



KWAZULU-NATAL PROVINCE
KWAZULU-NATAL PROVINSIE
ISIFUNDAZWE SAKWAZULU-NATALI

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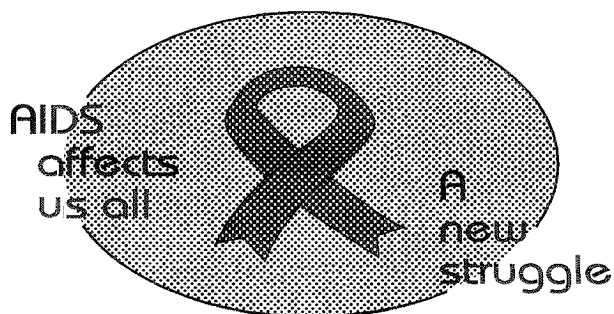
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PIETERMARITZBURG,

23 AUGUST 2012
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No. 805

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DEPARTMENT OF HEALTH

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GENERAL NOTICE – ALGEMENE KENNISGEWING – ISAZISO SIKAWONKE-WONKE

No. 17**23 August 2012****KWAZULU-NATAL DELEGATION OF POWERS ACT REPEAL BILL, 2012**

Notice in terms of Rule 194 of the Standing Rules of the KwaZulu-Natal Legislature

Notice is hereby given in terms of Rule 194 of the Standing Rules of the Provincial Legislature that the KwaZulu-Natal Delegation of Powers Act Repeal Bill, 2012 as set out hereunder, has been introduced into the aforesaid Legislature and will be considered by the Premier and Royal Household Portfolio Committee. The public and other interested groups are invited to submit representations on the said Bill, which representations must be addressed to:

Attention: Ms N Madide
The Secretary
KwaZulu-Natal Legislature
Private Bag X 9112
PIETERMARITZBURG
3200

Email: madiden@kznlegislature.gov.za

so as to reach her not later than 15 days from the date of publication.

N NAIDOO
Secretary to the KwaZulu-Natal Legislature

**KWAZULU-NATAL
DELEGATION OF POWERS ACT REPEAL BILL, 2012**

BILL

To provide for the repeal of the KwaZulu-Natal Delegation of Powers Act, 1994; and to provide for matters connected therewith.

BE IT ENACTED by the Provincial Legislature of the Province of KwaZulu-Natal, as follows:-

Repeal of law

1. The KwaZulu-Natal Delegation of Powers Act, 1994 (Act No. 8 of 1994), is hereby repealed.

Transitional arrangements

2.(1) Where the Premier of KwaZulu-Natal has assigned the administration of a law to a Member of the Executive Council of the Province of KwaZulu-Natal in terms of section 235(6)(c)(ii) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), or item 14(1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), any reference to the expressions "Administrator" or "Minister" in that law, must be construed as a reference to the Member of the Executive Council to whom the Premier has assigned the administration of that law.

(2)(a) Subject to paragraph (b), a delegation in terms of the repealed KwaZulu-Natal Delegation of Powers Act, 1994 (Act No. 8 of 1994), remains in force for a period not exceeding 12 (twelve) months after the date of commencement of this Act, whereupon the delegation lapses.

(b) All delegations in terms of the repealed KwaZulu-Natal Delegation of Powers Act, 1994, must be –

- (i) reviewed;
- (ii) withdrawn; and
- (iii) if considered necessary or appropriate, replaced with a delegation in terms of a specific empowering provision of any applicable law.

Short title

3. This Act is called the KwaZulu-Natal Delegation of Powers Repeal Act, 2012.

**MEMORANDUM ON THE OBJECTS
OF THE
KWAZULU-NATAL DELEGATION OF POWERS ACT REPEAL BILL, 2012**

1. BACKGROUND

The Bill has, as its purpose, the repeal of the KwaZulu-Natal Delegation of Powers Act, 1994 (Act No. 8 of 1994). As part of the Rationalisation of Laws Project, the KwaZulu-Natal Delegation of Powers Act, 1994, was identified as one of the provincial laws which needed to be rationalised to bring it in line with other national and provincial legislation.

