

**NORTHERN CAPE PROVINCE**

**PROFENSI YA KAPA-BOKONE**



**NOORD-KAAP PROVINSIE**

**IPHONDO LOMNTLA KOLONI**

**EXTRAORDINARY • BUITENGEWONE**

**Provincial Gazette  
Kasete ya Profensi**

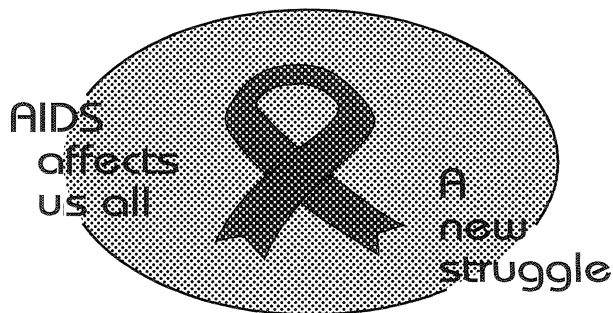
**iGazethi YePhondo  
Provinsiale Koerant**

**Vol. 20**

**KIMBERLEY, 5 SEPTEMBER 2013**

**No. 1728**

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## GENERAL NOTICES ALGEMENE KENNISGEWINGS

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### NOTICE 91 OF 2013

NORTHERN CAPE PROVINCIAL GOVERNMENT  
DEPARTMENT OF SPORT, ARTS AND CULTURE

PUBLICATION FOR PUBLIC COMMENT

PROPOSED

- NORTHERN CAPE PROVINCIAL ARCHIVES BILL, 2013
- NORTHERN CAPE ARTS AND CULTURE COUNCIL BILL, 2013
- NORTHERN CAPE HERITAGE RESOURCES AUTHORITY BILL, 2013

The above Bills are hereby published for public comment. Written representations may be made to the Department of Sport, Arts and Culture and must be directed to:

**Patrick Montwedi**  
Head: Office of the MEC  
1 Albertyn Street  
New Park  
Private Bag X6091  
KIMBERLEY  
8300

Fax: 053 8314152  
Tel: 053 8331454  
E-mail: [pmontwedi@ncpg.gov.za](mailto:pmontwedi@ncpg.gov.za)

no later than **20 September 2013**.



**Ms C Chotelo, MPL**  
Acting MEC for Sport, Arts and Culture

# BILL

To provide for a Provincial Archives for the Northern Cape Province; the proper management and care of the records of governmental bodies; the preservation and use of a provincial archival heritage; and to provide for matters connected therewith.

**BE IT ENACTED** by the Provincial Legislature of the Northern Cape Province as follows:-

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CHAPTER I  
INTERPRETATION

Definitions

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

“**appraisal**” means the archival function of determining the eventual disposal of records;

10

“**archives**” means records in the custody of an archives repository;

“**archives repository**” means any archives repository contemplated in section 6(1);

“**custody**” means the control of records based upon their physical possession;

15

“**Department**” means the Northern Cape Department of Sport, Arts and Culture listed in column 1 of Schedule 2 to the Public Service Act, 1994;

“**disposal authority**” means a written authority issued in terms of section 8(2)(a) specifying records to be transferred into the custody of the Provincial Archives or specifying records to be otherwise disposed off;

20

“**electronic records system**” means any records system in which information is generated electronically and stored by means of computer technology;

25

“**governmental body**” means any legislative, executive, judicial or administrative organ of state (including a statutory body) at the provincial or local level of government in the Province;

30

“**head of a governmental body**” means the chief executive officer of a governmental body or the person who is acting as such;

“**Head of Department**” means the Head of the Department listed in column 2 of Schedule 2 to the Public Service Act, 1994;

35

“**National Archives**” means the National Archives and Records Service of South Africa established by section 2 of the National Archives and Records Service of South Africa Act, 1996 (Act No. 43 of 1996);

40

“**non-public record**” means a record created or received by a private individual or a body other than one defined as a governmental body in terms of this Act or the National Archives and Records Service of South Africa Act, 1996 (Act No. 43 of 1996);

45

“**organ of state**” has the meaning set out in section 239 of the Constitution of the Republic of South Africa, 1996;

“**prescribe**” means prescribe by regulation;

50

“**Province**” means the Northern Cape Province referred to in section 103(1)(g) of the Constitution of the Republic of South Africa, 1996;

- “**Provincial Archives**” means the Northern Cape Provincial Archives established by section 2;
- “**Provincial Archivist**” means the Provincial Archivist appointed in terms of section 4(1); 5
- “*Provincial Gazette*” means the *Provincial Gazette* of the Province;
- “**Provincial Legislature**” means the Provincial Legislature of the Province referred to in section 104 of the Constitution of the Republic of South Africa, 1996; 10
- “**public record**” means a record created or received by a governmental body in pursuance of its activities;
- “**Public Service Act**” means the Public Service Act, 1994 (Proclamation No. 103 of 1994); 15
- “**record**” means recorded information regardless of form or medium;
- “**records classification system**” means a classification plan for the identification, arrangement, storage and retrieval of records; 20
- “**regulation**” means any regulation made under this Act;
- “**responsible Member**” means the Member of the Executive Council of the Province responsible for the administration of this Act; and 25
- “**this Act**” includes any regulation made under this Act.

## CHAPTER II THE PROVINCIAL ARCHIVES 30

### Establishment of the Northern Cape Provincial Archives

2. There is hereby, within the Department, established the Northern Cape Provincial Archives. 35

### Objects and functions of the Provincial Archives

3. The objects and functions of the Provincial Archives are to – 40
- (a) preserve public and non-public records with enduring value for use by the public and the State;
  - (b) make such records accessible and promote their use by the public; 45
  - (c) ensure the proper management and care of all public records;
  - (d) collect non-public records with enduring value of provincial significance which cannot be more appropriately preserved by another institution, with due regard to the need to document aspects of the Province’s experience neglected by archives repositories in the past; 50

- (e) promote co-operation and co-ordination between institutions having custody of non-public records with enduring value; and
- (f) promote an awareness of archives and records management and encourage archival and record management activities. 5

#### Provincial Archivist and staff

- 4. (1) The Provincial Archives must be managed by a Provincial Archivist appointed by the responsible Member on the basis of relevant experience and an appropriate archival qualification. 10
- (2) The Provincial Archivist manages the Provincial Archives under the direction of the Head of Department. 15
- (3) The Provincial Archivist must, in the performance of his or her functions, be assisted by officials appointed in terms of the Public Service Act.
- (4) (a) The Provincial Archivist may, in writing and subject to any conditions, delegate a power or assign a duty to a member of the staff and may at any time cancel such delegation or assignment. 20
- (b) A delegation or assignment does not divest the Provincial Archivist of the power delegated or duty assigned and he or she may at any time exercise the power or perform the duty concerned. 25

#### Powers and duties of Provincial Archivist

- 5. (1) The Provincial Archivist must – 30
  - (a) take measures to arrange, describe and retrieve records;
  - (b) provide information, consultation, research and other services related to records; 35
  - (c) maintain a provincial list of non-public records in the Province, which, in the opinion of the Head of Department, have enduring value;
  - (d) draft an appraisal policy for the Provincial Archives; 40
  - (e) generally, take such other steps and perform such other acts as may be necessary for or conducive to the achievement of the objects of the Provincial Archives. 45
- (2) The Provincial Archivist may –
  - (a) provide training in archival techniques and the management of records;

- (b) co-operate with organisations interested in archival matters or the management or records;
- (c) provide professional and technical support in aid of archival activities and the archival community; 5
- (d) with the concurrence of the responsible Member, exempt a governmental body from any provision of this Act;
- (e) require of a person who has made use of records in the custody of the Provincial Archives while researching a publication or dissertation to furnish a copy of the publication or dissertation to the Provincial Archives; 10
- (f) publish, in the *Provincial Gazette*, the appraisal policy and lists of records that may be destroyed; 15
- (g) make known information concerning records by means such as publications, exhibitions and the lending of records, with special emphasis on activities designed to reach out to less privileged sectors of society. 20

### CHAPTER III RECORDS

25

#### Custody and preservation of records

- 6. (1) The responsible Member may from time to time establish archives repositories under the control of the Provincial Archivist for the custody of records. 30
- (2) Public records identified in a disposal authority as having enduring value must be transferred to an archives repository when they have been in existence for 20 years: Provided that – 35
  - (a) no other Act of Parliament or the Provincial Legislature requires such records to be kept in the custody of a particular governmental body or person;
  - (b) the Provincial Archivist may, after consultation with the head of a governmental body, identify such records which – 40
    - (i) should remain in the custody of a governmental body; or
    - (ii) should be transferred to an archives repository before they have been in existence for 20 years; 45
  - (c) the Provincial Archivist may defer the transfer of any such records; and



- (d) the Provincial Archivist may grant permission for any public records to be transferred to an archives repository before they have been in existence for 20 years.
- (3) The Provincial Archivist must take measures to preserve and restore records. 5

#### Access and use of records

7. (1) Subject to any other Act of Parliament or the Provincial Legislature which deals with access to public records – 10
- (a) a public record in the custody of the Provincial Archives is available for public access if a period of 20 years has elapsed since the end of the year in which the record came into existence; 15
- (b) access to a public record in respect of which a period of less than 20 years has elapsed since the end of the year in which the record came into existence may be given by the Provincial Archivist upon request. 20
- (2) A non-public record in the custody of the Provincial Archives is available for public access subject to any conditions agreed upon at its acquisition in terms of section 9(1). 25
- (3) Notwithstanding subsections (1) and (2), the Provincial Archivist may refuse access to a record on the grounds of its fragile condition, provided that there shall be a right of appeal to the Head of Department against the refusal. 30
- (4) The responsible Member may make regulations as to the admission of the public to archives repositories, the making available of records for public access and the use of equipment for the making of copies of or extracts from records in the custody of the Provincial Archives. 35

#### Management of public records

8. (1) Subject to the provisions of this Act, the Provincial Archivist is charged with the proper management and care of public records in the custody of governmental bodies. 40
- (2) Without limiting the generality of subsection (1) –
- (a) no public record under the control of a governmental body may be transferred to an archives repository, destroyed, erased or otherwise disposed off without the written authorization of the Provincial Archivist; 45

- (b) the Provincial Archivist must –
- (i) determine records classification systems to be applied by governmental bodies; 5
  - (ii) determine the conditions subject to which records may be microfilmed or electronically reproduced; and
  - (iii) determine the conditions subject to which electronic records systems should be managed; 10
- (c) the Provincial Archivist must inspect public records in so far as such inspection may be necessary for the performance of his or her functions under the Act: Provided that the inspection of public records which contain information, the disclosure of which is restricted by any other Act of Parliament or the Provincial Legislature, may be done only with the consent of the head of the governmental body concerned. 15
- (3) The responsible Member may make regulations as to the management and care of public records in the custody of governmental bodies. 20
- (4) The Provincial Archivist may from time to time issue directives and instructions, not inconsistent with this Act, as to the management and care of public records in the custody of governmental bodies. 25
- (5) The head of a governmental body must, subject to any law governing the employment of personnel of the governmental body concerned and such requirements as may be prescribed, designate an official of the body to be the records manager of the body. 30
- (6) The records manager is responsible to see to it that the governmental body complies with the requirements of this Act.
- (7) Additional powers and functions may be prescribed to a records manager. 35

#### **Acquisition and management of non-public records**

9. (1) The Provincial Archivist may, on behalf of the State, acquire by purchase or donation or on loan for a temporary period or in perpetuity, either unconditionally or subject to such conditions as may be agreed upon, non-public records which, in his or her opinion, have enduring value of provincial significance and which are not more appropriately preserved by another institution. 40
- (2) Subject to any such conditions as may be applicable, non-public records acquired under subsection (1), must be deposited in the archives repository determined by the Provincial Archivist. 45

- (3) No person or institution having non-public records in his or her custody, which are recorded on the provincial list referred to in section 5(1)(c), may destroy, export or otherwise dispose off such records without –
- (a) reporting to the Provincial Archivist his or her intention to so dispose off such records at least 90 days in advance of such action; and 5
- (b) securing the approval of the Provincial Archivist for such action. 10

#### CHAPTER IV GENERAL PROVISIONS

##### Offences and penalties

10. (1) Any person who – 15
- (a) wilfully damages any public or non-public record in the control of a governmental body; or 20
- (b) otherwise than in accordance with this Act or any other law, removes, destroys or erases such record, 25
- is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 2 years, or both such fine and imprisonment. 25
- (2) Any person who fails to comply with section 9, is guilty of an offence and liable on conviction to a fine not exceeding R10 000.00 or imprisonment for a period not exceeding 2 years, or both such fine and imprisonment. 30
- (3) The Provincial Archivist may refuse to allow any person convicted of an offence in terms of subsection (1), access to an archives repository for such period as he or she may deem fit, subject to an appeal to the Head of Department. 35

##### Regulations

11. (1) The responsible Member may, by notice in the *Provincial Gazette*, make regulations regarding – 40
- (a) the establishment of a Provincial Advisory Archives Council and to provide for its constitution, functions and remuneration; 45
- (b) the terms and conditions governing the transfer of records under section 6(2); 45
- (c) the admission of the public to archives repositories, the making available of records for public access and the use of equipment for the making of copies of or extracts from records in the custody of the Provincial Archives; 50

- (d) the management and care of public records in the custody of governmental bodies;
- (e) requirements regarding the designation of an official on the establishment of a governmental body to be the records manager of the body; 5
- (f) additional powers and functions of record managers; and
- (g) any matter which is necessary or expedient to be prescribed in order to achieve or promote the objects of this Act. 10

#### Short title and commencement

12. This Act is called the Northern Cape Provincial Archives Act, 2013, and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*. 15

**KENNISGEWING 91 VAN 2013**

**PROVINSIALE REGERING VAN DIE NOORD-KAAP  
DEPARTEMENT VAN SPORT, KUNS EN KULTUUR  
PUBLIKASIE VIR OPENBARE KOMMENTAAR  
VOORGESTELDE**

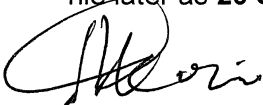
- NOORD-KAAPSE PROVINSIALE ARGIEFWETSONTWERP, 2013
- NOORD-KAAPSE WETSONTWERP OP DIE KUNSTE EN KULTUURRAAD, 2013
- WETSONTWERP OP DIE NOORD-KAAPSE ERFENISHULPBRONOWERHEID, 2013

Die bogenoemde Wetsontwerpe word hierby vir openbare kommentaar gepubliseer. Skriftelike voorleggings kan gedoen word aan die Departement van Sport, Kuns en Kultuur en moet gerig word aan:

**Patrick Montwedi**  
Hoof: Kantoor van die LUR  
Albertynstraat 1  
New Park  
Privaatsak X6091  
KIMBERLEY  
8300

Faks: 053 8314152  
Tel: 053 8331454  
E-pos: [pmontwedi@ncpg.gov.za](mailto:pmontwedi@ncpg.gov.za)

nie later as 20 September 2013 nie.



**Me C Chotelo, MPL**  
Waarnemende LUR vir Sport, Kuns en Kultuur

# WETSONTWERP

Om voorsiening te maak vir 'n Provinsiale Argief vir die Provinsie Noord-Kaap; die behoorlike bestuur en versorging van rekords van regeringsliggame; die bewaring en gebruik van 'n provinsiale argivale erfenis; en om voorsiening te maak vir aangeleenthede wat daarmee verband hou.

**DAAR WORD BEPAAL** deur die Provinsiale Wetgewer van die Provinsie Noord-Kaap, soos volg:-

## INDELING VAN ARTIKELS

5

### Artikel

#### HOOFSTUK I UITLEG

10

1. Woordomskrywing

#### HOOFSTUK II DIE PROVINSIALE ARGIEF

15

2. Instelling van die Noord-Kaapse Provinsiale Argief
3. Doelstellings en werksaamhede van die Provinsiale Argief
4. Provinsiale Argivaris en personeel
5. Bevoegdhede en pligte van Provinsiale Argivaris

20

#### HOOFSTUK III REKORDS

25

6. Bewaring en versorging van rekords
7. Toegang en gebruik van rekords
8. Bestuur van openbare rekords
9. Verkryging en bestuur van nie-openbare rekords

30

#### HOOFSTUK IV ALGEMENE BEPALINGS

10. Misdrywe en strawwe
11. Regulasies
12. Kort titel en inwerkingtreding

## HOOFTUK I UITLEG

### Woordomskrywing

5

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken –

“argiefbewaarplek” enige argiefbewaarplek beoog in artikel 6(1);

10

“argiewe” rekords in bewaring van ‘n argiefbewaarplek;

“beskikkingsmagtiging” ‘n geskrewe magtiging uitgereik ingevolge artikel 8(2)(a) wat rekords vermeld wat in die bewaring van die Provinsiale Argief oorgeplaas moet word of wat rekords vermeld wat op ‘n ander wyse oor beskik moet word;

15

“bewaring” die beheer van rekords gebaseer op die fisiese besit daarvan;

“Departement” die Noord-Kaapse Departement van Sport, Kunste en Kultuur gelys in kolom 1 van Bylae 2 tot die Staatsdienswet, 1994;

20

“Departementshoof” die Hoof van die Departement gelys in kolom 2 van Bylae 2 tot die Staatsdienswet, 1994;

“elektroniese rekordstelsel” enige rekordstelsel waarin inligting elektronies genereer en deur middel van rekenaartegnologie gestoor word;

25

“hierdie Wet” ook enige regulasie ingevolge hierdie Wet gemaak;

“hoof van ‘n regeringsliggaam” die hoof-uitvoerende beamppte van ‘n regeringsliggaam of die persoon wat as sodanig waarneem;

30

“keuring” die argivale funksie waarvolgens die uiteindelijke beskikking oor rekords bepaal word;

35

“Nasionale Argief” die Nasionale Argief en Rekordsdiens van Suid-Afrika ingestel by artikel 2 van die Wet op die Nasionale Argief en Rekordsdiens van Suid-Afrika, 1996 (Wet No. 43 van 1996);

40

“nie-openbare rekord” ‘n rekord geskep of ontvang deur ‘n private individu of ‘n liggaam anders as ‘n regeringsliggaam soos omskryf in hierdie Wet of die Wet op die Nasionale Argief en Rekordsdiens van Suid-Afrika, 1996 (Wet No. 43 van 1996);

“openbare rekord” ‘n rekord geskep of ontvang deur ‘n regeringsliggaam in die uitvoering van sy aktiwiteite;

45

“Provinsiale Argief” die Noord-Kaapse Provinsiale Argief ingestel by artikel 2;

“Provinsiale Argivaris” die Provinsiale Argivaris kragtens artikel 4(1) aangestel;

50

“Provinsiale Koerant” die *Provinsiale Koerant* van die Provinsie;

“**Provinsiale Wetgewer**” die Provinsiale Wetgewer van die Provinsie in artikel 104 van die Grondwet van die Republiek van Suid-Afrika, 1996, genoem;

5

“**Provinsie**” die Provinsie Noord-Kaap in artikel 103(1)(g) van die Grondwet van die Republiek van Suid-Afrika, 1996 genoem;

10

“**regeringsliggaam**” enige wetgewende, uitvoerende, regsprekende of administratiewe orgaan van die staat (insluitend ‘n statutêre liggaam) op die provinsiale of plaaslike vlak van regering in die Provinsie;

“**rekord**” vasgelegde inligting ongeag die vorm of medium;

15

“**rekordklassifikasiesstelsel**” ‘n klassifikasieplan vir die identifikasie, ordening, berging en herwinning van rekords;

“**regulasie**” ‘n regulasie uitgevaardig kragtens hierdie Wet;

20

“**Staatsdienswet**” die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994);

“**staatsorgaan**” ‘n instelling in artikel 239 van die Grondwet van die Republiek van Suid-Afrika, 1996 beskryf;

25

“**verantwoordelike Lid**” die Lid van die Uitvoerende Raad van die Provinsie verantwoordelik vir die toepassing van hierdie Wet; en

“**voorskryf**” voorskryf by regulasie.

