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**PROVINCIAL NOTICE**

The following Bill is hereby published for general information:

Provincial Archives and Records Service of the Western Cape Bill [B2—2005]

P.N. 46/2005 11 February 2005

Any person or organisation wishing to comment on the said Bill is requested to lodge such comment in writing before or on 4 March 2005:

- (a) by posting it to:  
The Acting Secretary:  
Western Cape  
Provincial Parliament  
(Attention: Mr J. Nkabinde)  
P.O. Box 648  
Cape Town  
8000
- (b) by e-mail to:  
jnkabinde@wcpp.gov.za
- (c) by fax to:  
J. Nkabinde  
(021) 487-1685

R. G. Hindley  
*Acting Secretary to Parliament*

*As 'n Nuusblad by die Poskantoor Geregistreer*

**INHOUD**

**PROVINSIALE KENNISGEWING**

Die volgende Wetsontwerp word hierby vir algemene inligting gepubliseer:

Wetsontwerp op die Provinsiale Argief-en Rekorddiens van die Wes-Kaap [W2—2005]

P.K. 46/2005 11 Februarie 2005

Enige persoon of organisasie wat kommentaar oor die genoemde Wetsontwerp wens te lewer, word versoek om sodanige kommentaar skriftelik te lewer voor of op 4 Maart 2005:

- (a) deur dit te pos aan:  
Die Waarnemende Sekretaris:  
Wes-Kaapse  
Provinsiale Parlement  
(Aandag: Mnr. J. Nkabinde)  
Posbus 648  
Kaapstad  
8000
- (b) deur dit te e-pos aan:  
jnkabinde@wcpp.gov.za
- (c) deur dit te faks aan:  
J. Nkabinde  
(021) 487-1685

R. G. Hindley  
*Waarnemende Sekretaris van die Parlement*

*Ibhaliswe ePosini njengePhephandaba*

**IZIQULATHO**

**ISAZISO SEPHONDO**

Lo Mthetho uSayilwayo upapashelwe ulwazi gabalala:

UMthetho osaYilwayo wooVimba boGcina-mpepha bePhondo neeNkqubo zoGcino lweeRekhodi zeNtshona Koloni [B2—2005]

P.N. 46/2005 11 Februwari 2005

Nabani na okanye nawuphi na umbutho ofuna ukuphefumla ngalo Mthetho uSayilwayo kufuneka angenise uluvo lwakhe elubhale phantsi phambi komhla we-4 Matshi 2005:

- (a) ngokuluposela ku:  
Nobhala oBambeleyo:  
Western Cape  
Provincial Parliament  
(Iya ku: Jabu Nkabinde)  
P.O. Box 648  
Cape Town  
8000
- (b) nge-imeyile ku:  
jnkabinde@wcpp.gov.za
- (c) ngefeksi ku:  
Mnu J. Nkabinde  
(021) 487-1685

R. G. Hindley  
*UNobhala obambeleyo wePalamente*

# BILL

**To provide for a Provincial Archives and Records Service for the province of the Western Cape; to provide for the proper management and care of public records in the province of the Western Cape; to provide for the preservation and use of a provincial archival heritage, and to provide for matters connected therewith.**

**B**E IT ENACTED by the Provincial Parliament of the Province of the Western Cape, as follows:—

## Definitions

1. In this Act, unless the context indicates otherwise—
  - (1) **“appraisal”** means the archival function of determining the eventual disposal of records; 5
  - (2) **“archives”** means records in the custody of an archives repository;
  - (3) **“archives repository”** means any archives repository contemplated in section 6;
  - (4) **“Committee”** means the Western Cape Archives Advisory Committee established in terms of section 10; 10
  - (5) **“custody”** means the control of records based on the physical possession thereof;
  - (6) **“disposal authority”** means a written authority issued in terms of section 9(2)(a) specifying the records to be transferred into the custody of the Service or specifying records to be otherwise disposed of; 15
  - (7) **“document”** means any recorded information or object which can be treated as a unit;
  - (8) **“electronic records”** means information which is generated and captured electronically and stored by means of computer technology; 20
  - (9) **“electronic record system”** means an electronic system in which information is generated, captured and stored electronically, including source documents and output, software applications, operating systems, data and metadata;
  - (10) **“governmental body”** means any legislative, executive, judicial or administrative organ of state, including a statutory body, commission, board or council, in the provincial or local sphere of government in the province of the Western Cape; 25
  - (11) **“head of a governmental body”** means the chief executive officer of a governmental body or the person acting as such, or the head of a provincial department or a person acting as such; 30
  - (12) **“non-public record”** means recorded information, regardless of the form or medium thereof, created or received by a private individual or a body other than a body defined as a governmental body;
  - (13) **“prescribe”** means prescribe by regulation; 35
  - (14) **“provincial department”** means the provincial department in the Western Cape responsible for cultural matters;
  - (15) **“Provincial Minister”** means the member of the Western Cape Provincial Cabinet responsible for cultural affairs and related matters;
  - (16) **“public record”** means recorded information, regardless of the form or medium thereof, created or received by a governmental body in pursuance of its activities; 40
  - (17) **“Public Service Act”** means the Public Service Act, 1994;

- (18) **“record”** means recorded information, regardless of the form or medium thereof;
- (19) **“recording”** means anything on which sounds or images or both are fixed or from which sounds or images or both are capable of being reproduced, regardless of the form thereof; 5
- (20) **“records classification system”** means a plan for the systematic identification and arrangement of business activities and/or records into categories according to logically structured connections, methods and procedural rules;
- (21) **“records management”** means a process of ensuring the proper creation, arrangement, maintenance, use and disposal of documents and records to achieve efficient, transparent and accountable governance; 10
- (22) **“regulation”** means any regulation made under this Act;
- (23) **“Service”** means the Provincial Archives and Records Service of the Western Cape established in terms of section 2;
- (24) **“this Act”** includes any regulations made thereunder. 15

### **Establishment of Provincial Archives and Records Service of the Western Cape**

2. The Provincial Archives and Records Service of the Western Cape, a component within the provincial department, is established.

### **Objects of Service**

3. The objects of the Service are to— 20
- (a) preserve public and non-public records of enduring value for use by the public and the State;
- (b) make such records accessible, and to promote their use by the public;
- (c) ensure the proper management and care of all public records;
- (d) collect non-public records of enduring value and 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; 25
- (e) promote cooperation and coordination between institutions having custody of non-public records that are of enduring value; 30
- (f) participate in the national automated archival information retrieval system;
- (g) promote an awareness of archives and records management, and to encourage archival and records management activities; and
- (h) generally promote the preservation and use of a provincial archival heritage.

### **Appointment of Head of Service** 35

4. A Head of the Service must be appointed in terms of the provisions of the Public Service Act and must have the relevant professional experience and an appropriate archival qualification.

### **Powers of Head of Service**

5. (1) The Head of the Service is responsible for the management of the Service. 40
- (2) The Head of the Service may—
- (a) take any measures, as he or she may deem necessary, to arrange, describe and retrieve records;
- (b) provide information, consultation, research and other services related to records; 45
- (c) with special emphasis on activities designed to reach out to less privileged sectors of society, make known information concerning records by means such as publications, exhibitions and the lending of records;
- (d) provide training in archival techniques and the management of records;
- (e) cooperate with organisations interested in archival matters or the management of records; 50
- (f) provide professional and technical support in aid of archival activities and the archival community;

- (g) require of a person who, while researching a publication or dissertation, has made use of records in the custody of the Service, to furnish a copy of the publication or dissertation to the Service;
  - (h) with the concurrence of the Provincial Minister, exempt a governmental body from any provision of this Act; and 5
  - (i) 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 Service.
- (3) The Head of the Service may—
- (a) in the performance of his or her duties, be assisted by officers and employees appointed in terms of the Public Service Act; and 10
  - (b) subject to any conditions, in writing delegate a power or assign a duty to a member of the staff and may at any time in writing withdraw such delegation or assignment.

### **Custody and preservation of records**

6. (1) The Provincial Minister may from time to time establish archives repositories under the control of the Head of the Service for the custody of records. 15
- (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—
- (a) no other Act of Parliament or of the Provincial Parliament of the Western Cape requires such records to be kept in the custody of a particular governmental body or person; 20
  - (b) the Head of the Service, after consultation with the head of a governmental body, may identify records which—
    - (i) must remain in the custody of a governmental body; or 25
    - (ii) must be transferred to an archives repository before they have been in existence for 20 years;
  - (c) the Head of the Service may defer the transfer of any public records; and
  - (d) the Head of the Service may grant permission for any public records to be transferred to an archives repository before they have been in existence for 20 30 years.
- (3) The Provincial Minister may prescribe terms and conditions governing the transfer of records under subsection (2).
- (4) The Head of the Service must take such measures as are necessary to preserve and restore records. 35
- (5) The Head of the Service may destroy or otherwise dispose of any public record in the custody of the Service where the retention of the record, according to existing disposal authorities issued by the Head of the Service, is no longer deemed necessary.

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

7. (1) The Head of the Service, on behalf of the Provincial Government of the Western Cape, after obtaining approval from the head of the provincial department, may 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 are of enduring value and provincial significance and which cannot be more appropriately preserved by another institution. 40 45
- (2) Subject to such conditions as may be applicable, non-public records acquired under subsection (1) must be deposited in the archives repository determined by the Head of the Service.

### **Access and use**

8. (1) Subject to any other Act that deals with the access to public records— 50
- (a) a public record in the custody of the Service must be 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; or
  - (b) the Head of the Service may, upon request, grant 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. 55

(2) A non-public record in the custody of the Service must be available for public access subject to any conditions agreed upon at the time of its acquisition in terms of section 7(1).

(3) Notwithstanding subsection (1), the Head of the Service may refuse access to a record on the grounds of its fragile condition, if alternative procedures provide for access to the content of such records. 5

(4) The Provincial Minister may make regulations regarding 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 Service. 10

### Records management

**9.** (1) Subject to the provisions of this Act, the Head of the Service is responsible for the proper management of public records in the custody of governmental bodies.

(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 of without the written authorisation of the Head of the Service; 15

(b) the Head of the Service must—

(i) determine record classification systems to be applied by governmental bodies; 20

(ii) determine conditions subject to which records may be microfilmed or electronically reproduced; and

(iii) determine conditions subject to which electronic records systems should be managed;

(c) the Head of the Service must inspect public records in so far as such inspection may be necessary for the performance of his or her functions under this Act; provided that the inspection of the public records which contain information, the disclosure of which is restricted by any other Act of Parliament, must be done only with the consent of the head of the governmental body concerned. 25 30

(3) The Head of the Service may from time to time issue directives and instructions, which must not be inconsistent with the regulations, as to the management and care of public records in the custody of governmental bodies.

(4) The Provincial Minister may make regulations regarding the management and care of public records in the custody of governmental bodies. 35

(5) (a) 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, appoint an official of the body to be the records manager of the body.

(b) The records manager is responsible for ensuring that the governmental body complies with the requirements of this Act. 40

(c) The Head of the Service may assign additional powers and functions to a records manager.

### Archives Advisory Committee

**10.** (1) The Provincial Minister, by notice in the *Provincial Gazette*, must establish an advisory committee to be known as the Western Cape Archives Advisory Committee. 45

(2) The Committee must consist of at least five but not more than nine members appointed by the Provincial Minister.

(3) Members of the Committee must be—

(a) South African citizens;

(b) permanently resident in the province of the Western Cape; 50

(c) demographically representative of the inhabitants of the province of the Western Cape, and

(d) knowledgeable about, or have an interest in archival matters.

### Appointment of members of Committee

**11.** (1) The Provincial Minister appoints the members of the Committee for a period not exceeding three years. The Committee consists of— 55

(a) the Head of the Service;

- (b) two persons nominated by the Western Cape Branch of the South African Society of Archivists; and
- (c) other persons from the list of candidates nominated by way of a public process.

