo kuMkhomishinala ngokuxhomekeke kwicandelo 7.

(8) Ukuba ngexesha lokuqhuba kobeko-liso, lophando lombha, uMkhomishinala unoluvo lokuba kungomdla wabantwana ukuqesha umgcini, uMkhomishinala angeza neso sicelo, ngokuhambelana neMithetho yeNkundla.

Amagunya nemisebenzi eyongezelelekileyo

15. (1) Kukwenza uMkhomishinala akwazi ukwenza imisebenzi nokusebenzisa amagunya achaziweyo ngokwalo Mthetho, uMkhomishinala—

- (a) ngokwesigunyaziso sikamantyi, angabanolawulo lobulungisa kwingingqi ekuza kukhangelwa kuyo, ancedise amalungu iNkonzo yamaPolisa oMzantsi Afrika xa esebenzisa amagunya akhe okukhangela nokuthatha ngokubhekiselele kuwo nawuphi umba onxulumene neemfuno nokhuseleko lwabantwana;
- (b) angakhuphel' umsila wengwe nabani na ukuba avele phambi kwakhe azokunika ubungqina, okanye aveze nayiphi na incwadi, ingxelo, uxwebhu okanye into anayo okanye ayilawulayo, ngeloo xesha nakwindawo echazwe kukumsila wengwe okanye kwisaziso;
- (c) angaqhuba isifungo okanye ubungqina bakhe nabani na ovela njengengqina phambi koMkhomishinala;
- (d) angabaqesha abantu abanjalo njengoko kuyakube kuyimfuneko ukuze kwenziwe imisebenzi yeofisi yoMkhomishinala, phantsi kwemimiselo nemiqathango yenkonzo njengoko ichaziwe kwindibano yengcebiso wano neNkulumbuso noMphathiswa wePhondo ojongene nezemali.

(2) Kwiimeko ezichazwe kwicandelwana (1)(b)—

- (a) umsila wengwe okanye isaziso simele sityikitywe nguMkhomishinala size sinikezelwe nguMkhomishinala okanye nabani na ogunyaziswe nguMkhomishinala ukube enze njalo, ngendlela enye naleyo yomsila wengwe okanye yesaziso, ngokwemeko yelo xesha, ukwenzela ingqina elisamtyaleni kwiNkundla ePhakamileyo;

- (b) nawuphi na umntu phambi koMkhomishinala angancediswa ngumeli wezo-mthetho ngeendleko eziphuma epokothweni yakhe loo mntu.

Imisebenzi

16. UMkhomishinala—

- (a) kufanele anike ingxelo yonyaka kwiPalamente yePhondo ngamanyathelo athathiweyo nguRhulumente weNtshona Koloni ukukhusela nokukhuthaza iimfuno zabantwana kweli Phondo; kwaye
- (b) angangenisa ingxelo ekhethekileyo kwiPalamente yePhondo nangeliphi na elinye ixesha, engomba onxulumene nalo Mthetho, ngokoluvo loMkhomishinala, ayimelanga kuthotyelwa ide ikhutshwe ingxelo yonyaka.

Uxanduva

17. UMkhomishinala okanye nabani na oqeshwe nguye akasayi kubanoxanduva ngokubhekiselele kuyo nantoni na eyenzelwe okulungileyo phantsi kwamalungiselelo alo Mthetho okanye oMgaqo-siseko wabaNtwana.

ISAHLUKO 4

IIMFANELO ZEEARHENTE ZOMBUSO KUNYE NOFIKELELO KWIINKCKACHA NAKUMAZIKO

Iimfanelo zeearhente zombuso

18. (1) Zonke iarhente zombuso kufuneka zancedise uMkhomishinala kwaye ziqinisekise ukuzimela geqe, ukungakheth' icala, isidima nokuba nefuthe kweofisi yoMkhomishinala.

