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### PROVINCIAL NOTICE

The following draft Bill is hereby published for general information:

Draft Western Cape Procurement (Business Interests of Employees) Bill, 2010

P.N. 137/2010 14 April 2010

Any person or organization wishing to comment on the said draft Bill is requested to lodge such comment in writing before or on 17 May 2010:

- (a) by posting it to:  
Mr. T Arendse  
(Acting) Head: Governance and Asset Management  
Western Cape Provincial Treasury  
Private Bag X9165  
Cape Town 8000
- (b) by e-mail to:  
Tarendse@pgwc.gov.za  
Telephone: 021 483 9393  
Fax: 021 483 3707
- (c) by delivering it to:  
Mr. T Arendse  
Room 1-02  
1st Floor, 4 Dorp Street  
Cape Town 8000
- (d) Copies of Bill available on website:  
[http://www.capegateway.gov.za/eng/your\\_gov/398/pubs/bills/](http://www.capegateway.gov.za/eng/your_gov/398/pubs/bills/)

## INHOUD

### PROVINSIALE KENNISGEWING

Die volgende Konsepwetsontwerp word hierby vir algemene inligting gepubliseer:

Wes-Kaapse Konsepwetsontwerp op Verkryging (Sakebelange van Werknemers), 2010

P.N. 137/2010 14 April 2010

Enige persoon of organisasie wat kommentaar oor die genoemde Konsepwetsontwerp wens te lewer, word versoek om sodanige kommentaar skriftelik te lewer voor of op 17 Mei 2010:

- (a) deur dit te pos aan:  
Mnr. T Arendse  
(Wnde) Hoof: Regeringspraktyk en Batebestuur  
Wes-Kaapse Provinsiale Tesourie  
Privaatsak X9165  
Kaapstad 8000
- (b) deur dit te e-pos aan:  
Tarendse@pgwc.gov.za  
Telefoon: 021 483 9393  
Faks: 021 483 3707
- (c) deur dit af te lewer aan:  
Mnr. T Arendse  
Kamer 1-02  
1e Vloer, Dorpstraat 4  
Kaapstad 8001
- (d) Askrite van die konsepwetsontwerp is beskikbaar op die volgende webtuiste:  
[http://www.capegateway.gov.za/eng/your\\_gov/398/pubs/bills/](http://www.capegateway.gov.za/eng/your_gov/398/pubs/bills/)

## IZIQULATHO

### ISAZISO SEPHONDO

Lo Mthetho aSayilwayo ulandelayo upapashwe apha ukunika ulwazi ngokubanzi:

**Idrafti Yomthetho Oyilwayo Wokuthenga Wentshona Koloni (Ukuthabatha KwaBaqeshwa Ingxaxheba KweZozoqosho, 2010)**

P.N. 137/2010 14 Epreli 2010

Nabani na okanye nawuphi na umbutho onqwenela ukuphawula ngalo Mthetho uSayilwayo kuthethwa ngawo uyacelwa ukuba afake izimvo zakhe phambi okanye ngomhla we- 7 ngoMeyi 2010

- (a) ngokuposela ku:  
Mr. T Arendse  
Intloko (elibambela): uLawulo nokuPhathwa kwee-Asethi  
UNondyebo wephondo leNtshona Koloni  
Private Bag X9165, Ekapa 8000
- (b) nge-imeyile ku:  
Tarendse@pgwc.gov.za  
Ifowuni: 021 483 9393  
Ifekisi: 021 483 3707
- (c) ngokuthumela ku:  
Mr. T Arendse  
Room 1-02  
1st Floor, 4 Dorp Street  
Ekapa 8001
- (d) Iikopi zoMthetho oyilwayo zifumaneka apha:  
[http://www.capegateway.gov.za/eng/your\\_gov/398/pubs/bills/](http://www.capegateway.gov.za/eng/your_gov/398/pubs/bills/)



# DRAFT WESTERN CAPE PROCUREMENT (BUSINESS INTERESTS OF EMPLOYEES) BILL

**To restrict the business interests of employees of the Provincial Government and of provincial public entities as well as members of the controlling bodies of such entities, in entities conducting business with the Provincial Government and provincial public entities; to provide for the disclosure of such interests; and to provide for matters incidental thereto.**

WHEREAS the provisions of section 217(1) of the Constitution of the Republic of South Africa, 1996, and section 62(1) of the Constitution of the Western Cape, 1997, require the Provincial Government and any other organ of state, when it contracts for goods or services, to do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective;

AND WHEREAS it is considered necessary in order to impose and regulate a procurement system as required by those provisions to restrict the business interests that employees of the Provincial Government and of provincial public entities and members of the controlling bodies of provincial public entities are allowed to have in entities doing business with the Provincial Government and provincial public entities, and for that purpose to require the disclosure of any such interests,

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

## Definitions

1. In this Act, unless the context otherwise indicates—
  - “**accounting authority**”, in relation to a provincial public entity, means the accounting authority referred to in section 49 of the Public Finance Management Act, 1999 (Act 1 of 1999); 5
  - “**business interest**” means —
    - (a) a right or entitlement to share in profits, revenue or assets of an entity;
    - (b) a real or personal right in property; 10
    - (c) a right to remuneration or any other private gain or benefit, and includes any interest contemplated in paragraphs (a), (b) or (c) acquired through an intermediary and any potential interest in terms of any of those paragraphs;
  - “**Cabinet Member**” means the Premier or a Provincial Minister; 15
  - “**employee**” means a person employed by the Provincial Government or a provincial public entity, whether permanently or temporarily, including —
    - (a) an employee as contemplated in section 8 of the Public Service Act;
    - (b) a person appointed in terms of section 12A of the Public Service Act;

- (c) a person transferred or seconded to the Provincial Government or a provincial public entity in terms of section 15 of the Public Service Act; and
- (d) an educator as defined in the Employment of Educators Act, 1998 (Act 76 of 1998),
- and includes a member of the board or other controlling body of a provincial public entity; 5
- “**entity**” means any —
- (a) association of persons, whether or not incorporated or registered in terms of any law, including a company, corporation, trust, partnership, close corporation, joint venture or consortium; or 10
- (b) sole proprietorship;
- “**entity conducting business with the Provincial Government**” means an entity that contracts or applies or tenders for the sale, lease or supply of goods or services to the Provincial Government;
- “**family member**” means a person’s — 15
- (a) spouse; or
- (b) child, parent, brother or sister, whether such a relationship results from birth, marriage or adoption;
- “**intermediary**” means a person through whom an interest is acquired, and includes — 20
- (a) a person to whom is granted or from whom is received a general power of attorney; and
- (b) a representative or agent;
- “**member**” in relation to a provincial public entity, means a member of the board or other controlling body of the provincial public entity; 25
- “**prescribe**” means prescribe by regulation under section 8;
- “**Provincial Government**” means the Provincial Government of the Western Cape, and includes a provincial public entity;
- “**provincial public entity**” means a provincial public entity as defined in section 1 of the Public Finance Management Act, 1999; 30
- “**Public Service Act**” means the Public Service Act, 1994 (Proclamation 103 of 1994);
- “**responsible Cabinet Member**” means the Cabinet Member responsible for the relevant provincial department or provincial public entity, as the case may be;
- “**spouse**” means a person’s — 35
- (a) partner in marriage;
- (b) partner in a customary union according to indigenous law; or
- (c) partner in a relationship in which the parties live together in a manner resembling a marital partnership or customary union;
- “**this Act**” includes the regulations made under section 8. 40