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## HOOFSUK II DIE PROVINSIALE ARGIEF

### Instelling van die Noord-Kaapse Provinsiale Argief

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2. Daar word hierby, binne die Departement, die Noord-Kaapse Provinsiale Argief ingestel.

### Doelstellings en werksaamhede van die Provinsiale Argief

40

3. Die doelstellings en werksaamhede van die Provinsiale Argief is om –

45

(a) openbare en nie-openbare rekords wat blywende waarde het vir gebruik deur die publiek en die Staat te bewaar;

(b) sulke rekords toeganklik te maak en gebruik daarvan deur die publiek te bevorder;

50

(c) die behoorlike bestuur en versorging van alle openbare rekords te verseker;

(d) nie-openbare rekords met blywende waarde en van provinsiale belang wat nie op ‘n meer doelmatige wyse deur ‘n ander instansie bewaar kan word nie, te versamel, met behoorlike inagneming van die behoefte om aspekte van die Provinsie se ervaring wat in die verlede deur argiefbewaarplekke nagelaat is, te dokumenteer;



- (e) samewerking en koördinerings tussens instellings wat bewaarders van nie-openbare rekords met blywende waarde is te bevorder; en
- (f) 'n bewusheid van argiewe en rekordbestuur te bevorder, en argivale en rekordbestuursaktiwiteite aan te moedig.

#### Provinsiale Argivaris en personeel

4. (1) Die Provinsiale Argief word bestuur deur 'n Provinsiale Argivaris deur die verantwoordelike Lid aangestel op grond van toepaslike ondervinding en argiefkwalifikasie.
- (2) Die Provinsiale Argivaris bestuur die Provinsiale Argief onder leiding van die Departementshoof.
- (3) Die Provinsiale Argivaris word by die verrigting van sy of haar werksaamhede bygestaan deur werknemers aangestel ingevolge die Staatsdienswet.
- (4) (a) Die Provinsiale Argivaris kan, skriftelik en behoudens enige voorwaardes, aan 'n lid van die personeel 'n bevoegdheid delegeer of 'n plig opdra en kan te eniger tyd so 'n delegasie of opdrag intrek.
- (b) 'n Delegasie of opdrag ontnem die Provinsiale Argivaris nie van die bevoegdheid gedelegeer of plig opgedra nie, en hy of sy kan te eniger tyd self die bevoegdheid uitoefen of die plig verrig.

#### Bevoegdhede en pligte van Provinsiale Argivaris

5. (1) Die Provinsiale Argivaris moet –
- (a) die nodige maatreëls tref om rekords te orden, te beskryf en te herwin;
- (b) inligting, konsultasie, navorsing en ander dienste met betrekking tot rekords voorsien;
- (c) 'n provinsiale lys van nie-openbare rekords in die Provinsie, wat volgens die oordeel van die Departementshoof blywende waarde het, byhou;
- (d) 'n keuringsbeleid vir die Provinsiale Argief opstel;
- (e) in die algemeen dié ander stappe doen en dié ander handelinge verrig wat nodig of dienstig is ten einde die oogmerke van die Provinsiale Argief te bereik.
- (2) Die Provinsiale Argivaris kan –
- (a) opleiding in argivale tegnieke en die beheer van rekords voorsien;

- 5 (b) saamwerk met organisasies wat belangstel in argivale aangeleenthede of die bestuur van rekords;
- (c) professionele en tegniese bystand verleen ter ondersteuning van argivale aktiwiteite en die argivale gemeenskap;
- 10 (d) met die instemming van die verantwoordelike Lid, 'n regeringsliggaam vrystel van enige bepaling van hierdie Wet;
- (e) van 'n persoon wat tydens navorsing vir 'n publikasie of skripsie van rekords in bewaring van die Provinsiale Argief gebruik gemaak het, vereis om 'n kopie van die publikasie of skripsie aan die Provinsiale Argief te verskaf;
- 15 (f) die keuringsbeleid en lyste van rekords wat vernietig kan word, in die *Provinsiale Koerant* publiseer; en
- 20 (g) met besondere klem op aktiwiteite wat daarop gerig is om uit te reik na minder bevoorregte sektore van die samelewing, inligting met betrekking tot rekords bekendmaak deur middel van metodes soos publikasies, uitstallings en die uitleen van rekords.

### HOOFTUK III REKORDS

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#### Bewaring en versorging van rekords

6. (1) Die verantwoordelike Lid kan van tyd tot tyd argiefbewaarplesse vir die bewaring van rekords onder die beheer van die Provinsiale Argivaris instel.
- 30 (2) Openbare rekords wat in 'n beskikkingsmagtiging geïdentifiseer word as sou dit blywende waarde het, word na 'n argiefbewaarples oorgeplaas wanneer dit 20 jaar oud is: Met dien verstande dat –
- 35 (a) geen ander Parlements-wet of Wet van die Provinsiale Wetgewer vereis dat sulke rekords in bewaring van 'n besondere regeringsliggaam of persoon gehou moet word nie;
- 40 (b) die Provinsiale Argivaris, na oorleg met die hoof van 'n regeringsliggaam, dié rekords kan identifiseer wat –
- (i) in bewaring van 'n regeringsliggaam moet bly; of
- 45 (ii) na 'n argiefbewaarples oorgeplaas moet word voordat dit 20 jaar oud is;
- (c) die Provinsiale Argivaris die oorplasing van enige openbare rekords kan uitstel; en

(d) die Provinsiale Argivaris toestemming kan verleen dat enige openbare rekords na 'n argiefbewaarplek oorgeplaas word voordat dit 20 jaar oud is.

5 (3) Die Provinsiale Argivaris moet die stappe doen om rekords te bewaar en te restoureer.

### Toegang en gebruik van rekords

10 7. (1) Behoudens enige ander Parlements wet of Wet van die Provinsiale Wetgewer wat betrekking het op toegang tot openbare rekords –

15 (a) is 'n openbare rekord in bewaring van die Provinsiale Argief beskikbaar vir openbare toegang indien 'n tydperk van 20 jaar vanaf die einde van die jaar waarin die rekord tot stand gekom het, verloop het;

20 (b) kan die Provinsiale Argivaris op versoek toegang verleen tot 'n openbare rekord ten opsigte waarvan 'n tydperk korter as 20 jaar vanaf die einde van die jaar waarin die rekord tot stand gekom het, verloop het.

25 (2) 'n Nie-openbare rekord in bewaring van die Provinsiale Argief is beskikbaar vir openbare toegang behoudens enige voorwaardes waarop ooreengekom is tydens verkryging ingevolge artikel 9 (1) van hierdie Wet.

30 (3) Ondanks subartikels (1) en (2) kan die Provinsiale Argivaris toegang tot 'n rekord weier op grond van die swak toestand daarvan, behoudens 'n reg tot appèl na die Departementshoof teen die weiering.

35 (4) Die verantwoordelike Lid kan regulasies uitvaardig ten opsigte van die toelating van die publiek tot argiefbewaarplekke, die beskikbaarstelling van rekords vir openbare toegang en die gebruik van toerusting vir die maak van afdrucke van of uittreksels uit rekords in bewaring van die Provinsiale Argief.

### Bestuur van openbare rekords

40 8. (1) Behoudens die bepalings van hierdie Wet is die Provinsiale Argivaris verantwoordelik vir die behoorlike bestuur en versorging van openbare rekords in bewaring van regeringsliggame.

(2) Sonder om die algemeenheid van subartikel (1) te beperk –

45 (a) mag geen openbare rekord onder die beheer van 'n regeringsliggaam na 'n argiefbewaarplek oorgeplaas word, of vernietig, uitgewis of op enige ander wyse oor beskik word nie sonder die skriftelike magtiging van die Provinsiale Argivaris;

- (b) moet die Provinsiale Argivaris –
- (i) rekordklassifikasiesistels wat deur regeringsliggame toegepas moet word, bepaal;
- (ii) die voorwaardes vir die mikroverfilming of elektroniese reproduksie van rekords bepaal; en
- (iii) die voorwaardes vir die bestuur van elektroniese rekordstelsels bepaal;
- (c) moet die Provinsiale Argivaris openbare rekords inspekteer vir sover sodanige inspeksie nodig is vir die verrigting van sy of haar werksaamhede kragtens hierdie Wet: Met dien verstande dat die inspeksie van openbare rekords wat inligting bevat ten opsigte waarvan die bekendmaking beperk word deur 'n ander Parlements wet of Wet van die Provinsiale Wetgewer, slegs gedoen mag word met die toestemming van die hoof van die betrokke regeringsliggaam.
- (3) Die verantwoordelike Lid kan regulasies uitvaardig met betrekking tot die bestuur en versorging van openbare rekords in bewaring van regeringsliggame.
- (4) Die Provinsiale Argivaris kan van tyd tot tyd voorskrifte en instruksies uitreik, wat nie teenstrydig met hierdie Wet mag wees nie, met betrekking tot die bestuur en versorging van openbare rekords in bewaring van regeringsliggame.
- (5) Die hoof van 'n regeringsliggaam moet, behoudens enige wet wat die indiensstelling van personeel van die betrokke regeringsliggaam reël en sodanige vereistes as wat voorgeskryf word, 'n beampte van die liggaam aanwys as rekordbestuurder van die liggaam.
- (6) Die rekordbestuurder is daarvoor verantwoordelik om toe te sien dat die regeringsliggaam aan die vereistes van hierdie Wet voldoen.
- (7) Bykomende bevoegdheids en werksaamhede kan vir 'n rekordbestuurder voorgeskryf word.

#### Verkryging en bestuur van nie-openbare rekords

9. (1) Die Provinsiale Argivaris kan deur middel van aankoop of skenking of in bruikleen, hetsy tydelik of permanent, hetsy onvoorwaardelik of op die voorwaardes waarop ooreengekom word, namens die Staat nie-openbare rekords verkry wat na sy of haar mening blywende waarde van provinsiale betekenis het en nie op 'n meer doelmatige wyse deur 'n ander instansie bewaar kan word nie.
- (2) Behoudens die voorwaardes wat van toepassing kan wees, moet nie-openbare rekords wat kragtens subartikel (1) verkry is, geplaas word in die argiefbewaarplek wat die Provinsiale Argivaris bepaal.

5 (3) Geen persoon of instelling wat nie-openbare rekords wat opgeneem is in die provinsiale lys in artikel 5(1)(c) genoem in sy of haar bewaring het, mag sodanige rekords vernietig, uitvoer of op 'n ander manier daarvan ontslae raak nie sonder om –

(a) sy of haar voorneme om van die rekords ontslae te raak minstens 90 dae vooraf aan die Provinsiale Argivaris bekend te maak nie; en

10 (b) die Provinsiale Argivaris se goedkeuring daarvoor te verkry nie.

#### HOOFSTUK IV ALGEMENE BEPALINGS

##### Misdrywe en strawwe

15 10. (1) Iemand wat –

(a) opsetlik enige openbare of nie-openbare rekord onder die beheer van 'n regeringsliggaam beskadig; of

20 (b) so 'n rekord anders as ooreenkomstig hierdie Wet of enige ander wet verwyder, vernietig of uitwis,

25 is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of gevangenisstraf vir 'n tydperk van hoogstens 2 jaar of met beide daardie boete en gevangenisstraf.

30 (2) Iemand wat versuim om te voldoen aan artikel 9 is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens R10 000.00 of met gevangenisstraf vir 'n tydperk van hoogstens 2 jaar of met beide daardie boete en gevangenisstraf.

35 (3) Die Provinsiale Argivaris kan vir die tydperk wat hy of sy goedvind, weier om aan iemand wat aan 'n misdryf ingevolge subartikel (1) skuldig bevind is, toegang tot 'n argiefbewaarplek te verleen, behoudens 'n appèl na die Departementshoof.

##### Regulasies

40 11. (1) Die verantwoordelike Lid kan, by kennisgewing in die *Provinsiale Koerant*, regulasies maak aangaande –

(a) die instelling van 'n Provinsiale Raadgewende Argiefraad en om te voorsien vir sy samestelling, werksaamhede en vergoeding;

45 (b) die bedinge en voorwaardes wat die oordrag van rekords kragtens artikel 6(2) reël;

50 (c) die toelating van die publiek tot argiefbewaarplekke, die beskikbaarstelling van rekords vir openbare toegang en die gebruik van toerusting vir die maak van afskrifte van of uittreksels uit rekords in bewaring by die Provinsiale Argief;

- 5
- (d) die bestuur en versorging van openbare rekords in bewaring van owerheidsliggame;
- (e) vereistes rakende die toewysing van 'n beampte op die diensstaat van 'n owerheidsliggaam om die rekordbestuurder van die liggaam te wees;
- 10
- (f) bykomende bevoegdhede en werksaamhede van rekordbestuurders; en
- (g) enige aangeleentheid wat nodig of dienstig is om voor te skryf ten einde die doelstellings van hierdie Wet te bereik of te bevorder.

15

**Kort titel en inwerkingtreding**

12. Hierdie Wet heet die Noord-Kaapse Provinsiale Argiefwet, 2013, en tree in werking op 'n datum deur die Premier by proklamasie in die *Provinsiale Koerant* bepaal.

**NOTICE 92 OF 2013**

**BILL**

To establish a juristic person to be known as the Northern Cape Arts and Culture Council; to determine its objects, functions and operation; to regulate its staff and financial matters; and to provide for matters connected therewith.

**BE IT ENACTED** by the Provincial Legislature of the Northern Cape Province as follows:-

<b>ARRANGEMENT OF SECTIONS</b>		<b>5</b>
<b>Section</b>		
<b>CHAPTER I</b>		
<b>INTERPRETATION</b>		
1.	Definitions	
<b>CHAPTER II</b>		
<b>THE COUNCIL</b>		
2.	Establishment of the Northern Cape Arts and Culture Council	
3.	Objects of the Council	
4.	Composition of the Council	
5.	Powers and functions of the Council	
6.	Term of office of members of the Council and filling of vacancies	20
7.	Eligibility to serve on the Council	
8.	Conflicting interests	
9.	Removal from office	
10.	Remuneration of members of Council	
11.	Meetings of the Council	25
12.	Committees of Council	
<b>CHAPTER III</b>		
<b>STAFF MATTERS</b>		
13.	Staff of Council and remuneration	
14.	Chief executive officer	
15.	Removal of chief executive officer from office	
16.	Employment contract and performance agreement of chief executive officer	35
<b>CHAPTER IV</b>		
<b>FINANCE AND PROCUREMENT</b>		
17.	Finances	40
18.	Accountability, audits and reports	
19.	Appropriation of income and property	
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## CHAPTER V GENERAL PROVISIONS

21.	Delegation	
22.	Regulations	5
23.	Repeal of laws	
24.	Transitional and founding arrangements	
25.	Short title and commencement	

## CHAPTER I INTERPRETATION

### Definitions

1.	In this Act, unless the context otherwise indicates, –	15
	“ <b>chairperson</b> ” means the chairperson of the Council appointed in terms of section 4(6);	
	“ <b>chief executive officer</b> ” means the chief executive officer appointed in terms of section 13(1);	20
	“ <b>committee</b> ” means a committee of the Council appointed in terms of section 12;	
	“ <b>Constitution</b> ” means the Constitution of the Republic of South Africa, 1996;	25
	“ <b>Council</b> ” means the Northern Cape Arts and Culture Council established by section 2;	
	“ <b>Department</b> ” means the Provincial Department responsible for arts and culture in the Province;	30
	“ <b>district municipality</b> ” means a district municipality as defined in the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);	35
	“ <b>Executive Council</b> ” means the Executive Council of the Province as referred to in section 132 of the Constitution;	
	“ <b>family member</b> ” means a person’s –	40
	(a) spouse; or	
	(b) child, parent, brother or sister, whether such a relationship results from birth, marriage or adoption;	
	“ <b>financial year</b> ” means the period commencing on the first day of April in any year to the thirty-first day of March in the ensuing year, both days inclusive;	45
	“ <b>Head of Department</b> ” means the Head of the Department responsible for arts and culture in the Province;	



- “**head of the provincial treasury**” means the head of the provincial treasury in the Province referred to in section 17(1)(a) of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- “**member**” means a member of the Council; 5
- “**organ of state**” has the meaning set out in section 239 of the Constitution;
- “**political office-bearer**” means – 10
- (a) a member of the National Assembly or the National Council of Provinces or the Cabinet;
  - (b) a member of a provincial legislature;
  - (c) a diplomatic representative of the Republic who is not a member of the public service; 15
  - (d) a member of a house or council of traditional leaders;
  - (e) a member of a municipal council; or
  - (f) a national or provincial office-bearer of any political party;
- “**Premier**” means the Premier of the Province referred to in section 125 of the Constitution; 20
- “**Province**” means the Northern Cape Province referred to in section 103(1)(g) of the Constitution, or any part thereof; 25
- “*Provincial Gazette*” means the *Provincial Gazette* of the Province;
- “**region**” means the area of jurisdiction of a district municipality;
- “**Republic**” means the Republic of South Africa referred to in section 1 of the Constitution; 30
- “**responsible Member**” means the Member of the Executive Council responsible for arts and culture in the Province; 35
- “**the arts**” includes all forms of music, dance, drama, theatre, craft, visual art, literature and community art; and
- “**this Act**” includes any regulation made under this Act. 40

## CHAPTER II THE COUNCIL

### Establishment of the Northern Cape Arts and Culture Council 45

2. A juristic person to be known as the Northern Cape Arts and Culture Council is hereby established.

### Objects of the Council

3. The objects of the Council are, within the Province, to –
- (a) encourage and provide opportunities for persons to practice the arts; 5
  - (b) promote the appreciation, understanding and the enjoyment of the arts;
  - (c) promote the general application of the arts in the community; 10
  - (d) uphold and promote the right of persons to freedom in the practice of the arts;
  - (e) address historical imbalances in the provision of infrastructure and funding for the promotion of the arts; 15
  - (f) develop and promote the arts and encourage excellence in performance and expression in art works and forms;
  - (g) provide financing for facilities where art and cultural activities may be practiced; and 20
  - (h) encourage and recognise innovations and creativity in all art works and forms. 25

### Composition of the Council

4. (1) The Council consists of 8 members to be appointed by the responsible Member, subject to subsection (4). 30
- (2) Every one of the 5 regions in the Province must be represented in the Council.
- (3) The responsible Member must, before appointing members, request nominations to be made for suitable persons to serve as members of the Council in at least one newspaper circulating in the Province and in the *Provincial Gazette*. 35
- (4) Members of the Council must have special knowledge or experience in – 40
- (a) music;
  - (b) dance;
  - (c) theatre; 45
  - (d) film and video;
  - (e) literary arts; 50
  - (f) spoken word arts;

- (g) visual arts;
  - (h) crafts;
  - (i) community art and culture; 5
  - (j) art education;
  - (k) technical knowledge of the arts; 10
  - (l) law;
  - (m) finance; or
  - (n) management, 15
- and must be broadly representative of the gender, language and community composition of the Province.
- (5) The Head of Department or an official designated by the Head of Department to represent the Department and the chief executive officer are entitled to be present and take part in the discussions at meetings of the Council, but are not members of the Council and may not vote at such meetings. 20
  - (6) The responsible Member must appoint a chairperson and deputy chairperson from amongst the members of the Council. 25
  - (7) Before being appointed a member of the Council, the candidate must submit to the responsible Member an affidavit in which such candidate declares that he or she – 30
    - (a) is eligible for such appointment; and
    - (b) is not disqualified in terms of this Act from such appointment. 35
  - (8) The responsible Member is at any time entitled to call for proof to his or her satisfaction of the continued eligibility of any member or prospective member of the Council, or to undertake or cause to be undertaken any investigation or enquiry in that regard. 40