(2) The Provincial Minister must by notice in the *Provincial Gazette* and such other printed media as the Provincial Minister may consider appropriate, invite the general public to nominate persons for appointment as members of the Committee. 5

(3) If the organisation referred to in subsection (1)(b) fails to nominate two persons, the Provincial Minister may appoint two persons on behalf of that organisation.

(4) Any member of the Committee, on expiry of his or her term of office, may be reappointed as a member of the Committee, except the Head of the Service, who is the only permanent member of the Committee. 10

### **Chairperson and deputy chairperson**

**12.** (1) The Provincial Minister must designate a member of the Committee (other than the Head of the Service) as the chairperson and must determine the date and place of the first meeting of the Committee. 15

(2) The Committee, at its first meeting, must from its members (other than the Head of the Service) appoint a deputy chairperson.

(3) When the chairperson of the Committee is absent or not able to perform his or her functions as chairperson, the deputy chairperson must act as chairperson and must for such period carry out all the powers and perform all the duties of the chairperson. 20

(4) If the chairperson vacates his or her post, the Provincial Minister must appoint another member as chairperson in his or her place.

(5) If both the chairperson and deputy chairperson are absent from a meeting of the Committee, the members present at the meeting must elect a member present (other than the Head of the Service) to act as chairperson for that meeting. 25

(6) The position of chairperson becomes vacant when—

- (a) the term of that member's office expires;
- (b) that member resigns; or
- (c) that member ceases to be a member of the Committee. 30

(7) A member may not be reappointed chairperson.

### **Dismissal**

**13.** The Provincial Minister may dismiss a member of the Committee, except the Head of the Service, only on grounds of misconduct, inability or incompetence and only after compliance with the provisions of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000). 35

### **Filling of vacancies**

**14.** If a vacancy arises before the expiry of the normal term of office of a member, the Provincial Minister may appoint a person for the unexpired period of such member's term of office in accordance with the provisions of section 11(2). 40

### **Objects and functions of Committee**

**15.** The objects and functions of the Committee are—

- (a) to promote, complement and support the objects and functions of the Service as mentioned in section 3 of this Act; and
- (b) to advise the Provincial Minister on issues relating to archival and record management matters. 45

### **Internal procedures and rules of Committee**

**16.** (1) The Committee must determine its own procedures by compiling rules in respect of—

- (a) the calling of meetings; 50
- (b) the procedures at meetings;
- (c) the frequency of meetings; provided that at least two meetings must be called annually; and

(d) the election of a deputy chairperson.

(2) The quorum for a meeting is a majority of all the appointed members of the Committee.

(3) The Committee takes decisions by a resolution of the majority of members present at a meeting and in the case of an equality of votes, the person presiding at the meeting has a casting vote in addition to a deliberative vote. 5

### **Allowances**

**17.** (1) Any member of the Committee who is not in the full-time employ of the State may be paid from the funds of the provincial department such meeting allowances as are determined by the Provincial Minister in concurrence with the Provincial Minister responsible for finance in the province of the Western Cape. 10

(2) A member referred to in subsection (1) may from funds of the provincial department be reimbursed in respect of expenses incurred by him or her in the performance of the functions of the Committee, as determined by the Provincial Minister. 15

### **Limitation of liability**

**18.** The Provincial Administration: Western Cape and any provincial department or any person employed in the Service of either will not be liable for the consequences of any action taken in good faith and without negligence in terms of this Act.

### **Offences and penalties** 20

**19.** (1) Any person who—

- (a) wilfully damages any public or non-public record in the control of a governmental body; or
- (b) otherwise than in accordance with this Act or any other law removes, destroys or erases such record, is guilty of an offence and liable on conviction to a fine not exceeding R10 000 or imprisonment for a period not exceeding two years or both such fine and imprisonment. 25

### **Transitional arrangements**

**20.** (1) The person who immediately prior to the commencement of this Act performed the functions of the acting head of the Western Cape Provincial Archives component of the National Archives of South Africa under the National Archives of South Africa Act, 1996 (Act 43 of 1996) continues in office as the acting head of the Service until the Head of the Service is appointed in terms of section 4. 30

(2) Every public servant who immediately prior to the commencement of this Act performed functions as a member of staff employed by the National Department of Arts and Culture in the Province of the Western Cape in relation to archival and record management matters becomes a member of the staff of the provincial department employed in the Provincial Archival and Records Service in the Western Cape, from the date of commencement of this Act. 35

(3) Any record in the custody of the said acting head on the day immediately prior to the commencement of this Act is hereby transferred to the Head of the Service, subject to any terms and conditions that were applicable to such records on that day. 40

### **Regulations**

**21.** The provincial Minister may make regulations regarding any matter which in terms of this Act is required or permitted to be prescribed or done by regulation, and generally, regarding any matter in respect of which it is necessary or expedient to make regulations in order to achieve or promote the objects of this Act. 45

### **Short title and commencement**

**22.** This Act is called the Provincial Archives and Records Service of the Western Cape Act, 2005, and comes into operation on a date to be fixed by the Premier by proclamation in the *Provincial Gazette*. 50

## **EXPLANATORY MEMORANDUM**

This legislation provides for a Provincial Archives and Records Service in the Western Cape with the assignment of the archive function (National Constitution, Act 108 of 1996: Schedule 5A) from the National Department of Arts and Culture to the Western Cape Provincial Department of Cultural Affairs and Sport. As such it provides for the efficient management and care of public records, the retention and use of a provincial archival heritage and related matters.

### **1. DEFINITIONS**

An explanation is given in section 1 of fixed terms with definitions referred to in the legislation.

### **2. ESTABLISHMENT AND OBJECTS OF SERVICE**

Section 2 provides for the establishment of a Provincial Archives and Records Service for the Western Cape Province, while the objectives of the Service, viz, the conservation of public and non-public records of permanent value, access to records and the management thereof, the collection of non-public records, co-operation between institutions as well as the promotion of the provincial archival heritage and awareness of archive records and management is provided for in section 3.

### **3. APPOINTMENT AND POWERS OF HEAD OF SERVICE**

Section 4 provides for the appointment of a Head of the Archives and Records Service while the responsibilities and powers of this Head are defined in section 5. Staff for this institution to assist the Head as well as the powers of delegation in this regard is provided for in section 5(3).

### **4. CUSTODY AND PRESERVATION OF RECORDS**

The Provincial Minister responsible for Cultural Affairs may establish archives repositories in terms of subsection (1) of section 6, while in subsection (2) the method whereby public records must be dealt with in terms of a disposal authority for public records in existence for 20 years and longer is described as well as the powers of the Provincial Minister and Head of the Archives and Records Service.

### **5. ACQUISITION OF NON-PUBLIC RECORDS**

The circumstances as well as method whereby non-public records may be acquired by the Head of the Service for the Provincial Government of the Western Cape is described in section 7.

### **6. ACCESS AND USE**

Access to public as well as non-public records, subject to any other legislation dealing with access to public records, is provided for in Section 8. Subsection (3) provides for refusal of access to records in poor physical condition should alternative procedures for access be made available. The Provincial Minister may issue regulations in terms of subsection (4) providing for admission to archives repositories, making available of records as well as equipment for copying.

### **7. MANAGEMENT OF RECORDS**

The Head of the Service is responsible for the proper management of records in the custody of governmental bodies, control over the transfer thereof as well as the systems, conditions of reproduction of records, and the management of electronic recording systems in terms of Section 9. The determination and approval of a records management policy is also the responsibility of the Head of the Service. Subsection (4) provides for inspections of public records by the Head of the Service, and in consultation with relevant heads of government departments, issue directives and instructions for the management and care of public records.



In subsection (5) provision is made for the Provincial Minister to issue regulations as to the management and care of public records of government bodies. Subsection (6) provides for the appointment of records managers at government bodies and sets out the responsibilities of these managers.

## **8. ARCHIVES ADVISORY COMMITTEE**

### **8.1** *Establishment of structure and appointment of members*

Sections 10, 11 and 12 make provision for the establishment of a Western Cape Archives Advisory Committee by the Minister, as well as the constitution of the Advisory Committee, the appointment and re-appointment of members, and the election and appointment of the chairperson and deputy chairperson. Provision is also made for the expiry of terms of office as well as resignations.

In section 13 grounds for the termination of the term of office of any member, excluding the Head of the Service, are provided for and section 14 provides for the filling of a vacancy on the Advisory Committee in terms of section 11 (2).

### **8.2** *Objects and functions*

Section 15 describes the objects and functions of the Advisory Committee as promotional, complimentary and supplementary to the functions of the Archive and Records Service, while the Committee will also advise the Provincial Minister on archive matters.

### **8.3** *Internal procedures and rules*

All procedures and rules pertaining to the meetings of the Advisory Committee, as well as decision making of this Committee are indicated in section 16.

### **8.4** *Allowances*

Section 17 provides for the payment of meeting allowances to Committee members who are not in the full time employment of Government Service. Such members are also allowed to be reimbursed for expenditure incurred in the execution of their duties.

## **9. LIMITING OF ACCOUNTABILITY**

Section 18 indemnifies the Provincial Administration or any department of the Government of the Western Cape, or officials of these institutions of the consequences of actions under this Act that were executed in good faith and without any negligence.

## **10. OFFENCES AND PENALTIES**

Section 19 stipulates that the purposeful damaging, removal, or destruction of public and non-public records of a government body is an offence and determines the penalties.

## **11. TRANSITIONAL ARRANGEMENTS**

The execution of the function of the archive and records service in the Western Cape is currently being controlled by the National Department of Arts and Culture. Section 20 provides for the existing head of the Western Cape Archive component of the National Archive and Records Service of South Africa to continue in an acting capacity as Head of Service with the taking effect of this Act. He or she will continue to act in this capacity until such time as a Head of Service is appointed in terms of this Act. Section 20 also determines that all officials from the National Department of Arts and Culture tasked with the Western Cape Archive function will be considered to be in the employment of the Provincial Archive and Records Service of the Western Cape with the taking effect of this Act.

**12. REGULATIONS**

Authority to make regulations regarding the Provincial Archive and Records Service is given to the Provincial Minister by section 21.

**13. SHORT TITLE**

The taking effect of the Act on a date determined by the Premier through proclamation, as well as its short title, is indicated in section 22.