Questions as to the constitutionality of the KwaZulu-Natal Delegation of Powers Act, 1994 (Act No. 8 of 1994), also arose. The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), in sections 126, 132 and 138, specifically provides for the *assignment* of powers. Empowering provisions authorising the *delegation* of powers and functions appear in specific laws (all KZN provincial legislation enacted since 2003 have detailed provisions dealing with delegations of specific powers and functions in terms of those laws) and it is not considered necessary to have a separate general law also dealing with delegation. Furthermore, practical problems arise where the provisions of the specific law and the general law, in respect of delegations, differ.

The KwaZulu-Natal Delegation of Powers Act, 1994 is, therefore, superfluous and must be repealed.

2. CLAUSE BY CLAUSE EXPLANATION

In summary, the Bill provides as follows –

Clause 1:

Clause 1 repeals the KwaZulu-Natal Delegation of Powers Act, 1994 (Act No. 8 of 1994).

Clause 2:

Clause 2 deals with transitional arrangements.

Clause 3:

Clause 3 contains the short title of the Act.

3. ORGANISATIONAL AND PERSONNEL IMPLICATIONS FOR PROVINCIAL GOVERNMENT

No undue organisational and personnel implications are foreseen.

4. FINANCIAL IMPLICATIONS FOR PROVINCIAL GOVERNMENT

No undue financial implications are foreseen.

5. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Bill has been drafted in consultation with –

- 5.1 the Office of the Premier (including officials in the administration attached to the Cabinet Office);
- 5.2 all heads of Legal Services components attached to departments in KwaZulu-Natal; and
- 5.3 the KwaZulu-Natal Public Sector Lawyers' Forum (KZN PSLF).

6. CONTACT PERSON:

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KWAZULU-NATAL HERROEPINGSWETSONTWERP OP DELEGERING VAN BEVOEGDHEDE, 2012

Kennisgewing ooreenkomstig Reël 194 van die Staande Reëls van die KwaZulu-Natal Wetgewer

Kennsigewing geskied hiermee ooreenkomstig Reël 194 van die Staande Reëls van die KwaZulu-Natal Wetgewer dat die Kwazulu-Natal Herroepingswetsontwerp op Delegering van Bevoegdheid, 2012 soos hieronder uiteengesit, by die voorgemelde Wetgewer ingedien is en deur die Portfoliokomitee oor Premier en Koninklike Huishouding Plaaslike oorweeg sal word. Die publiek en ander belanghebbende groepe word uitgenooi om versoë oor die vermelde wetsontwerp in te dien, welke versoë gerig moet word aan:

Aandag: Me. N Madide
Die Sekretaris
KwaZulu-Natal Legislature
Privaatsak X 9112
PIETERMARITZBURG
3200

E-pos:madiden@kznlegislature.gov.za

Vertoë moet haar nie later as 15 dae vanaf die datum van hierdie publikasie bereik nie.

N NAIDOO
Sekretaris van die KwaZulu-Natal Wetgewer

**KWAZULU-NATAL
HERROEPINGSWETSONTWERP OP WET OP DELEGERING VAN
BEVOEGDHEDE, 2012**

WETSONTWERP

Om voorsiening te maak vir die herroeping van die KwaZulu-Natal Wet op Delegering van Bevoegdheede, 1994; en om voorsiening te maak vir aangeleenthede daartoe verbind.

DAAR WORD soos volg deur die Provinsiale Wetgewing van die Provinsie KwaZulu-Natal bepaal:-

Herroeping van wet

1. Die KwaZulu-Natal Wet op Delegering van Bevoegdheede, 1994 (Wet No. 8 van 1994) word hiermee herroep.

Oorgangsmatreëls

2.(1) Waar die Premier van KwaZulu-Natal die administrasie van 'n wet toegewys het aan 'n Lid van die Uitvoerende Raad van die Provinsie van KwaZulu-Natal ingevolge artikel 235(6)(c)(ii) van die Grondwet van die Republiek van Suid-Afrika, 1993 (Wet No. 200 van 1993), of item 14(1) van Bylae 6 tot die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996), moet enige verwysing na die bewoordinge "Administrateur" of "Minister" in daardie wet geïnterpreteer word as 'n verwysing na die Lid van die Uitvoerende Raad aan wie die Premier die administrasie van daardie wet toegewys het.