### **Disclosure of business interests of employees and family members of employees in entities conducting business with Provincial Government**

2. (1) Before the Provincial Government enters into any contract with an entity for the sale, lease or supply of goods or services, the entity must provide an affidavit in the prescribed manner disclosing any business interest that an employee or a family member of an employee has in that entity. 45
- (2) An employee must disclose in the prescribed manner to the Provincial Government any business interest that the employee or any family member of the employee has in an entity conducting business with the Provincial Government.
- (3) An employee must make a disclosure referred to in subsection (2) forthwith on becoming aware of the business interest concerned, or when it is brought to his or her attention, and thereafter at the prescribed intervals. 50
- (4) An employee must disclose any business interest referred to in subsection (2), that exists at the commencement of this Act, in the prescribed manner within three months after the commencement of this Act. 55

### **Restriction of business interests of employees in entities conducting business with Provincial Government**

3. (1) Subject to section 30 of the Public Service Act, section 33 of the Employment of Educators Act, 1998 (Act 76 of 1998), and subsection (3) of this section, an employee

may not have a business interest in any entity conducting business with the Provincial Government if the employee himself or herself or together with one or more —

- (a) family members of the employee;
- (b) partners or other business associates of the employee; or
- (c) other employees,

5 directly or indirectly owns or controls more than five per cent of the shares, stock, membership or other interest of that entity.

(2) Subsection (1) does not apply in respect of a business interest acquired from a binding contract which was concluded with the Provincial Government before the commencement of this Act, and where the contractual period has not expired. 10

(3) The responsible Cabinet Member may, on application in the prescribed manner by an employee, after consultation with the Head of the provincial department concerned and on good cause shown, grant permission for that employee, or any category of employees, to have a business interest exceeding the limit referred to in subsection (1) in an entity that conducts or intends conducting business with the Provincial Government. 15

(4) In considering an application contemplated in subsection (3), the responsible Cabinet Member must take into account —

- (a) the nature of goods or services to be supplied to the Provincial Government by the entity concerned; 20
- (b) the nature and extent of the business interest of the employee or employees concerned in that entity;
- (c) the nature and extent of any adverse financial, operational and other circumstances for the state, the employee or employees concerned or members of the public if the application is not approved; and 25
- (d) whether the approval of the application will be consistent with —
  - (i) fair, equitable, transparent, competitive and cost effective procurement of goods or services; and
  - (ii) applicable procurement legislation and policy.

(5) The Provincial Government may not — 30

- (a) enter into any contract which is inconsistent with subsection (1); or
- (b) extend any contract which was concluded before the commencement of this Act and which is inconsistent with subsection (1).

#### Database

4. The Director-General of the Province must compile and maintain a database of all business interests disclosed in terms of section 2 by employees and by entities conducting business with the Provincial Government. 35

#### Failure to comply with Act

5. (1) Failure by an entity doing business with the Provincial Government to disclose any interest that an employee has in that entity, and of which the entity was aware or should reasonably have been aware when making the affidavit referred to in section 2(1), is a ground for the Provincial Government, without detracting from any other available remedy, to cancel the contract concerned and claim damages, if any, or to reject the application or tender of that entity, as the case may be. 40

(2) In the event of an alleged failure by an employee, excluding a member of a provincial public entity and a Head of a provincial department, to comply with a provision of this Act, the Head of a provincial department or the accounting authority of the provincial public entity concerned, as the case may be, must — 45

- (a) investigate the matter or cause the matter to be investigated; and
- (b) if the evidence gathered in the investigation supports the alleged contravention, institute disciplinary action against the employee. 50

(3) In the event of an alleged failure by a Head of a provincial department to comply with a provision of this Act, the Premier must —

- (a) investigate the matter or cause the matter to be investigated; and
- (b) if the evidence gathered in the investigation supports the alleged contravention, the Premier must institute disciplinary action against that Head of a provincial department. 55

(4) In the event of an alleged failure by a member of a provincial public entity to comply with a provision of this Act, the responsible Cabinet Member must —

- (a) investigate the matter or cause the matter to be investigated; and
- (b) if the evidence gathered in the investigation supports the alleged contravention the responsible Cabinet Member must take appropriate steps against that member of the provincial public entity.

**Delegation**

5

6. (1) A Cabinet Member may delegate in writing any function assigned to him or her by this Act, excluding the functions referred to in section 5(3) or (4), to the Director-General or a senior manager in a provincial department or the accounting authority of the provincial public entity concerned, as the case may be.

(2) The Director-General may delegate in writing any function assigned to him or her by or in terms of this Act, to a senior manager in a provincial department. 10

**Application of other legislation**

7. This Act does not affect the application of any other legislation that regulates procurement by the Provincial Government or provides for the disclosure of the interests of employees. 15

**Regulations**

8. The Premier may make regulations regarding —

- (a) any matter that may or must be prescribed in terms of this Act; and
- (b) generally, any matter which is necessary or expedient to prescribe in order to achieve the objects of this Act. 20

**Short title and commencement**

9. This Act is called the Western Cape Procurement (Business Interests of Employees) Act, 2010, and comes into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*.

## **MEMORANDUM ON THE OBJECTS OF THE DRAFT WESTERN CAPE PROCUREMENT (BUSINESS INTERESTS OF EMPLOYEES) BILL**

### **1. BACKGROUND**

Section 217(1) of the Constitution of the Republic of South Africa, 1996 and section 62(1) of the Constitution of the Western Cape, 1997, require the Provincial Government, when it contracts for goods or services, to do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

During August 2008 the Auditor-General issued a performance audit of entities that are connected with government employees and who are doing business with government departments. In July 2009 the National Standing Committee on Public Accounts (SCOPA) had a special sitting where all the provincial Directors-General were instructed to provide feedback on what action was taken against employees identified in the AG's audit. Currently there is no prohibition or restriction on employees of the Provincial Government from having business interests in entities that conduct business with the Provincial Government. Only senior managers employed by government have a duty to disclose any such business interests. No similar duty is placed on other employees employed by government or by a provincial public entity.

The Provincial Government of the Western Cape supports the view that, in order to impose and regulate a procurement system as required by the Constitution and the Provincial Constitution as stated above, it is necessary to restrict the business interests that employees of the Provincial Government and of provincial public entities as well as members of the controlling bodies of such entities are allowed to have in entities doing business with the Provincial Government and provincial public entities, and for that purpose also to require the disclosure of such interests.

### **2. PURPOSE OF BILL**

The purpose of the Bill is to restrict the business interests of employees of the Provincial Government and provincial public entities, and members of the controlling bodies (hereinafter referred to as 'members') of such entities are allowed to have in entities doing business with the Provincial Government and provincial public entities, and for that purpose also to require the disclosure of such interests in entities conducting business with the Provincial Government and provincial public entities.

### **3. CONTENTS OF BILL**

#### **Clause 1**

Clause 1 contains the definitions.