# WETSONTWERP

**Om voorsiening te maak vir 'n Provinsiale Argief- en Rekorddiens vir die provinsie Wes-Kaap; om voorsiening te maak vir die behoorlike bestuur en versorging van publieke rekords in die provinsie Wes-Kaap; om voorsiening te maak vir die behoud en gebruik van 'n provinsiale argivale erfenis, en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.**

**D**AAR WORD BEPAAL deur die Provinsiale Parlement van die Wes-Kaap, soos volg:—

## Woordomskrywing

1. In hierdie Wet, tensy dit uit die samehang anders blyk, beteken—
  - (1) **“argiefbewaarplek”** enige argiefbewaarplek in artikel 6 bedoel; 5
  - (2) **“argiewe”** rekords in bewaring by 'n argiefbewaarplek;
  - (3) **“beskikkingsmagtiging”** 'n skriftelike magtiging uitgereik ingevolge artikel 9(2)(a) wat spesifiseer watter rekords in die bewaring van die Diens oorgeplaas moet word of wat spesifiseer oor watter rekords daar op 'n ander wyse beskik moet word; 10
  - (4) **“bewaring”** die beheer van rekords gebaseer op die fisiese besit daarvan;
  - (5) **“Diens”** die Provinsiale Argief- en Rekorddiens van die Wes-Kaap ingevolge artikel 2 ingestel;
  - (6) **“dokument”** enige aangetekende inligting of voorwerp wat as 'n eenheid hanteer kan word; 15
  - (7) **“elektroniese rekords”** inligting wat elektronies gegenereer en vasgelê word en deur middel van rekenaartegnologie gestoor word;
  - (8) **“elektroniese rekordstelsel”** 'n elektroniese stelsel waarin inligting elektronies gegenereer, vasgelê en gestoor word, insluitende brondokumente en uitset, programmatuurtoepassings, bedryfstelsels, data en metadata; 20
  - (9) **“hierdie Wet”** ook enige regulasies daarkragtens uitgevaardig;
  - (10) **“hoof van 'n regeringsliggaam”** die hoof uitvoerende beampte van 'n regeringsliggaam of die persoon wat as sodanig waarneem, of die hoof van 'n provinsiale departement of die persoon wat as sodanig waarneem;
  - (11) **“keuring”** die argivale funksie van die uiteindelijke beskikking oor rekords te bepaal; 25
  - (12) **“Komitee”** die Wes-Kaapse Argiefadvieskomitee ingevolge artikel 10 ingestel;
  - (13) **“nie-publieke rekord”** vasgelegde inligting, ongeag die vorm of medium, geskep of ontvang deur 'n private individu of 'n ander liggaam as 'n liggaam wat as 'n regeringsliggaam omskryf is; 30
  - (14) **“opname”** enigiets waarop klank of beeld of albei vasgelê is of waarvan klank of beeld of albei gereproduseer kan word, ongeag die vorm;
  - (15) **“provinsiale departement”** die provinsiale departement in die Wes-Kaap verantwoordelik vir kultuuraangeleenthede; 35
  - (16) **“Provinsiale Minister”** die lid van die Wes-Kaapse Provinsiale Kabinet verantwoordelik vir kultuursake en verwante aangeleenthede;
  - (17) **“publieke rekord”** vasgelegde inligting, ongeag die vorm of medium, geskep of ontvang deur 'n regeringsliggaam in die uitvoering van sy aktiwiteite; 40

- (18) **“regeringsliggaam”** enige wetgewende, uitvoerende, regsprekende of administratiewe staatsorgaan, insluitende ’n statutêre liggaam, kommissie of raad, in die provinsiale of plaaslike regeringsfeer in die provinsie Wes-Kaap;
- (19) **“regulasie”** enige regulasie kragtens hierdie Wet uitgevaardig;
- (20) **“rekord”** vasgelegde inligting, ongeag die vorm of medium; 5
- (21) **“rekordbestuur”** ’n proses om die behoorlike skepping, ordening, instandhouding en gebruik van en beskikking oor dokumente en rekords te verseker ten einde doeltreffende, deursigtige en verantwoordbare bestuur te verkry;
- (22) **“rekordklassifikasiesstelsel”** ’n plan vir die stelselmatige identifisering en rangskikking van besigheidsaktiwiteite en/of rekords in kategorieë volgens logies gestruktureerde konvensies, metodes en prosedurereëls; 10
- (23) **“Staatsdienswet”** die Staatsdienswet, 1994;
- (24) **“voorskryf”** by regulasie voorskryf.

## **Instelling van Provinsiale Argief- en Rekorddiens van die Wes-Kaap** 15

2. Die Provinsiale Argief- en Rekorddiens van die Wes-Kaap, ’n komponent binne die provinsiale departement, word ingestel.

### **Doelstellings van Diens**

3. Die doelstellings van die Diens is—
- (a) om publieke en nie-publieke rekords van blywende waarde vir gebruik deur die publiek en die Staat in stand te hou; 20
- (b) om dié rekords toeganklik te maak, en om die gebruik daarvan deur die publiek te bevorder;
- (c) om die behoorlike bestuur en versorging van alle publieke rekords te verseker;
- (d) om nie-publieke rekords van blywende waarde en provinsiale betekenis wat nie op ’n meer geskikte wyse deur ’n ander instelling in stand gehou kan word nie, te versamel, met behoorlike inagneming van die behoefte om aspekte van die Provinsie se ervaring wat in die verlede deur argiefbewaarplesse nagelaat is, te dokumenteer; 25
- (e) om samewerking en koördinasie tussen instellings wat nie-publieke rekords van blywende waarde in bewaring het, te bevorder; 30
- (f) om aan die nasionale outomatiese argiefinligtingherwinningstelsel deel te neem;
- (g) om ’n bewustheid van argiewe en rekordbestuur te bevorder, en om argivale en rekordbestuursaktiwiteite aan te moedig; en 35
- (h) om in die algemeen die behoud en gebruik van ’n provinsiale argivale erfenis te bevorder.

### **Aanstelling van Hoof van Diens**

4. ’n Hoof van die Diens moet ingevolge die bepalings van die Staatsdienswet aangestel word en moet oor die tersaaklike professionele ondervinding en ’n toepaslike argiefkwalifikasie beskik. 40

### **Bevoegdhede van Hoof van Diens**

5. (1) Die Hoof van die Diens is verantwoordelik vir die bestuur van die Diens.
- (2) Die Hoof van die Diens kan—
- (a) enige maatreëls tref wat hy of sy nodig ag om rekords te orden, te beskryf en op te spoor; 45
- (b) inligtings-, konsultasie-, navorsings- en ander dienste met betrekking tot rekords lewer;
- (c) met besondere nadruk op aktiwiteite wat daarop gerig is om uit te reik na minderbevoorregte sektore van die samelewing, inligting met betrekking tot rekords bekend maak deur metodes soos publikasies en uitstallings en die uitleen van rekords; 50
- (d) opleiding in argivale tegnieke en die bestuur van rekords verskaf;
- (e) saamwerk met organisasies wat belang stel in argivale aangeleenthede of die bestuur van rekords; 55

- (f) professionele en tegniese bystand verleen ter ondersteuning van argivale aktiwiteite en die argivale gemeenskap;
  - (g) van 'n persoon wat rekords wat by die Diens in bewaring is, vir navorsing oor 'n publikasie of verhandeling gebruik het, verlang om 'n eksemplaar van die publikasie of verhandeling aan die Diens te verskaf; 5
  - (h) met die instemming van die Provinsiale Minister 'n regeringsliggaam vrystel van enige bepaling van hierdie Wet; en
  - (i) oor die algemeen ander stappe doen en ander handelinge verrig wat nodig of bevorderlik is ten einde die doelstellings van die Diens te verwesenlik.
- (3) Die Hoof van die Diens kan— 10
- (a) by die verrigting van sy of haar pligte bygestaan word deur beamptes en werknemers wat ingevolge die Staatsdienswet aangestel is; en
  - (b) behoudens enige voorwaardes, 'n bevoegdheid of plig skriftelik delegeer of opdra aan 'n lid van die personeel en kan so 'n delegering of opdrag te eniger tyd skriftelik intrek. 15

### Bewaring en instandhouding van rekords

6. (1) Die Provinsiale Minister kan van tyd tot tyd argiefbewaarplesse vir die bewaring van rekords onder beheer van die Hoof van die Diens instel.
- (2) Publieke rekords wat in 'n beskikkingsmagtigings geïdentifiseer is as sou dit blywende waarde hê, word na 'n argiefbewaarples oorgeplaas wanneer dit 20 jaar oud is; met dien verstande dat— 20
- (a) geen ander Wet van die Parlement of van die Provinsiale Parlement van die Wes-Kaap vereis dat dié rekords deur 'n bepaalde regeringsliggaam of persoon in bewaring gehou moet word nie;
  - (b) die Hoof van die Diens, na oorleg met die hoof van 'n regeringsliggaam, rekords kan identifiseer wat— 25
    - (i) deur 'n regeringsliggaam in bewaring gehou moet word; of
    - (ii) na 'n argiefbewaarples oorgeplaas moet word voordat dit 20 jaar oud is;
  - (c) die Hoof van die Diens die oorplesing van enige publieke rekords kan uitstel; en 30
  - (d) die Hoof van die Diens toestemming kan verleen dat enige publieke rekords na 'n argiefbewaarples oorgeplaas word voordat dit 20 jaar oud is.
- (3) Die Provinsiale Minister kan bedinge en voorwaardes voorskryf vir die oorplesing van rekords kragtens subartikel (2).
- (4) Die Hoof van die Diens moet die stappe doen wat nodig is vir die behoud en herstel van rekords. 35
- (5) Die Hoof van die Diens kan enige publieke rekord wat deur die Diens in bewaring gehou word, vernietig of andersins daarvoor beskik waar die verdere behoud van die rekord volgens bestaande beskikkingsmagtigings deur die Hoof van die Diens uitgereik, nie meer nodig geag word nie. 40

### Verkryging van nie-publieke rekords

7. (1) Die Hoof van die Diens kan namens die Provinsiale Regering van die Wes-Kaap, na verkryging van goedkeuring van die hoof van die provinsiale departement, nie-publieke rekords wat na sy of haar mening van blywende waarde en provinsiale betekenis is en nie op 'n meer geskikte wyse deur 'n ander instelling bewaar kan word nie, deur middel van aankoop of skenking of bruikleen tydelik of permanent, hetsy onvoorwaardelik of op die voorwaardes waarop ooreengekom word, verkry. 45
- (2) Behoudens die voorwaardes wat van toepassing is, moet nie-publieke rekords wat kragtens subartikel (1) verkry is, geplaas word in die argiefbewaarples wat die Hoof van die Diens bepaal. 50

### Toegang en gebruik

8. (1) Behoudens enige ander Wet wat betrekking het op toegang tot publieke rekords—
- (a) is 'n publieke rekord wat by die diens in bewaring is, 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; 55

- (b) kan die Hoof van die Diens op versoek toegang verleen tot 'n publieke 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.
- (2) 'n Nie-publieke rekord wat by die Diens in bewaring is, is beskikbaar vir openbare toegang behoudens enige voorwaardes waarop ooreengekom is tydens die verkryging daarvan ingevolge artikel 7(1). 5
- (3) Ondanks subartikels (1) en (2) kan die Hoof van die Diens toegang tot 'n rekord weier op grond van die swak toestand daarvan, indien alternatiewe prosedures voorsiening maak vir toegang tot die inhoud van dié rekord.
- (4) Die Provinsiale Minister kan regulasies uitvaardig ten opsigte van die toelating van die publiek tot argiefbewaarplesse, die beskikbaarstelling van rekords vir openbare toegang, en die gebruik van toerusting vir die maak van afdrucke van of uittreksels uit rekords wat by die Diens in bewaring is. 10

### Rekordbestuur

9. (1) Behoudens die bepalings van hierdie Wet is die Hoof van die Diens verantwoordelik vir die behoorlike bestuur van publieke rekords wat by regeringsliggame in bewaring is. 15
- (2) Sonder om die algemeenheid van subartikel (1) in te kort —
- (a) mag geen publieke rekord onder die beheer van 'n regeringsliggaam na 'n argiefbewaarples oorgeplaas, vernietig, uitgewis of op enige ander wyse oor beskik word sonder die skriftelike magtiging van die Hoof van die Diens, nie wat uitgereik word; 20
- (b) moet die Hoof van die Diens—
- (i) rekordklassifikasiesistelsels wat deur regeringsliggame toegepas moet word, bepaal; 25
- (ii) voorwaardes vir die mikroverfilming of elektroniese reproduksie van rekords bepaal; en
- (iii) voorwaardes vir die bestuur van elektroniese rekordstelsels bepaal;
- (c) moet die Hoof van die Diens publieke rekords inspekteer vir sover 'n inspeksie nodig is vir die verrigting van sy of haar werksaamhede kragtens hierdie Wet; met dien verstande dat die inspeksie van die publieke rekords wat inligting bevat waarvan die bekendmaking deur enige ander Wet van die Parlement beperk word, slegs met die toestemming van die hoof van die betrokke regeringsliggaam gedoen mag word. 30
- (3) Die Hoof van die Diens kan van tyd tot tyd lasgewings en instruksies uitreik, wat nie strydig met die regulasies mag wees nie, betreffende die bestuur en versorging van publieke rekords wat in die bewaring van regeringsliggame is. 35
- (4) Die Provinsiale Minister kan regulasies uitvaardig met betrekking tot die bestuur en versorging van publieke rekords wat by regeringsliggame in bewaring is.
- (5) (a) Die hoof van 'n regeringsliggaam moet, behoudens enige wet wat die indiensstelling van personeel van die betrokke regeringsliggaam reël en enige vereistes wat voorgeskryf word, 'n beampte van die liggaam as rekordbestuurder van die liggaam aanstel. 40
- (b) Die rekordbestuurder is daarvoor verantwoordelik om toe te sien dat die regeringsliggaam aan die vereistes van hierdie Wet voldoen. 45
- (c) Die Hoof van die Diens kan bykomende bevoegdhede en werksaamhede aan 'n rekordbestuurder opdra.