### **Powers and functions of the Council**

- 5. In order to achieve its objects, the Council may – 45
  - (a) give financial support, advice and information to persons, organisations and institutions that may approach it for that purpose;
  - (b) investigate and determine the need of, and give support, advice and information to persons, organisations and institutions; 50

- |     |  |    |
|-----|--|----|
| (c) | promote and encourage equity in arts and culture;  |    |
| (d) | conduct research into various fields of art;   |    |
| (e) | establish, compile and maintain a database of persons, organisations, institutions, equipment and facilities connected with the arts;  | 5  |
| (f) | raise funds with the written consent of the responsible Member to promote the objects of this Act;   | 10 |
| (g) | enter into agreements with persons, organisations or institutions with written consent of the responsible Member;  |    |
| (i) | establish, maintain and administer, or, with the written consent of the responsible Member, take over any enterprise or institution operating within the scope of its objects, powers or functions;  | 15 |
| (i) | provide training in any form of the arts and may establish, maintain and administer any institution providing such training;   | 20 |
| (j) | purchase, acquire, possess, hire, alienate or let, pledge or encumber movable property and with the approval of the responsible Member, with the concurrence of the head of the provincial treasury, purchase, acquire, possess, hire, alienate or let pledge or encumber, immovable property; | 25 |
| (k) | on request advise the responsible Member on matters and policy regarding the arts and culture;   |    |
| (l) | publish information on its objects and functions;  | 30 |
| (m) | report quarterly on its activities to the responsible Member; and  |    |
| (n) | perform such other functions that are necessary to achieve the objects of this Act.  | 35 |

#### **Term of office of members of the Council and filling of vacancies**

- |    |     |  |    |
|----|-----|--|----|
| 6. | (1) | A member may be appointed for a period of 5 years.   |    |
|    | (2) | A member whose term of office has expired is eligible for reappointment, but may not serve more than 2 terms of office.  | 40 |
|    | (3) | Any vacancy on the Council may be filled by appointment in the manner in which the member who vacates the office was required to be appointed, and any member so appointed holds office for the unexpired portion of the period for which the member who vacated the office was appointed. | 45 |

## Eligibility to serve on the Council

7. (1) To be eligible to serve as a member of the Council, and to continue to hold that office, a person must –
- (a) be a fit and proper person; 5
- (b) not be subject to any disqualification set out in subsection (2);
- (c) have submitted to the responsible Member the affidavit referred to in section 4(7); and 10
- (d) be a citizen of the Republic and ordinarily residing in the country.
- (2) A person may not be a member of the Council if that person - 15
- (a) is a political office-bearer;
- (b) is an unrehabilitated insolvent, or becomes insolvent and the insolvency results in the sequestration of his or her estate; 20
- (c) was once, or is removed from an office of trust on account of misconduct;
- (d) is subject to an order of a competent court holding that person to be mentally deranged; 25
- (e) within the previous ten years has been, or is, convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under Chapter 2 or 3 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) or an offence involving dishonesty; or 30
- (f) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine. 40
- (3) The provisions of subsections (1) and (2), read with the changes required by the context, apply to any official referred to in section 4(5).

### Conflicting interests

8. (1) A member of the Council must not –
- (a) engage in any activity that may undermine the integrity of the Council; 5
  - (b) attend, participate in or influence the proceedings during a meeting of the Council if, in relation to the matter before the Council, that member has an interest that precludes the member from performing the duties of a member of the Council in a fair, unbiased and proper manner; 10
  - (c) vote at any meeting of the Council in connection with a matter contemplated in paragraph (b); 15
  - (d) make private use of, or profit from, any confidential information obtained as a result of performing duties as a member of the Council; or 20
  - (e) divulge any information referred to in paragraph (d) to any third party, except as required as part of that person's official functions as a member of the Council.
- (2) If, at any time, it appears to a member of the Council that a matter before the Council concerns an interest of that member referred to in subsection (1)(b), the member must - 25
- (a) immediately and fully disclose the nature of that interest to the meeting; and 30
  - (b) withdraw from the meeting to allow the remaining members to discuss the matter and determine whether the member should be prohibited from participating in any further proceedings concerning that matter. 35

### Removal from office

9. (1) The responsible Member may, by written notice, remove any member of the Council from office – 40
- (a) on the grounds of misconduct or incompetence;
  - (b) if the member becomes subject to a disqualification contemplated in section 7(2); 45
  - (c) if the member is absent for more than two meetings of the Council in one year without sound reason, or, in the case of absence due to medical reasons, without presenting a valid medical certificate.

- (2) A decision to remove a member of the Council on the grounds of misconduct or incompetence must be based on a finding to that effect by an investigating tribunal appointed by the responsible Member.
- (3) A notice contemplated in subsection (1) must state the reasons for removal of the member. 5
- (4) The responsible Member may at any time disband the Council if he or she is, on reasonable grounds, convinced that the Council is not functioning properly or that it will be in the community's or public interest to do so. 10

### Remuneration of members of Council

10. (1) A member of the Council must be paid such reasonable remuneration and allowances out of the funds of the Council as the responsible Member, with the concurrence of the head of the provincial treasury, may from time to time determine. 15
- (2) A member of the Council, who is in the full-time employ of any organ of state, may not receive remuneration in terms of subsection (1). 20
- (3) Remuneration determined in terms of subsection (1) must be published in the *Provincial Gazette* by the responsible Member before it becomes effective.
- (4) Members of the Council are entitled to be reimbursed for any travelling and subsistence expenses reasonably incurred by them for the performance of their functions as members of the Council. 25

### Meetings of the Council

11. (1) The chairperson determines the date, time and place for the first meeting of the Council, and the chairperson, in consultation with the Council, determines the date, time and place for each subsequent meeting. 30
- (2) The chairperson, in consultation with the Council, may determine procedures at meetings of the Council, after due consideration of the principles of openness and transparency. 35
- (3) A majority of the members of the Council contemplated in section 4(1) is a quorum for a meeting of the Council. 40
- (4) The Council must attempt to reach its decision by consensus.
- (5) If the Council is unable to reach a consensual decision in any matter before it, the Council may resolve the matter by a simple majority vote on a motion. 45

- (6) In the event of an equality of votes regarding any matter put to the vote, the chairperson has a casting vote in addition to his or her deliberative vote.
- (7) Subject to subsections (4), (5) and (6), the Council may establish rules for its own proceedings. 5
- (8) The chief executive officer must take minutes or cause minutes to be taken at meetings of the Council.
- (9) Minutes of the proceedings of meetings of the Council must be retained at the offices of the Council and must be open to the public for inspection. 10
- (10) No person who has access to any information classified by the Council as confidential, may, without permission of the Council, divulge such information. 15
- (11) If a particular person is able to assist the Council in the consideration of a particular matter, the Council may co-opt that person for that purpose.
- (12) A person so co-opted is not entitled to vote at any meeting of the Council or a committee of the Council. 20
- (13) The Council must meet at least once every 3 months to, amongst other things, consider the report referred to in section 5(m). 25
- (14) The responsible Member may call a meeting of the Council if the Council fails to comply with subsection (13).
- (15) The chairperson must call an extraordinary meeting of the Council, if so requested by the responsible Member, the majority of members of the Council or chief executive officer. 30
- (16) Whenever any matter to be dealt with by the Council is of such a nature that it requires the immediate and urgent attention of the Council and it is not possible for the Council to meet in order to attend to the matter, all relevant documentation pertaining to such matter must forthwith be made available to each member by the chief executive officer for consideration. 35
- (17) A matter referred to in subsection (16) and agreed upon in writing by a simple majority of the Council members will, subject to subsection (18), be a resolution of the Council. 40
- (18) A resolution contemplated in subsection (17), must be reported to the Council by the chief executive officer at its next ensuing meeting and must be so recorded in the minutes of that meeting. 45



## Committees of Council

12. (1) The Council may establish committees, with the power to co-opt other persons, for the purpose of assisting it with the due and proper exercise and performance of any of its powers and functions in terms of this Act, and may likewise dissolve, extend, enlarge or limit any committee so established. 5
- (2) (a) A committee established under subsection (1), consists of no fewer than three members designated by the Council being suitable and appropriately qualified or experienced regarding matters relating to the functions of the committee in question. 10
- (b) The Council must designate a Council member serving on a committee as the chairperson of such committee. 15
- (3) A co-opted member of a committee serves in an advisory capacity, and may not vote at any meeting of such committee.

## CHAPTER III STAFF MATTERS

20

### Staff of Council and remuneration

13. (1) The Council – 25
- (a) must, subject to sections 14, 15 and 16 and with the concurrence of the responsible Member, appoint a suitably qualified and experienced person as chief executive officer, who –
- (i) subject to the direction and control of the Council, is responsible for all financial and administrative responsibilities pertaining to the functions of the Council; and 30
- (ii) is accountable to the Council; 35
- (b) must, with the concurrence of the responsible Member, determine a staff establishment for the Council; and
- (c) may, on the establishment contemplated in paragraph (b), appoint any other staff as may be necessary to enable the Council to perform its functions. 40
- (2) Section 7(1) and (2) and section 8, read with the changes required by the context, apply to the chief executive officer and each staff member to be appointed in terms of this Act. 45

- (3) The Council may, with the concurrence of the responsible Member and the head of the provincial treasury, determine the remuneration, allowances, employment benefits and other terms and conditions of appointment of a person appointed in terms of subsection (1). 5
- (4) The Council may delegate its powers in terms of subsection (1)(c) to the chief executive officer.
- (5) The responsible Member may, after consultation with the Council, second any official on the establishment of the Department to the Council in accordance with section 15(3) of the Public Service Act, 1994. 10

### Chief executive officer

14. (1) The chief executive officer, appointed in terms of section 13(1), must be a person who has appropriate qualifications, knowledge or experience regarding the business and operations of the Council. 15
- (2) The chief executive officer must have thorough knowledge of the financial and provisioning administration prescripts incumbent on the Council. 20
- (3) The Council must, when appointing a chief executive officer, through public invitation, request applications for that position.
- (4) The chief executive officer is appointed for such period and on such terms and conditions of service as the Council may, subject to section 13(3), determine, but - 25
- (a) the chief executive officer may not be so appointed for a period exceeding 5 years; 30
- (b) upon the expiration of the term of office of the chief executive officer, he or she is eligible for reappointment for one further term of 5 years only; 35
- (c) the chief executive officer may not undertake any other remunerative work, without the prior written consent of the Council.
- (5) The chief executive officer may, on 3 months' written notice tendered to the Council, resign from his or her office. 40
- (6) Whenever the office of chief executive officer is vacant or the chief executive officer is absent or incapacitated or refuses or fails to act, the powers and functions of the chief executive officer may be exercised and performed by any person designated as the acting chief executive officer by the responsible Member, but such person may not be the acting chief executive officer for a period exceeding 6 months in total. 45

- (7) While a person appointed as contemplated in subsection (6) so acts, he or she may exercise the powers and perform the functions of the chief executive officer.

**Removal of chief executive officer from office** 5

15. (1) The Council may remove the chief executive officer from office –
- (a) on account of his or her improper conduct; 10
  - (b) for unfitness for the functions of his or her office;
  - (c) on the ground of a permanent infirmity of mind or body which renders him or her incapable of discharging the functions of his or her office or discharging them properly; 15
  - (d) on the ground that he or she is or has become subject to a disqualification envisaged in section 7(2).
- (2) The Council may, in order to determine whether there exists sufficient cause for the removal of the chief executive officer from office as contemplated in subsection (1), initiate an inquiry or investigation for that purpose. 20
- (3) Whenever any inquiry or investigation, initiated as contemplated in subsection (2), is being undertaken, the Council may and with due regard to the provisions of the Labour Relations Act, 1995 (Act No. 66 of 1995), suspend the chief executive officer from his or her office pending the outcome of such an inquiry or investigation. 25
- (4) For the purposes of subsection (1)(a), non-compliance by the chief executive officer with any provision of this Act or the Public Finance Management Act, 1999 (Act No. 1 of 1999), amongst other things, constitutes improper conduct. 30

**Employment contract and performance agreement of chief executive officer** 35

16. (1) The appointment of the chief executive officer by the Council as contemplated in section 13(1) becomes effective from the date of the entering into a written employment contract with the Council, which employment contract must be for the duration of his or her term of office as chief executive officer. 40
- (2) The employment contract contemplated in subsection (1) must, as a minimum, contain the chief executive officer's personal particulars, term of office, conditions of service, powers, functions, responsibilities, duties as well as his or her remuneration, allowances and benefits. 45
- (3) In addition to the employment contract as contemplated in subsection (1), the chief executive officer must annually, prior to the commencement of the financial year concerned, conclude a performance agreement with the Council which performance agreement's term of operation must coincide with the financial year of the Council. 50

- (4) The performance agreement contemplated in subsection (3) must, as a minimum, contain a reference to the financial year to which such performance agreement pertains, the purpose of the chief executive officer's job, the key result areas, financial and management criteria, performance guidelines and targets of such job, as well as the standards for measuring the performance of the chief executive officer, by the Council, on at least a bi-annual basis. 5

**CHAPTER IV**  
**FINANCE AND PROCUREMENT** 10

**Finances**

17. (1) The Council is financed from – 15
- (a) money appropriated by the Provincial Legislature for the Council;
- (b) any money payable to the Council in terms of this Act;
- (c) income derived by the Council from its investment and deposit of surplus money in terms of subsection (6); and 20
- (d) all other monies legally accruing to the Council from any source.
- (2) The financial year of the Council is the period from 1 April in any year to 31 March of the following year. 25
- (3) The prescripts incumbent on a provincial public entity, contained in the Public Finance Management Act, 1999 (Act No. 1 of 1999), and the Treasury Regulations apply to the Council. 30
- (4) The Council must open and maintain an account in the name of the Council with a registered bank in the Republic and –
- (a) any money received by the Council must be deposited into that account; and 35
- (b) every payment on behalf of the Council must be made from that account. 40
- (5) Withdrawals from the account of the Council must be authorized on its behalf by two persons designated for that purpose by resolution of the Council.
- (6) The Council may invest or deposit money of the Council that is not immediately required for contingencies or to meet current expenditures – 45
- (a) on a call account or short-term fixed deposit with any registered bank or financial institution in the Republic; or

- (b) in an investment account with the Corporation for Public Deposits established in terms of section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984).
- (7) Any money standing to the credit of the Council at the end of any financial year of the Council, excluding such money as has been approved by the responsible Member, being necessary for the reasonable immediate running expenses of the Council, must be paid into the Provincial Revenue Fund. 5
- (8) No loan may be made out of the funds of the Council, or from any other funds administered or held in trust by the Council, to a member of the Council, or a member of the staff of the Council, or to a family member of such member of the Council or member of the staff of the Council. 10
- Accountability, audits and reports** 15
18. (1) The Council must –
- (a) account for state and other money received by, or paid for, or on account of the Council; and 20
- (b) cause the necessary accounting and related records to be kept, in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999). 25
- (2) The records referred to in subsection (1)(b) must be audited by the Auditor General.
- (3) The Council must, through the Head of Department, report at least quarterly in writing to the responsible Member on its activities. 30
- (4) The Council must submit the report and statements referred to in section 55(1) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), to the responsible Member in the way required by section 55(3) of that Act. 35
- (5) The responsible Member must, as soon as practicable after receiving the report and statements referred to in subsection (4), table it in the Provincial Legislature. 40
- (6) The Council must, in the report contemplated in subsection (4), as far as the exercise and performance of its powers and functions during the year being reported on, are concerned, also include reference to -
- (a) its achievements; 45
- (b) its failures;
- (c) the financial implications of all such achievements and failures;

- (d) any recommendations pertaining to its objects, for consideration.
- (7) The Council must establish an audit committee for the Council consisting of at least three persons in accordance with Treasury Regulation 27. 5
- (8) The audit committee must prepare, sign and submit to the Council, within 15 days of the end of each quarter, a report in respect of the operations, including the income and expenditure of the Council in respect of the preceding quarter. 10
- Appropriation of income and property**
19. The moneys appropriated by the Provincial Legislature to the Council as contemplated in section 17(1)(a), must be utilized in accordance with such appropriation and all other income, property and profits of the Council must be utilized exclusively for the achievement of its objects and in accordance with the provisions of this Act. 15
- Procurement**
20. (1) When procuring any supply or service, or hiring or letting anything or acquiring or granting any right or acquiring or disposing of any asset for or on behalf of the Council as contemplated in section 5, the Council must ensure that such procurement is effected in accordance with, and duly complies with – 20
- (a) the regulations made or instructions issued by the National Treasury in respect of an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective as contemplated in section 76(4)(c) of the Public Finance Management Act, 1999 (Act No. 1 of 1999); 25
- (b) the instructions issued by the Provincial Treasury as contemplated in section 18(2)(a) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), in respect of an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective; 30
- (c) the appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective as established by the Council, as contemplated in section 51(1)(a)(iii) of the Public Finance Management Act, 1999 (Act No. 1 of 1999) and Treasury Regulation 16A; and 35
- (d) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000). 40
- (2) The Council must adopt, within six months after the coming into operation of this Act, a procurement system consistent with subsection (1), which procurement system must be utilized for the procurement of all supplies, goods and services, as well as the disposal of supplies and goods by the Council. 45

CHAPTER V  
GENERAL PROVISIONS

Delegation

21. (1) The Council may, subject to subsections (2) and (3), in writing, delegate any of its powers, functions or duties in terms of this Act, to the chief executive officer or a committee of the Council. 5
- (2) The chief executive officer may, with the written permission of the Council, sub-delegate any power, function or duty delegated to him or her in terms of subsection (1), to any member of the staff of the Council. 10
- (3) A delegation or sub-delegation, as the case may be, may be withdrawn by the Council or the chief executive officer with the concurrence of the Council, respectively. 15

Regulations

22. (1) The responsible Member may, by notice in the *Provincial Gazette*, make regulations regarding – 20
- (a) fees to be paid to the Council or any institution administered by the Council; and 25
- (b) any other matter that may be necessary or expedient in order to achieve the objects of this Act.
- (2) Any regulation made in terms of subsection (1)(a), may only be made with the concurrence of the head of the provincial treasury. 30
- (3) No less than 1 month before any regulation is made under this section, the responsible Member must cause the text thereof to be published in the *Provincial Gazette* together with a notice declaring his or her intention to make that regulation and inviting interested persons to furnish any comments thereon or any representation which they may wish to make in regard thereto, to the responsible Member on or before a date mentioned in the notice. 35
- (4) The provisions of subsection (3) do not apply to an amendment made to any regulation published in terms of that subsection. 40

Repeal of laws

23. The laws mentioned in the Schedule are hereby repealed to the extent indicated in the third column of the Schedule. 45

**Transitional and founding arrangements**

24. (1) For the purpose of this section, “**previous Act**” means the Cultural Promotion Act, 1983 (Act No. 35 of 1983). 5
- (2) With effect from the date on which this Act comes into operation –
- (a) the Northern Cape Arts and Culture Council established in terms of the previous Act continues to exist and function as if established under the corresponding provision of this Act, until the responsible Member appoints a new Council in accordance with the provisions of section 4; 10
- (b) all assets, charges, rights, obligations and liabilities of any institution created in terms of the previous Act or administered by such institution, are transferred from that institution to the Council and the Council becomes the successor-in-law of the institution; and 15
- (a) anything done under a provision of the previous Act and which may be done under the corresponding provision of this Act is regarded to have been done under the latter provision. 20

**Short title and commencement**

25. This Act is called the Northern Cape Arts and Culture Council Act, 2013, and comes into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*. 25



**SCHEDULE**

**Laws repealed in terms of section 23(1)**

<b>No. and Year of Act</b>	<b>Short title of Act</b>	<b>Extent of repeal</b>
Act No. 35 of 1983	Culture Promotion Act, 1983	The whole
Act No. 65 of 1989	Cultural Affairs Act (House of Assembly), 1989	The whole

**KENNISGEWING 92 VAN 2013****WETSONTWERP**

Om 'n regs persoon bekend as die Noord-Kaapse Kunste en Kultuurraad in te stel; om sy doelstellings, werksaamhede en werking te bepaal; om sy personeel- en finansiële aangeleendiede te reël; en om voorsiening te maak vir aangeleendiede wat daarmee in verband staan.