(2)(a) Behoudens paragraaf (b), bly 'n delegering, ingevolge die herroepde KwaZulu-Natal Wet op Delegering van Bevoegdheede, 1994 (Wet No. 8 van 1994), in werking vir 'n tydperk van nie langer nie as 12 maande vanaf die inwerkingtredingsdatum van hierdie Wet, waarop die delegering verval.

(b) Alle delegerings ingevolge die herroepde KwaZulu-Natal Wet op Delegering van Bevoegdheede, 1994, moet –

- (i) hersien;
- (ii) teruggetrek; en
- (iii) indien nodig of toepaslik geag, vervang word met 'n delegering ingevolge 'n spesifieke bemagtigingsbepaling van enige toepaslike wet.

Kort titel

3. Hierdie Wet word genoem die KwaZulu-Natal Herroepingswet op Delegering van Bevoegdheede, 2012.

**MEMORANDUM OOR DIE OOGMERKE VAN DIE
KWAZULU-NATAL HERROEPINGSWETSONTWERP OP WET OP
DELEGERING VAN BEVOEGDHEDE, 2012**

1. AGTERGROND

Die Wetsontwerp het ten doel die herroeping van die KwaZulu-Natal Wet op Delegering van Bevoegdheede, 1994 (Wet No. 8 van 1994). As deel van die Rasionalisasie van Wette-projek, is die KwaZulu-Natal Wet op Delegering van Bevoegdheede, 1994 geïdentifiseer as een van die provinsiale wette wat gerasionaliseer moet word om dit in ooreenstemming te bring met ander nasionale en provinsiale wetgewing.

Vrae oor die grondwetlikheid van die KwaZulu-Natal Wet op Delegering van Bevoegdheede, 1994 (Wet No. 8 van 1994), het ook ontstaan. Die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996), in artikels 126, 132 en 138, maak spesifiek voorsiening vir die *toekenning* van bevoegdheede. Bemagtigingsbepalings wat die *delegering* van bevoegdheede en funksies goedkeur verskyn in spesifieke wette (alle KZN provinsiale wetgewing verorden sedert 2003 bevat uitvoerige bepalings wat handel oor delegerings van spesifieke bevoegdheede en funksies ingevolge daardie wette) en dit word nie as noodsaaklik beskou om 'n afsonderlike algemene wet te hê wat ook oor delegering handel nie. Praktiese probleme ontstaan buitendien waar die bepalings van die spesifieke wet en die algemene wet, met betrekking tot delegering, verskil.

Aldus is die KwaZulu-Natal Wet op die Delegering van Bevoegdheede, 1994 oorbodig en moet herroep word.

2. KLOUSULE VIR KLOUSULE VERDUIDELIKING

Ter opsomming maak die Wetsontwerp soos volg voorsiening –

Klousule 1:

Klousule 1 herroep die KwaZulu-Natal Wet op die Delegering van Bevoegdheede, 1994 (Wet No. 8 van 1994).

Klousule 2:

Klousule 2 handel oor oorgangsmatreëls.

Klousule 3:

Klousule 3 bevat die kort titel van die Wet.

3. ORGANISATORIESE- EN PERSONEELIMPLIKASIES VIR PROVINSIALE REGERING

Geen buitensporige organisatoriese- en personeelimplikasies word voorsien nie.

4. FINANSIËLE IMPLIKASIES VIR PROVINSIALE REGERING

Geen buitensporige finansiële implikasies word voorsien nie.

5. DEPARTEMENTE/LIGGAME/PERSONE GERAADPLEEG

Die Wetsontwerp is geformuleer in oorleg met –

5.1 die Kantoor van die Premier (insluitend beamptes in die administrasie verbonde aan die Kabinetskantoor);

5.2 alle hoofde van komponente in die Regsdienste verbonde aan departemente in KwaZulu-Natal; en

5.3 die KwaZulu-Natal Openbare Sektor Prokureursforum (KZN OSPF).