### Argiefadvieskomitee

10. (1) Die Provinsiale Minister moet by kennisgewing in die *Provinsiale Koerant* 'n advieskomitee instel wat as die Wes-Kaapse Argiefadvieskomitee bekend staan. 50
- (2) Die Komitee bestaan uit minstens vyf maar hoogstens nege lede wat deur die Provinsiale Minister aangestel word.
- (3) Lede van die Komitee moet—
- (a) Suid-Afrikaanse burgers wees;
- (b) permanent in die provinsie Wes-Kaap woonagtig wees; 55
- (c) die inwoners van die provinsie Wes-Kaap demografies verteenwoordig; en
- (d) kundig wees, of 'n belangstelling hê, in argiefaangeleenthede.

### Aanstelling van lede van Komitee

11. (1) Die Provinsiale Minister stel die lede van die Komitee vir 'n tydperk van hoogstens drie jaar aan. Die Komitee bestaan uit—
- (a) die Hoof van die Diens;
  - (b) twee persone wat deur die Wes-Kaapse Tak van die Suid-Afrikaanse Vereniging van Argivarisse benoem is; en 5
  - (c) ander persone uit die lys kandidate wat deur middel van 'n openbare proses benoem is.
- (2) Die Provinsiale Minister moet by kennisgewing in die *Provinsiale Koerant* en die ander gedrukte media wat die Provinsiale Minister geskik ag, die breë publiek uitnooi om persone te benoem vir aanstelling as lede van die Komitee. 10
- (3) Indien die organisasie in subartikel (1)(b) bedoel, versuim om twee persone te benoem, kan die Provinsiale Minister twee persone namens daardie organisasie aanstel.
- (4) Enige lid van die Komitee kan by verstryking van sy of haar ampstermyn heraan gestel word as lid van die Komitee, uitgesonderd die Hoof van die Diens, wat die enigste permanente lid van die Komitee is. 15

### Voorsitter en ondervoorsitter

12. (1) Die Provinsiale Minister moet 'n lid van die Komitee (uitgesonderd die Hoof van die Diens) as voorsitter aanwys en moet die datum en plek van die eerste vergadering van die Komitee bepaal. 20
- (2) Die Komitee moet op sy eerste vergadering uit sy lede (uitgesonderd die Hoof van die Diens) 'n ondervoorsitter aanstel.
- (3) Wanneer die voorsitter van die Komitee afwesig is of nie in staat is om sy of haar werksaamhede as voorsitter te verrig nie, moet die ondervoorsitter as voorsitter optree en moet hy of sy vir dié tydperk alle bevoegdhede en pligte van die voorsitter uitoefen en verrig. 25
- (4) Indien die voorsitter sy of haar amp ontruim, moet die Provinsiale Minister 'n ander lid as voorsitter in sy of haar plek aanstel.
- (5) Indien sowel die voorsitter as die ondervoorsitter afwesig is van 'n vergadering van die Komitee, moet die lede wat op die vergadering teenwoordig is, 'n lid wat verteenwoordig is (uitgesonderd die Hoof van die Diens) kies om vir daardie vergadering as voorsitter op te tree. 30
- (6) Die posisie van voorsitter raak vakant wanneer—
- (a) die ampstermyn van daardie lid verstryk;
  - (b) daardie lid bedank; of 35
  - (c) daardie lid ophou om 'n lid van die Komitee te wees.
- (7) 'n Lid mag nie as voorsitter herkies word nie.

### Ontslag

13. Die Provinsiale Minister kan 'n lid van die Komitee, uitgesonderd die Hoof van die Diens, ontslaan slegs op grond van wangedrag, onvermoë of onbekwaamheid en slegs nadat die wet op die bevordering van administratiewe geregtigheid (Wet 3 van 2000) nagekom is. 40

### Vulling van vakatures

14. Indien 'n vakature voor die verstryking van die normale ampstermyn van 'n lid ontstaan, kan die Provinsiale Minister 'n persoon vir die onverstreke tydperk van daardie lid se ampstermyn aanstel ooreenkomstig die bepalings van artikel 11(2). 45

### Doelstellings en werksaamhede van Komitee

15. Die doelstellings en werksaamhede van die Komitee is—
- (a) om die doelstellings en werksaamhede van die Diens soos in artikel 3 vermeld, te bevorder, aan te vul en te steun; en 50
  - (b) om die Provinsiale Minister oor kwessies rakende argivale en rekord-bestuursaangeleenthede te adviseer.

### Interne prosedures en reëls van Komitee

- 16.** (1) Die Komitee moet sy eie interne prosedures bepaal deur reëls op te stel ten opsigte van —
- (a) die belê van vergaderings;
  - (b) die prosedures op vergaderings; 5
  - (c) die frekwensie van vergaderings; met dien verstande dat minstens twee vergaderings jaarliks gehou moet word; en
  - (d) die verkiesing van 'n ondervoorsitter.
- (2) 'n Kworum vir 'n vergadering is 'n meerderheid van al die aangestelde lede van die Komitee. 10
- (3) Die Komitee neem besluite deur 'n resoluëie van die meerderheid van die lede teenwoordig op 'n vergadering, en in die geval van 'n staking van stemme het die persoon wat op die vergadering voorsit, 'n beslissende stem benewens 'n beraadslagende stem.

### Toelaes 15

- 17.** (1) Enige lid van die Komitee wat nie in die voltydse diens van die Staat is nie, kan uit die fondse van die provinsiale departement dié vergaderingstoelaes betaal word wat deur die Provinsiale Minister bepaal word met die instemming van die Provinsiale Minister verantwoordelik vir finansies in die provinsie Wes-Kaap.
- (2) 'n Lid in subartikel (1) bedoel, kan uit fondse van die provinsiale departement vergoed word ten opsigte van uitgawes deur hom of haar aangegaan by die verrigting van die werksaamhede van die Komitee, soos deur die Provinsiale Minister bepaal. 20

### Beperking van aanspreeklikheid

- 18.** Die Provinsiale Administrasie: Wes-Kaap en enige provinsiale departement of enige persoon wat in diens is van een van die twee, is nie aanspreeklik vir die gevolge van enige handeling wat te goeder trou en sonder nalatigheid ingevolge hierdie Wet verrig is nie. 25

### Misdrywe en strawwe

- 19.** (1) Enige persoon wat—
- (a) enige publieke of nie-publieke rekord onder die beheer van 'n 30  
regeringsliggaam opsetlik beskadig; of
  - (b) anders as ooreenkomstig hierdie Wet of enige ander wet so 'n rekord verwyder, vernietig of uitwis, is skuldig aan 'n misdryf en is by skuldigbevinding strafbaar met 'n boete van hoogstens R10 000 of gevangenisstraf vir 'n tydperk van hoogstens twee jaar of dié boete sowel as 35  
die gevangenisstraf.

### Oorgangsreëlings

- 20.** (1) Die persoon wat onmiddellik voor die inwerkingtreding van hierdie Wet die werksaamhede van die waarnemende hoof van die Wes-Kaapse Provinsiale Argief-komponent van die Nasionale Argief van Suid-Afrika verrig het ingevolge die Wet op die Nasionale Argief van Suid-Afrika, 1996 (Wet 43 van 1996), gaan voort in die amp as waarnemende hoof van die Diens totdat die Hoof van die Diens ingevolge artikel 4 aangestel word. 40
- (2) Elke staatsamptenaar wat onmiddellik voor die inwerkingtreding van hierdie Wet as 'n lid van die personeel van die nasionale Departement van Kuns en Kultuur werksaamhede in die Provinsie Wes-Kaap met betrekking tot argivale en rekord-bestuursaangeleenthede verrig het, word 'n lid van die personeel van die provinsiale departement in diens in die Provinsiale Argiefdiens in die Wes-Kaap met ingang van die datum van inwerkingtreding van hierdie Wet. 45
- (3) Enige rekord wat by die waarnemende hoof in bewaring is op die dag onmiddellik voor die inwerkingtreding van hierdie Wet, word na die Hoof van die Diens oorgeplaas, behoudens die bedinge en voorwaardes wat op daardie dag op dié rekords van toepassing was. 50



**Regulasies**

21. Die Provinsiale Minister kan regulasies uitvaardig aangaande enige aangeleentheid wat ingevolge hierdie Wet by regulasie voorgeskryf of gedoen moet of kan word, en in die algemeen met betrekking tot enige aangeleentheid ten opsigte waarvan dit nodig of dienstig is om regulasies uit te vaardig ten einde die doelstellings van hierdie Wet te bereik of te bevorder. 5

**Kort titel en inwerkingtreding**

22. Hierdie Wet heet die Wet op die Provinsiale Argief- en Rekorddiens van die Wes-Kaap, 2005, en tree in werking op 'n datum wat die Premier by proklamasie in die *Provinsiale Koerant* bepaal. 10

## **VERKLARENDE MEMORANDUM**

Met die oordrag van die argieffunksie (Nasionale Grondwet, Wet 108 van 1996: Skedule 5A) van die Nasionale Departement van Kuns en Kultuur na die Wes- Kaapse Provinsiale Departement van Kultuursake en Sport, maak hierdie wetgewing voorsiening vir 'n Provinsiale Argief- en Rekorddiens in die Wes-Kaap, behoorlike bestuur en versorging van publieke rekords, die behoud en gebruik van 'n provinsiale argivale erfenis en verbandhoudende aangeleenthede.

### **1. WOORDOMSKRYWINGS**

In artikel 1 word 'n uiteensetting en die definisies gegee van die vaste terme gebruik in hierdie wetgewing.

### **2. INSTELLING EN DOELSTELLINGS VAN DIENS**

Artikel 2 maak voorsiening vir die vestiging van 'n Provinsiale Argief- en Rekorddiens vir die Wes-Kaap Provinsie, terwyl artikel 3 voorsiening maak vir doelwitte soos die bewaring van openbare en nie-openbare rekords van blywende waarde, toeganklikheid van rekords, bestuur daarvan, versameling van nie-openbare rekords, samewerking tussen instellings, sowel as die promosie van die provinsiale argivale erfenis en bewustheid van argief rekords en bestuur.

### **3. AANSTELLING EN BEVOEGDHEDE VAN DIE HOOF VAN DIENS**

In artikel 4 word voorsien vir die aanstelling van 'n Hoof van die Argief-en Rekorddiens, terwyl die verantwoordelikhede en magte van hierdie Hoof in artikel 5 omskryf word. In artikel 5(3) word voorsien vir personeel vir hierdie instelling om die Hoof by te staan, asook die Hoof se delegasiebevoegdhe in hierdie verband.