#### **Clause 2**

Clause 2 provides for the disclosure by an entity of any business interest that an employee of the Provincial Government or a provincial public entity, or a member of a provincial public entity has in that entity. This clause also provides for the disclosure of business interests by an employee of the Provincial Government or a provincial public entity, or a member of a provincial public entity, or any business interest of a family member of that employee or member, in an entity that conducts business with the Provincial Government or provincial public entity. Furthermore, an employee of the Provincial Government or a provincial public entity, or a member of a provincial public entity must disclose any existing business interest that he or she has in an entity that conducts business with the Provincial Government or a provincial public entity as at the date of the commencement of this legislation once enacted.

#### **Clause 3**

Clause 3 provides for the restriction of an employee of the Provincial Government or provincial public entity or a member of a provincial public entity from having an interest

in any entity conducting business with the Provincial Government or a provincial public entity. An employee of the Provincial Government or provincial public entity or a member of a provincial public entity must apply to the relevant provincial Minister for permission to have such a business interest in an entity, and permission will only be granted on good cause shown.

#### **Clause 4**

Clause 4 provides for the Director-General to compile and maintain a database of all business interests disclosed in terms of this legislation.

#### **Clause 5**

Clause 5 provides for disciplinary action to be taken against an employee of the Provincial Government or a provincial public entity, and for appropriate steps to be taken against a member of a provincial public entity if any of the aforementioned persons fail to comply with the provisions of this legislation. This clause also provides for consequences for the entity that fails to comply with the provisions of this legislation.

#### **Clause 6**

Clause 6 provides for the Director-General to delegate any function assigned to him or her in terms of this Act, to a senior manager in a provincial department.

#### **Clause 7**

Clause 7 provides for the application of any other legislation that regulates procurement.

#### **Clause 8**

Clause 8 provides for the Premier to make regulations.

#### **Clause 9**

Clause 9 provides for the short title and commencement of this legislation.

### **4. CONSULTATION**

Department of the Premier: Legal Services  
Department of the Premier: Forensic Investigative Unit  
Provincial Treasury

### **5. FINANCIAL IMPLICATIONS**

Additional administrative costs pertaining to the implementation of this legislation once enacted are envisaged to be minimal, and will be covered within current budgets. No additional staff will be necessary.

### **6. LEGISLATIVE COMPETENCE**

The provincial Minister is satisfied that all the provisions in the Bill fall within the Province's legislative competence.



# WES-KAAPSE KONSEPWETSONTWERP OP VERKRYGING (SAKEBELANGE VAN WERKNEMERS)

Om die sakebelange van werknemers van die Provinsiale Regering en van provinsiale openbare instellings asook lede van die beheerliggame van sodanige instellings in instellings wat met die Provinsiale Regering en met provinsiale openbare instellings sake doen, te beperk; om voorsiening te maak vir die bekendmaking van sulke belange; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

AANGESIEN die bepalings van artikel 217(1) van die Grondwet van die Republiek van Suid-Afrika, 1996, en artikel 62(1) van die Grondwet van die Wes-Kaap, 1997, van die Provinsiale Regering en enige ander staatsorgaan vereis, wanneer hy vir goedere of dienste kontrakkeer, om dit te doen ooreenkomstig 'n stelsel wat regverdig, billik, deursigtig, mededingend en kostedoeltreffend is;

EN AANGESIEN dit as noodsaaklik geag word ten einde 'n verkrygingstelsel in te stel en te reguleer soos deur daardie bepalings vereis, om die sakebelange wat werknemers van die Provinsiale Regering en van provinsiale openbare instellings en lede van die beheerliggame van provinsiale openbare instellings toegelaat word om te hê in instellings wat met die Provinsiale Regering en met provinsiale openbare instellings sake doen, te beperk en vir daardie doel om die bekendmaking van enige sodanige belange te vereis,

**W**ORD DAAR DAAROM BEPAAL deur die Provinsiale Parlement van die Provinsie Wes-Kaap, soos volg:—

## Woordoms krywing

1. In hierdie Wet, tensy dit uit die samehang anders blyk, beteken —
- “**familielid**” ’n persoon se — 5
    - (a) gade; of
    - (b) kind, ouer, broer of suster, ongeag of so ’n verhouding die gevolg is van geboorte, huwelik of aanneming;
  - “**gade**” ’n persoon se — 10
    - (a) huweliksmaat;
    - (b) maat in ’n gebruikelike verbinding ingevolge die inheemse reg; of
    - (c) maat in ’n verhouding waarin die partye saamwoon op ’n wyse wat met ’n huweliksverhouding of gebruikelike verhouding ooreenstem;
- “**hierdie Wet**” ook die regulasies wat kragtens artikel 8 uitgevaardig word;



- “**instelling**” enige —
- (a) vereniging van persone, hetsy ingelyf of geregistreer al dan nie ingevolge enige wet, insluitende ’n maatskappy, korporasie, trust, vennootskap, beslote korporasie, gesamentlike onderneming of konsortium; of
- (b) alleeneienaarskap; 5
- “**instelling wat met die Provinsiale Regering sake doen**” ’n instelling wat kontrakteer of aansoek doen of tender vir die verkoop, verhuring of verskaffing van goedere of dienste aan die Provinsiale Regering;
- “**Kabinetslid**” die Premier of ’n Provinsiale Minister;
- “**lid**”, met betrekking tot ’n provinsiale openbare instelling, ’n lid van die raad of enige ander beheerliggaam van die provinsiale openbare instelling; 10
- “**provinsiale openbare instelling**” ’n provinsiale openbare instelling soos omskryf in artikel 1 van die Wet op Openbare Finansiële Bestuur, 1999 (Wet 1 van 1999);
- “**Provinsiale Regering**” die Provinsiale Regering van die Wes-Kaap, en ook ’n provinsiale openbare instelling; 15
- “**rekenpligtige gesag**”, met betrekking tot ’n provinsiale openbare instelling, die rekenpligtige gesag bedoel in artikel 49 van die Wet op Openbare Finansiële Bestuur, 1999;
- “**sakebelang**” — 20
- (a) ’n reg of geregtigheid om te deel in winste, inkomste of bates van ’n instelling;
- (b) ’n saaklike of persoonlike reg op eiendom;
- (c) ’n reg op besoldiging of enige ander private gewin of voordeel, en ook enige belang beoog in paragrawe (a), (b) of (c) wat deur ’n tussenganger verkry word en enige potensiële belang ingevolge enige van daardie paragrawe; 25
- “**Staatsdienswet**” die Staatsdienswet, 1994 (Proklamasie 103 van 1994);
- “**tussenganger**” ’n persoon deur wie ’n belang verkry word, en ook —
- (a) ’n persoon aan wie ’n algemene volmag verleen is of van wie ’n algemene volmag verkry is; en 30
- (b) ’n verteenwoordiger of agent;
- “**verantwoordelike Kabinetslid**” die Kabinetslid verantwoordelik vir die toepaslike provinsiale departement of provinsiale openbare instelling, na gelang van die geval;
- “**voorskryf**” voorskryf by regulasie kragtens artikel 8; 35
- “**werknemer**” ’n persoon in diens van die Provinsiale Regering of ’n provinsiale openbare instelling, hetsy permanent of tydelik, insluitende —
- (a) ’n werknemer soos beoog in artikel 8 van die Staatsdienswet;
- (b) ’n persoon aangestel ingevolge artikel 12A van die Staatsdienswet;
- (c) ’n persoon oorgeplaas of geseondeer na die Provinsiale Regering of na ’n provinsiale openbare instelling ingevolge artikel 15 van die Staatsdienswet; en 40
- (d) ’n opvoeder soos omskryf in die Wet op die Indiensneming van Opvoeders, 1998 (Wet 76 van 1998), en ook ’n lid van die raad of enige ander beheerliggaam van ’n provinsiale openbare instelling. 45