6. KONTAKPERSOON

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Posisie: Senior Staatsregsadviseur
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No. 17

23 kuNcwaba 2012

UMTHETHOSIVIVINYO WOKUCHITHA UMTHETHO WOKUDLULISELWA KWAMANDLA WAKWAZULU-NATALI, 2012

Isaziso ngokuhambisana noMthetho 194 weMithetho Emileyo yeSishayamthetho saKwaZulu-Natali

Ngalokhu kunikezwa isaziso ngokuhambisana noMthetho 194 weMithetho Emileyo yeSishayamthetho sesiFundazwe maqondana nokuthi Umthethosivivinyo Wokuchitha uMthetho wokuDluliselwa kwaMandla WaKwaZulu-Natali, 2012, njengoba uchazwe ngezansi, sewethuliwe eSishayamthethweni esibalulwe ngenhla futhi uzocutshungulwa yiKomidi Lesishayamthetho Lomnyango kaNdunankulu Nezindaba zaseNdlunkulu. Umphakathi kanye nabanye abanentshisekelo bayamenywa ukuba balethe izethulo ezimayelana nalo Mthethosivivinyo, okumele ziqondiswe ku -:

Nksz. N Madide
UNobhala
ISishayamthetho saKwaZulu-Natali
Isikhwama Seposi X 9112
Pietermaritzburg
3200

I-imeyili: madiden@kznlegislature.gov.za

ukuze zifinyelele kuye zingakapheli izinsuku eziyi-15 kusukela ngosuku okushicilelwe ngalo lesi saziso

N NAIDOO
UNobhala weSishayamthetho saKwaZulu-Natali

**UMTHETHOSIVIVINYO WOKUCHITHA UMTHETHO WOKUDLULISELWA
KWAMANDLA WAKWAZULU-NATALI, 2012**

UMTHETHOSIVIVINYO

Wokuhlinzekela ukuchithwa koMthetho wokuDluliselwa kwaMandla waKwaZulu-Natali, 1994; nokuhlinzekela okunye okuphathelene nalokho.

MAWUMISWE isiShayamthetho sesiFundazwe saKwaZulu-Natali, kanje:-

Ukuchithwa komthetho

1. UMthetho wokuDluliselwa kwaMandla waKwaZulu-Natali, 1994 (uMthetho No. 8 ka 1994), ngalokhu uyachithwa.

Izinhlizeko zesikhashana

2.(1) Uma uNdunankulu waKwaZulu-Natali enikeze iLungu loMkhandlu oPhethe esiFundazweni saKwaZulu-Natali amandla okuphatha umthetho ngokwesigaba 235(6)(c)(ii) soMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, 1993 (uMthetho No. 200 ka 1993), noma ngokohlamvu 14(1) loHlelo 6 loMthethosisekelo, 1996, noma iliphi igama elisho "isiPhathimandla" noma "uNgqongqoshe" kulowo mthetho, kumele kuthathwe ngokuthi lisho iLungu loMkhandlu oPhethe elinikezwe amandla okuphatha lowo mthetho uNdunankulu.

(2)(a) Kuncike endimeni (b), ukudluliselwa kwamandla ngokoMthetho wokuDluliselwa kwaMandla waKwaZulu-Natali, 1994 (uMthetho No. 8 ka 1994) osuchithiwe, kuyiqhubeka nokusebenza isikhathi esingeqile ezinyangeni eziyi-12 emva kosuku okuqale ngalo ukusebenza kwalo Mthetho, lapho kuyobe sekugcina khona ukudluliselwa kwamandla.

(b) Konke ukudluliselwa kwamandla ngokoMthetho wokuDluliselwa kwaMandla waKwaZulu-Natali, 1994 osuchithiwe, kumele –

(i) kubuyekezwe;

(ii) kuhoxiswe; futhi

(iii) uma kubonakala ukuthi kunesidingo noma kufanele, esikhundleni sakho amandla adluliselwe ngokwenhlizeko yanoma yimuphi omunye umthetho osebenzayo.