### **4. BEWARING EN INSTANDHOUDING VAN REKORDS**

Subartikel (1) van artikel 6 maak voorsiening vir die Provinsiale Minister verantwoordelik vir Kultuursake van die Wes-Kaap om argiefbewaarplekke in te stel. Subartikel (2) voorsien vir die wyse waarop met openbare rekords gehandel moet word in terme van beskikkingsmagtigings oor openbare rekords van 20 jaar en ouer en beskryf die magte wat die Provinsiale Minister en Hoof van die Argief- en Rekorddiens in hierdie verband het.

### **5. VERKRYGING VAN NIE-PUBLIEKE REKORDS**

In artikel 7 word die omstandighede en wyse uiteengesit waaronder nie-openbare rekords aangewins kan word deur die Hoof van die Diens, ten behoeve van die Provinsiale Regering van die Wes-Kaap.

### **6. TOEGANG EN GEBRUIK**

Onderworpe aan enige ander wetgewing wat met toegang tot publieke rekords handel, word voorsiening gemaak vir toegang tot publieke rekords sowel as nie-publieke rekords (artikel 8). Subartikel (3) voorsien daarvoor dat toegang geweier kan word tot rekords in swak fisiese toestande indien alternatiewe prosedures vir toeganklikheid beskikbaar is. Die Provinsiale Minister kry in subartikel (4) regulasiebevoegdheid ten opsigte van toegang tot bewaarplekke, beskikbaar maak van rekords en kopieer toerusting.

### **7. REKORDBESTUUR**

Artikel 9 maak voorsiening vir die Hoof van die Diens vir verantwoordelikheid vir die behoorlike bestuur van rekords by regeringsliggame, die beheer oor die oorpasing daarvan sowel as die stelsels, voorwaardes vir reproduksie van rekords, asook bestuur van elektroniese rekordstelsels. Die bepaling en goedkeuring van 'n rekord-bestuursbeleid is ook die Hoof van Diens se plig. Subartikel (4) maak voorsiening dat die Hoof van die Diens inspeksies van publieke rekords kan uitvoer en na oorleg met die

betrokke hoof van 'n regeringsliggaam voorskrifte en instruksies vir die bestuur en versorging van publieke rekords uitreik.

In terme van subartikel (5) kan die Provinsiale Minister regulasies met betrekking tot die bestuur en versorging van publieke rekords by regeringsliggame uitreik. Subartikel (6) maak voorsiening vir die aanstelling van rekordbestuurders by regeringsliggame sowel as die verantwoordelikheid van hierdie rekordbestuurders.

## **8. ARGIEFADVIESKOMITEE**

### **8.1 *Instelling en aanstelling van lede, asook struktuur***

Artikels 10, 11 en 12 maak voorsiening vir die instelling van 'n Wes-Kaapse Argiefadvieskomitee deur die Provinsiale Minister, sowel as die profiel van die advieskomitee, die wyse van aanstelling en heraanstelling van lede, sowel as die aanwysing en verkiesing van die voorsitter en ondervoorsitter respektiewelik. Voorsiening word ook gemaak vir die verstryking van termyne en bedankings.

In artikel 13 word gronde verskaf waarop 'n lid van die advieskomitee, uitgesonderd die Hoof van die Diens, ontslaan kan word, terwyl in artikel 14 voorsien word dat 'n vakature wat ontstaan op die Advieskomitee gevul kan word ooreenkomstig artikel 11 (2).

### **8.2 *Doelstellinge en werksaamhede***

Artikel 15 omskryf die doelstellinge en werksaamhede van die Advieskomitee as promoverend, komplimenterend en ondersteunend tot die funksies van die Argief- en Rekorddiens, terwyl die Komitee ook die Provinsiale Minister sal adviseer oor argiefaangeleenthede.

### **8.3 *Interne prosedures en reëls***

Alle prosedures en reëls rondom vergaderings van die Advieskomitee sowel as die besluitnemingswyse word in artikel 16 uiteengesit.

### **8.4 *Toelaes***

Artikel 17 maak voorsiening vir die betaling van vergaderingstoelae uit fondse van die provinsiale departement aan komiteelede wat nie voltyds in die Regering se diens is nie. Sodanige lede kan ook vir uitgawes aangegaan in die uitvoering van hul funksie vergoed word uit departementele fondse.

## **9. BEPERKING VAN AANSPREEKLIKHEID**

Artikel 18 vrywaar die Provinsiale Administrasie of enige departement van die Regering van die Wes-Kaap of amptenare van hierdie instellings van gevolge van handeling onder hierdie Wet wat ter goeder trou en sonder nalatigheid uitgevoer is.

## **10. MISDRYWE EN STRAFBEPALINGS**

Artikel 19 maak opsetlike beskadiging, verwydering, vernietiging of uitwissing van enige publieke en nie-publieke rekords van 'n regeringsliggaam, 'n misdryf en lê die straf vas.

## **11. OORGANGSMAATREËLS**

Die huidige uitvoering van die argief- en rekorddiens funksie in die Wes-Kaap word beheer deur die Nasionale Departement van Kuns en Kultuur. Artikel 20 maak voorsiening vir die bestaande hoof van die Wes-Kaapse argiefkomponent van die Nasionale Argief en Rekorddiens van Suid-Afrika om by in werkingtreding van hierdie Wet in waarnemende hoedanigheid voort te gaan as hoof totdat 'n Hoof van die Diens aangestel is ingevolge hierdie wet. Artikel 20 gaan voort en bepaal ook dat alle amptenare van die Nasionale Departement van Kuns en Kultuur gemoed met die Wes-Kaapse argieffunksie met ingang van inwerkingtreding van hierdie wet geag in diens van die Provinsiale Argief- en Rekorddiens van die Wes-Kaap te wees.

**12. REGULASIESBEVOEGDHEID**

Artikel 21 gee regulasiebevoegdheid aan die Provinsiale Minister verantwoordelik vir Kultuursake in die Wes-Kaap.

**13. KORTTITEL**

Die inwerktrading van die wet op 'n datum deur die Premier by proklamasie bepaal asook die korttitel van die wet is in artikel 22 saamgevat.

# UMTHETHO OSAYILWAYO

Ukusebenzela ooVimba boGcino-mpepha bePhondo kunye neeNkqubo zoGcino-lweRekhodi zeNtshona Koloni; ukusebenzela ulawulo olululo nokulondoloza amaxwebhu orhulumente kwiPhondo leNtshona Koloni; ukusebenzela ulondolozo nokusetyenziswa koovimba-maxwebhu abathwele ilifa lemveli, kwanokusebenzela imicimbi enxibelelene noku.

**O**YA KUMISELWA yiPalamente yePhondo leNtshona Koloni ngolu hlobo lulandelayo:—

## Inkcazelo

1. Kulo mthetho, ngaphandle kokuba okuqulathiweyo kuthetha nto yimbi —
  - (1) **“uhluzo-maxwebhu”** luthetha umsebenzi woovimba boGcino-mpepha wokumisela ukutshitshiswa kwamaxwebhu; 5
  - (2) **“oovimba-bogcino-mpepha”** bathetha amaxwebhu aselugcinweni lomgcini-maxwebhu;
  - (3) **“umgcini-mpepha”** uthetha umgcini wovimba bamaxwebhu ekubhekiselelwa kuye kwicandelo 6; 10
  - (4) **“ikomiti”** ithetha iKomiti ejongene nooVimba boGcino-mpepha beNtshona Koloni kunye neeNgcebiso ngamaXwebhu neyamiselwa ngokwecandelo 10;
  - (5) **“ugcino”** luthetha ukulawulwa kwala maxwebhu ngokusekelezwe kwindawo akuyo;
  - (6) **“ugunyaziwe otshitshisayo”** uthetha igunya elibhaliweyo elikhutshwa ngokwemiqathango yecandelo 9(2)(a) elibalula ukuba amaxwebhu lawo makagqithiselwe elugcinweni looVimba-maxwebhu bePhondo kunye neeNkqubo zokujongana namaXwebhu kungenjalo atshitshiswe; 15
  - (7) **“uxwebhu”** lubhekisa kulo naluphi na ulwazi olurekhodiweyo okanye into enokubonwa njengeyunithi; 20
  - (8) **“amaxwebhu agcinwe kwikhompyutha”** kuthethwa iinkcukacha ezibhaliweyo zaza zafakwa kwizixhobo ze-elektroniki eyiteknoloji yekhomyutha ukuzigcina;
  - (9) **“inkqubo yogcino zinkcukacha ngekhompyutha”** ithetha inkqubo ye-elektroniki apho kuye kubhalwe iinkcukacha, ze zifakwe kwi-elektroniki ukuzigcina, kuqukwa namaxwebhu angumthombo namagalelo, ukusetyenziswa kweediski, inkqubo zokusebenza, idatha nemethadatha; 25
  - (10) **“iqumrhu loburhulumente”** lithetha naliphi na ilungu lombuso lomthetho owisiweyo, elesigqeba solawulo, elenkundla, okanye elolawulo, kubandakanywa nequmrhu elisemthethweni, ikomishoni, ibhodi okanye ibhunga, kwinqanaba lephondo okanye elengingqi kwelorhulumente wePhondo leNtshona Koloni; 30
  - (11) **“intloko yequmrhu lorhulumente”** lithetha igosa eliyintloko lolawulo lequmrhu lorhulumente okanye umntu owenza umsebenzi ololo hlobo, okanye intloko yesebe lephondo okanye umntu owenza umsebenzi ololo hlobo; 35
  - (12) **“irekhodi engeyokarhulumente”** ithetha iinkcukacha ezishicilelweyo, nokuba zezaluphi na uhlobo okanye nokuba ziyiphi na into eyenziwe okanye efunyenwe emntwini ozimeleyo okanye kwiqumrhu elingelilo eli lichazwe njengequmrhu likarhulumente; 40
  - (13) **“ukuyalela”** kuthetha ukuyalelwa ngummiselo;

- (14) **“isebe lephondo”** lithetha isebe lephondo leNtshona Koloni elinoxanduva lemicimbi yezenkcubeko;
- (15) **“uMphathiswa wephondo”** uthetha ilungu leKhabhinethi yePhondo leNtshona Koloni elinoxanduva lwemicimbi yenkcubeko nemicimbi eyelele kuyo; 5
- (16) **“irekhodi karhulumente”** ithetha iinkcukacha ezishicilelweyo, nokuba zezaluphi na uhlobo ezenziwe okanye ezifunyenwe kwiqumrhu likarhulumente zokwenza imisebenzi yalo;
- (17) **“umthetho, iPublic Service Act”** uthetha iPublic Service Act, 1994 (Proclamation No. 103 of 1994) njengoko ulungisiwe; 10
- (18) **“irekhodi”** luthetha ulwazi olurekhodiweyo, nokuba lolwaluphi na uhlobo okanye lusentwenini na;
- (19) **“ukushicilela”** kuthetha nayiphi na into enesandi okanye umfuziselo okanye ezi zinto zombini ezincanyathiselwe kunye, okanye apho isandi nokuba ngumfuziselo okanye ezi zinto zombini zinakho ukuphinda zibe nokuvakaliswa okanye zenziwe kwakhona; 15
- (20) **“inkqubo yokuhlelwa kweerekhodi”** ithetha ucwangciso olulungiselelwe ukuchonga nokulungiselela imicimbi kunye/okanye neerekhodi zibe zizintlu ezilandelelanayo zonxibelelwano, iinkqubo nemigaqo yeenkqubo.
- (21) **“ulawulo lweerekhodi”** luthetha inkqubo yokuqinisekisa ngeyona ndlela ifanelekileyo yokwenza, ukucwangcisa, ukulondoloza, ukusebenzisa nokutshitshisa ezi rekhodi, ukuphumeza ulawulo olufanelekileyo, oluselubala nokujongana noxanduva; 20
- (22) **“ummiselo”** uthetha nawuphi na ummiselo owenziwe phantsi kwalo Mthetho; 25
- (23) **“iNkonzo”** ithetha iNkonzo yoGcino-mpepha yePhondo neyeeRekhodi zeNtshona Koloni eyasekwa ngokwemiqathango yecandelo 2 lalo Mthetho;
- (24) **“lo Mthetho”** ubandakanya nayiphi na imimiselo eyenziweyo apha ngezantsi.