**DAAR WORD BEPAAL** deur die Provinsiale Wetgewer van die Provinsie Noord-Kaap soos volg:-

**INDELING VAN ARTIKELS**

5

**Artikel****HOOFSTUK I  
UITLEG**

10

1. Woordomskrywing

**HOOFSTUK II  
DIE RAAD**

15

2. Instelling van die Noord-Kaapse Kunste en Kultuurraad
3. Doelstellings van die Raad
4. Samestelling van die Raad
5. Bevoegdhede en werksaamhede van die Raad
6. Ampstermyn van Raadslede en vulling van vakatures
7. Geskiktheid om in die Raad te dien
8. Botsende belange
9. Verwydering uit die amp
10. Vergoeding van lede van Raad
11. Vergaderings van die Raad
12. Komitees van Raad

20

25

**HOOFSTUK III  
PERSONEELAANGELEENDIEDE**

30

13. Personeel van die Raad en vergoeding
14. Hoof uitvoerende beampte
15. Verwydering van hoof uitvoerende beampte uit die amp
16. Indiensnemingskontrak en prestasie-ooreenkoms van hoof uitvoerende beampte

35

**HOOFSTUK IV  
FINANSIES EN VERKRYGINGSADMINISTRASIE**

17. Finansies
18. Rekenpligtigheid, oudits en verslae
19. Bewilliging van inkomste en eiendom
20. Verkrygingsadministrasie

40

HOOFTUK V  
ALGEMENE BEPALINGS

- 5 21. Delegasie  
22. Regulasies  
23. Herroeping van wette  
24. Oorgangs- en oprigtingsmaatreëls  
25. Kort titel en inwerkingtreding

10 HOOFTUK I  
UITLEG

Woordomskrywing

- 15 1. In hierdie Wet, tensy uit die samehang anders blyk, beteken, –
- 20 “boekjaar” die periode wat op die eerste dag van April in enige jaar begin tot op die een-en-dertigste dag van Maart in die daaropvolgende jaar, met inbegrip van albei dae;
- “Departement” die Provinsiale Departement verantwoordelik vir kunste en kultuur in die Provinsie;
- 25 “Departementshoof” die Hoof van die Departement verantwoordelik vir kunste en kultuur in die Provinsie;
- “die kunste” ook alle vorme van musiek, dans, drama, toneel, kunsvlyt, beeldende kuns, letterkunde en gemeenskapskuns;
- 30 “distriksmunisipaliteit” ‘n distriksmunisipaliteit soos omskryf in die Wet op Plaaslike Regering: Munisipale Strukture, 1998 (Wet No. 117 van 1998);
- “familielid” iemand se –
- 35 (a) gade; of  
(b) kind, ouer, broer of suster, hetsy van geboorte, huwelik of by aanneming;
- “Grondwet” die Grondwet van die Republiek van Suid-Afrika, 1996;
- 40 “hierdie Wet” ook enige regulasie ingevolge hierdie Wet gemaak;
- “hoof uitvoerende beampte” die hoof uitvoerende beampte kragtens artikel 13(1) aangestel;
- 45 “hoof van die provinsiale tesourie” die hoof van die provinsiale tesourie in die Provinsie genoem in artikel 17(1)(a) van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999);
- 50 “komitee” ‘n komitee van die Raad kragtens artikel 12 aangestel;
- “lid” ‘n lid van die Raad;

“politieke ampsbekleër” –

- 5 (a) ‘n lid van die Nasionale Vergadering of die Nasionale Raad van Provinsies of die Kabinet;
- (b) ‘n lid van ‘n provinsiale wetgewer;
- (c) ‘n diplomatieke verteenwoordiger van die Republiek wat nie ‘n lid van die staatsdiens is nie;
- (d) ‘n lid van ‘n huis of raad van tradisionele leiers;
- 10 (e) ‘n lid van ‘n munisipale raad; of
- (f) ‘n nasionale of provinsiale ampsbekleër van enige politieke party;

“Premier” die Premier van die Provinsie in artikel 125 van die Grondwet genoem;

15 “*Provinsiale Koerant*” die *Provinsiale Koerant* van die Provinsie;

“Provinsie” die Provinsie Noord-Kaap in artikel 103(1)(g) van die Grondwet genoem, of enige gedeelte daarvan;

20 “Raad” die Noord-Kaapse Kunste en Kultuurraad by artikel 2 ingestel;

“Republiek” die Republiek van Suid-Afrika in artikel 1 van die Grondwet genoem;

“staatsorgaan” ‘n instelling in artikel 239 van die Grondwet beskryf;

25 “streek” die regsgebied van ‘n distriksmunisipaliteit;

“Uitvoerende Raad” die Uitvoerende Raad van die Provinsie in artikel 132 van die Grondwet genoem;

30 “verantwoordelike Lid” die Lid van die Uitvoerende Raad verantwoordelik vir kunste en kultuur in die Provinsie; en

“voorsitter” die voorsitter van die Raad kragtens artikel 4(6) aangestel.

35

## HOOFSUK II DIE RAAD

### Instelling van die Noord-Kaapse Kunste en Kultuurraad

- 40 2. ‘n Regspersoon bekend as die Noord-Kaapse Kunste en Kultuurraad word hierby ingestel.

### Doelstellings van die Raad

3. Die doelstellings van die Raad is, om binne die Provinsie, –
- 5 (a) mense aan te moedig en vir hulle geleenthede te skep om die kunste te beoefen;
- (b) die waardering, begrip en genot van die kunste te bevorder;
- 10 (c) die algemene aanwending van die kunste in die gemeenskap te bevorder;
- (d) die reg van mense op die vrye beoefening van die kunste te handhaaf en bevorder;
- 15 (e) historiese ongelykhede in die voorsiening van infrastruktuurbevoorsiening vir bevordering van die kunste aan te spreek;
- (f) die kunste te ontwikkel en bevorder en voortreflikheid by uitvoering en uitdrukking in kunswerke en –vorme te ontwikkel;
- 20 (g) finansiering vir geriewe waar kuns en –kultuuraktiwiteite beoefen kan word te voorsien; en
- 25 (h) innovasies en kreatiwiteit by alle kunswerke en –vorme aan te moedig en te erken.

### Samestelling van die Raad

4. (1) Die Raad bestaan uit 8 lede wat, behoudens subartikel (4), deur die verantwoordelike Lid aangestel word.
- 30 (2) Elkeen van die 5 streke in die Provinsie word in die Raad verteenwoordig.
- (3) Die verantwoordelike Lid moet, alvorens lede aangestel word, by kennisgewing in die *Provinsiale Koerant* en in minstens een koerant wat in die Provinsie in omloop is, belanghebbendes nooi om persone te nomineer wat geskik is vir aanstelling as lede van die Raad.
- 35 (4) Raadslede moet besondere kennis of ondervinding hê van –
- 40 (a) musiek;
- (b) dans;
- 45 (c) toneel;
- (d) film en video;
- (e) woordkuns;
- 50 (f) retorika;

- (g) beeldende kunste;
- (h) kunsvlyt;
- 5 (i) gemeenskapskuns en -kultuur;
- (j) kunsopvoeding;
- (k) kunstegniek;
- 10 (l) die reg;
- (m) finansies; of
- 15 (n) bestuur,
- en moet algemeen verteenwoordigend van die geslags-, taal- en gemeenskapsamestelling van die Provinsie wees.
- 20 (5) Die Departementshoof of 'n beamppte deur die Departementshoof aangewys om die Departement te verteenwoordig en die hoof uitvoerende beamppte kan teenwoordig wees en deelneem aan die besprekings by die vergaderings van die Raad, maar is nie lede van die Raad nie en kan nie by die vergaderings stem nie.
- 25 (6) Die verantwoordelike Lid stel 'n lid van die Raad as voorsitter en 'n ander lid as ondervoorsitter aan.
- (7) Vóór aanstelling as lid van die Raad, lê die kandidaat 'n beëdigde verklaring
- 30 aan die verantwoordelike Lid voor, waarin die kandidaat verklaar dat hy of sy –
- (a) beskikbaar is vir die aanstelling; en
- 35 (b) nie kragtens hierdie Wet ongeskik is vir sodanige aanstelling nie.
- (8) Die verantwoordelike Lid kan te eniger tyd daarop aandrang dat
- 40 bevredigende bewys aan hom of haar gelever word van die volgehoue geskiktheid van enige lid of voornemende lid van die Raad, of om enige ondersoek of navrae in dié verband te onderneem of te laat onderneem.

### Bevoegdhede en werksaamhede van die Raad

5. Ten einde sy doelstellings te verwesenlik, kan die Raad –
- 45 (a) finansiële bystand, advies en inligting aan mense, organisasies en instellings wat hom vir daardie doel nader, gee;
- (b) die behoefte ondersoek en vasstel, en bystand, advies en inligting aan
- 50 mense, organisasies en instellings gee;

- 5 (c) billikheid in die kunste en kultuur bevorder en aamoedig;
- (d) navorsing in verskillende vertakkinge van die kuns doen;
- 5 (e) 'n databasis van mense, organisasies, instellings, toerusting en fasiliteite instel, saamstel en byhou;
- (f) met die skriftelike toestemming van die verantwoordelike Lid fondse om die doelstellings van hierdie Wet te bevorder, insamel;
- 10 (g) met skriftelike goedkeuring van die verantwoordelike Lid met mense, organisasies en instellings ooreenkomste aangaan;
- (h) enige onderneming of instelling wat binne die sfeer van sy doelstellings, bevoegdheede of werksaamhede funksioneer instel, byhou en bedryf;
- 15 (i) opleiding in enige kunstevorm gee en enige instelling wat daardie opleiding gee instel, byhou en bedryf;
- 20 (j) roerende goed koop, verkry, besit, huur, vervreem of uithuur, verpand of beswaar en met die goedkeuring van die verantwoordelike Lid, met die instemming van die hoof van die provinsiale tesourie, onroerende goed koop, verkry, besit, huur, vervreem of uithuur, verpand of beswaar;
- 25 (k) op versoek, die verantwoordelike Lid oor aangeleenthede en beleid aangaande die kunste en kultuur adviseer;
- (l) inligting aangaande sy doelstellings en werksaamhede publiseer;
- 30 (m) kwartaalliks oor sy aktiwiteite aan die verantwoordelike Lid verslag doen; en
- (n) daardie ander werksaamhede wat nodig is om die doelstellings van hierdie Wet te verwesenlik, uitvoer.

35 **Ampstermyn van lede van die Raad en aanvul van vakatures**

6. (1) 'n Lid word vir 'n tydperk van 5 jaar aangestel.
- 40 (2) 'n Lid wie se ampstermyn verstryk het, kan weer aangestel word, maar mag nie meer as 2 ampstermyne uitdien nie.
- (3) 'n Vakature in die Raad word aangevul op dieselfde manier as wat die lid wat die amp ontruim het veronderstel was om aangestel te gewees het, en die lid aldus aangestel, dien vir die onverstreke gedeelte van die tydperk waarvoor die lid wat die amp ontruim het, aangestel was.
- 45

**Geskiktheid om in die Raad te dien**

7. (1) Om geskik te wees om as lid van die Raad te dien en om in daardie amp voort te gaan, moet sò iemand –
- 5
- (a) 'n natuurlike persoon wees;
- (b) nie onderworpe wees aan 'n diskwalifisering in subartikel (2) uiteengesit nie;
- 10
- (c) die beëdigde verklaring in artikel 4(7) genoem by die verantwoordelike Lid indien; en
- (d) 'n burger van die Republiek wees en gewoonlik in die land woon.
- 15
- (2) Niemand dien as lid van die Raad as hy of sy –
- (a) 'n politieke ampsbekleër is nie;
- 20
- (b) 'n ongerehabiliteerde insolvent is, of insolvent word en die insolvensie tot die sekwestrasie van sy of haar boedel lei nie;
- (c) ooit op grond van wangedrag uit 'n vertrouensamp ontslaan is, of ontslaan word nie;
- 25
- (d) aan 'n bevel van 'n hof met regsbevoegdheid wat hom of haar geestelik versteurd bevind het, onderworpe is nie;
- (e) in die voorafgaande 10 jaar in die Republiek of elders aan diefstal, bedrog, vervalsing of uitgee van 'n vervalste stuk, meined, 'n misdryf ingevolge die Wet op Voorkoming en Bestryding van Korrupte Bedrywighede, 2004 (Wet No. 12 van 2004), 'n misdryf ingevolge Hoofstuk 2 of 3 van die Voorkoming van Georganiseerde Misdaadwet, 1998 (Wet No. 121 van 1998), 'n misdryf ingevolge die Finansiële Intelligensiesentrumwet, 2001 (Wet No. 38 van 2001) of 'n misdryf wat oneerlikheid behels, skuldig bevind is, of skuldig bevind word nie; of
- 30
- (f) aan enige ander misdryf begaan ná die inwerkingtreding van die Grondwet van die Republiek van Suid-Afrika, 1993 (Wet No. 200 van 1993) skuldig bevind is en tot gevangenisstraf sonder die keuse van 'n boete gevonnissen is.
- 40
- (3) Die bepalings van subartikels (1) and (2), geles in samehang met die veranderings vereis deur die konteks, is op enige beampte in artikel 4(5) bedoel, van toepassing.
- 45



### Botsende belange

8. (1) 'n Lid van die Raad –
- 5 (a) doen nie mee aan enige aktiwiteit wat die integriteit van die Raad kan ondermyn nie;
- 10 (b) woon nie die verrigtinge van 'n vergadering by, neem nie daaraan deel of oefen nie 'n invloed daarop uit nie as die betrokke lid ten opsigte van die aangeleentheid wat voor die Raad dien, 'n belang het wat hom of haar verhinder om die pligte van 'n lid van die Raad op 'n regverdige, onbevooroordeelde en behoorlike wyse na te kom;
- 15 (c) stem nie by enige vergadering van die Raad oor 'n aangeleentheid bedoel in paragraaf (b) nie;
- 20 (d) maak nie privaat gebruik van of trek nie voordeel uit enige vertroulike inligting verkry in die nakoming van sy of haar pligte as lid van die Raad nie; of
- (e) maak nie enige inligting in paragraaf (d) genoem aan enige derde party bekend nie, tensy dit as deel van sy of haar amptelike werksaamhede as lid van die Raad vereis word.
- 25 (2) Indien dit te eniger tyd vir 'n lid van die Raad lyk of 'n aangeleentheid wat voor die Raad dien, betrekking het op 'n belang van die betrokke lid in subartikel (1)(b) genoem -
- 30 (a) onthul die lid die aard van daardie belang onmiddellik en volledig aan die vergadering; en
- (b) onttrek die lid van die vergadering sodat die oorblywende lede die aangeleentheid kan bespreek en bepaal of die lid verbied behoort te word om aan enige verdere verrigtinge aangaande die aangeleentheid deel te neem.
- 35

### Verwydering uit die amp

9. (1) Die verantwoordelike Lid kan, by skriftelike kennisgewing, 'n lid van die Raad uit die amp verwyder –
- 40 (a) op grond van wangedrag of onbekwaamheid;
- 45 (b) as die lid onderworpe raak aan 'n diskwalifisering in artikel 7(2) bedoel;
- (c) indien die lid in een jaar meer as twee vergaderings van die Raad sonder geldige rede mis of, in die geval van afwesigheid om mediese redes, versuim om 'n geldige mediese sertifikaat te toon.

- 5 (2) 'n Besluit om 'n lid van die Raad op grond van wangedrag of onbekwaamheid uit die amp te verwyder, word gegrond op 'n bevinding te dien effekte deur 'n ondersoektribunaal wat deur die verantwoordelike Lid aangestel is.
- (3) 'n Kennisgewing in subartikel (1) bedoel, gee die redes vir die verwydering uit die amp van die lid aan.
- 10 (4) Die verantwoordelike Lid kan te eniger tyd die Raad ontbind as hy of sy op redelike gronde oortuig is dat die Raad nie behoorlik funksioneer nie of dat dit in die belang van die gemeenskap of die publiek is om dit te ontbind.

#### Vergoeding van lede van Raad

- 15 10. (1) 'n Lid van die Raad word sodanige redelike vergoeding en toelaes uit die fondse van die Raad betaal soos wat die verantwoordelike Lid, met die instemming van die hoof van die provinsiale tesourie, van tyd tot tyd mag bepaal.
- 20 (2) 'n Lid van die Raad wat voltyds in diens van 'n staatsorgaan is, ontvang nie kragtens subartikel (1) vergoeding nie.
- (3) Vergoeding kragtens subartikel (1) bepaal, word deur die verantwoordelike Lid in die *Provinsiale Koerant* gepubliseer voordat dit in werking tree.
- 25 (4) Lede van die Raad is geregtig op vergoeding vir enige redelike reis- en verblyfuitgawes wat hulle aangaan in die verrigting van hul werksaamhede as lede van die Raad.

#### 30 Vergaderings van die Raad

11. (1) Die voorsitter kan die datum, tyd en plek vir die eerste vergadering van die Raad bepaal en bepaal in oorleg met die Raad die datum, tyd en plek vir elke daaropvolgende vergadering.
- 35 (2) Die voorsitter bepaal in oorleg met die Raad prosedures vir vergaderings van die Raad, met behoorlike inagneming van die beginsels van openlikheid en deursigtigheid.
- 40 (3) 'n Meerderheid van die lede van die Raad bedoel in artikel 4(1) vorm 'n kworum vir 'n vergadering van die Raad.
- (4) Die Raad moet probeer om sy besluite deur konsensus te neem.
- 45 (5) As die Raad nie konsensus kan bereik oor enige aangeleentheid wat voor hom dien nie, kan hy die saak deur 'n gewone meerderheidstem op 'n mosie beslis.

- (6) In die geval van 'n staking van stemme rakende enige aangeleentheid waarvoor gestem word, het die voorsitter 'n beslissende stem bykomend tot sy of haar gewone stem.
- 5 (7) Die Raad bepaal behoudens subartikels (4), (5) en (6) reëls vir sy eie verrigtinge.
- (8) Die hoof uitvoerende beampte hou notule of laat notule van die vergaderings van die Raad hou.
- 10 (9) Notules van die verrigtinge van die vergaderings van die Raad word by die kantore van die Raad gehou en is toeganklik vir die publiek.
- (10) Niemand wat toegang het tot inligting wat die Raad as vertroulik klassifiseer, mag die inligting sonder toestemming van die Raad openbaar maak nie.
- 15 (11) Indien 'n bepaalde persoon in staat is om die Raad by die oorweging van 'n bepaalde aangeleentheid behulpsaam te wees, kan die Raad die persoon vir die doel koöpteer.
- 20 (12) Sodanige gekoöpteerde persoon het nie die reg om by 'n vergadering van die Raad of 'n komitee van die Raad te stem nie.
- (13) Die Raad vergader ten minste een keer elke 3 maande om onder andere die verslag in artikel 5(m) genoem, te oorweeg.
- 25 (14) Die verantwoordelike Lid kan 'n vergadering van die Raad belê as die Raad versuim om aan subartikel (13) te voldoen.
- 30 (15) Die voorsitter belê 'n buitengewone vergadering van die Raad as die verantwoordelike Lid, die meerderheid van lede van die Raad of die hoof uitvoerende beampte daarvoor vra.
- 35 (16) Wanneer 'n aangeleentheid wat voor die Raad moet dien uiteraard die onmiddellike en dringende aandag van die Raad verg en dit nie vir die Raad moontlik is om te vergader om daaraan aandag te gee nie, word alle dokumentasie met betrekking tot sodanige aangeleentheid sonder verwyld deur die hoof uitvoerende beampte aan alle lede vir oorweging beskikbaar gestel.
- 40 (17) Behoudens subartikel (18) is 'n aangeleentheid genoem in subartikel (16), waarop skriftelik deur 'n gewone meerderheid van die Raadslede ooreengekom word, 'n besluit van die Raad.
- 45 (18) 'n Besluit in subartikel (17) bedoel, word deur die hoof uitvoerende beampte aan die Raad oorgedra by die Raad se volgende vergadering en aldus in die notules van daardie vergadering aangeteken.