(2) Akukho mntu okanye nayiphi na iarhente yombuso enokungenelela ekusebenzeni koMkhomishinala okanye komsebenzi wakhe okanye athintele ukusebenza koMkhomishinala okanye komsebenzi wakhe.

(3) Xa uMkhomishinala esenza izindululo nakubani na okanye kwiarhente yombuso, umntu lowo okanye iarhente yombuso kumele ixele ngembalelwano kuMkhomishinala ngezenzo zakhe ekuphenduleni izindululo ngexesha elifanelekileyo elichazwe nguMkhomishinala.

(4) Nabani na okanye iarhente yombuso owalayo okanye osilelayo ukuzalisekisa izindululo zoMkhomishinala, akucelwa nguMkhomishinala, unikezela ngezizathu ezibhaliweyo zokwala okanye zokusilela kwakhe kuMkhomishinala ngexesha elifanelekileyo elichazwe nguMkhomishinala.

Ufikelelo kwiinkcukacha nakumaziko

19. (1) Zonke iarhente zombuso kunye namaziko karhulumente nawabucala ajongene okanye abonelela ngeenkonzelo zawo kubantwana kufuneka, ngokwesicelo soMkhomishinala enikezele ngeenkukacha ezibhekiselele nakowuphi umba ophantsi kwemisebenzi yoMkhomishinala.

(2) Onke amaziko karhulumente ajongene okanye abonelela ngeenkonzozo zawo kubantwana kufuneka amvumele uMkhomishinala afikelele kumasango awo ngenjongo yokuhubha umsebenzi wakhe ochazwe kwiSahluko 3 salo Mthetho.

ISAHLUKO 5 ULAWULO LWE OFISI YOMKHOMISHINALA

Imisebenzi yabalawuli

20. Imisebenzi yabalawuli yeofisi yoMkhomishinala ingenziwa ngamagosa asebenza kuRhulumente weNtshona Koloni.

Inkxaso-mali

21. IPalamente yePhondo ingaba inkxaso-mali ngezibonelelo zePhondo ukwenzela ukuba uMkhomishinala akwazi ukwenza imisebenzi yakhe ngokwalo Mthetho.

Umvuzo woMkhomishinala

22. INkulumbuso ngokucebisana noMphathiswa wePhondo onoxanduva lwezemali kufuneka, amaxesha ngamaxesha, afumanise umvuzo neminye imimiselo nemiqathango yengqesho yoMkhomishinala, ethathela ingqalelo izibonelelo ezikhoyo zePhondo.

Iminikelo

23. Iofisi yoMkhomishinala ingafumana iminikelo, ngokuxhomekeke kwimithetho nakwimiyalelo nakweminye imiqathango yezemali kaNondyebo.

ISAHLUKO 6 AMALUNGISELELO JIKELELE

Imigaqo

24. INkulumbuso ingenza imigaqo ebhekiselele nakowuphi na umba awuthatha ngokuba ubalulekile ukuze kuphunyelelwe iinjongo zalo Mthetho.

Amatyala nezohlwayo

25. Nabani na—

- (a) owaphula okanye osilelayo ukuthobela naliphi na ilungiselelo lalo Mthetho;
- (b) othintela uMkhomishinala ekwenzeni imisebenzi yakhe echazwe kulo Mthetho;
- (c) owalayo okanye osilelayo ukunikezela ngeenkukacha okanye ngengcaciso ngokubhekiselele kwisicelo soMkhomishinala, okanye onikezela ngeenkukacha zobuxoki nezilahlekisayo,

unetyala lolwaphulo-mthetho kwaye wagwetywa ufanele isohlwayo ezingadlulilyo kwi-R10 000.

Isihloko esifutshane nokuqala kokusebenza kwaso

26. Lo Mthetho ubizwa ngokuba nguMthetho woMkhomishinala wabaNtwana eNtshona Koloni, 2017, kwaye uza kusebenza ngomhla obekwe yiNkulumbuso kwisibhengezo kwiGazethi yePhondo.