### **Ukumiselwa kwenkonzo yephondo yoovimba bogcino-mpepha neerekhodi** 30

2. Kusekwa icandelo elikwisebe lephondo leNkonzo yoGcino-mpepha yePhondo neyeeRekhodi zeNtshona Koloni.

### **Iinjongo nemisebenzi**

#### **3. Iinjongo nemisebenzi yale Nkonzo yile—**

- (a) kukugcina iirekhodi zikarhulumente nezo zingezozikarhulumente kusenzelwa ukuba ze zisetyenziswe luluntu nangumbuso ngokuxabisekileyo; 35
- (b) kukuzenza ukuba zifikeleleke ezo rekhodi zinjalo kwanokukhuthaza ukusetyenziswa kwazo luluntu;
- (c) kukuqinisekisa ulawulo olululo nokunonotshelwa kwazo zonke iirekhodi zikarhulumente; 40
- (d) kukuqokelela iirekhodi ezingezizo ezikarhulumente ngokwexabiso lokubaluleka kwephondo nezingenakugcinwa ngokufanelekileyo lelinye iziko, ngenxa yemimiselo yokuba kufakwe emaxwebhini izinto ezenzekayo kwiphondo ezazingananzwanga ngoovimba bogcino-mpepha kwixesha elidlulileyo; 45
- (e) kukukhuthaza intsebenziswano nolungelelaniso phakathi kwamaziko agcina iirekhodi engezozikarhulumente ngokuxabisekileyo;
- (f) ukuthatha inxaxheba kwinkqubo yesizwe yokufumana ulwazi nokulugcina;
- (g) nokukhuthaza ukuba kwaziwe ngogcino-mpepha nendlela yokulawula iirekhodi kwanokukhuthaza imisebenzi yomgcini-mpepha nolawulo lweerekhodi; kunye 50
- (h) nokunyusa umgangatho wokulondoloza kwanowokusebenzisa ilifa lendalo nelemveli ngogcino-mpepha zephondo.

### **Ukuqeshwa kweNtloko**

4. INTloko ejongene nale Nkonzo kufuneka iqeshwe ngokwemiqathango yomthetho oyiPublic Service Act, kwaye kufuneka ibe namava obungcali ahambelana noku, ndawonye neemfanelo ezifunekayo ezimalunga nogcino-mpepha. 55

## Amagunya eNtloko

5. (1) INtloko ejongene nale Nkonzo inoxanduva lokulawula le Nkonzo.
- (2) INtloko ejongene nale Nkonzo inga—
- (a) thatha nawaphi na amanyathelo xa ibona kufanelekile, icwangcise, ichaze, ikhuphe iirekhodi; 5
  - (b) nika ingcaciso, iingcebiso, uphando nezinye iinkqubo eziphathelelene neerekhodi;
  - (c) gxininisa ngokukodwa kwimisebenzi esekelwe ukuba ifane namaphulo okwazisa aya kufikelela kumanqanaba ngamanqanaba oluntu abangenazimfanelo ngokwaneleyo, yenze kwaziwe neerekhodi ezichaphazelekayo, oko ikwenza ngokwemipoposho, imiboniso kwanokubolekisa ngeerekhodi; 10
  - (d) ngenza uqeqesho exhobisa ngobuchule obumalunga nogcino-mpepha nolawulo lweerekhodi;
  - (e) sebenzisana namaqumrhu achaphazelekayo kwimicimbi yogcino-mpepha okanye kulawulo lweerekhodi; 15
  - (f) nika inkxaso enobugcisa nobuchule ekuncedeni kwimisebenzi yovimba wogcino-mpepha nabasebenzisi balo vimba;
  - (g) funa umntu othe wasebenzisa iirekhodi eziselugcinweni lwale Nkonzo, xa loo mntu esenza uphando ngopapasho okanye ngokwenza inkcazelo ebhalwa ngokubanzi/ithisisi yakhe, ukufakela kwikopi yopapasho okanye ithisisi ngale Nkonzo, kanti 20
  - (h) angathi ngokwemvumelwano ayinikwe nguMphathiswa wephondo alixolele naliphi na iqumrhu lorhulumente kuwo nawuphi na ummiselo walo Mthetho.
  - (i) ngathabatha amanyathelo angamanye yenze neentshukumo ezizezinye ezinokufaneleka ekufezekiseni iinjongo zale Nkonzo; 25
- (3) INtloko ejongene nale Nkonzo ingathi—
- (a) ekuwujhubeni umsebenzi wayo, incediswe ngamagosa nabaqeshwa abaqeshwe ngokwemiqathango yomthetho, iPublic Service Act; kanti
  - (b) ngokuxhomekeka kuyo nayiphi na imimiselo, ebhaliweyo, imisele amagunya okanye inike ilungu labasebenzi umsebenzi ize ithi ngalo naliphi na ixesha, ilurhoxise olo miselo, okanye umsebenzi, ikwenza oko ngokwembalelwano. 30

## Ugcino nolondolozo lweerekhodi

6. (1) UMphathiswa wePhondo uya kuthi, ixesha nexesha, amisele igosa lovimba wogcino-mpepha eliya kuba phantsi kweNtloko ejongene nale Nkonzo ukuze ibe lilo eligcine ezo rekhodi. 35
- (2) Iirekhodi zoRhulumente ezithe zakhethwa ngegunya lokuzitshitshisa njengezinexabiso ziya kugqithiselwa kwigosa logcino-mpepha xa zithe kanti sezineminyaka engama-20 zikhona; ngaphandle kokuba—
- (a) akukho wumbi uMthetho wePalamente okanye wePalamente yePhondo leNtshona Koloni ofuna ezo rekhodi zibe selugcinweni lwequmrhu elithile lorhulumente okanye komntu othile; 40
  - (b) iNtloko ejongene nale Nkonzo iya kuthi yakuba ibonisene nentloko yequmrhu lorhulumente, ichonge iirekhodi ezinjalo eziya
    - (i) kuhlala ziselugcinweni lwequmrhu lorhulumente; okanye 45
    - (ii) kufuneka zigqithiselwe kwigosa lovimba wogcino—mpepha ngaphambi kokuba zibe zineminika engama-20 zikho;
  - (c) iNtloko ejongene nale Nkonzo ingamisela urhoxiso logqithiselo lweerekhodi zorhulumente;
  - (d) iNtloko ejongene nale Nkonzo inganika imvume yokuba kugqithiselwe iirekhodi kumlondolozo wogcino-mpepha ngaphambi kokuba zibe zihleli iminyaka engama-20. 50
- (3) UMphathiswa wePhondo nguye onokuthi ngokwemiqathango yemimiselo elawula ugqithiselo lweerekhodi ephantsi kwecandelwana (2) anike imiyalelo.
- (4) INtloko ejongene nale Nkonzo ingathatha amanyathelo anjalo njengoko ingawo alungele ulondolozo nogcino-mpepha lweerekhodi. 55
- (5) INtloko ejongene nale Nkonzo ingazitshabalalisa okanye izitshitshise naziphi na iirekhodi eziselugcinweni zale Nkonzo, apho ukugcinwa kwezi rekhodi, okuhamba ngokwamagunya okutshitshisa akhutshwa yiNtloko yeSebe lale Nkonzo, rekhodi ezo iya kube izezingasafuneki nganto. 60

### Ukufunwa kweerekhodi ezingezozikarhulumente

7. (1) INTloko ejongene nale Nkonzo, egameni loRhulumente wePhondo leNtshona Koloni, iya kuthi emva kokufumana ifomu yemvume kwintloko yesebe lephondo, xa ifuna ukuba ithengiswe, okanye kunikelwe ngayo, okanye kubolekiswe ixeshana okanye umphelo, ikwenze oko ngokupheleleyo okanye ngokuxhomekeke kwimimiselo enjalo kwakuba kuvunyelwene, iirekhodi ezinezinto zephondo ezibalulekileyo ezingezozikarhulumente ezithe ngokokubona kwakhe akwabikho mfuneko yokuba zigcinwe lelinye iqumrhu. 5

(2) Ngokuxhomekeke kwimimiselo engasetyenziswa, iirekhodi ezingezozikarhulumente kulindeleke ngokwecandelwana (1) ukuba zifakwe elugcinweni lweempepha, ngokumiselwa yiNtloko ejongene nale Nkonzo. 10

### Ufikeleleko nokusetyenziswa

8. (1) (a) Ngokuxhomekeke kuMthetho ojongene nokufikelelwa kweerekhodi—

(i) iirekhodi zorhulumente eziselugcinweni lweNkonzo kufuneka zifunyanwe ngabantu xa iminyaka engama-20 sele iphelile ukususela ekupheleni konyaka ezenziwa ngawo iirekhodi ezo; okanye 15

(ii) imvume yokufikelelwa kweerekhodi zorhulumente ngokubhekiselele kwixesha elingaphantsi kweminyaka engama-20 liye laphela ukususela ekupheleni konyaka ezenziwa ngazo iirekhodi ezo iya kukhutshwa yiNtloko yeNkonzo ngokwesicelo. 20

(2) iirekhodi ezingezozikarhulumente eziselugcinweni lwale Nkonzo kufuneka zifunyanwe ngabantu, oko kusenziwa ngokuxhomekeke kwiimeko ekuvunyelwene ngazo xa bekufunwa ezi rekhodi ngokwemiqathango yecandelo 7(1) lalo Mthetho;

(3) nangona ngokwecandelwana (1), iNtloko yeNkonzo ingathi yale ukuba ezi rekhodi zibe nokufikelelwa ngenxa yemeko zayo ezi-ethe-ethe, ngaphandle kokuba kungenziwa ezinye iindlela zokuba kufikelelwe kokuqulathwe ziirekhodi ezo, kwanokuba 25

(4) UMphathiswa wephondo unokwenza imimiselo enika imvume yokuba uluntu lungene koovimba bogcino-mpepha, ukwenzela ukuba kufikelelwe kwezi rekhodi, kwanokusetyenziswa kwezixhobo zokwenza iikopi zezicatshulwa eziphuma kwezi rekhodi ziselugcinweni lwale Nkonzo. 30

### Ulawulo lweerekhodi

9. (1) Ngokuxhomekeke kwimimiselo yalo Mthetho, iNtloko ejongene nale Nkonzo inoxanduva lokulawula iirekhodi eziselugcinweni lwamaqumrhu orhulumente ngokufanelekileyo. 35

(2) Unganyinwanga nje umthetho-jikelele wecandelwana (1)—

(a) akukho rekhodi zorhulumente eziphantsi kolawulo lwequmrhu lorhulumente eziya kugqithiselwa kuvimba wogcino-mpepha emazitshatyalaliswe, zicinywe okanye zitshitshiswe ngaphandle kwesigunyaziso esibhaliweyo yiNtloko ejongene nale Nkonzo; 40

(b) iNtloko ejongene nale Nkonzo kufuneka—

(i) imisele inkqubo yokuhlelwa kweerekhodi eya kusetyenziswa ngamaqumrhu orhulumente;

(ii) imisele imiqathango exhomekeke ekubeni iirekhodi zenziwe imicrofilm okanye i-elektroniki, iphinde 45

(iii) imisele imiqathango exhomekeke ekubeni iirekhodi ezifakwe kwi-elektroniki zikwazeke ukulawuleka;

(c) INTloko ejongene nale Nkonzo kufuneka ihlole iirekhodi zorhulumente kangangokuba ukuhlolwa oko kufanele ukusetyenziswa yiyo kwimisebenzi yayo phantsi kwalo Mthetho; ngaphandle kokuba ukuhlolwa oko kweerekhodi zorhulumente ezineenkucakacha akufunekanga zivele kuwo nawuphi na uMthetho wePalamente, ngaphandle kokuba zingavezwa kuphela ngokwemvume yentloko yequmrhu lorhulumente elichaphazelekayo. 50

(3) INTloko ejongene nale Nkonzo inokumisela amaxesha ngamaxesha imigaqo-nkqubo nemiyalelo, ekufuneka ukuba ingakhabani nemiqathango ekhoyo, yolawulo lweerekhodi zoluntu ezigcinwe ngamaqumrhu karhulumente. 55



(4) UMphathiswa wephondo uya kwenza imimiselo ngendlela emazilawulwe ziphathwe ngayo iirekhodi zikarhulumente eziselugcinweni lwamaqumrhu orhulumente.