**Komitees van Raad**

- 5 12. (1) Die Raad kan komitees instel, met die bevoegdheid om ander persone te  
koöpteer, om hom by te staan met die behoorlike en korrekte uitoefening  
en verrigting van sy bevoegdhede en werksaamhede kragtens hierdie Wet en  
kan ook enige komitee wat op hierdie wyse ingestel is, ontbind, uitbrei,  
ver groot of beperk.
- 10 (2) (a) 'n Komitee ingevolge subartikel (1) ingestel, bestaan uit minstens  
drie lede aangewys deur die Raad wat geskik en behoorlik  
gekwalifiseer of ervare is aangaande aangeleenthede wat op die  
werksaamhede van die betrokke komitee betrekking het.
- 15 (b) Die Raad benoem 'n raadslid wat op 'n komitee dien as die  
voorsitter van sodanige komitee.
- (3) 'n Gekoöpteerde lid van 'n komitee dien in 'n raadgewende hoedanigheid en  
kan nie by enige vergadering van sodanige komitee stem nie.

20

**HOOFTUK III  
PERSONEELAANGELENTHED****Personeel van Raad en vergoeding**

- 25 13. (1) Die Raad –
- 30 (a) stel, met die instemming van die verantwoordelike Lid, 'n paslik  
gekwalifiseerde en ervare persoon as hoof uitvoerende beampte aan,  
wat behoudens artikels 14, 15 en 16 –
- 35 (i) onderhewig aan die voorskrifte en beheer van die Raad vir  
alle finansiële en administratiewe verantwoordelikhede met  
betrekking tot die werksaamhede van die Raad  
verantwoordelik is; en
- (ii) aan die Raad verantwoording doen;
- 40 (b) bepaal, met die instemming van die verantwoordelike Lid, 'n  
personeeldiensstaat vir die Raad; en
- (c) kan enige ander personeel wat nodig mag wees om die Raad in staat  
te stel om sy werksaamhede te verrig, aanstel op die diensstaat in  
paragraaf (b) bedoel.
- 45 (2) Artikel 7(1) en (2) en artikel 8, gelees in samehang met die veranderings  
vereis deur die konteks, is van toepassing op die hoof uitvoerende beampte  
en elke personeellid wat kragtens hierdie Wet aangestel is.

- 5
- (3) Die Raad kan, met die instemming van die verantwoordelike Lid en die hoof van die provinsiale tesourie, die vergoeding, toelaes, diensvoordele en ander bedinge en voorwaardes van aanstelling van 'n persoon kragtens subartikel (1) aangestel, bepaal.
- (4) Die Raad kan sy bevoegdhede kragtens subartikel (1)(c) aan die hoof uitvoerende beampte delegeer.
- 10
- (5) Die verantwoordelike Lid kan, na oorlegpleging met die Raad, ooreenkomstig artikel 15(3) van die Staatsdienswet, 1994, enige werknemer op die diensstaat van die Departement aan die Raad sekondeer.

### Hoof uitvoerende beampte

- 15
14. (1) Die hoof uitvoerende beampte, aangestel kragtens artikel 13(1), is iemand met gepaste kwalifikasies, kennis of ondervinding van die sake en werksaamhede van die Raad.
- 20
- (2) Die hoof uitvoerende beampte moet deeglike kennis van die finansiële- en verkrygingsadministrasievoorskrifte wat op die Raad betrekking het, hê.
- (3) By aanstelling van 'n hoof uitvoerende beampte vra die Raad by openbare uitnodiging aansoeke vir die betrokke betrekking.
- 25
- (4) Die hoof uitvoerende beampte word aangestel vir die tydperk en op die bedinge en diensvoorwaardes wat die Raad, behoudens artikel 13(3), mag bepaal, maar –
- 30
- (a) die hoof uitvoerende beampte word aangestel vir 'n tydperk van hoogstens 5 jaar;
- (b) by verstryking van die dienstermyn van die hoof uitvoerende beampte, kan hy of sy slegs vir een verdere termyn van 5 jaar in aanmerking kom vir heraanstelling;
- 35
- (c) die hoof uitvoerende beampte onderneem nie enige ander besoldigde werk sonder die voorafverkreë skriftelike toestemming van die Raad nie.
- 40
- (5) Die hoof uitvoerende beampte kan met 3 maande skriftelike kennisgewing aan die Raad uit sy of haar amp bedank.
- 45
- (6) Wanneer die amp van die hoof uitvoerende beampte vakant is of die hoof uitvoerende beampte afwesig of onbevoeg is of versuim of weier om op te tree, kan die bevoegdhede en werksaamhede van die hoof uitvoerende beampte uitgeoefen en verrig word deur enigiemand wat deur die verantwoordelike Lid as die waarnemende hoof uitvoerende beampte aangewys word, maar sodanige persoon tree nie vir langer as 'n totaal van 6 maande as waarnemende hoof uitvoerende beampte op nie.

- (7) Terwyl iemand aangestel soos in subartikel (6) bedoel, sodanig waarneem, kan hy of sy die hoof uitvoerende beampte se bevoegdhede uitoefen en sy of haar werksaamhede verrig.

5 **Verwydering van hoof uitvoerende beampte uit die amp**

15. (1) Die Raad kan die hoof uitvoerende beampte uit die amp verwyder –
- 10 (a) op grond van sy of haar onbehoorlike optrede;
- (b) vanweë ongeskiktheid vir die werksaamhede van sy of haar amp;
- 15 (c) op grond van 'n permanente ongesteldheid van gees of liggaam wat hom of haar onbekwaam maak om die werksaamhede van sy of haar amp te verrig of behoorlik te verrig;
- (d) op grond daarvan dat hy of sy onderworpe geraak het aan 'n diskwalifisering in artikel 7(2) bedoel.
- 20 (2) Die Raad kan 'n verhoor of ondersoek onderneem om te bepaal of daar voldoende rede vir die afdanking van die hoof uitvoerende beampte soos bedoel in subartikel (1), bestaan.
- 25 (3) Wanneer 'n verhoor of ondersoek soos in subartikel (2) bedoel, onderneem word, kan die Raad met behoorlike inagneming van die bepalings van die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995), die hoof uitvoerende beampte uit sy of haar amp skors, hangende die bevinding van sodanige verhoor of ondersoek.
- 30 (4) Vir die doeleindes van subartikel (1)(a), geld nie-nakoming deur die hoof uitvoerende beampte van enige bepaling van hierdie Wet of die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), onder andere, as onbehoorlike optrede.

35 **Indiensnemingskontrak en prestasie-ooreenkoms van hoof uitvoerende beampte**

- 40 16. (1) Die aanstelling van die hoof uitvoerende beampte deur die Raad, soos bedoel in artikel 13(1), word van krag vanaf die datum waarop 'n skriftelike indiensnemingskontrak met die Raad aangegaan word, welke kontrak die duur van sy of haar ampstermyn as hoof uitvoerende beampte dek.
- 45 (2) Die indiensnemingskontrak in subartikel (1) bedoel, bevat minstens die hoof uitvoerende beampte se persoonlike besonderhede, ampstermyn, diensvoorwaardes, bevoegdhede, werksaamhede, verantwoordelikhede en pligte, asook sy of haar vergoeding, toelaes en voordele.
- 50 (3) Bykomend tot die indiensnemingskontrak soos in subartikel (1) bedoel, gaan die hoof uitvoerende beampte jaarliks vóór die aanvang van die betrokke boekjaar 'n prestasie-ooreenkoms met die Raad aan, welke prestasie-ooreenkoms se termyn met die boekjaar van die Raad saamval.

- 5 (4) Die prestasie-ooreenkoms in subartikel (3) bedoel, verwys minstens na die boekjaar waarop sodanige prestasie-ooreenkoms betrekking het, die doel van die hoof uitvoerende beampte se werk, die sleutelresultate-areas, finansiële en bestuurskriteria, prestasieriglyne en doelwitte van sodanige werk, asook die standarde vir die beoordeling van die hoof uitvoerende beampte se prestasie op minstens 'n tweejaarlikse grondslag.

10 **HOOFTUK IV**  
**FINANSIES EN VERKRYGINGSADMINISTRASIE**

**Finansies**

- 15 17. (1) Die Raad word gefinansier uit –
- (a) geld deur die Provinsiale Wetgewer vir die Raad bewillig;
- (b) enige geld aan die Raad betaalbaar kragtens hierdie Wet;
- 20 (c) inkomste wat die Raad kragtens subartikel (6) uit sy belegging en deponering van oortollige geld kry; en
- (d) alle gelde wat wettig uit enige bron aan die Raad toeval.
- 25 (2) Die boekjaar van die Raad strek oor die tydperk van 1 April in enige jaar tot 31 Maart van die daaropvolgende jaar.
- (3) Die voorskrifte in die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999) en die Tesourieregulasies vervat wat deur 'n provinsiale openbare instelling nagekom moet word, geld vir die Raad.
- 30 (4) Die Raad open en onderhou 'n rekening in die naam van die Raad by 'n geregistreerde bank in die Republiek en -
- (a) deponeer al die geld wat die Raad ontvang in daardie rekening; en
- 35 (b) maak elke betaling namens die Raad uit daardie rekening.
- (5) Enige onttrekking uit die rekening van die Raad word namens hom gemagtig deur twee persone wat deur die Raad vir die doel gemagtig is.
- 40 (6) Die Raad kan geld van die Raad wat nie onmiddellik vir gebeurlikhede of lopende uitgawes benodig word nie, belê of deponeer –
- (a) in 'n dagrekening of korttermyn- vaste deposito by enige
- 45 geregistreerde bank of finansiële instelling in die Republiek; of

- (b) in 'n beleggingsrekening by die Korporasie vir Openbare Deposito's, ingestel kragtens artikel 2 van die Wet op die Korporasie vir Openbare Deposito's, 1984 (Wet No. 46 van 1984).
- 5 (7) 'n Saldo ten bate van die Raad aan die einde van 'n boekjaar van die Raad, uitgesonder geld wat die verantwoordelike Lid as noodsaaklik vir die redelike onmiddellike lopende uitgawes van die Raad goedkeur, word in die Provinsiale Inkomstefonds inbetaal.
- 10 (8) Geen lening word aan 'n lid van die Raad, of 'n lid van die personeel van die Raad, of aan 'n familielid van sodanige lid van die Raad, of lid van die personeel van die Raad uit die fondse van die Raad of uit enige ander fondse wat deur die Raad geadmistreer of in trust gehou word, gemaak nie.
- 15
- Rekenpligtigheid, oudits en verslae**
18. (1) Die Raad –
- 20 (a) gee rekenskap van Staats- en ander geld wat ontvang is deur, of betaal is vir of namens die Raad; en
- (b) hou die nodige boekhoukundige en verwante rekords by,
- 25 ooreenkomstig die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999).
- (2) Die rekords in subartikel 1(b) genoem, word deur die Ouditeur-Generaal ge-oudit.
- 30 (3) Die Raad doen deur die Departementshoof minstens kwartaalliks skriftelik aan die verantwoordelike Lid oor sy aktiwiteite verslag.
- (4) Die Raad lê die verslag en state genoem in artikel 55(!) van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), aan die verantwoordelike Lid voor op die wyse deur artikel 55(3) van daardie Wet vereis.
- 35
- (5) Die verantwoordelike Lid lê die verslag en state genoem in subartikel (4) so gou as moontlik ná ontvangs daarvan in die Provinsiale Wetgewer ter tafel.
- 40
- (6) Wat verslagdoening oor die uitoefening van sy bevoegdhede en die verrigting van sy werksaamhede gedurende die jaar betref, verwys die Raad in die verslag bedoel in subartikel (4) ook na -
- 45
- (a) sy prestasies;
- (b) sy mislukkings;
- 50 (c) die finansiële implikasies van alle sodanige prestasies en mislukkings;



- (d) enige aanbevelings met betrekking tot sy doelstellings, vir oorweging.
- 5 (7) Die Raad stel ooreenkomstig Tesourieregulasie 27 'n ouditkomitee, wat uit ten minste drie persone bestaan, vir die Raad in.
- 10 (8) Binne 15 dae vóór die einde van elke kwartaal onderteken en dien die ouditkomitee 'n verslag by die Raad in wat hy opstel oor die Raad se werksaamhede, insluitende sy inkomste en uitgawe vir die voorafgaande kwartaal.

### Toewysing van inkomste en eiendom

- 15 19. Die gelde wat die Provinsiale Wetgewer aan die Raad toewys, soos in artikel 17(1)(a) bedoel, word ooreenkomstig sodanige toewysing aangewend en alle ander inkomste, eiendom en winste van die Raad word uitsluitlik vir die verwesenliking van sy doelstellings en ooreenkomstig die bepalings van hierdie Wet aangewend.

### Verkrygingsadministrasie

- 20 20. (1) By die verkryging van enige goed of diens, of die huur of verhuur van enigets, of verlening van enige reg, of verkryging of verhandeling van enige bate vir of namens die Raad, soos bedoel in artikel 5, sorg die Raad dat sodanige verkryging geskied ooreenkomstig, en met behoorlike voldoening aan –
- 25 (a) die regulasies gemaak of instruksies uitgereik deur die Nasionale Tesourie ten opsigte van 'n geskikte verkryging- en voorsieningstelsel wat regverdig, billik, deursigtig, mededingend en lonend is, soos bedoel in artikel 76(4)(c) van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999);
- 30 (b) die instruksies uitgereik deur die Provinsiale Tesourie, soos bedoel in artikel 18(2)(a) van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), ten opsigte van 'n geskikte verkryging- en voorsieningstelsel wat regverdig, billik, deursigtig, mededingend en lonend is;
- 35 (c) die gepaste verkryging- en voorsieningstelsel wat regverdig, billik, deursigtig, mededingend en lonend is, soos ingestel deur die Raad en soos bedoel in artikel 51(1)(a)(iii) van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999) en Tesourieregulasie 16A; en
- 40 (d) die Wet op die Raamwerk vir 'n Voorkeurverkrygingsbeleid, 2000 (Wet No. 5 van 2000).
- 45 (2) Binne ses maande ná die inwerkingtreding van hierdie Wet keur die Raad in ooreenstemming met subartikel (1) 'n verkrygingstelsel goed, welke verkrygingstelsel aangewend moet word vir die verkryging van alle voorrade, goedere en dienste, asook vir die verhandeling van voorrade en goedere deur die Raad.
- 50

**HOOFSTUK V  
ALGEMENE BEPALINGS****Delegasie**

- 5
21. (1) Behoudens subartikels (2) en (3) kan die Raad enige van sy bevoegdhede, werksaamhede of pligte kragtens hierdie Wet aan die hoof uitvoerende beampte of 'n komitee van die Raad delegeer.
- 10 (2) Die hoof uitvoerende beampte kan met die skriftelike toestemming van die Raad enige bevoegdheid, werksaamheid of plig wat kragtens subartikel (1) aan hom of haar gedelegeer is, subdelegeer aan enige lid van die personeel van die Raad.
- 15 (3) 'n Delegasie of sub-delegasie, na gelang van die geval, kan onderskeidelik deur die Raad of deur die hoof uitvoerende beampte, met instemming van die Raad, teruggetrek word.

**Regulasies**

- 20
22. (1) Die verantwoordelike Lid kan, by kennisgewing in die *Provinsiale Koerant*, regulasies maak ten opsigte van –
- 25 (a) gelde betaalbaar aan die Raad of enige instelling deur die Raad bedryf; en
- (b) enige ander aangeleentheid wat nodig of dienstig is ten einde die oogmerke van hierdie Wet te bereik.
- 30 (2) 'n Regulasie kragtens subartikel (1)(a) gemaak, word alleenlik gemaak met die instemming van die hoof van die provinsiale tesourie.
- 35 (3) Minstens 1 maand voor 'n regulasie ooreenkomstig hierdie artikel gemaak word, laat die verantwoordelike Lid die teks daarvan in die *Provinsiale Koerant* publiseer, tesame met 'n kennisgewing waarin sy of haar voorneme om daardie regulasie te maak verklaar word en belanghebbendes genooi word om kommentaar te lewer daarop of vertoë wat hulle sou wou righ daaromtrent aan die verantwoordelike Lid op of voor 'n datum in die kennisgewing vermeld te laat kry.
- 40 (4) Die bepalinge van subartikel (3) geld nie ten opsigte van 'n wysiging aan 'n regulasie kragtens daardie subartikel gepubliseer nie.

**Herroeping van wette**

- 45
23. Die wette in die Bylae genoem word hierby in die mate in die derde kolom van die Bylae aangedui, herroep.

### Oorgangs- en oprigtingsmaatreëls

- 5
24. (1) Vir die doel van hierdie artikel, beteken “**vorige Wet**” die Wet op die Bevordering van Kultuur, 1983 (Wet No. 35 van 1983).
- (2) Vanaf die datum waarop hierdie Wet in werking tree –
- 10 (a) bestaan die Noord-Kaapse Kunste en Kultuurraad, kragtens die vorige Wet ingestel, voort asof dit ingestel is ingevolge die ooreenstemmende bepaling van hierdie Wet, totdat die verantwoordelike Lid ‘n nuwe Raad ooreenkomstig artikel 4 aanstel;
- 15 (b) word alle bates, laste, regte, pligte en verpligtinge van enige instelling kragtens die vorige Wet geskep of deur so ‘n instelling bestuur, vanaf daardie instelling na die Raad oorgedra en word die Raad die opvolger in regte van die instelling; en
- 20 (c) enigiets wat ingevolge die bepalings van die vorige Wet gedoen is en wat ingevolge die ooreenstemmende bepalings van hierdie Wet gedoen kan word, word geag ingevolge die laasgenoemde bepalings gedoen te wees.

### Kort titel en inwerkingtreding

- 25 25. Hierdie Wet heet die Noord-Kaapse Wet op die Kunste en Kultuurraad, 2013, en tree in werking op ‘n datum deur die Premier by proklamasie in die *Provinsiale Koerant* bepaal.

## BYLAE

## Wette herroep by artikel 23(1)

Nommer en Jaar van Wet	Kort titel van Wet	Mate van herroeping
Wet No. 35 van 1983	Wet op die Bevordering van Kultureel, 1983	Die geheel
Wet No. 65 van 1989	Wet op Kulturele Aangeleenthede (Volksraad), 1989	Die geheel

**NOTICE 93 OF 2013**

**BILL**

To provide for the constitution of a council for the Northern Cape Heritage Resources Authority and for the governance thereof by the Council; to determine its objects, functions and operation; to regulate its staff and financial matters; and to provide for matters connected therewith.