### **Bekendmaking van sakebelange van werknemers en familieledede van werknemers in instellings wat met Provinsiale Regering sake doen**

2. (1) Voordat die Provinsiale Regering enige kontrak vir die verkoop, verhuring of verskaffing van goedere of dienste met ’n instelling aangaan, moet die instelling op die voorgeskrewe wyse ’n beëdigde verklaring verskaf wat enige sakebelang wat ’n werknemer of ’n familielid van ’n werknemer in daardie instelling het, bekend maak. 50
- (2) ’n Werknemer moet op die voorgeskrewe wyse aan die Provinsiale Regering enige sakebelang bekend maak wat die werknemer of enige familielid van die werknemer het in ’n instelling wat met die Provinsiale Regering sake doen. 55
- (3) ’n Werknemer moet ’n bekendmaking in subartikel (2) bedoel, onverwyld maak nadat hy of sy van die betrokke sakebelang bewus word, of wanneer dit onder sy of haar aandag gebring word, en daarna met die voorgeskrewe tussenpose.
- (4) ’n Werknemer moet enige sakebelang in subartikel (2) bedoel wat met die inwerkingtredding van hierdie Wet bestaan, op die voorgeskrewe wyse bekend maak binne drie maande na die inwerkingtredding van hierdie Wet. 60

### **Beperking van sakebelange van werknemers in instellings wat met die Provinsiale Regering sake doen**

**3.** (1) Behoudens artikel 30 van die Staatsdienswet, artikel 33 van die Wet op die Indiensneming van Opvoeders, 1998 (Wet 76 van 1998), en subartikel (3) van hierdie artikel mag 'n werknemer nie 'n sakebelang in enige instelling wat met die Provinsiale Regering sake doen, hê nie indien die werknemer self of saam met een of meer — 5

- (a) familieleden van die werknemer;
- (b) vennote of ander sake-assosiate van die werknemer; of
- (c) ander werknemers, regstreeks of onregstreeks meer as vyf persent van die aandele, effekte, lidmaatskap of ander belang van daardie instelling besit of beheer nie. 10

(2) Subartikel (1) is nie van toepassing nie ten opsigte van 'n sakebelang verkry uit 'n bindende kontrak wat met die Provinsiale Regering aangegaan is voor die inwerkingtreding van hierdie Wet en waar die kontraktydperk nog nie verstryk het nie.

(3) Die verantwoordelike Kabinetslid kan op aansoek op die voorgeskrewe wyse deur 'n werknemer, na oorleg met die Hoof van die betrokke provinsiale departement en by aanvoering van gegronde redes, toestemming verleen dat daardie werknemer, of enige kategorie werknemers, 'n sakebelang kan hê wat groter is as die perk in subartikel (1) bedoel in 'n instelling wat met die Provinsiale Regering sake doen of beoog om dit te doen. 15 20

(4) By die oorweging van 'n aansoek in subartikel (3) beoog, moet die verantwoordelike Kabinetslid ag slaan op —

- (a) die aard van die goedere of dienste wat deur die betrokke instelling aan die Provinsiale Regering verskaf staan te word;
- (b) die aard en omvang van die sakebelang van die betrokke werknemer of werknemers in daardie instelling; 25
- (c) die aard en omvang van enige nadelige finansiële, operasionele en ander omstandighede vir die staat, die betrokke werknemer of werknemers of lede van die publiek indien die aansoek nie goedgekeur word nie; en
- (d) of die goedkeuring van die aansoek in ooreenstemming sal wees met — 30
  - (i) regverdige, billike, deursigtige, mededingende en kostedoeltreffende verkryging van goedere of dienste; en
  - (ii) toepaslike verkrygingswetgewing en -beleid.

(5) Die Provinsiale Regering mag nie —

- (a) enige kontrak sluit wat strydig met subartikel (1) is nie; of 35
- (b) enige kontrak wat voor die inwerkingtreding van hierdie Wet gesluit is en wat strydig met subartikel (1) is, verleng nie.

### **Databasis**

**4.** Die Direkteur-generaal van die Provinsie moet 'n databasis saamstel en byhou van alle sakebelange wat ingevolge artikel 2 bekend gemaak is deur werknemers en deur instellings wat met die Provinsiale Regering sake doen. 40

### **Versuim om aan Wet te voldoen**

**5.** (1) Versuim deur 'n instelling wat met die Provinsiale Regering sake doen om enige belang bekend te maak wat 'n werknemer in daardie instelling het, en waarvan die instelling bewus was of redelikerwys bewus moes gewees het toe hy die beëdigde verklaring in artikel 2(1) bedoel afgelê het, is gronde vir die Provinsiale Regering, sonder om aan enige ander beskikbare regsmiddel afbreuk te doen, om die betrokke kontrak te kanselleer en skadevergoeding te eis, as daar is, of om die aansoek of tender van daardie instelling te verwerp, na gelang van die geval. 45

(2) In die geval van 'n beweerde versuim deur 'n werknemer, uitsluitend 'n lid van 'n provinsiale openbare instelling en 'n Hoof van 'n provinsiale departement, om aan 'n bepaling van hierdie Wet te voldoen, moet die Hoof van die provinsiale departement of die rekenpligtige gesag van die betrokke provinsiale openbare instelling, na gelang van die geval — 50

- (a) die aangeleentheid ondersoek of laat ondersoek; en 55
- (b) indien die getuienis wat in die ondersoek ingewin is, die beweerde oortreding staaf, dissiplinêre stappe teen die werknemer instel.

- (3) In die geval van 'n beweerde versuim deur die Hoof van 'n provinsiale departement om aan 'n bepaling van hierdie Wet te voldoen, moet die Premier —
- (a) die aangeleentheid ondersoek of laat ondersoek; en
  - (b) indien die getuienis wat in die ondersoek ingewin is, die beweerde oortreding staaf, dissiplinêre stappe teen die Hoof van 'n provinsiale departement instel. 5
- (4) In die geval van 'n beweerde versuim deur 'n lid van 'n provinsiale openbare instelling om aan 'n bepaling van hierdie Wet te voldoen, moet die verantwoordelike Kabinetslid —
- (a) die aangeleentheid ondersoek of laat ondersoek; en
  - (b) indien die getuienis wat in die ondersoek ingewin is, die beweerde oortreding staaf, toepaslike stappe teen die lid van die provinsiale openbare instelling doen. 10

### **Delegering**

6. (1) 'n Kabinetslid kan enige funksie wat by hierdie Wet aan hom of haar opgedra is, uitgesonderd die funksies in artikel 5(3) of (4) bedoel, skriftelik delegeer aan die Direkteur-generaal of 'n senior bestuurder in 'n provinsiale departement of aan die rekenpligtige gesag van die betrokke provinsiale openbare instelling, na gelang van die geval. 15
- (2) Die Direkteur-generaal kan enige funksie wat by hierdie Wet aan hom of haar opgedra is, skriftelik delegeer aan 'n senior bestuurder in 'n provinsiale departement. 20

### **Toepassing van ander wetgewing**

7. Hierdie Wet raak nie die toepassing van enige ander wetgewing wat verkryging deur die Provinsiale Regering reël of wat vir die bekendmaking van die belange van werknemers voorsiening maak nie.