(5) (a) Intloko yequmrhu lorhulumente iya kuthi, ngokuxhomekeke kuwo nawuphi na umthetho olawula abasebenzi bequmrhu lorhulumente elichaphazelekayo kwanezinto ezifunekayo ezingamiselwa, inyule igosa lequmrhu ukuba libe ngumanejala wequmrhu elo. 5

(b) Umanejala osingathe iirekhodi uya kuba noxanduva lokuqinisekisa ukuba iqumrhu lorhulumente liyayithobela imimiselo yalo Mthetho.

(c) Intloko ejongene nale Nkonzo ingamiselwa amagunya ongezelelweyo kwanemisebenzi yomanejala osingathe iirekhodi. 10

### **IKomiti yeeNgcebiso yoGcino-mpepha**

10. (1) UMphathiswa wephondo kufuneka, athi ngesaziso *kwiGazethi yePhondo*, aseke ikomiti yeengcebiso eya kwaziwa ngokuba yiKomiti yooGcino-mpepha yeNtshona Koloni. 15

(2) Le Komiti iya kuba namalungu amahlanu ubuncinane kodwa angabikho ngaphezu kwamalungu alithoba anyulwe nguMphathiswa wePhondo.

(3) Amalungu eKomiti kufuneka—

(a) abe ngabemi boMzantsi Afrika;

(b) abe ngabahlali abahlala isigxina kwiPhondo leNtshona Koloni; 20

(c) kufuneka ahambelane namanani abahlali bohlanga ngalunye lwePhondo lweNtshona Koloni; yaye

(d) abe nolwazi, okanye abe nomdla kwimicimbi yoogcino-mpepha.

### **Ukunyulwa kwamalungu eKomiti**

11. (1) UMphathiswa wePhondo nguye onyula amalungu eKomiti, malungu lawo aya kusebenza iminyaka emithathu. IKomiti iya kuba— 25

(a) neNtloko ejongene neNkonzo;

(b) abantu ababini abaphakanyiswe liSetyana leNtshona Koloni loMbutho woMzantsi Afrika woGcino-mpepha, kunye

(c) nabanye abantu abavela kuluhlu lwabagqatswa abaya kuphakanyiswa ngokwendlela yenkqubo yoluntu. 30

(2) UMphathiswa wePhondo kufuneka ibe nguye omemelela uluntu ngokubanzi ukuba luphakamise amagama amalungu eKomiti ngokuthi akhuphe isaziso *kwiGazethi yePhondo* nakwamanye amaphephandaba ngokokubona kwakhe.

(3) Ukuba umbutho ekubhekiselelwa kuwo ku(1)(b) uyasilela ukuphakamisa abantu ababini, uMphathiswa wephondo uya kubanyula ngokwakhe abo bantu babini egameni lalo mbutho ukhankanyiweyo. 35

(4) Naliphi na ilungu leKomiti, liya kuthi xa sekuphele ixesha lalo lisesikhundleni, liphinde linyulwe kwakhona njengelungu leKomiti, ngaphandle kweNtloko yeNkonzo eba lilungu leKomiti isigxina. 40

### **USihlalo nesekele likasihlalo**

12. (1) UMphathiswa wePhondo kufuneka anyule ilungu leKomiti (ngaphandle kweNtloko yeNkonzo) ukuba libe nguSihlalo yaye amisele umhla wokuqala nendawo yentlanganiso yeKomiti.

(2) IKomiti kufuneka, ithi kwintlanganiso yayo yokuqala, inyule (ngaphandle kweNtloko yeNkonzo) usekele-sihlalo kumalungu ayo. 45

(3) Ukuba usihlalo weKomiti akakho okanye akanako ukuyenza imisebenzi yakhe njengosihlalo, isekela likasihlalo iya kuba lilo eliya kusebenza njengosihlalo kwaye uya kuthi ngelo xesha ibe ngawakhe onke amagunya aze enze yonke imisebenzi kasihlalo

(4) Kwimeko apho usihlalo athe wasishiya isikhundla sakhe, iKomiti kufuneka inyule elinye ilungu lisebenze njengosihlalo kwindawo kasihlalo. 50

(5) Kwimeko apho bobabini, usihlalo kunye nosekele sihlalo bathe ababikho entlanganisweni yeKomiti, amalungu akhoyo kuloo ntlanganiso kufuneka anyule ilungu eliza kusebenza njengosihlalo kwintlanganiso leyo.

(6) Isikhundla sikasihlalo asibi namntu xa— 55

(a) ixesha lelungu liphela ekupheleni kweminyaka emithathu;

(b) ilungu lirhoxa; okanye

- (c) ilungu liyeka ukuba lilungu leKomiti.  
 (7) Ilungu aliya kuphinda linyulwe njengosihlalo.

### Ukugxothwa

13. UMphathiswa wephondo angaligxotha kuphela ilungu leKomiti ngaphambi kokuba liphele ixesha lalo, ngaphandle kweNtloko yoGcino-mpepha neNkonzo yeeRekhodi, xa lithe alaziphatha ngandlela, lingakwazi okanye lingabi nabuchule bokusebenza emva kokulandela izibonelelo ze*Promotion of Administrative Justice Act, 2000* (Umthetho 3 ka-2000). 5

### Uzaliso lwezikhundla

14. Ukuba ngaba isikhundla sivela ngaphambi komhla wokuphela kwexesha ebelisekelwe ukuba lisebenze lona ilungu, uMphathiswa wePhondo uya kuqesha umntu ngokwexesha elimileyo/ elingazi kuphela, oko ekwenza ngokwemimiselo yecandelo 11(2). 10

### Iinjongo nemisebenzi yeKomiti

15. Injongo nemisebenzi yeKomiti kuku— 15
- (a) khuthaza, ukufezekisa nokuxhasa iinjongo nemisebenzi yeeNkonzo zoGcino-mpepha zePhondo njengoko kuchaziwe kwicandelo 3 lalo Mthetho, ndawonye
- (b) nokucebisa uMphathiswa wephondo ngemibandela ebhekiselele kwimicimbi yogcino-mpepha. 20

### Iinkqubo ezilandelwayo nemigaqo yangaphakathi yeKomiti

16. (1) iKomiti kufuneka ibeke indlela oqhutywa ngayo umsebenzi ngaphakathi kwaneenkqubo ezilandelwayo ngokwenziwa kwemigaqo ebhekiselele—
- (a) ekubizeni iintlanganiso;
- (b) iinkqubo ezilandelwayo ezintlanganisweni; 25
- (c) ekubeni zihlala kangaphi iintlanganiso; kufuneka ukuba iintlanganiso zihlale ubuncinane kabini qho ngonyaka, kananjalo
- (d) nokunyula usekela sihlalo.
- (2) Ikhoram/ inani labakhoyo entlanganisweni iba bubuninzi lwawo onke amalungu onyuliweyo eKomiti. 30
- (3) IKomiti ithatha izigqibo ngokwesigqibo soninzi lwamalungu akhoyo entlanganisweni xa iivoti zilingana, usihlalo wentlanganiso leyo kuya kufuneka ibe nguye onevoti yesigqibo ukongeza kwivoti yakhe yeengxoxo njengelungu leKomiti.

### Iimfanelo

17. (1) Naliphi na ilungu leKomiti elingaqeshwanga isigxina nguMbuso liya kuhlulwa ngemali yesebe lephondo, iimfanelo zentlanganiso ezinjalo ke zimiselwa nguMphathiswa wephondo emva kokubonisana noMphathiswa wephondo ochaphazelekayo wezemali kwiNtshona Koloni. 35
- (2) Ilungu ekubhekiselelwa kulo kwicandelwana (1) liya kuhlulwa ngemali evela kwisebe lephondo ngokumayela neendleko ezithe zenzeka malunga nendlela eyenze ngayo imisebenzi yeKomiti, njengoko kumiselweyo nguMphathiswa wephondo. 40

### Ukuncitshiswa kwamathuba okujongana noxanduva

18. ULawulo lwePhondo: lweNtshona Koloni kunye naliphi na isebe okanye nawuphi na umntu abazi kuba natyala ngokubhekiselele kuyo nayiphi na into eyenziwe ngesihle nangenkathalo phantsi kwalo Mthetho. 45

### Ubutyala nezohlwayo

19. (1) Nawuphi na umntu othe—

- (a) ngabom wonakalisa naziphi na iirekhodi zorhulumente nezingezizo ezikarhulumente eziphantsi kolawulo lwequmrhu lorhulumente; okanye
- (b) akaqhuba ngokuhambelana nalo Mthetho okanye nawo nawuphi na omnye umthetho, wasusa, wonakalisa okanye wayicima irekhodi enjalo, unobutyala yaye uya kugwetywa ngokuwiselwa isohlwayo esingayi kudlula kuma-R10 000 okanye avalelwe kangangesithuba esingayi kudlula kwiminyaka emibini okanye azifumane zozibini izohlwayo. 5

### **Amalungiselelo exeshana**

20. (1) Umntu othe nje ukuba uqalise ukusebenza lo Mthetho, wenza imisebenzi yentloko ebambeleyo yecandelo leeNkonzo zoGcino-mpepha zeNtshona Koloni elilicandelo leeNkonzo zoGcino-mpepha zoMzantsi Afrika phantsi komthetho, iNational Archives of South Africa Act, 1996 (Act No.43 of 1996), uya kuqhuba esesikhundleni sentloko ebambeleyo yezi Nkonzo de ibe iNtloko ejongene nale Nkonzo iqeshwe ngokwemiqathango yecandelo 4 lalo Mthetho. 10

(2) Wonke umsebenzi worhulumente, othe nje wakuba uqalisile ukusebenza lo Mthetho, wenza imisebenzi njengomsebenzi oqeshwe liSebe leSizwe lezobuGcisa neNkcubeko kwiphondo leNtshona Koloni ngokubhekiselele kwimicimbi yogcino-mpepha, uya kuba ngumsebenzi wesebe lephondo oqeshwe kuVimba woGcino-mpepha wePhondo, ukususela mhla waqalisa ukusebenza lo Mthetho. 15

(3) Nayiphi na irekhodi eselugcinweni yentloko ebambeleyo ekhankanyiweyo iya kuthi ngomhla othe nje wakuba uqalisile ukusebenza lo mthetho, igqithiselwe kwiNtloko ejongene nale Nkonzo, ngokuxhomekeke kuyo nayiphi na imiqathango nemimiselo eyayisetyenziswa kwiirekhodi ezinjalo ngala mhla. 20

### **Imiqathango**

21. UMphathiswa wePhondo nguye oya kwenza imiqathango kuwo nawuphi na umcimbi oya kuthi ngokwemimiselo yalo Mthetho kufuneka okanye kuvunywe ukuba imiselwe okanye yenziwe ngokwemiqathango, kananjalo, ibhekiselelwe kuwo nawuphi na umbandela obonakala uyimfuneko, okanye ufanelekile ukuba umiselwe khon' ukuze kuphunyezwe okanye kukhuthazwe iinjongo zalo Mthetho. 25

### **Isihloko esifutshane nokuqalisa**

22. Lo Mthetho ubizwa ngokuba nguMthetho wooVimba boGcino-mpepha bePhondo neeNkqubo zoGcino lweeRekhodi zeNtshona Koloni (Provincial Archives and Records Service of the Western Cape Act), 2005, kwaye uya kuqalisa ukusebenza ngomhla oya kumiselwa yiNkulumbuso ngokwenza isibhengezo kwiGazethi yePhondo. 30

## **IMEMORANDAM YENGCACISO**

Olu wiso-mthetho lunika iiNdawo zoLondolozo ziiRekhodi ezibalulekileyo zePhondo kunye neNkonzo yeeRekhodi umsebenzi wendawo yolondolozo lweerekhodi ezibalulekileyo eNtshona Koloni (umthetho iNational Constitution, Act 108 of 1996: Scheduli 5A) ukusuka kwiSebe lezobuGcisa neNkcubeko leSizwe ukuya kwiSebe leMicimbi yeNkcubeko neMidlalo lePhondo leNtshona Koloni. Lukwalungiselela nolawulo olunempumelelo kwanokunonotselwa kweerekhodi zaseburhulumenteni, ukulondolozwa nokusetyenziswa kwelifa lendawo yokulondolozwa iirekhodi zephondo nemicimbi ekwafana nayo.