**BE IT ENACTED** by the Provincial Legislature of the Northern Cape Province as follows:-

	<b>ARRANGEMENT OF SECTIONS</b>	<b>5</b>
<b>Section</b>		
	<b>CHAPTER I</b> <b>INTERPRETATION</b>	<b>10</b>
1.	Definitions	
	<b>CHAPTER II</b> <b>THE AUTHORITY AND COUNCIL</b>	<b>15</b>
2.	Name and functioning of Authority	
3.	Object of the Authority	
4.	Powers, functions and duties of the Authority	
5.	Establishment of Council	
6.	Composition of the Council	<b>20</b>
7.	Term of office of members of the Council and filling of vacancies	
8.	Eligibility to serve on the Council	
9.	Conflicting interests	
10.	Removal from office	
11.	Remuneration of members of Council	<b>25</b>
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## CHAPTER I INTERPRETATION

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### Definitions

- |    |  |    |
|----|--|----|
| 1. | In this Act, unless the context otherwise indicates, –   |    |
|    | “ <b>Authority</b> ” means the Northern Cape Heritage Resources Authority referred to in section 2(a);   | 15 |
|    | “ <b>chairperson</b> ” means the chairperson of the Council appointed in terms of section 4(6);  | 20 |
|    | “ <b>chief executive officer</b> ” means the chief executive officer appointed in terms of section 14(1);  |    |
|    | “ <b>committee</b> ” means a committee of the Council appointed in terms of section 13;  | 25 |
|    | “ <b>Constitution</b> ” means the Constitution of the Republic of South Africa, 1996;  |    |
|    | “ <b>Council</b> ” means the Council of the Authority constituted in accordance with section 6;  | 30 |
|    | “ <b>Department</b> ” means the Provincial Department responsible for arts and culture in the Province;  |    |
|    | “ <b>district municipality</b> ” means a district municipality as defined in the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);               | 35 |
|    | “ <b>Executive Council</b> ” means the Executive Council of the Province as referred to in section 132 of the Constitution;  |    |
|    | “ <b>family member</b> ” means a person’s –  | 40 |
|    | (a) spouse; or   |    |
|    | (b) child, parent, brother or sister, whether such a relationship results from birth, marriage or adoption;  | 45 |
|    | “ <b>financial year</b> ” means the period commencing on the first day of April in any year to the thirty-first day of March in the ensuing year, both days inclusive; |    |
|    | “ <b>Head of Department</b> ” means the Head of the Department responsible for arts and culture in the Province;   |    |

- “**head of the provincial treasury**” means the head of the provincial treasury in the Province referred to in section 17(1)(a) of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- “**member**” means a member of the Council; 5
- “**National Act**” means the National Heritage Resources Act, 1999 (Act No. 25 of 1999);
- “**organ of state**” has the meaning set out in section 239 of the Constitution; 10
- “**political office-bearer**” means –
- (a) a member of the National Assembly or the National Council of Provinces or the Cabinet; 15
  - (b) a member of a provincial legislature;
  - (c) a diplomatic representative of the Republic who is not a member of the public service;
  - (d) a member of a house or council of traditional leaders;
  - (e) a member of a municipal council; or 20
  - (f) a national or provincial office-bearer of any political party;
- “**Premier**” means the Premier of the Province referred to in section 125 of the Constitution; 25
- “**Province**” means the Northern Cape Province referred to in section 103(1)(g) of the Constitution, or any part thereof;
- “**provincial estate**” means those heritage resources referred to in section 3 of the National Act, which have special qualities that make them significant in the context of the Province; 30
- “*Provincial Gazette*” means the *Provincial Gazette* of the Province;
- “**region**” means the area of jurisdiction of a district municipality; 35
- “**Republic**” means the Republic of South Africa referred to in section 1 of the Constitution;
- “**responsible Member**” means the Member of the Executive Council responsible for arts and culture in the Province; and 40
- “**this Act**” includes any regulation made under this Act.

## CHAPTER II THE AUTHORITY AND COUNCIL 45

### Name and functioning of Authority

2. The heritage resources authority of the Province, established by the responsible Member as a body corporate in terms of section 23 of the National Act –

- (a) is to be known as the Northern Cape Heritage Resources Authority;
- (b) is governed by a council constituted in accordance with section 6; and
- (c) must function as provided for in this Act. 5

### **Object of the Authority**

3. The object of the Authority is to identify and manage the provincial estate. 10

### **Powers, functions and duties of Authority**

4. The Authority must, for the Province, exercise the powers, perform the functions and carry out the duties – 15
- (a) provided for in this Act or any other law; and
  - (b) conferred or imposed on a provincial heritage authority by the National Act.

### **Establishment of Council** 20

5. (1) A Council for the Authority is hereby established –
- (a) to manage and control the affairs of the Authority; 25
  - (b) to be the accounting authority for the Authority as contemplated in section 49(2)(a) of the Public Finance Management Act, 1999 (Act No. 1 of 1999); and
  - (c) to exercise the powers and perform the functions conferred or imposed upon the Authority by this Act or any other law. 30
- (2) The Northern Cape Heritage Resources Council appointed by the responsible Member in terms of section 23 of the National Act, continues to exist and function as if established under subsection (1), until the responsible Member appoints a new Council in accordance with the provisions of section 6. 35

### **Composition of the Council** 40

6. (1) The Council consists of 8 members to be appointed by the responsible Member, subject to subsection (4). 40
- (2) Every one of the 5 regions in the Province must be represented in the Council. 45
- (3) The responsible Member must, before appointing members, request nominations to be made for suitable persons to serve as members of the Council in at least one newspaper circulating in the Province and in the *Provincial Gazette*.



- (4) Members of the Council must have special competence, experience and interest in the field of heritage resources and must be broadly representative of the gender, language and community composition of the Province.
- (5) The Head of Department or an official designated by the Head of Department to represent the Department and the chief executive officer are entitled to be present and take part in the discussions at meetings of the Council, but are not members of the Council and may not vote at such meetings. 5
- (6) The responsible Member must appoint a chairperson and deputy chairperson from amongst the members of the Council. 10
- (7) Before being appointed a member of the Council, the candidate must submit to the responsible Member an affidavit in which such candidate declares that he or she – 15
- (a) is eligible for such appointment; and
- (b) is not disqualified in terms of this Act from such appointment. 20
- (8) The responsible Member is at any time entitled to call for proof to his or her satisfaction of the continued eligibility of any member or prospective member of the Council, or to undertake or cause to be undertaken any investigation or enquiry in that regard. 25

#### **Term of office of members of the Council and filling of vacancies**

7. (1) A member may be appointed for a period of 5 years. 30
- (2) A member whose term of office has expired is eligible for reappointment, but may not serve more than 2 terms of office.
- (3) Any vacancy on the Council may be filled by appointment in the manner in which the member who vacates the office was required to be appointed, and any member so appointed holds office for the unexpired portion of the period for which the member who vacated the office was appointed. 35

#### **Eligibility to serve on the Council**

8. (1) To be eligible to serve as a member of the Council, and to continue to hold that office, a person must – 40
- (a) be a fit and proper person; 45
- (b) not be subject to any disqualification set out in subsection (2);
- (c) have submitted to the responsible Member the affidavit referred to in section 6(7); and

- (d) be a citizen of the Republic and ordinarily residing in the country.
- (2) A person may not be a member of the Council if that person -
- (a) is a political office-bearer; 5
- (b) is an unrehabilitated insolvent, or becomes insolvent and the insolvency results in the sequestration of his or her estate;
- (c) was once, or is removed from an office of trust on account of misconduct; 10
- (d) is subject to an order of a competent court holding that person to be mentally deranged; 15
- (e) within the previous ten years has been, or is, convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under Chapter 2 or 3 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) or an offence involving dishonesty; or 20
- (f) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine. 25
- (3) The provisions of subsections (1) and (2), read with the changes required by the context, apply to any official referred to in section 6(5). 30

### Conflicting interests

9. (1) A member of the Council must not – 35
- (a) engage in any activity that may undermine the integrity of the Council;
- (b) attend, participate in or influence the proceedings during a meeting of the Council if, in relation to the matter before the Council, that member has an interest that precludes the member from performing the duties of a member of the Council in a fair, unbiased and proper manner; 40
- (c) vote at any meeting of the Council in connection with a matter contemplated in paragraph (b); 45

- (d) make private use of, or profit from, any confidential information obtained as a result of performing duties as a member of the Council; or
  - (e) divulge any information referred to in paragraph (d) to any third party, except as required as part of that person's official functions as a member of the Council. 5
- (2) If, at any time, it appears to a member of the Council that a matter before the Council concerns an interest of that member referred to in subsection (1)(b), the member must - 10
- (a) immediately and fully disclose the nature of that interest to the meeting; and 15
  - (b) withdraw from the meeting to allow the remaining members to discuss the matter and determine whether the member should be prohibited from participating in any further proceedings concerning that matter. 20

**Removal from office**

10. (1) The responsible Member may, by written notice, remove any member of the Council from office – 25
- (a) on the grounds of misconduct or incompetence;
  - (b) if the member becomes subject to a disqualification contemplated in section 8(2); 30
  - (c) if the member is absent for more than two meetings of the Council in one year without sound reason, or, in the case of absence due to medical reasons, without presenting a valid medical certificate.
- (2) A decision to remove a member of the Council on the grounds of misconduct or incompetence must be based on a finding to that effect by an investigating tribunal appointed by the responsible Member. 35
- (3) A notice contemplated in subsection (1) must state the reasons for removal of the member. 40
- (4) The responsible Member may at any time disband the Council if he or she is, on reasonable grounds, convinced that the Council is not functioning properly or that it will be in the community's or public interest to do so.

**Remuneration of members of Council**

11. (1) A member of the Council must be paid such reasonable remuneration and allowances out of the funds of the Council as the responsible Member, with the concurrence of the head of the provincial treasury, may from time to time determine. 5
- (2) A member of the Council, who is in the full-time employ of any organ of state, may not receive remuneration in terms of subsection (1). 10
- (3) Remuneration determined in terms of subsection (1) must be published in the *Provincial Gazette* by the responsible Member before it becomes effective.
- (4) Members of the Council are entitled to be reimbursed for any travelling and subsistence expenses reasonably incurred by them for the performance of their functions as members of the Council. 15

**Meetings of the Council**

12. (1) The chairperson determines the date, time and place for the first meeting of the Council, and the chairperson, in consultation with the Council, determines the date, time and place for each subsequent meeting. 20
- (2) The chairperson, in consultation with the Council, may determine procedures at meetings of the Council, after due consideration of the principles of openness and transparency. 25
- (3) A majority of the members of the Council contemplated in section 6(1) is a quorum for a meeting of the Council. 30
- (4) The Council must attempt to reach its decision by consensus.
- (5) If the Council is unable to reach a consensual decision in any matter before it, the Council may resolve the matter by a simple majority vote on a motion. 35
- (6) In the event of an equality of votes regarding any matter put to the vote, the chairperson has a casting vote in addition to his or her deliberative vote.
- (7) Subject to subsections (4), (5) and (6), the Council may establish rules for its own proceedings. 40
- (8) The chief executive officer must take minutes or cause minutes to be taken at meetings of the Council. 45
- (9) Minutes of the proceedings of meetings of the Council must be retained at the offices of the Council and must be open to the public for inspection.

- (10) No person who has access to any information classified by the Council as confidential, may, without permission of the Council, divulge such information.
- (11) If a particular person is able to assist the Council in the consideration of a particular matter, the Council may co-opt that person for that purpose. 5
- (12) A person so co-opted is not entitled to vote at any meeting of the Council or a committee of the Council. 10
- (13) The Council must meet at least once every 3 months to, amongst other things, consider the report referred to in section 19(3).
- (14) The responsible Member may call a meeting of the Council if the Council fails to comply with subsection (13). 15
- (15) The chairperson must call an extraordinary meeting of the Council, if so requested by the responsible Member, the majority of members of the Council or chief executive officer. 20
- (16) Whenever any matter to be dealt with by the Council is of such a nature that it requires the immediate and urgent attention of the Council and it is not possible for the Council to meet in order to attend to the matter, all relevant documentation pertaining to such matter must forthwith be made available to each member by the chief executive officer for consideration. 25
- (17) A matter referred to in subsection (16) and agreed upon in writing by a simple majority of the Council members will, subject to subsection (18), be a resolution of the Council. 30
- (18) A resolution contemplated in subsection (17), must be reported to the Council by the chief executive officer at its next ensuing meeting and must be so recorded in the minutes of that meeting.

**Committees of Council** 35

13. (1) The Council may establish committees, with the power to co-opt other persons, for the purpose of assisting it with the due and proper exercise and performance of any of its powers and functions in terms of this Act, and may likewise dissolve, extend, enlarge or limit any committee so established. 40
- (2) (a) A committee established under subsection (1), consists of no fewer than three members designated by the Council being suitable and appropriately qualified or experienced regarding matters relating to the functions of the committee in question. 45
- (b) The Council must designate a Council member serving on a committee as the chairperson of such committee.
- (3) A co-opted member of a committee serves in an advisory capacity, and may not vote at any meeting of such committee. 50

**CHAPTER III**  
**STAFF MATTERS**

**Staff of Authority and remuneration**

- |     |      |  |    |
|-----|------|--|----|
| 14. | (1)  | The Council –  | 5  |
|     | (a)  | must, subject to sections 15, 16 and 17 and with the concurrence of the responsible Member, appoint a suitably qualified and experienced person as chief executive officer, who –  | 10 |
|     | (i)  | subject to the direction and control of the Council, is responsible for all financial and administrative responsibilities pertaining to the functions of the Authority; and  | 15 |
|     | (ii) | is accountable to the Council;   |    |
|     | (b)  | must, with the concurrence of the responsible Member, determine a staff establishment for the Authority; and   | 20 |
|     | (c)  | may, on the establishment contemplated in paragraph (b), appoint any other staff as may be necessary to enable the Authority to perform its functions.   | 25 |
| (2) |      | Section 8(1) and (2) and section 9, read with the changes required by the context, apply to the chief executive officer and each staff member to be appointed in terms of this Act.  |    |
| (3) |      | The Council may, with the concurrence of the responsible Member and the head of the provincial treasury, determine the remuneration, allowances, employment benefits and other terms and conditions of appointment of a person appointed in terms of subsection (1). | 30 |
| (4) |      | The Council may delegate its powers in terms of subsection (1)(c) to the chief executive officer.  | 35 |
| (5) |      | The responsible Member may, after consultation with the Council, second any official on the establishment of the Department to the Authority in accordance with section 15(3) of the Public Service Act, 1994.   | 40 |
| (6) |      | A person in the employ of the Authority when this Act comes into operation –   |    |
|     | (a)  | remains so employed;   | 45 |
|     | (b)  | retains his or her emoluments and other conditions of service; and   |    |

- (c) is employed additional to the staff establishment of the Authority determined in terms of subsection (1)(b).

**Chief executive officer**

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15. (1) The chief executive officer, appointed in terms of section 14(1), must be a person who has appropriate qualifications, knowledge or experience regarding the business and operations of the Authority.
- (2) The chief executive officer must have thorough knowledge of the financial and provisioning administration prescripts incumbent on the Authority.
- (3) The Council must, when appointing a chief executive officer, through public invitation, request applications for that position.
- (4) The chief executive officer is appointed for such period and on such terms and conditions of service as the Council may, subject to section 14(3), determine, but -
- (a) the chief executive officer may not be so appointed for a period exceeding 5 years;
- (b) upon the expiration of the term of office of the chief executive officer, he or she is eligible for reappointment for one further term of 5 years only;
- (c) the chief executive officer may not undertake any other remunerative work, without the prior written consent of the Council.
- (5) The chief executive officer may, on 3 months' written notice tendered to the Council, resign from his or her office.
- (6) Whenever the office of chief executive officer is vacant or the chief executive officer is absent or incapacitated or refuses or fails to act, the powers and functions of the chief executive officer may be exercised and performed by any person designated as the acting chief executive officer by the responsible Member, but such person may not be the acting chief executive officer for a period exceeding 6 months in total.
- (7) While a person appointed as contemplated in subsection (6) so acts, he or she may exercise the powers and perform the functions of the chief executive officer.

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**Removal of chief executive officer from office**

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16. (1) The Council may remove the chief executive officer from office –
- (a) on account of his or her improper conduct;

- (b) for unfitness for the functions of his or her office;
- (c) on the ground of a permanent infirmity of mind or body which renders him or her incapable of discharging the functions of his or her office or discharging them properly; 5
- (d) on the ground that he or she is or has become subject to a disqualification envisaged in section 8(2).
- (2) The Council may, in order to determine whether there exists sufficient cause for the removal of the chief executive officer from office as contemplated in subsection (1), initiate an inquiry or investigation for that purpose. 10
- (3) Whenever any inquiry or investigation, initiated as contemplated in subsection (2), is being undertaken, the Council may and with due regard to the provisions of the Labour Relations Act, 1995 (Act No. 66 of 1995), suspend the chief executive officer from his or her office pending the outcome of such an inquiry or investigation. 15
- (4) For the purposes of subsection (1)(a), non-compliance by the chief executive officer with any provision of this Act or the Public Finance Management Act, 1999 (Act No. 1 of 1999), amongst other things, constitutes improper conduct. 20
- Employment contract and performance agreement of chief executive officer** 25
17. (1) The appointment of the chief executive officer by the Council as contemplated in section 14(1) becomes effective from the date of the entering into a written employment contract with the Council, which employment contract must be for the duration of his or her term of office as chief executive officer. 30
- (2) The employment contract contemplated in subsection (1) must, as a minimum, contain the chief executive officer's personal particulars, term of office, conditions of service, powers, functions, responsibilities, duties as well as his or her remuneration, allowances and benefits. 35
- (3) In addition to the employment contract as contemplated in subsection (1), the chief executive officer must annually, prior to the commencement of the financial year concerned, conclude a performance agreement with the Council which performance agreement's term of operation must coincide with the financial year of the Council. 40
- (4) The performance agreement contemplated in subsection (3) must, as a minimum, contain a reference to the financial year to which such performance agreement pertains, the purpose of the chief executive officer's job, the key result areas, financial and management criteria, performance guidelines and targets of such job, as well as the standards for measuring the performance of the chief executive officer, by the Council, on at least a bi-annual basis. 45



CHAPTER IV  
FINANCE AND PROCUREMENT

Finances

18. (1) The Authority is financed from – 5
- (a) money appropriated by the Provincial Legislature for the Authority;
  - (b) any money payable to the Authority in terms of this Act; 10
  - (c) income derived by the Authority from its investment and deposit of surplus money in terms of subsection (6); and
  - (d) all other monies legally accruing to the Authority from any source. 15
- (2) The financial year of the Authority is the period from 1 April in any year to 31 March of the following year.
- (3) The prescripts incumbent on a provincial public entity, contained in the Public Finance Management Act, 1999 (Act No. 1 of 1999), and the Treasury Regulations apply to the Authority. 20
- (4) The Council must open and maintain an account in the name of the Authority with a registered bank in the Republic and – 25
- (a) any money received by the Authority must be deposited into that account; and
  - (b) every payment on behalf of the Authority must be made from that account. 30
- (5) Withdrawals from the account of the Authority must be authorized on its behalf by two persons designated for that purpose by resolution of the Council. 35
- (6) The Council may invest or deposit money of the Authority that is not immediately required for contingencies or to meet current expenditures -
- (a) on a call account or short-term fixed deposit with any registered bank or financial institution in the Republic; or
  - (b) in an investment account with the Corporation for Public Deposits established in terms of section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984).

- (7) Any money standing to the credit of the Authority at the end of any financial year of the Authority, excluding such money as has been approved by the responsible Member, being necessary for the reasonable immediate running expenses of the Authority, must be paid into the Provincial Revenue Fund. 5
- (8) No loan may be made out of the funds of the Authority, or from any other funds administered or held in trust by the Authority, to a member of the Council, or a member of the staff of the Authority, or to a family member of such member of the Council or member of the staff of the Authority. 10

### Accountability, audits and reports

19. (1) The Council must – 15
- (a) account for state and other money received by, or paid for, or on account of the Authority; and
- (b) cause the necessary accounting and related records to be kept, 20
- in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999).
- (2) The records referred to in subsection (1)(b) must be audited by the Auditor General. 25
- (3) The Authority must, through the Head of Department, report at least quarterly in writing to the responsible Member on its activities.
- (4) The Authority must submit the report and statements referred to in section 55(1) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), to the responsible Member in the way required by section 55(3) of that Act. 30
- (5) The responsible Member must, as soon as practicable after receiving the report and statements referred to in subsection (4), table it in the Provincial Legislature. 35
- (6) The Authority must, in the report contemplated in subsection (4), as far as the exercise and performance of its powers and functions during the year being reported on, are concerned, also include reference to - 40
- (a) its achievements;
- (b) its failures; 45
- (c) the financial implications of all such achievements and failures;
- (d) any recommendations pertaining to its objects, for consideration.