IMEMORANDAMU YEENJONGO ZOQULONQO LOMTHETHO OSAYILWAYO WOMKHOMISHINALA WABANTWANA ENTSHONA KOLONI, 2017

1. IINJONGO ZOMTHETHO OSAYILWAYO

UQulunqo loMthetho osaYilwayo woMkhomishinala wabaNtwana eNtshona Koloni, 2017 (uMthetho osaYilwayo) lwenzelwe ukuqesha uMkhomishinala wabaNtwana (uMkhomishinala) kwiPhondo leNtshona Koloni. Ngaphezulu, uQulunqo loMthetho osaYilwayo lubonelela ngamandl' olawulo, imisebenzi noxanduva loMkhomishinala emenza akwazi ukwenza nokuphumeza umsebenzi wakhe awuyalelwe ngumgaqo-siseko kwicandelo 79 loMgaqo-siseko weNtshona Koloni, 1997 (uMthetho 1 ka-1998) (uMgaqo-siseko wePhondo) ukuze abek' iliso, ahlole, enze uphando, afundise, aphembelele, acebise kwaye enike ingxelo ngemiba echaphazela abantwana. Kwakhona uMthetho osaYilwayo uza kubonelela ngolawulo lweofisi yoMkhomishinala.

2. IMVELAPHI

2.1 UMkhomishinala wabaNtwana usungulwa licandelo 78(1) loMgaqo-siseko wePhondo. UMkhomishinala kufunekaancedise uRhulumente weNtshona Koloni ekukhuseleni iimfuno zabantwana eNtshona Koloni, ingakumbi ngokubhekiselele—

- (a) kwiinkonzo zezempilo;
- (b) kwimfundo;
- (c) kwiinkonzo zempilo-ntle;
- (d) ekuzonwabiseni nakubummandi; kunye
- (e) nezemidlalo.

2.2 UMgaqo-siseko wePhondo uzimisele ekuphumeza umthetho wephondo wokulawula Amandl' olawulo woMkhomishinala.

3. OKUQULATHWE NGUMTHETHO OSAYILWAYO

3.1 Isolotya 1

Eli solotya lichaza ngecandelo lenkcazelo yoQulunqo loMthetho osaYilwayo.

3.2 Isolotya 2

Eli solotya lichaza ngokuqeshwa koMkhomishinala ixesha elingangeminyaka emihlanu (5), elixesha elihlaziywa kubekanye. Uqesho lwenziwa ngokwezindululo ezenziwe yiPalamente yePhondo.

3.3 **Isoloty 3**

Eli soloty 3 lichaza ngeziqinisekiso zemfundo ukuze aqeshwe uMkhomishinala.

3.4 **Isoloty 4**

Eli soloty 4 lichaza ukuba uMkhomishinala kufanele enze isifungo seofisi phambi kokuqalisa imisebenzi yakhe.

3.5 **Isoloty 5**

Eli soloty 5 lichaza ngokususwa nangokurhoxiswa koMkhomishinala ngokwezindululo ezenziwe yiPalamente yePhondo.

3.6 **Isoloty 6**

Eli soloty 6 lichaza ngokugcwaliswa kwesithuba kwiofisi yoMkhomishinala. INkulumbuso ingaqesha ibambela Mkhomishinala ngokucebisana nePalamente yePhondo.

3.7 **Isoloty 7**

Eli soloty 7 lichaza nemithetho-siseko elawula uMkhomishinala ekwenzeni nasekuphumezeni amandl' olawulo nemisebenzi yakhe.