### **Regulasies**

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8. Die Premier kan regulasies uitvaardig betreffende —
- (a) enige aangeleentheid wat ingevolge hierdie Wet voorgeskryf kan of moet word; en
  - (b) oor die algemeen, enige aangeleentheid wat nodig of dienstig is om voor te skryf ten einde die oogmerke van hierdie Wet te bereik. 30

### **Kort titel en inwerkingtreding**

9. Hierdie Wet heet die Wes-Kaapse Wet op Verkryging (Sakebelange van Werknemers), 2010, en tree in werking op 'n datum wat die Premier by proklamasie in die *Provinsiale Koerant* bepaal.

## **MEMORANDUM OOR DIE OOGMERKE VAN DIE WES-KAAPSE KONSEPWETSONTWERP OP VERKRYGING (SAKEBELANGE VAN WERKNEMERS)**

### **1. AGTERGROND**

Artikel 217(1) van die Grondwet van die Republiek van Suid-Afrika, 1996, en artikel 62(1) van die Grondwet van die Wes-Kaap, 1997, vereis van die Provinsiale Regering, wanneer hy vir goedere of dienste kontraktee, om dit te doen ooreenkomstig 'n stelsel wat regverdig, billik, deursigtig, mededingend en kostedoeltreffend is.

Gedurende Augustus 2008 het die Ouditeur-generaal 'n prestasie-oudit gedoen van instellings wat bande met regeringswerknemers het en wat met staatsdepartemente sake doen. In Julie 2009 het die nasionale Staande Komitee oor Openbare Rekening (SKOOR) 'n spesiale sitting gehou waar al die provinsiale direkteurs-generaal opdrag gegee is om terugvoering te gee oor die stappe wat gedoen is teen werknemers wat in die OG se oudit geïdentifiseer is. Tans bestaan daar geen verbod of beperking op werknemers van die Provinsiale Regering om sakebelange te hê in instellings wat met die Provinsiale Regering sake doen nie. Net senior bestuurders wat in diens van die Regering is, het 'n plig om enige sodanige sakebelange bekend te maak. Geen soortgelyke plig is op ander werknemers in diens van die Regering of in diens van 'n provinsiale openbare instelling geplaas nie.

Die Provinsiale Regering van die Wes-Kaap steun die siening dat, ten einde 'n verkrygingstelsel in te stel en te reguleer soos deur die Grondwet en die Provinsiale Grondwet vereis soos hierbo gestel, dit nodig is om die sakebelange wat werknemers van die Provinsiale Regering en van provinsiale openbare instellings asook lede van die beheerliggame van sodanige instellings toegelaat word om te hê in instellings wat met die Provinsiale Regering en met provinsiale openbare instellings sake doen, te beperk, en vir daardie doel ook om die bekendmaking van sulke belange te vereis.

### **2. DOEL VAN WETSONTWERP**

Die doel van die Wetsontwerp is om die sakebelange van werknemers van die Provinsiale Regering en van provinsiale openbare instellings asook lede van die beheerliggame (hierna 'lede' genoem) van sodanige instellings in instellings wat met die Provinsiale Regering en met provinsiale openbare instellings sake doen, te beperk en om vir daardie doel ook te vereis dat sulke belange in instellings wat met die Provinsiale Regering en provinsiale openbare instellings sake doen, bekend gemaak word.

### **3. INHOUD VAN WETSONTWERP**

#### **Klousule 1**

Klousule 1 bevat die woordomsrywings.

#### **Klousule 2**

Klousule 2 maak voorsiening vir die bekendmaking deur 'n instelling van enige sakebelang wat 'n werknemer van die Provinsiale Regering of van 'n provinsiale openbare instelling of 'n lid van 'n provinsiale openbare instelling in daardie instelling het. Hierdie klousule bepaal ook dat 'n werknemer van die Provinsiale Regering of van 'n provinsiale openbare instelling of 'n lid van 'n provinsiale openbare instelling sy of haar eie sakebelang, of enige sakebelang van 'n familielid van daardie werknemer of lid, in 'n instelling wat met die Provinsiale Regering sake doen, bekend moet maak. Verder moet 'n werknemer van die Provinsiale Regering of van 'n provinsiale openbare instelling of 'n lid van 'n provinsiale openbare instelling enige bestaande sakebelang wat hy of sy het in 'n instelling wat met die Provinsiale Regering of met 'n provinsiale openbare instelling sake doen met die inwerkingtreding van hierdie wetgewing wanneer dit verorden word, bekend maak.

**Klousule 3**

Klousule 3 maak voorsiening vir die beperking van 'n werknemer van die Provinsiale Regering of van 'n provinsiale openbare instelling of 'n lid van 'n provinsiale openbare instelling om 'n belang te hê in enige instelling wat met die Provinsiale Regering of met 'n provinsiale openbare instelling sake doen. 'n Werknemer van die Provinsiale Regering of van 'n provinsiale openbare instelling of 'n lid van 'n provinsiale openbare instelling moet by die betrokke provinsiale Minister aansoek doen vir toestemming om so 'n sakebelang in 'n instelling te hê, en toestemming sal slegs by aanvoering van gegronde redes verleen word.

**Klousule 4**

Klousule 4 maak daarvoor voorsiening dat die Direkteur-generaal 'n databasis van alle sakebelange wat ingevolge hierdie wetgewing bekend gemaak is, moet saamstel en byhou.

**Klousule 5**

Klousule 5 maak voorsiening vir dissiplinêre stappe wat gedoen moet word teen 'n werknemer van die Provinsiale Regering of van 'n provinsiale openbare instelling en vir toepaslike stappe wat gedoen moet word teen 'n lid van 'n provinsiale openbare instelling indien enige van voorgemelde persone versuim om aan die bepalings van hierdie wetgewing te voldoen. Hierdie klousule maak ook voorsiening vir gevolge vir die instellings wat versuim om aan die bepalings van hierdie wetgewing te voldoen.

**Klousule 6**

Klousule 6 maak daarvoor voorsiening dat die Direkteur-generaal enige funksie wat ingevolge hierdie Wet aan hom of haar opgedra is, aan 'n senior bestuurder in 'n provinsiale departement kan delegeer.

**Klousule 7**

Klousule 7 maak voorsiening vir die toepassing van enige ander wetgewing wat verkryging reguleer.

**Klousule 8**

Klousule 8 maak daarvoor voorsiening dat die Premier regulasies kan uitvaardig.

**Klousule 9**

Klousule 9 maak voorsiening vir die kort titel en inwerkingtreeding van hierdie wetgewing.

**4. OORLEGPLEGING**

Departement van die Premier: Regsdienste  
Departement van die Premier: Forensiese Ondersoekkeenheid  
Provinsiale Tesourie

**5. FINANSIËLE IMPLIKASIES**

Bykomende administratiewe koste rakende die implementering van hierdie wetgewing na die verordening daarvan sal na verwagting minimaal wees en sal binne lopende begrotings gedek word. Geen bykomende personeel sal nodig wees nie.

## **6. WETGEWENDE BEVOEGDHEID**

Die provinsiale Minister is oortuig dat al die bepalings van die Wetsontwerp binne die Provinsie se wetgewende bevoegdheid val.