- (7) The Council must establish an audit committee for the Authority consisting of at least three persons in accordance with Treasury Regulation 27.
- (8) The audit committee must prepare, sign and submit to the Authority, within 15 days of the end of each quarter, a report in respect of the operations, including the income and expenditure of the Authority in respect of the preceding quarter. 5

#### Appropriation of income and property

20. The moneys appropriated by the Provincial Legislature to the Authority as contemplated in section 17(1)(a), must be utilized in accordance with such appropriation and all other income, property and profits of the Authority must be utilized exclusively for the achievement of its objects and in accordance with the provisions of this Act. 10  
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#### Procurement

21. (1) When procuring any supply or service, or hiring or letting anything or acquiring or granting any right or acquiring or disposing of any asset for or on behalf of the Authority, the Council must ensure that such procurement is effected in accordance with, and duly complies with – 20
- (a) the regulations made or instructions issued by the National Treasury in respect of an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective as contemplated in section 76(4)(c) of the Public Finance Management Act, 1999 (Act No. 1 of 1999); 25
- (b) the instructions issued by the Provincial Treasury as contemplated in section 18(2)(a) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), in respect of an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective; 30  
35
- (c) the appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective as established by the Council, as contemplated in section 51(1)(a)(iii) of the Public Finance Management Act, 1999 (Act No. 1 of 1999) and Treasury Regulation 16A; and 40
- (d) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).
- (2) The Council must adopt, within six months after the coming into operation of this Act, a procurement system consistent with subsection (1), which procurement system must be utilized for the procurement of all supplies, goods and services, as well as the disposal of supplies and goods by the Council. 45

## CHAPTER V GENERAL PROVISIONS

### Delegation

- |     |     |  |    |
|-----|-----|--|----|
| 22. | (1) | The Council may, subject to subsections (2) and (3), in writing, delegate any of the Authority's powers, functions or duties in terms of this Act, to the chief executive officer or a committee of the Council.       | 5  |
|     | (2) | The chief executive officer may, with the written permission of the Council, sub-delegate any power, function or duty delegated to him or her in terms of subsection (1), to any member of the staff of the Authority. | 10 |
|     | (3) | A delegation or sub-delegation, as the case may be, may be withdrawn by the Council or the chief executive officer with the concurrence of the Council, respectively.  | 15 |

### Regulations

- |     |     |  |    |
|-----|-----|--|----|
| 23. | (1) | The responsible Member may, by notice in the <i>Provincial Gazette</i> , make regulations regarding –  | 20 |
|     | (a) | fees to be paid to the Authority or any institution administered by the Authority; and   | 25 |
|     | (b) | any other matter that may be necessary or expedient in order to achieve the objects of this Act.   |    |
|     | (2) | Any regulation made in terms of subsection (1)(a), may only be made with the concurrence of the head of the provincial treasury.   | 30 |
|     | (3) | No less than 1 month before any regulation is made under this section, the responsible Member must cause the text thereof to be published in the <i>Provincial Gazette</i> together with a notice declaring his or her intention to make that regulation and inviting interested persons to furnish any comments thereon or any representation which they may wish to make in regard thereto, to the responsible Member on or before a date mentioned in the notice. | 35 |
|     | (4) | The provisions of subsection (3) do not apply to an amendment made to any regulation published in terms of that subsection.  | 40 |

### Short title and commencement

- |     |   |    |
|-----|---|----|
| 24. | This Act is called the Northern Cape Heritage Resources Authority Act, 2013, and comes into operation on a date fixed by the Premier by proclamation in the <i>Provincial Gazette</i> . | 45 |
|-----|---|----|

**KENNISGEWING 93 VAN 2013**

**WETSONTWERP**

Om voorsiening te maak vir die konstituering van 'n raad vir die Noord-Kaapse Erfenishulpbronowerheid en vir die bestuur daarvan deur die Raad; om sy doelstellings, werksaamhede en werking te bepaal, om sy personeel- en finansiële sake te reël; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

**DAAR WORD BEPAAL** deur die Provinsiale Wetgewer van die Provinsie Noord-Kaap soos volg:-

**INDELING VAN ARTIKELS**

5

**Artikel**

**HOOFSUK I  
UITLEG**

10

1. Woordomskrwyng

**HOOFSUK II  
DIE OWERHEID EN RAAD**

15

2. Naam en funksionering van Owerheid  
3. Doelstellings van Owerheid  
4. Bevoegdhede, werksaamhede en pligte van Owerheid  
5. Instelling van Raad  
6. Samestelling van Raad  
7. Ampstermyn van Raadslede en vulling van vakatures  
8. Geskiktheid om in die Raad te dien  
9. Botsende belange  
10. Verwydering uit die amp  
11. Vergoeding van lede van Raad  
12. Vergaderings van die Raad  
13. Komitees van Raad

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**HOOFSUK III  
PERSONEELAANGELENTHED**

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14. Personeel van die Owerheid en vergoeding  
15. Hoof uitvoerende beampte  
16. Verwydering van hoof uitvoerende beampte uit die amp  
17. Indiensnemingskontrak en prestasie-ooreenkoms van hoof uitvoerende beampte

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**HOOFSUK IV  
FINANSIES EN VERKRYGINGSADMINISTRASIE**

40

18. Finansies  
19. Rekenpligtigheid, oudits en verslae  
20. Bewilliging van inkomste en eiendom  
21. Verkrygingsadministrasie

HOOFSTUK V  
ALGEMENE BEPALINGS

- 5           22. Delegasie  
            23. Regulasies  
            24. Kort titel en inwerkingtreding

HOOFSTUK I  
UITLEG

10

## Woordsomskrywing

1.       In hierdie Wet, tensy uit die samehang anders blyk, beteken, –
- 15           “**boekjaar**” die periode wat op die eerste dag van April in enige jaar begin tot op die een-en-dertigste dag van Maart in die daaropvolgende jaar, met inbegrip van albei dae;
- 20           “**Departement**” die Provinsiale Departement verantwoordelik vir kunste en kultuur in die Provinsie;
- “**Departementshoof**” die Hoof van die Departement verantwoordelik vir kunste en kultuur in die Provinsie;
- 25           “**distriksmunisipaliteit**” ‘n distriksmunisipaliteit soos omskryf in die Wet op Plaaslike Regering: Munisipale Strukture, 1998 (Wet No. 117 van 1998);
- “**familielid**” iemand se –
- 30           (a)       gade; of  
            (b)       kind, ouer, broer of suster, hetsy van geboorte, huwelik of by aanneming;
- “**Grondwet**” die Grondwet van die Republiek van Suid-Afrika, 1996;
- 35           “**hierdie Wet**” ook enige regulasie ingevolge hierdie Wet gemaak;
- “**hoof uitvoerende beampte**” die hoof uitvoerende beampte kragtens artikel 14(1) aangestel;
- 40           “**hoof van die provinsiale tesourie**” die hoof van die provinsiale tesourie in die Provinsie genoem in artikel 17(1)(a) van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999);
- “**komitee**” ‘n komitee van die Raad kragtens artikel 13 aangestel;
- 45           “**lid**” ‘n lid van die Raad;
- “**Nasionale Wet**” die Wet op Nasionale Erfenishulpbronne, 1999 (Wet No. 25 van 1999);

“Owerheid” die Noord-Kaapse Erfenishulpbronowerheid in artikel 2(a) genoem;

“politieke ampsbekleër” –

- 5 (a) ‘n lid van die Nasionale Vergadering of die Nasionale Raad van Provinsies of die Kabinet;
- (b) ‘n lid van ‘n provinsiale wetgewer;
- (c) ‘n diplomatieke verteenwoordiger van die Republiek wat nie ‘n lid van die staatsdiens is nie;
- 10 (d) ‘n lid van ‘n huis of raad van tradisionele leiers;
- (e) ‘n lid van ‘n munisipale raad; of
- (f) ‘n nasionale of provinsiale ampsbekleër van enige politieke party;

15 “Premier” die Premier van die Provinsie in artikel 125 van die Grondwet genoem;

“provinsiale besit” die erfenishulpbronne in artikel 3 van die Nasionale Wet genoem wat besondere eienskappe het wat hulle binne die konteks van die Provinsie noemenswaardig maak;

20 “*Provinsiale Koerant*” die *Provinsiale Koerant* van die Provinsie;

“Provinsie” die Provinsie Noord-Kaap in artikel 103(1)(g) van die Grondwet genoem, of enige gedeelte daarvan;

25 “Raad” die Raad van die Owerheid saamgestel ooreenkomstig artikel 6;

“Republiek” die Republiek van Suid-Afrika in artikel 1 van die Grondwet genoem;

30 “staatsorgaan” ‘n instelling in artikel 239 van die Grondwet beskryf;

“streek” die regsgebied van ‘n distriksmunisipaliteit;

35 “Uitvoerende Raad” die Uitvoerende Raad van die Provinsie in artikel 132 van die Grondwet genoem;

“verantwoordelike Lid” die Lid van die Uitvoerende Raad verantwoordelik vir kunste en kultuur in die Provinsie; en

40 “voorsitter” die voorsitter van die Raad kragtens artikel 6(6) aangestel.

## HOOFTUK II DIE OWERHEID EN RAAD

### Naam en funksionering van Owerheid

- 45 2. Die erfenishulpbronowerheid van die Provinsie, as ‘n regspersoon kragtens artikel 23 van die Nasionale Wet ingestel –

- (a) staan bekend as die Noord-Kaapse Erfenishulpbronowerheid;
- (b) word deur 'n raad saamgestel ooreenkomstig artikel 6 beheer; en
- 5 (c) funksioneer soos in hierdie Wet voorsien.

### Doelstelling van Owerheid

- 10 3. Dit is die Owerheid se doelstelling om die provinsiale besit te identifiseer en te bestuur.

### Bevoegdhede, werksaamhede en pligte van Owerheid

- 15 4. Die Owerheid oefen vir die Provinsie die bevoegdhede uit, verrig die werksaamhede en voer die pligte uit –
- (a) wat in hierdie Wet of enige ander wet voorsien word; en
- 20 (b) wat aan 'n provinsiale erfenishulpbronowerheid deur die Nasionale Wet verleen of opgelê word.

### Instelling van Raad

- 25 5. (1) 'n Raad vir die Owerheid word hierby ingestel –
- (a) om die sake van die Owerheid te bestuur en te beheer;
- (b) as rekenpligtige gesag vir die Owerheid soos bedoel in artikel 49(2)(a) van die Wet op Openbare Finansiële Bestuur, 1999 (Wet 30 No. 1 van 1999); en
- (c) om die bevoegdhede uit te oefen en die werksaamhede te verrig wat deur hierdie Wet of enige ander wet aan die Owerheid verleen of 35 opgelê word.
- (2) Die Noord-Kaapse Erfenishulpbronraad, kragtens artikel 23 van die Nasionale Wet deur die verantwoordelike Lid aangestel, bly voortbestaan en funksioneer asof ingestel ingevolge subartikel(1), totdat die 40 verantwoordelike Lid 'n nuwe Raad ooreenkomstig die bepalinge van artikel 6 aanstel.

### Samestelling van die Raad

- 45 6. (1) Die Raad bestaan uit 8 lede wat, behoudens subartikel (4), deur die verantwoordelike Lid aangestel word.
- (2) Elk van die 5 streke in die Provinsie word in die Raad verteenwoordig.
- 50 (3) Die verantwoordelike Lid moet, alvorens lede aangestel word, in minstens een koerant wat in die Provinsie in omloop is en die *Provinsiale Koerant* nominasies vir geskikte persone om as lede van die Raad te dien, aanvra.



- 5
- (4) Raadslede moet besondere kundigheid, ondervinding en betrokkenheid hê by erfenishulpbronne en moet algemeen verteenwoordigend van die geslags-, taal- en gemeenskapsamestelling van die Provinsie wees.
- 10
- (5) Die Departementshoof of 'n beamppte deur die Departementshoof aangewys om die Departement te verteenwoordig en die hoof uitvoerende beamppte kan teenwoordig wees en deelneem aan die besprekings by die vergaderings van die Raad, maar is nie lede van die Raad nie en kan nie by die vergaderings stem nie.
- 15
- (6) Die verantwoordelike Lid stel 'n lid van die Raad as voorsitter en 'n ander lid as ondervoorsitter aan.
- 20
- (7) Vóór aanstelling as lid van die Raad, lê die kandidaat 'n beëdigde verklaring aan die verantwoordelike Lid voor, waarin die kandidaat verklaar dat hy of sy –
- (a) beskikbaar is vir die aanstelling; en
- (b) nie kragtens hierdie Wet ongeskik is vir sodanige aanstelling nie.
- 25
- (8) Die verantwoordelike Lid kan te eniger tyd daarop aandrang dat bevredigende bewys aan hom of haar gelewer word van die volgehoue geskiktheid van enige lid of voornemende lid van die Raad, of om enige ondersoek of navrae in dié verband te onderneem of te laat onderneem.

#### Ampstermyn van lede van die Raad en aanvul van vakatures

- 30
7. (1) 'n Lid word vir 'n tydperk van 5 jaar aangestel.
- (2) 'n Lid wie se ampstermyn verstryk het, kan weer aangestel word, maar mag nie meer as 2 ampstermyne uitdien nie.
- 35
- (3) 'n Vakature in die Raad word aangevul op dieselfde manier as wat die lid wat die amp ontruim het veronderstel was om aangestel te gewees het, en die lid aldus aangestel, dien vir die onverstreke gedeelte van die tydperk waarvoor die lid wat die amp ontruim het, aangestel was.

#### Geskiktheid om in die Raad te dien

- 40
8. (1) Om geskik te wees om as lid van die Raad te dien en om in daardie amp voort te gaan, moet sò iemand –
- 45
- (a) 'n natuurlike persoon wees;
- (b) nie onderworpe wees aan 'n diskwalifisering in subartikel (2) uiteengesit nie;
- 50
- (c) die beëdigde verklaring in artikel 6(7) genoem by die verantwoordelike Lid indien; en

- (d) 'n burger van die Republiek wees en gewoonlik in die land woon.
- (2) Niemand dien as lid van die Raad as hy of sy –
- 5 (a) 'n politieke ampsbekleër is nie;
- (b) 'n ongerehabiliteerde insolvent is, of insolvent word en die insolvensie tot die sekwestrasie van sy of haar boedel lei nie;
- 10 (c) ooit op grond van wangedrag uit 'n vertrouensamp ontslaan is, of ontslaan word nie;
- (d) aan 'n bevel van 'n hof met regsbevoegdheid wat hom of haar geestelik versteurd bevind het, onderworpe is nie;
- 15 (e) in die voorafgaande 10 jaar in die Republiek of elders aan diefstal, bedrog, vervalsing of uitgee van 'n vervalste stuk, meened, 'n misdryf ingevolge die Wet op Voorkoming en Bestryding van Korrupte Bedrywighede, 2004 (Wet No. 12 van 2004), 'n misdryf ingevolge Hoofstuk 2 of 3 van die Voorkoming van Georganiseerde Misdadwet, 1998 (Wet No. 121 van 1998), 'n misdryf ingevolge die Finansiële Intelligensiesentrumwet, 2001 (Wet No. 38 van 2001) of 'n misdryf wat oneerlikheid behels, skuldig bevind is, of skuldig bevind word nie; of
- 20 (f) aan enige ander misdryf begaan ná die inwerkingtreding van die Grondwet van die Republiek van Suid-Afrika, 1993 (Wet No. 200 van 1993) skuldig bevind is en tot gevangenisstraf sonder die keuse van 'n boete gevonnissen is.
- 25 (3) Die bepalings van subartikels (1) and (2), gelees in samehang met die veranderings vereis deur die konteks, is op enige beampte in artikel 6(5) bedoel, van toepassing.
- 30

### 35 Botsende belange

9. (1) 'n Lid van die Raad –
- 40 (a) doen nie mee aan enige aktiwiteit wat die integriteit van die Raad kan ondermyn nie;
- (b) woon nie die vergadering van 'n vergadering by, neem nie daaraan deel of oefen nie 'n invloed daarop uit nie as die betrokke lid ten opsigte van die aangeleentheid wat voor die Raad dien, 'n belang het wat hom of haar verhinder om die pligte van 'n lid van die Raad op 'n regverdige, onbevooroordeelde en behoorlike wyse na te kom;
- 45 (c) stem nie by enige vergadering van die Raad oor 'n aangeleentheid bedoel in paragraaf (b) nie;

- 5 (d) maak nie privaat gebruik van of trek nie voordeel uit enige vertroulike inligting verkry in die nakoming van sy of haar pligte as lid van die Raad nie; of
- 5 (e) maak nie enige inligting in pragraaf (d) genoem aan enige derde party bekend nie, tensy dit as deel van sy of haar amptelike werksaamhede as lid van die Raad vereis word.
- 10 (2) Indien dit te eniger tyd vir 'n lid van die Raad lyk of 'n aangeleentheid wat voor die Raad dien, betrekking het op 'n belang van die betrokke lid in subartikel (1)(b) genoem –
- 15 (a) onthul die lid die aard van daardie belang onmiddellik en volledig aan die vergadering; en
- 20 (b) onttrek die lid van die vergadering sodat die oorblywende lede die aangeleentheid kan bespreek en bepaal of die lid verbied behoort te word om aan enige verdere verrigtinge aangaande die aangeleentheid deel te neem.

#### Verwydering uit die amp

- 25 10. (1) Die verantwoordelike Lid kan, by skriftelike kennisgewing, 'n lid van die Raad uit die amp verwyder –
- 30 (a) op grond van wangedrag of onbekwaamheid;
- (b) as die lid onderworpe raak aan 'n diskwalifisering in artikel 8(2) bedoel;
- (c) indien die lid in een jaar meer as twee vergaderings van die Raad sonder geldige rede mis of, in die geval van afwesigheid om mediese redes, versuim om 'n geldige mediese sertifikaat te toon.
- 35 (2) 'n Besluit om 'n lid van die Raad op grond van wangedrag of onbekwaamheid uit die amp te verwyder, word gegronde op 'n bevinding te dien effekte deur 'n ondersoektribunaal wat deur die verantwoordelike Lid aangestel is.
- 40 (3) 'n Kennisgewing in subartikel (1) bedoel, gee die redes vir die verwydering uit die amp van die lid aan.
- 45 (4) Die verantwoordelike Lid kan te eniger tyd die Raad ontbind as hy of sy op redelike gronde oortuig is dat die Raad nie behoorlik funksioneer nie of dat dit in die belang van die gemeenskap of die publiek is om dit te ontbind.

**Vergoeding van lede van Raad**

- 5 11. (1) 'n Lid van die Raad word sodanige redelike vergoeding en toelaes uit die fondse van die Raad betaal soos wat die verantwoordelike Lid, met die instemming van die hoof van die provinsiale tesourie, van tyd tot tyd mag bepaal.
- 10 (2) 'n Lid van die Raad wat voltyds in diens van 'n staatsorgaan is, ontvang nie kragtens subartikel (1) vergoeding nie.
- (3) Vergoeding kragtens subartikel (1) bepaal, word deur die verantwoordelike Lid in die *Provinsiale Koerant* gepubliseer voordat dit in werking tree.
- 15 (4) Lede van die Raad is geregtig op vergoeding vir enige redelike reis- en verblyfuitgawes wat hulle aangaan in die verrigting van hul werksaamhede as lede van die Raad.