3.8 **Isoloty 8**

Eli soloty 8 lichaza ngemisebenzi yokubek' iliso yoMkhomishinala. UMkhomishinala kufuneka agcinele kufutshane intsebenziswano yakhe neentloko zamasebe ahlukeneyo ngokunjalo neyoMkhomishinala weeNkonzo zoLuleko kwiPhondo, neyoMkhomishinala weeNkonzo zamaPolisa kwiPhondo, neyeSebe lezoBulungisa, amaziko amaqela abucala ngokunjalo nee-arhente ezibonelela ngeenkonzo ebantwaneni, kunye namasebe kazwelonke ahambelana noku ngokubhekiselele kwimithetho echaphazela abantwana, ukuze kubekwe esweni amalungelo neemfuno zabantwana.

3.9 **Isoloty 9**

Eli soloty 9 lichaza uMkhomishinala ukuba aqhube okanye aqalise uphando afake nemibuzo ngokubhekiselele kuwo nawuphi na umba ophantsi kwemisebenzi yakhe.

3.10 **Isoloty 10**

Eli soloty uMkhomishinala ukuba aqhube okanye aqalise uphando afake nemibuzo ngokubhekiselele kuwo nawuphi na umba ophantsi kwemisebenzi yakhe kwaye ekhokele intsebenziswano namacendelo karhulumente, awabucala, awoluntu ngokunjalo nawamaziko ezemfundo ngokubhekiselele kuphando.

3.11 **Isoloty 11**

Eli soloty lichaza uMkhomishinala ukuba afundise uluntu malunga nemithetho eyahlukeneyo nangezinye izixhobo zokukhuthaza amalungelo neemfuno zabantwana.

3.12 **Isoloty 12**

Eli soloty lichaza uMkhomishinala ukuba aphembelele iPalamente yePhondo okanye kaZwelonke kwaye enze izindululo ezibhekiselele kumgaqo-nkqubo nakumthetho ochaphazela okanye osenokuchaphazela amalungelo wabantwana.

3.13 **Isoloty 13**

Eli soloty lichaza uMkhomishinala ukuba acebise kwaye enze izindululo nakubani na okanye nakweliphi na iqumrhu lombuso kwiPhondo elinemigaqo-nkqubo nemisebenzi enxulumene nabantwana ehloliweyo, ebekwe iliso okanye ephandiweyo nguMkhomishinala.

3.14 **Isoloty 14**

Eli soloty lichaza ngenkqubo efanele ilandelwe xa kwenziwa isicelo sokubekw' iliso, sokuhlolwa okanye sokuphandwa nguMkhomishinala.

3.15 **Isoloty 15**

Eli soloty lichaza ngamandl' olawulo nemisebenzi eyongeziweyo yoMkhomishinala. UMkhomishinala angahamba nabeeNkonzo zamaPolisi oMzantsi Afrika xa esebenzisa amandl' olawulo wakhe xa egqogqa kwaye ethimba ngokubhekiselele kuwo nawuphi na umba onxulumene neemfuno nokhuselo lwabantwana, anika umsila wengwe okanye isaziso nabani na ukuba avele phambi kwakhe, aqhube isifungo okanye ubugqina nakubani na ovela phambi koMkhomishinala njengengqina, kwaye aqeshe loo mntu ngokwemfuneko yokwenziwa kwemisebenzi yeofisi yoMkhomishinala.

3.16 **Isoloty 16**

Eli soloty 16 lichaza imisebenzi yoMkhomishinala yokwenza ingxelo rhoqo ngonyaka kwiPalamente yePhondo nokungenisa iingxelo ezikhethekileyo kwiPalamente yePhondo nanina na.

3.17 **Isoloty 17**

Eli soloty 17 lichaza ukuba akusayi kuba nguMkhomishinala okanye nabani na aqesheshileyo ozakuba noxanduva ngokubhekiselele nakwintoni na eyenziwe ngesihle phantsi koMthetho woMgaqo-siseko wePhondo.