# IDRAFTI YOMTHETHO OYILWAYO WOKUTHENGA WENTSHONA KOLONI (UKUTHABATHA KWABAQESHA INXAXHEBA KWEZOSHISHINO)

Ukuthintela abaqesha bePhondo leNtshona Koloni ekuthabatheni inxaxheba yezoshishino kumaqumrhu ashishina noRhulumente wePhondo kunye namashishini karhulumente akumaphondo, namalungu abalawuli baloo maqumrhwana; ukulungiselela inkqubo yokubhengeza loo nxaxheba; nokulungiselela imiba enxulumene noko.

NJENGOKO imimiselo yecandelo 217(1) lomGaqo-siseko weRiphabhliki yomZantsi Afrika, 1996, necandelo 62(1) lomGaqo-siseko weNtshona Koloni, 1997, ifuna ukuba uRhulumente wePhondo, naliphi na icandelo likarhulumente, xa esenza izivumelwano zokuthenga impahla okanye iinkonzo, akwenze oko ngokwenkqubo enobulungisa, ekholisayo, engafihlisiyo, evumela ukhuphiswano neendleko ezifanelekileyo;

NANJENGOKO kufumaniseke ukuba kubalulekile oko ukuze kumiselwe kambe kunqingqwe inkqubo yokuthenga ngokokufunwa yiloo mimiselo ukuze kumiselwe iintlobo zenxaxheba yoshishini abaqesha boRhulumente wePhondo kunye namashishini karhulumente akumaphondo, namalungu abalawuli baloo maqumrhwana; abavumeleke ukuba babandakanyeke kuzo kumaqumrhu aqhuba ushishino noRhulumente wePhondo namashishini karhulumente akumaphondo, ukuze ke ngoko kufuneke ukuba ezo ntlobo zenxaxheba zibhengezwe.

**K**UWISWA UMTHETHO KE NGOKO nguRhulumente wePhondo leNtshona Koloni, ngelithi: —

## Iinkcazelo

1. Kulo mThetho, ngaphandle kokuba oko kuthethwayo kuchaza nto yimbi—
  - “**ilungu**” ngokunxulumene nequmrhwana likarhulumente kwiphondo, oko kuthetha ilungu lebhodi okanye enye ibhodi elawulayo yequmrhwana likarhulumente kwiphondo; 5
  - “**iLungu leKhabhinethi**” ligama elithetha iNkulumbuso okanye umPhathiswa wePhondo;
  - “**iLungu leKhabhinethi eliluThwalayo uxanduva**” oku kuthetha iLungu leKhabhinethi elimele isebe lephondo okanye iqumrhwana likarhulumente kwiphondo njengoko kunokubanjalo; 10
  - “**ilungu losapho**” ligama elithetha umntu—



- (a) oliqabane; okanye  
 (b) umntwana, umzali, umnakwethu okanye udadethu, nokuba obo budlelwane bungenxa yokuzalana, yomtshato okanye ngenxa yokuphiwa umntwana;  
**“inxaxheba kwezoshishino”** ithetha—  
 (a) Ilungelo okanye ukuba nelungelo lokuxhamla kwiprofiti, kwingeniso okanye 5  
 kwimpahla yequmrhu;  
 (b) Ilungelo lobunini okanye nobunini-propati;  
 (c) Ilungelo lokuvuzwa okanye nayiphi na enye inzuzo yabucala okanye ukuxhamla,  
 nokubandakanya nayiphi na inxaxheba ekhankaywe kumhlathi (a), (b) okanye (c); 10  
**“iqabane”** ligama elithetha umntu—  
 (a) olihlakani emtshatweni;  
 (b) Ihlakani kumtshato wesintu ngokwemithetho yomthonyama; okanye  
 (c) ihlakani kubudlelwane apho abo babandakanyekayo bahlalisanayo ngokunga batshatile okanye batshate isintu; 15  
**“iqumrhu”** ligama elithetha nawuphi na—  
 (a) Umbutho wabantu, nokuba umiselwe ngokusesikweni kusini na okanye nokuba ubhaliswe ngokwawo nawuphi na umthetho, kubandakanywa inkampani, ukopolotyeni, ithrasti, iqumrhu elidityanelweyo, ikoporesheni, iqumrhu elihlanganyelweyo okanye amaqumrhu ahlanganyelweyo; okanye 20  
 (b) Iqumrhu lomntu omnye;  
**“iqumrhu elishishina noRhulumente wePhondo”** lithetha iqumrhu elinekontraka okanye elicela okanye elithendarishela ukuthengisela, ukuqeshisela okanye ukubonelelela uRhulumente wePhondo ngempahla neenkonzo;  
**“iqumrhwana likarhulumente kwiphondo”** lithetha iqumrhwana 25  
 likarhulumente wephondo njengoko kuchaziwe kwicandelo 1 lePublic Finance Management Act, 1999 (umThetho 1 ka-1999);  
**“lo mThetho”** ubandakanya imigaqo equlunqwe phantsi kwecandelo 8;  
**“oogunyaziwe abajongene noxanduva”**, ngokunxulumene nequmrhwana likarhulumente, oko kuthetha oogunyaziwe abajongene noxanduva ekubhekiswa 30  
 kubo kwicandelo 49 lePublic Finance Management Act, 1999;  
**“ukumisela”** ligama elithetha ukumisela ngokomgaqo phantsi kwecandelo 8;  
**“umngeneli”** ligama elithetha umntu elisetyenziselwa ukufumana okuthile okunqwenelwayo, kanaanjalo libandakanya —  
 (a) Umntu onikwe okanye ekufunyenwe kuye igunya lokumela ngokubanzi; 35  
 kunye  
 (b) Nommeli okanye i-arhente;  
**“umqeshwa”** ligama elithetha umntu oqeshwe nguRhulumente wePhondo, okanye iqumrhwana likarhulumente, nokuba uqeshwe isigxina okanye okwethutyana, kubandakanywa — 40  
 (a) Umqeshwa njengoko kukhankanywe kwicandelo 8 lomthetho weeNkonzo zoluNtu;  
 (b) Umntu oqeshwe ngokwecandelo 12A lomThetho weeNkonzo zoluNtu;  
 (c) Umntu odluliselwe okanye othunyelwe kuRhulumente wePhondo okanye iqumrhwana likarhulumente lwiphondo ngokwecandelo 15 lomThetho 45  
 weeNkonzo zoluNtu; kunye  
 (d) nomfundisi-ntsapho njengoko echazwe kumThetho wokuQeshwa kwaBefundisi-ntsapho, 1998 (umThetho 76 ka-1998)  
 oko kuquka ilungu lebhodi okanye enye ibhodi elawulayo yequmrhwama likarhulumente kwiphondo; 50  
**“umThetho weeNkonzo zoluNtu”** ligama elithetha umThetho weeNkonzo zoluNtu, 1994 (umPoposho 103 ka-1994);  
**“uRhulumente wePhondo”** ligama elithetha uRhulumente wePhondo leNtshona Koloni.