Isihloko esifingqiwe

3. Lo Mthetho ubizwa ngoMthetho wokuChitha uMthetho wokuDluliselwa kwaMandla waKwaZulu-Natali, 2012.

IMEMORANDAMU NGEZINHLOSO ZOMTHETHOSIVIVINYO WOKUCHITHA UMTHETHO WOKUDLULISELWA KWAMANDLA WAKWAZULU-NATALI, 2012

1. ISENDLALELO

UMthethosivivinyo uhlose ukuchitha uMthetho wokuDluliselwa kwaMandla waKwaZulu-Natali, 1994 (uMthetho No. 8 ka 1994). Njengengxenye yoHlelo lokuPhuculwa kweMithetho, uMthetho wokuDluliselwa kwaMandla waKwaZulu-Natali, 1994 (uMthetho No. 8 ka 1994), wahlonzwa njengomunye wemithetho yesifundazwe odinga ukuphuculwa ukuze uhambisane neminye imithetho kazwelonke neyesifundazwe.

Kwaphinde kwaqhamuka imibuzo mayelana nokuhambisana koMthetho wokuDluliselwa kwaMandla waKwaZulu-Natali, 1994 (uMthetho No. 8 ka 1994) noMthethosisekelo. UMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, 1996 (uMthetho No. 108 ka 1996), ezigabeni 126, 132 no 138, uhlinzekela ngokucacile ukudluliselwa kwamandla. Kunezinhlizwe ezigunyaza ukudluliselwa kwamandla namajoka ezivelayo emithethweni ethile (yonke imithetho yesiFundazwe saKwaZulu-Natali esungulwe kusukela ngonyaka ka 2003 inezinhlizwe ezicacile eziphathelene nokudluliselwa kwamandla namajoka athile ngokwaleyo mithetho) futhi kubukeka kungenasidingo ukuthi kube nomthetho oseceleni nawo okhuluma ngokudluliselwa kwamandla. Ngaphezu kwalokho, kuba nezinkinga uma kwenzeka ukuthi izinhlizwe zomthetho othile ezimayelana nokudluliselwa kwamandla ziyahluka kulezo zomthetho omkhulu.

Ngakho-ke, uMthetho wokuDluliselwa kwaMandla waKwaZulu-Natali, 1994, awunasidingo futhi kumele uchithwe.

2. INCAZELO YESIGABA SOMTHETHO NGASINYE

Kafushane nje, uMthethosivivinyo uhlinzeka kanje –

Isigaba soMthetho 1:

Isigaba soMthetho 1 sichitha uMthetho wokuDluliselwa kwaMandla waKwaZulu-Natali, 1994 (uMthetho No. 8 ka 1994).

Isigaba soMthetho 2:

Isigaba soMthetho 2 sikhuluma ngezinhlizwe zesikhashana.

Isigaba soMthetho 3:

Isigaba soMthetho 3 siqukethe isihloko esifingqiwe soMthetho.

3. IZINGQINAMBA KWEZOKUPHATHA NEZABASEBENZI KUHULUMENI WESIFUNDAZWE

Akukho zingqinamba ezilindelekile kwezokuphatha nakwezabasebenzi.

4. IZIMALI EZIZODINGEKA KUHULUMENI WESIFUNDAZWE

Akukho zimali okulindeleke ukuthi zidingeke.

5. IMINYANGO/IMIGWAMANDA/ABANTU OKUBONISWENE NABO

UMthethosivivinyo wakhiwe ngokubonisana –

5.1 neHhovisi likaNdunankulu (kubandakanya abasebenzi asebenza eHhovisi leKhabhinethi);

5.2 nezinhlalo zazo zonke izimpiko zezoMthetho ezingaphansi kweminyango kahulumeni waKwaZulu-Natali; kanye

5.3 nesiGungu sabaMeli bakaHulumeni wesiFundazwe saKwaZulu-Natali (KZN PSLF).

6. OKUNGAXHUNYWANA NAYE:

Igama:	Mnu. Mark Serfontein
Isikhundla:	UMeluleki woMbuso kwezoMthetho
Ucingo:	(033) 341 3388
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