**Vergaderings van die Raad**

- 20 12. (1) Die voorsitter kan die datum, tyd en plek vir die eerste vergadering van die Raad bepaal en bepaal in oorleg met die Raad die datum, tyd en plek vir elke daaropvolgende vergadering.
- 25 (2) Die voorsitter bepaal in oorleg met die Raad prosedures vir vergaderings van die Raad, met behoorlike inagneming van die beginsels van openlikheid en deursigtigheid.
- 30 (3) 'n Meerderheid van die lede van die Raad bedoel in artikel 6(1) vorm 'n kworum vir 'n vergadering van die Raad.
- (4) Die Raad moet probeer om sy besluite deur konsensus te neem.
- 35 (5) As die Raad nie konsensus kan bereik oor enige aangeleentheid wat voor hom dien nie, kan hy die saak deur 'n gewone meerderheidstem op 'n mosie beslis.
- 40 (6) In die geval van 'n staking van stemme rakende enige aangeleentheid waaroor gestem word, het die voorsitter 'n beslissende stem bykomend tot sy of haar gewone stem.
- (7) Die Raad bepaal behoudens subartikels (4), (5) en (6) reëls vir sy eie verrigtinge.
- 45 (8) Die hoof uitvoerende beampte hou notule of laat notule van die vergaderings van die Raad hou.
- (9) Notules van die verrigtinge van die vergaderings van die Raad word by die kantore van die Raad gehou en is toeganklik vir die publiek.

- 5
- (10) Niemand wat toegang het tot inligting wat die Raad as vertroulik klassifiseer, mag die inligting sonder toestemming van die Raad openbaar maak nie.
- (11) Indien 'n bepaalde persoon in staat is om die Raad by die oorweging van 'n bepaalde aangeleentheid behulpsaam te wees, kan die Raad die persoon vir die doel koöpteer.
- 10
- (12) Sodanige gekoöpteerde persoon het nie die reg om by 'n vergadering van die Raad of 'n komitee van die Raad te stem nie.
- (13) Die Raad vergader ten minste een keer elke 3 maande om onder andere die verslag in artikel 19(3) genoem, te oorweeg.
- 15
- (14) Die verantwoordelike Lid kan 'n vergadering van die Raad belê as die Raad versuim om aan subartikel (13) te voldoen.
- (15) Die voorsitter belê 'n buitengewone vergadering van die Raad as die verantwoordelike Lid, die meerderheid van lede van die Raad of die hoof uitvoerende beampte daarvoor vra.
- 20
- (16) Wanneer 'n aangeleentheid wat voor die Raad moet dien uiteraard die onmiddellike en dringende aandag van die Raad verg en dit nie vir die Raad moontlik is om te vergader om daaraan aandag te gee nie, word alle dokumentasie met betrekking tot sodanige aangeleentheid sonder verwyl deur die hoof uitvoerende beampte aan alle lede vir oorweging beskikbaar gestel.
- 25
- (17) Behoudens subartikel (18) is 'n aangeleentheid genoem in subartikel (16), waarop skriftelik deur 'n gewone meerderheid van die Raadslede ooreengekom word, 'n besluit van die Raad.
- 30
- (18) 'n Besluit in subartikel (17) bedoel, word deur die hoof uitvoerende beampte aan die Raad oorgedra by die Raad se volgende vergadering en aldus in die notules van daardie vergadering aangeteken.
- 35

### Komitees van Raad

- 40
13. (1) Die Raad kan komitees instel, met die bevoegdheid om ander persone te koöpteer, om hom by te staan met die behoorlike en korrekte uitoefening en verrigting van sy bevoegdhede en werksaamhede kragtens hierdie Wet en kan ook enige komitee wat op hierdie wyse ingestel is, ontbind, uitbrei, vergroot of beperk.
- 45
- (2) (a) 'n Komitee ingevolge subartikel (1) ingestel, bestaan uit minstens drie lede aangewys deur die Raad wat geskik en behoorlik gekwalifiseer of ervare is aangaande aangeleenthede wat op die werksaamhede van die betrokke komitee betrekking het.
- 50
- (b) Die Raad benoem 'n raadslid wat op 'n komitee dien as die voorsitter van sodanige komitee.

- (3) 'n Gekoöpteerde lid van 'n komitee dien in 'n raadgewende hoedanigheid en kan nie by enige vergadering van sodanige komitee stem nie.

### HOOFSUK III PERSONEELAANGELEENTHEDE

#### Personeel van die Owerheid en vergoeding

14. (1) Die Raad –

(a) stel, met die instemming van die verantwoordelike Lid, 'n paslik gekwalifiseerde en ervare persoon as hoof uitvoerende beampte aan, wat behoudens artikels 15, 16 en 17 –

(i) onderhewig aan die voorskrifte en beheer van die Raad vir alle finansiële en administratiewe verantwoordelikhede met betrekking tot die werksaamhede van die Raad verantwoordelik is; en

(ii) aan die Raad verantwoording doen;

(b) bepaal, met die instemming van die verantwoordelike Lid, 'n personeeldiensstaat vir die Owerheid; en

(c) kan enige ander personeel wat nodig mag wees om die Owerheid in staat te stel om sy werksaamhede te verrig, aanstel op die diensstaat in paragraaf (b) bedoel.

(2) Artikel 8(1) en (2) en artikel 9, gelees in samehang met die veranderings vereis deur die konteks, is van toepassing op die hoof uitvoerende beampte en elke personeellid wat kragtens hierdie Wet aangestel is.

(3) Die Raad kan, met die instemming van die verantwoordelike Lid en die hoof van die provinsiale tesourie, die vergoeding, toelaes, diensvoordele en ander bedinge en voorwaardes van aanstelling van 'n persoon kragtens subartikel (1) aangestel, bepaal.

(4) Die Raad kan sy bevoegdhede kragtens subartikel (1)(c) aan die hoof uitvoerende beampte delegeer.

(5) Die verantwoordelike Lid kan, na oorlegpleging met die Raad, ooreenkomstig artikel 15(3) van die Staatsdienswet, 1994, enige werknemer op die diensstaat van die Departement aan die Raad sekondeer.

(6) Iemand in diens van die Owerheid wanneer hierdie Wet in werking tree –

(a) bly aldus in diens;

(b) behou sy of haar emolumente en ander diensvoorwaardes; en

- (c) word bykomend tot die diensstaat van die Owerheid kragtens subartikel (1)(b) bepaal, in diens gehou.

### Hoof uitvoerende beampte

5

15. (1) Die hoof uitvoerende beampte, aangestel kragtens artikel 14(1), is iemand met gepaste kwalifikasies, kennis of ondervinding van die sake en werksaamhede van die Owerheid.

10

(2) Die hoof uitvoerende beampte moet deeglike kennis van die finansiële- en verkrygingsadministrasievoorskrifte wat op die Owerheid betrekking het, hê.

(3) By aanstelling van 'n hoof uitvoerende beampte vra die Raad by openbare uitnodiging aansoeke vir die betrokke betrekking.

15

(4) Die hoof uitvoerende beampte word aangestel vir die tydperk en op die bedinge en diensvoorwaardes wat die Raad, behoudens artikel 14(3), mag bepaal, maar –

20

(a) die hoof uitvoerende beampte word aangestel vir 'n tydperk van hoogstens 5 jaar;

25

(b) by verstryking van die dienstermyn van die hoof uitvoerende beampte, kan hy of sy slegs vir een verdere termyn van 5 jaar in aanmerking kom vir heraanstelling;

30

(c) die hoof uitvoerende beampte onderneem nie enige ander besoldigde werk sonder die voorafverkreë skriftelike toestemming van die Raad nie.

(5) Die hoof uitvoerende beampte kan met 3 maande skriftelike kennisgewing aan die Raad uit sy of haar amp bedank.

35

(6) Wanneer die amp van die hoof uitvoerende beampte vakant is of die hoof uitvoerende beampte afwesig of onbevoeg is of versuim of weier om op te tree, kan die bevoegdhede en werksaamhede van die hoof uitvoerende beampte uitgeoefen en verrig word deur enigiemand wat deur die verantwoordelike Lid as die waarnemende hoof uitvoerende beampte aangewys word, maar sodanige persoon tree nie vir langer as 'n totaal van 6 maande as waarnemende hoof uitvoerende beampte op nie..

40

(7) Terwyl iemand aangestel soos in subartikel (6) bedoel, sodanig waarneem, kan hy of sy die hoof uitvoerende beampte se bevoegdhede uitoefen en sy of haar werksaamhede verrig.

45

### Verwydering van hoof uitvoerende beampte uit die amp

16. (1) Die Raad kan die hoof uitvoerende beampte uit die amp verwyder –

50

(a) op grond van sy of haar onbehoorlike optrede;

- (b) vanweë ongeskiktheid vir die werksaamhede van sy of haar amp;
- (c) op grond van 'n permanente ongesteldheid van gees of liggaam wat hom of haar onbekwaam maak om die werksaamhede van sy of haar amp te verrig of behoorlik te verrig;
- (d) op grond daarvan dat hy of sy onderworpe geraak het aan 'n diskwalifisering in artikel 8(2) bedoel.
- (2) Die Raad kan 'n verhoor of ondersoek onderneem om te bepaal of daar voldoende rede vir die afdanking van die hoof uitvoerende beampte soos bedoel in subartikel (1), bestaan.
- (3) Wanneer 'n verhoor of ondersoek soos in subartikel (2) bedoel, onderneem word, kan die Raad met behoorlike inagneming van die bepalinge van die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995), die hoof uitvoerende beampte uit sy of haar amp skors, hangende die bevinding van sodanige verhoor of ondersoek.
- (4) Vir die doeleindes van subartikel (1)(a), geld nie-nakoming deur die hoof uitvoerende beampte van enige bepaling van hierdie Wet of die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), onder andere, as onbehoorlike optrede.

#### 25 **Indiensnemingskontrak en prestasie-ooreenkoms van hoof uitvoerende beampte**

17. (1) Die aanstelling van die hoof uitvoerende beampte deur die Raad, soos bedoel in artikel 14(1), word van krag vanaf die datum waarop 'n skriftelike indiensnemingskontrak met die Raad aangegaan word, welke kontrak die duur van sy of haar ampstermyn as hoof uitvoerende beampte dek.
- (2) Die indiensnemingskontrak in subartikel (1) bedoel, bevat minstens die hoof uitvoerende beampte se persoonlike besonderhede, ampstermyn, diensvoorwaardes, bevoegdhede, werksaamhede, verantwoordelikhede en pligte, asook sy of haar vergoeding, toelaes en voordele.
- (3) Bykomend tot die indiensnemingskontrak soos in subartikel (1) bedoel, gaan die hoof uitvoerende beampte jaarliks vóór die aanvang van die betrokke boekjaar 'n prestasie-ooreenkoms met die Raad aan, welke prestasie-ooreenkoms se termyn met die boekjaar van die Raad saamval.
- (4) Die prestasie-ooreenkoms in subartikel (3) bedoel, verwys minstens na die boekjaar waarop sodanige prestasie-ooreenkoms betrekking het, die doel van die hoof uitvoerende beampte se werk, die sleutelresultate-areas, finansiële en bestuurskriteria, prestasieriglyne en doelwitte van sodanige werk, asook die standarde vir die beoordeling van die hoof uitvoerende beampte se prestasie op minstens 'n tweejaarlikse grondslag.



HOOFTUK IV  
FINANSIES EN VERKRYGINGSADMINISTRASIE

Finansies

5

18. (1) Die Owerheid word gefinansier uit –

(a) geld deur die Provinsiale Wetgewer vir die Owerheid bewillig;

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(b) enige geld aan die Owerheid betaalbaar kragtens hierdie Wet;

(c) inkomste wat die Owerheid kragtens subartikel (6) uit sy belegging en deponering van oortollige geld kry; en

15

(d) alle gelde wat wettig uit enige bron aan die Owerheid toeval.

(2) Die boekjaar van die Owerheid strek oor die tydperk van 1 April in enige jaar tot 31 Maart van die daaropvolgende jaar.

20

(3) Die voorskrifte in die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999) en die Tesourieregulasies vervat wat deur 'n provinsiale openbare instelling nagekom moet word, geld vir die Owerheid.

25

(4) Die Raad open en onderhou 'n rekening in die naam van die Owerheid by 'n geregistreerde bank in die Republiek en –

(a) deponeer al die geld wat die Owerheid ontvang in daardie rekening; en

30

(b) maak elke betaling namens die Owerheid uit daardie rekening.

(5) Enige onttrekking uit die rekening van die Owerheid word namens hom gemagtig deur twee persone wat deur die Raad vir die doel gemagtig is.

35

(6) Die Raad kan geld van die Owerheid wat nie onmiddellik vir gebeurlikhede of lopende uitgawes benodig word nie, belê of deponeer –

(a) in 'n dagrekening of korttermyn- vaste deposito by enige geregistreerde bank of finansiële instelling in die Republiek; of

40

(b) in 'n beleggingsrekening by die Korporasie vir Openbare Deposito's, ingestel kragtens artikel 2 van die Wet op die Korporasie vir Openbare Deposito's, 1984 (Wet No. 46 van 1984).

- 5
- (7) 'n Saldo ten bate van die Owerheid aan die einde van 'n boekjaar van die Owerheid, uitgesonder geld wat die verantwoordelike Lid as noodsaaklik vir die redelike onmiddellike lopende uitgawes van die Owerheid goedkeur, word in die Provinsiale Inkomstefonds inbetaal.
- 10
- (8) Geen lening word aan 'n lid van die Raad, of 'n lid van die personeel van die Owerheid, of aan 'n familielid van sodanige lid van die Raad, of lid van die personeel van die Owerheid uit die fondse van die Owerheid of uit enige ander fondse wat deur die Owerheid geadministreer of in trust gehou word, gemaak nie.

### Rekenpligtigheid, oudits en verslae

- 15
19. (1) Die Raad –
- (a) gee rekenskap van Staats- en ander geld wat ontvang is deur, of betaal is vir of namens die Owerheid; en
- 20
- (b) hou die nodige boekhoukundige en verwante rekords by, ooreenkomstig die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999).
- 25
- (2) Die rekords in subartikel 1(b) genoem, word deur die Ouditeur-Generaal ge-oudit.
- (3) Die Owerheid doen deur die Departementshoof minstens kwartaalliks skriftelik aan die verantwoordelike Lid oor sy aktiwiteite verslag.
- 30
- (4) Die Owerheid lê die verslag en state genoem in artikel 55(1) van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), aan die verantwoordelike Lid voor op die wyse deur artikel 55(3) van daardie Wet vereis.
- 35
- (5) Die verantwoordelike Lid lê die verslag en state genoem in subartikel (4) so gou as moontlik ná ontvangs daarvan in die Provinsiale Wetgewer ter tafel.
- 40
- (6) Wat verslagdoening oor die uitoefening van sy bevoegdhede en die verrigting van sy werksaamhede gedurende die jaar betref, verwys die Owerheid in die verslag bedoel in subartikel (4) ook na –
- 45
- (a) sy prestasies;
- (b) sy mislukkings;
- (c) die finansiële implikasies van alle sodanige prestasies en mislukkings;
- (d) enige aanbevelings met betrekking tot sy doelstellings, vir oorweging.

- (7) Die Raad stel ooreenkomstig Tesourieregulasie 27 'n ouditkomitee, wat uit ten minste drie persone bestaan, vir die Owerheid in.
- (8) Binne 15 dae vóór die einde van elke kwartaal onderteken en dien die ouditkomitee 'n verslag by die Owerheid in wat hy opstel oor die Owerheid se werksaamhede, insluitende sy inkomste en uitgawe vir die voorafgaande kwartaal.

### Toewysing van inkomste en eiendom

20. Die gelde wat die Provinsiale Wetgewer aan die Owerheid toewys, soos in artikel 17(1)(a) bedoel, word ooreenkomstig sodanige toewysing aangewend en alle ander inkomste, eiendom en winste van die Owerheid word uitsluitlik vir die verwesenliking van sy doelstellings en ooreenkomstig die bepalinge van hierdie Wet aangewend.

### Verkrygingsadministrasie

21. (1) By die verkryging van enige goed of diens, of die huur of verhuur van enigiets, of verlening van enige reg, of verkryging of verhandeling van enige bate vir of namens die Owerheid, soos bedoel in artikel 5, sorg die Raad dat sodanige verkryging geskied ooreenkomstig, en met behoorlike voldoening aan –
- (a) die regulasies gemaak of instruksies uitgereik deur die Nasionale Tesourie ten opsigte van 'n geskikte verkryging- en voorsieningstelsel wat regverdig, billik, deursigtig, mededingend en lonend is, soos bedoel in artikel 76(4)(c) van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999);
- (b) die instruksies uitgereik deur die Provinsiale Tesourie, soos bedoel in artikel 18(2)(a) van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), ten opsigte van 'n geskikte verkryging- en voorsieningstelsel wat regverdig, billik, deursigtig, mededingend en lonend is;
- (c) die gepaste verkryging- en voorsieningstelsel wat regverdig, billik, deursigtig, mededingend en lonend is, soos ingestel deur die Raad en soos bedoel in artikel 51(1)(a)(iii) van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999) en Tesourieregulasie 16A; en
- (d) die Wet op die Raamwerk vir 'n Voorkeurverkrygingsbeleid, 2000 (Wet No. 5 van 2000).
- (2) Binne ses maande ná die inwerkingtreding van hierdie Wet keur die Raad in ooreenstemming met subartikel (1) 'n verkrygingstelsel goed, welke verkrygingstelsel aangewend moet word vir die verkryging van alle voorrade, goedere en dienste, asook vir die verhandeling van voorrade en goedere deur die Raad.

HOOFSTUK V  
ALGEMENE BEPALINGS

## Delegasie

- 5
22. (1) Behoudens subartikels (2) en (3) kan die Raad skriftelik enige van die Owerheid se bevoegdhede, werksaamhede of pligte kragtens hierdie Wet aan die hoof uitvoerende beampte of 'n komitee van die Raad delegeer.
- 10 (2) Die hoof uitvoerende beampte kan met die skriftelike toestemming van die Raad enige bevoegdheid, werksaamheid of plig wat kragtens subartikel (1) aan hom of haar gedelegeer is, subdelegeer aan enige lid van die personeel van die Owerheid.
- 15 (3) 'n Delegasie of sub-delegasie, na gelang van die geval, kan onderskeidelik deur die Raad of deur die hoof uitvoerende beampte, met instemming van die Raad, teruggetrek word.

## Regulasies

- 20 23. (1) Die verantwoordelike Lid kan, by kennisgewing in die *Provinsiale Koerant*, regulasies maak ten opsigte van –
- 25 (a) gelde betaalbaar aan die Owerheid of enige instelling deur die Owerheid bedryf; en
- (b) enige ander aangeleentheid wat nodig of dienstig is ten einde die oogmerke van hierdie Wet te bereik.
- 30 (2) 'n Regulasie kragtens subartikel (1)(a) gemaak, word alleenlik gemaak met die instemming van die hoof van die provinsiale tesourie.
- 35 (3) Minstens 1 maand voor 'n regulasie ooreenkomstig hierdie artikel gemaak word, laat die verantwoordelike Lid die teks daarvan in die *Provinsiale Koerant* publiseer, tesame met 'n kennisgewing waarin sy of haar voorneme om daardie regulasie te maak verklaar word en belanghebbendes genooi word om kommentaar te lewer daarop of verhoë wat hulle sou wou righ daaromtrent aan die verantwoordelike Lid op of voor 'n datum in die kennisgewing vermeld te laat kry.
- 40 (4) Die bepalings van subartikel (3) geld nie ten opsigte van 'n wysiging aan 'n regulasie kragtens daardie subartikel gepubliseer nie.

## Kort titel en inwerkingtreding

- 45 25. Hierdie Wet heet die Wet op die Noord-Kaapse Erfenishulpbronowerheid, 2013, en tree in werking op 'n datum deur die Premier by proklamasie in die *Provinsiale Koerant* bepaal.







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