## **Ukubhengezwa kwenxaxheba yabaqeshwa neentsapho zabo kumaqumrhu aqhuba ushishino noRhulumente wePhondo 55**

2. (1) Ngaphambi kokuba uRhulumente wePhondo enze nasiphi na isivumelano nequmrhu ngenjongo yokuthengisa, yokuqesha okanye yokubonelela ngempahla okanye ngeenkonzo, iqumrhu elo kufuneka libonelele ngengxelo efungelweyo ngendlela emiselweyo, ngxelo leyo ibhengeza nayiphi na inxaxheba umqeshwa okanye usapho lwakhe elinayo kwiqumrhu elo. 60

(2) Umqeshwa kufuneka abhengeze ngendlela imiselweyo kuRhulumente wePhondo nayiphi na inxaxheba umqeshwa okanye usapho lwakhe olunayo kwiqumrhu eliqhuba ushishino noRhulumente wePhondo.

(3) Umqeshwa kufuneka enze isibhengezo ekubhekiswe kuso kwicandelwana (2) ngoko nangoko akuba nolwazi lwenxaxheba yoshishino leyo, okanye akwaziswa ngayo, ze emva koko akwenze oko emva kwamathuba aqingqiweyo. 5

(4) Umqeshwa kufuneka abhengeze nayiphi na inxaxheba kwezoshishino ekubhekiswe kuyo kwicandelwana 2 nethe yabakhona ekusungulweni kwalo mThetho ekwenza oko ngendlela emiselweyo kwiinyanga ezintathu ukususela emva kokusungulwa kwalo mThetho. 10

### **Ukuthintelwa kwenxaxheba yezoshishino yabaqeshwa kumashishini aqhuba ushishino noRhulumente wePhondo**

3. (1) Ngokwecandelo 30 lomThetho weeNkonzo zoLuntu, icandelo 33 lomThetho wokuQeshwa kwabeFundisi-ntsapho, 1998 (umThetho 76 ka-1998), necandelwana (3) leli candelo, umqeshwa akanako ukuba nenxaxheba nakwiliphi na iqumrhu eliqhuba ushishino noRhulumente wePhondo ukuba umqeshwa lowo ngokwakhe okanye ekunye nabanye- 15

- (a) kusapho lomqeshwa lowo;
- (b) amahlakani okanye abanye umqeshwa anobudlelwano boshishino nabo; okanye 20
- (c) abanye abaqeshwa, ungumnini okanye ulawula ngokuthe ngqo okanye ngokungathanga ngqo izabelo, impahla, ubulungu okanye nayiphi na inxaxheba engaphezu kweepesenti ezintlanu kwelo qumrhu.

(2) Icandelwana (1) alisebenzi ngokubhekiselele kwinxaxheba yoshishino efumaneke ngenxa yesivumelwano esibophelelayo esenziwa noRhulumente wePhondo ngaphambi kokusungulwa kwalo mThetho, naxa nalaphi na ithuba lesivumelwano lingekaphelelwa lixesha. 25

(3) ILungu leKhabinethi eliluthwalayo uxanduva linakho, xa umqeshwa wesebe lephondo elisingethwe liLungu elo leKhabinethi, emva kokubonisana neNtloko yelo sebe kuthethwa ngalo lephondo elo, naxa kuthe kwabakho isizathu esivakalayo, ukunika loo mqeshwa imvume, okanye naluphi na uhlelo lomqeshwa kwelo sebe, yokuba nenxaxheba yoshishino eqgitha ummiselo ekubhekiswe kuwo kwicandelwana (1) kwiqumrhu eliqhuba ushishino noRhulumente wePhondo. 30

(4) Xa iLungu leKhabininethi linika ingqwalaselo isicelo esikhankanywe kwicandelwana (3) elo lungu liluthwalayo uxanduva kufuneka licamngce ngezi zinto zilandelayo— 35

- (a) uhlobo lwempahla okanye lweenkonzo ezibonelelwa uRhulumente wePhondo liqumrhu elo;
- (b) Uhlobo nobungakanani benxaxheba yoshishino yomqeshwa okanye yabaqeshwa abo kwelo qumrhu; 40
- (c) Uhlobo nobungakanani beemeko zezimali, zokuqhutywa komsebenzi kanti nezinye ezingancomekiyo kumbuso, umqeshwa okanye abaqeshwa abo okanye iimeko uluntu oluya kugagana nazo sakungavunywa isicelo; kananjalo
- (d) nokuba ukuvunywa kwesicelo eso siya kuhambelana kusini na 45
  - (i) nokuqhuba ngokulingana, ukukholiseka, nokungafihlisi, nokuncomeka kokuthenga impahla okanye iinkonzo okundleko zifanelekileyo; kananjalo
  - (ii) nomthetho nemigaqo-nkqubo echaphazelekayo.

(5) URhulumente wePhondo akanako— 50

- (a) Ukungena kuso nasiphi na isivumelwano esingahambelaniyo necandelwana (1); okanye
- (b) Ukwandisa nasiphi na isivumelwano ekwavunyelwana ngaso ngaphambi kokusungulwa kwalo mThetho nesiingahambelaniyo necandelwana (1). 50

### **Uvimba weenkukacha 55**

4. Umlawuli-Jikelele wePhondo kufuneka aqulunqe kambe abenovimba weenkukacha zazo zonke iinxaxheba kwezoshishino ezibhengezwe ngokwecandelo 2 ngabaqeshwa namaqumrhu aqhuba ushishino noRhulumente wePhondo.

### Ukusilela ukuthobela lomThetho

5. (1) Ukusilela kwequmrhu eliqhuba ushishino noRhulumente wePhondo ukubhengeza nayiphi na inxaxheba umqeshwa anayo kwelo qumrhu, nebisaziwa liqumrhu elo okanye ebelifanele ukuyazi xa bekusenziwa ingxelo efungelweyo ekhankanywe kwicandelo 2(1), sisizathu esinokwenza ukuba uRhulumente wePhondo abenako ukucima isivumelwano eso ngaphandle kokusebenzisa nayiphi na indlela yokulungisa loo mcimbi, aze afake isicelo sokubuyekeza ngomonakalo owenzekileyo ukuba ukhona, okanye asale isicelo okanye ithenda yelo qumrhu, nokuba yiyiphi na kwezo zinto. 5

(2) Xa kunokuthiwa umqeshwa, ngaphandle kwelungu lequmrhwana likarhulumente kwiphondo nomntu oyiNtloko yesebe kwiphondo, usilele ukuthobela imimiselo yalo mthetho, iNtloko yesebe lephondo okanye oogunyaziwe bokuthwala uxanduva lwequmrhwana likarhulumente elikwiphondo nelichaphazelekayo, njengoko kunganjalo, kufuneka. (a) kuphandwe ngalo mcimbi okanye unobangela womciombi omele ukuphandwa, yaye (b) ukuba ubungqina obufunyenweyo kuphando buyayixhasa eyokwaphulwa komthetho, makuqaliswe ngesenzo soluleko oluchasene nomqeshwa lowo. 10

(3) Ukuba kubekho isityhiolo sokusilela kweNtloko yesebe lephondo ekuthobeleni negatya lalo mThetho, iNkulumbuso kufuneka —

(a) iphande ngalo mcimbi okanye ngonobangela wawo ekufuneka uphandiwe, yaye 20

(b) ukuba ubungqina obuchasene nophando buxhasa ukwaphulwa komthetho, iNkulumbuso mayithathe amanyathelo oluleko ngokuchaseneyto nale Ntloko yesebe kwiphondo.