### **1. IINKCAZELO**

Inkcazelo yemimiselo ezinzileyo kunye neenkcazo ekubhekiselelwa kuzo kuwiso-mthetho inikiwe kwicandelo 1.

### **2. UKUMISELWA KUNYE NEENJONGO ZENKONZO**

Icandelo 2 lichaza ngokumiselwa kweeNdawo zoLondolozo ziRekhodi ezibalulekileyo zePhondo kunye neNkonzo yeeRekhodi yeNtshona Koloni, ngeli xesha imiba ephambili yeNkonzo, oko kukuthi, ukulondolozwa kweerekhodi ezixabiseke kakhulu zaseburhulumenteni nezo zingezozaburhulumenteni, ukufikelela kwiirekhodi nokulawula iirekhodi ezo, ukuqokelelwa kweerekhodi ezingezizo ezaseburhulumenteni, intsebenziswano phakathi kwamaqumrhu kwakunye nokwazisa ngelifa lendawo yolondolozo zirekhodi ezibalulekileyo zephondo kwanokwazisa ngenkonzo yeerekhodi zendawo yolondolozo zirekhodi ezibalulekileyo kwanendlela yokulawula ezi ndawo ichaziwe kwicandelo 3.

### **3. UKUNYULA KUNYE NAMAGUNYA ENTLOKO YENKONZO**

Icandelo 4 lichaza ngokunyulwa kweNtloko yeeNdawo zoLondolozo lweeRekhodi ezibalulekileyo kunye neNkonzo yeeRekhodi kanti lukwacaciswe kwicandelo 5 uxanduva namagunya ale Ntloko. Abasebenzi beli ziko baya kuncedisa iNtloko kwakunye namagunya abiweyo ngokumayela noku, kuchazwe kwicandelo 5(3).

### **4. UKUBA SELUGCINWENI NOKULONDOLOZWA KWEEREKHODI**

UMphathiswa wePhondo onoxanduva lokujongana neMicimbi yeNkcubeko angaseka oovimba bokulondolozwa iirekhodi ezibalulekileyo, oko ekwenza ngokwemiqathango yecandelwana (1) lecandelo 6, ngeli xesha kwicandelwana (2) kucaciswa ngendlela apho iirekhodi zaseburhulumenteni kufuneka zisingathwe khona ngokwemiqathango yamagunya aphaathelele kutshitshiso lweerekhodi zaseburhulumenteni ezineminyaka engama-20 nangaphezulu zikho, elo gunya lichazwa namagunya oMphathiswa wePhondo neNtloko yeeNdawo zoLondolozo ziiRekhodi ezibalulekileyo kunye neNkonzo yeeRekhodi.

### **5. UKUFUNYANWA KWEEREKHODI EZINGEZIZO EZASEBURHULUMENTENI**

Iimeko ndawonye nendlela ezithi zifunyanwe ngayo iirekhodi ezingezizo ezaseburhulumenteni yiNtloko yeNkonzo yoRhulumente wePhondo leNtshona Koloni zichaziwe kwicandelo 7.

### **6. UFIKELELEKO NOSETYENZISO**

Ukufikelela kwiirekhodi zaseburhulumenteni nezo zingezizo ezaseburhulumenteni, ngokuxhomekeke kulo naluphi na uviso-mthetho olujongene nokufikelela kwiirekhodi zaseburhulumenteni ichaziwe kwiCandelo 8. ICandelwana (3) lichaza ukungavunyelwa ukuba kufikelelwe kwiirekhodi ezikwimeko engafanelekanga ngokwenkangeleko ekufuneka kusetyenziswe nkqubo zimbi ukuze kufikelelwe kuzo. UMphathiswa wePhondo angakhupha imimiselo ngokwemiqathango yecandelwana (4) echaza ukufikelela koovimba abagcina iirekhodi ezibalulekileyo, zibe zikho neerekhodi kwakunye nezixhobo zokukopa.

## 7. UKUPHATHWA KWEEREKHODI

INtloko yeNkonzo inoxanduva lokuphathwa iirekhodi ezikugcino lwamaqumrhu orhulumente ngendlela eyiyo, ijonge nokugqithiselwa kwazo ndawonye neenkqubo, iimeko zokwenziwa kweerekhodi kananjalo ikhangele neenkqubo zokurekhoda nge-elektroniki, oko kusenziwa ngokwemiqathango yeCandelo 9. Ukusekwa nokuvunywa komgaqo-nkqubo wokulawula iirekhodi luxanduva lweNtloko yeNkonzo. Icandelwana (4) livumela iNtloko yenkonzo ukuba izihlole iirekhodi, kwaye iya kuthi idibene nezinye iintloko ezichaphazelekayo zamasebe orhulumente, ikhuphe imigaqo nemiyalelo yokuphathwa nokunonotshelwa kweerekhodi.

Kwicandelwana (5) kwenziwe amalungiselelo okuba uMphathiswa wePhondo akhuphe imimiselo ephathelele ekuphathweni nasekunonotshelweni kweerekhodi zaseburhulumenteni zamaqumrhu orhulumente. Icandelwana (6) lichaza ngokunyulwa koomanejala abaza kujongana neerekhodi kumaqumrhu orhulumente likwamisela noxanduva oluya kusingathwa ngaba manejala.

## 8. IKOMITI YEENGCEBISO YENDAWO YOKULONDOLOZA IIREKHODI EZIBALULEKILEYO

### 8.1 *Ukumiselwa kwequmrhu nokunyulwa kwamalungu*

AmaCandelo 10, 11 kunye nele-12 enza amalungiselelo okumiselwa kweKomiti eza kujongana neeNdawo zoLondoloza iirekhodi ezibalulekileyo nguMphathiswa, kwakunye nomgaqo-siseko weKomiti yeeNgcebiso, ukunyulwa nokuphinda kunyulwe amalungu kwakhona, ukhetho ndawonye nokunyulwa kukasihlalo nesekele likasihlalo. Enziwe namalungiselelo axa kuthe kwaphela ixesha lokuba sesikhundleni kananjalo nokurhoxa kuso.

Kwicandelo 13 izizathu zokupheliswa kwexesha lokuba sesikhundleni lalo naliphi na ilungu ngaphandle kweNtloko yeNkonzo, zichaziwe, kwaye icandelo 14 lichaza ngokuzaliswa kwesikhundla seKomiti yeeNgcebiso ngokwemiqathango yecandelo 11 (2).

### 8.2 *Imiba nemisebenzi*

Icandelo 15 licacisa imiba nemisebenzi yeKomiti yeeNgcebiso njengekhuthazayo, encomayo, nesisongezelelo kwimisebenzi yendawo yolondolozo lweerekhodi ezibalulekileyo kunye neNkonzo yeeRekhodi, ngeli xesha iya kube ikwacebisa uMphathiswa wePhondo ngemicimbi ephathelele kwindawo yolondolozo lweerekhodi ezibalulekileyo.

### 8.3 *Iinkqubo elandelwayo nemigaqo yangaphakathi*

Zonke iinkqubo ezilandelwayo nemigaqo ephathelele kwiintlanganiso zeKomiti yeeNgcebiso, nokuthatha isigqibo sale Komiti zikhankanyiwe kwicandelo 16.

### 8.4 *Imali yezibonelelo (allowances)*

Icandelo 17 licacisa ngentlawulo yemali esisibonelelo yentlanganiso kumalungu eKomiti angaqeshwanga sigxina kwiNkonzo yoRhulumente. Amalungu anjalo avumelekile ukuba afumane imbuyekezo ngenkcitho ethe yenzeka xa ebesenza imisebenzi yawo.

## 9. UKULINGANISELWA KWEMIDA YOKUPHENDULA

Icandelo 18 likhusela icandelo loLawulo lwePhondo okanye naliphi na isebe loRhulumente weNtshona Koloni okanye amagosa ala maqumrhu kwiziphumo zala manyathelo athatyathiwewo aphantsi kwalo Mthetho naphunyezwe ngokufanelekileyo.

## 10. ULWAPHULO- MTHETHO NEZOHLWAYO

Icandelo 19 lichaza ukuba ukonakaliswa, ukususwa, okanye ukutshatyalaliswa ngabom kwempahla yaseburhulumenteni naleyo engeyiyo eyaseburhulumenteni yequmrhu lorhulumente lulwaphulo-mthetho kwaye izohlwayo zilindelekile.

## **11. AMALUNGISELELO ENGUQU**

Ukusebenza kwenkqubo yendawo yolondolozo zirekhodi ezibalulekileyo kunye nenkonzo yeerekhodi eNtshona Koloni kulawulwa liSebe lezobuGcisa neNkcubeko leSizwe. Icandelo 20 libonelela intloko esele ikho yeNtshona Koloni yecandelo leNdawo yoLondolozo ziRekhodi neNkonzo yeeRekhodi leSizwe loMzantsi Afrika ukuba iqhubeke isebenza njengebambela esikhundleni seNtloko yeNkonzo ukususela mhla uqalisa ukusebenza lo Mthetho. Iya kuqhuba isebenza kwesi sikhundla ibambeke de ibe lelo xesha kuya kunyulwa ngalo iNtloko yeNkonzo, isonyulwa ngokwemiqathango yalo Mthetho. Icandelo 20 kwakhona likwamisela onke amagosa asuka kwiSebe lezobuGcisa neNkcubeko leSizwe elinikwe umsebenzi wokuba lijonge umsebenzi weNdawo yoLondolozo ziRekhodi zePhondo ezibalulekileyo ukuba aya kuthathwa njengaqeshwe kwiNdawo yoLondolozo ziRekhodi zePhondo kunye neNkonzo yeeRekhodi yeNtshona Koloni naya kuqalisa ukusebenza mhla waqala ukusebenza lo Mthetho.

## **12. IMIMISELO**

Igunya lokwenza imimiselo ephathelele kwiNdawo yoLondolozo ziRekhodi ezibalulekileyo zePhondo kunye neNkonzo yeeRekhodi lidluliselwa kuMphathiswa wePhondo ngokwecandelo 21.

## **13. ISIHLOKO ESIFUTSHANE**

UMthetho lo uya kuqalisa ukusebenza ngomhla oya kumiselwa yiNkulumbuso, oko ikwenza ngokubhengeza, kwanangesihloko sawo esifutshane, okuchaziweyo kwicandelo 22.