3.18 **Isoloty 18**

Eli soloty 18 lichaza ukuba onke amaqumrhu ombuso afaneleancedise uMkhomishinala kwaye akukho mntu okanye qumrhu lombuso ekumele lingenelele kwimisebenzi yoMkhomishinala. Xa uMkhomishinala esenza isindululo nakubani na okanye nakweliphi na iqumrhu lombuso loo mntu lowo kufanele anike ingxelo ngembalelwano kuMkhomishinala malunga neentshukumo zakhe ekuphenduleni kwizindululo.

3.19 **Isoloty 19**

Eli soloty 19 lichaza ukuba onke amaqumrhu ombuso kunye namaziko karhulumente nawabucala abonelela ngeenkonzo ebantwaneni afanele, ngokwesicelo soMkhomishinala, anikezele ngazo naziphi na iinkcukacha kuMkhomishinala eziphantsi komsebenzi woMkhomishinala. Onke amaziko karhulumente abonelela ngeenkonzo ebantwaneni afanele amvumele uMkhomishinala ukuba afikelele kwizakhiwo zawo ukwenzela ukuba enze umsebenzi wakhe wokuba nguMkhomishinala.

3.20 **Isoloty 20**

Eli soloty 20 lichaza ukuba imisebenzi yolawulo yeofisi yoMkhomishinala ingenziwa ngamagosa asebenzela uRhulumente weNtshona Koloni.

3.21 **Isoloty 21**

Eli soloty 21 lichaza ukuba iPalamente yePhondo ingahlahl' imali yengxowa-mali ukwenzela ukuba uMkhomishinala akwazi ukwenza imisebenzi yakhe.

3.22 **Isoloty 22**

Eli soloty 22 lichaza ngomholo woMkhomishinala.

3.23 Isoloty 23

Eli soloty lichaza ukuba iofisi yoMkhomishinala ingafumana inkxaso-mali ngokuxhokeke kwimigaqo nakwimiyalelo kaNondyebo ngokunjalo nokunye okufunekayo ngokwezemali.

3.24 Isoloty 24

Eli soloty lichaza iNkulumbuso ukuba yenze nayiphi na imithetho ukuze kuphuyezwe iinjongo zoMthetho.

3.25 Isoloty 25

Eli soloty lichaza olwaphulo-mthetho nezohlwayo zokophula nakuphi na okulungiselelwe nguMthetho, ukuthintela uMkhomishinala ekwenzeni imisebenzi yakhe, okanye ukwala okanye ukusilela ukunikezela ngeenkukacha okanye ngenkcazelo kuMkhomishinala, okanye ngokunikezela ngeenkukacha zobuxoki nezilahlekisayo.

3.26 Isoloty 26

Eli soloty lichaza ngesihloko esifutshane soMthetho.

4. EKUBONISWENE NABO

Ekusungulweni kolu Qulunqo loMthetho osaYilwayo, kucetyiswene nala mahlakani alandelayo:

- (a) ISebe leNkulumbuso: IiNkonzo zezoMthetho; kunye
- (b) neSebe leNkulumbuso: UMgaqo-nkqubo neQhinga lokusebenza.

5. ABASEBENZI ABADINGEKAYO

Kucetyiswa ukuba iofisi yoMkhomishinala wabaNtwana ibekwiSebe leNkulumbuso. UMkhomishinala uza kufuna inkxaso ukuze akwazi ukwenza imisebenzi yakhe. Le misebenzi iza kukhutshwa ngokusebenzisa inkqubo yoPhuhliso lweSebe.

6. IMALI EDINGEKAYO

Uhlahlo-mali oluqikelelwayo lweofisi yoMkhomishinala wabaNtwana eNtshona Koloni zizigidi ezisibhozo (R8 m) ngonyaka kuquka neemfuno zendawo yokuhlala.

7. **AMAGUNYA OKWENZA UMTHETHO**

INkulumbuso yeNtshona Koloni yanelisekile zonke izimiso ezikulu Qulunqo loMthetho osaYilwayo angina phantsi kwamagunya okwenza umthetho wePhondo.