(4) Ukuba kubekho isityholo sokusilela kwelungu lequmrhwana likarhulumente wephondo ekuthobeleni neli gatya lomThetho, eli lungu leKhabhinethi limele ukuthwala uxanduva kufuneka — 25

(a) liphande ngalo mcimbi okanye ngonobangela ofuna ukuba kuphandwe yaye

(b) ukuba ubungqina obufunyenweyo buxhasa ukuba waphulwe umthetho, ilungu leKhabhinethi lokuthwala uxanduva malithathe amanyathelo afanelekileyo ngokuchaseneyo nelungu lequmrhwana likarhulumente wephondo. 30

### Ukudluliselwa kwamagunya

6. (1) Ngaphandle kwecandelo 5(3) necandelo 5(4), ilungu leKhabhinethi linakho ukudlulisela, ngencwadi, nawuphi na umsebenzi eliwunikwe ngulo mThetho, kuMlawuli-Jikelele okanye kumphathi omkhulu okwisebe lephondo, okanye oogunyaziwe bokuthwala uxanduva bequmrhwana likarhulumente wephondo elichaphazelekayo, njengoko kunokubanjalo. 35

(2) Umlawuli-Jikelele unako ukudlulisela nawuphi na umsebenzi awunikwe ngulo mThetho okanye ngokwalo mThetho kumphathi omkhulu kwisebe lephondo. 40

### Ukusebenza kweminye imithetho

7. Lo mThetho awukuchapazeli ukusebenza kwawo nawuphi na omnye umthetho olawula ukuthenga koRhulumente wePhondo okanye omisela ukubhengezwa kwinxaxheba yabaqeshwa bakarhulumente.

### Imigaqo

45

8. Inkulumbuso inako ukuqulunqa imigaqo malunga-

(a) Nawo nawuphi na umcimbi ofanele okanye ekunyanzeleke ukuba umiselwe ngokwalo mThetho; kanaanjalo

(b) ngokubanzi, nawuphi na umcimbi oyimfuneko okanye ofanele kwenziwa ukuze kuphunyezwe iinjongo zalo mThetho. 50

### Isihloko esifutshane nokusungulwa

9. Lo mThetho kuthiwa ngumThetho wokuThenga weNtshona Koloni (ukuthabatha kwabaqeshwa inxaxheba kwezoshishino), 2010, kwaye uya kuqala ukusebenza ngomhla oya kumiselwa yiNkulumbuso ngompoposho kwiGazethi yePhondo.

**IMEMORANDAMU YEENJONGO ZOMTHETHO OYILWAYO  
OYIDRAFTI WOKUTHENGA WENTSHONA KOLONI  
(UKUTHABATHA KWABAQESHA INXAXHEBA  
KWEZOSHISHINO)**

**1. INTSHAYELELO**

Icandelo 217(1) lomGaqo-siseko weRiphabhliki yomZantsi Afrika, 1996, necandelo 62(1) lomGaqo-siseko weNtshona Koloni, 1997, lifuna ukuba uRhulumente wePhondo, xa esenza izivumelwano zokuthenga impahla okanye iinkonzo, akwenze oko ngokwenkqubo enobulungisa, ekholisayo, engafihlisiyo, evumela ukhuphiswano neendleko ezifanelekileyo.

Ngo-Agasti 2008 umPhicothi-Jikelele wakhupha ingxelo yophicotho yamaqumrhu anxulumene nabaqesha bakarhulumente nabaqhuba ushishino namasebe karhulumente. NgoJulayi 2009, iKomiti eMiyo yeSizwe eSingatha imiCimbi engeeMali zoluNtu (SCOPA) yaba neseshoni eyodwa apho bonke abaLawuli-Jikelele bephondo bayalelwa ukuba babonelele ngengxelo ngamanyathelo athatyathwayo malunga nabo baqesha nakhankanywa kuphicotho lomPhicothi-Jikelele. Okwangoku akukho sithintelo esithintela abaqesha boRhulumente wePhondo ekubeni bangabinayo inxaxheba yoshishino kumaqumrhu aqhuba ushishino noRhulumente wePhondo. Ngabaphathi abakhulu abaqeshe ngurhulumente kuphela abanoxanduva lokubhengeza olo hlobo lwenxaxheba yoshishino. Alukho uxanduva olufana nolo oluthwaliswe abaqesha bakarhulumente okanye liqumrhwana lephondo.

URhulumente wePhondo leNtshona Koloni uxhasa umbono wokuba, ukuze kunyanzeliswe kambe kulawulwe inkqubo yokuthenga njengoko kumiselwe kumGaqo-siseko weSizwe nakumGaqo-siseko wePhondo njengoko kuchaziwe ngentla apha, kukho imfuneko yokuba icuthwe inxaxheba yoshishino abaqesha boRhulumente abavunyelwe ukuba babenayo kumashishini aqhuba ushishino noRhulumente wePhondo, namanye amalungu aloo maqumrhwana, avunyelwe ukuba anganayo inxaxheba yokushishina kuloo maqumrhwana noRhulumente wePhondo kunye namanye amaqumrhwana akwiphondo, kwaye ngenxa yaloo njongo, nawo kuyafuneka ukuba mawakubhengeze ukuyithatha kwawo inxaxheba enjalo.

**2. INJONGO YALO MTHETHO UYILWAYO**

Injongo yalo mThetho uYilwayo kukucutha inxaxheba yoshishino yabaqesha boRhulumente wePhondo kumaqumrhu aqhuba ushishino noRhulumente wePhondo, namalungu oogunyaziwe abaphetheyo (nekubhekiswa kubo apha 'njengamalungu') aloo maqumrhwana avunyelweyo ukuba anganawo amaqumrhwana ashishinayo noRhulumente wePhondo kwanamaqumrhwana ephondo, yaye ngenxa yaloo njongo kwakhona kusafuneka kubhengeziwe ngaloo nxaxheba kumaqumrhwana ashishinayo phakathi kuRhulumente wePhondo nakumaqumrhwana karhulumente wephondo.

**3. OKUQULATHWE NGULO MTHETHO UYILWAYO**

**Igaty 1**

Igaty 1 liqulathe iinkcazelo.

**Igaty 2**

Igaty 2 limisela indlela yokubhengeza kwequmrhu nayiphi na inxaxheba yoshishino umqesha woRhulumente wephondo anayo kwiqumrhu elo. Eli gaty likwalungiselela ukuba umqesha woRhulumente wePhondo abenokubhengeza eyakhe inxaxheba yoshishino okanye nayiphi na inxaxheba yoshishino yosapho lwakhe, kwiqumrhu eliqhuba ushishino noRhulumente wePhondo. Ngaphezu koko, umqesha woRhulumente wePhondo okanye owequmrhwana lephondo okanye ilungu lequmrhwana lephondo, kufuneka abhengeze nayiphi na inxaxheba ekhoyo yoshishino anayo kwiqumrhu eliqhuba ushishino noRhulumente wePhondo okanye kwiqumrhwana likarhulumente wephondo ngomhla wokusungulwa kwalo mthetho wakumiselwa.

**Igaty 3**

Igaty 3 limisela ukuthintelwa komqeshwa woRhulumente wePhondo okanye owequmrhwana likarhulumente wephondo okanye owelungu lequmrhwana lephondo ekubeni nenxaxheba kulo naliphi na iqumrhu eliqhuba ushishino noRhulumente wePhondo okanye nequmrhwana likarhulumente wephondo. Umqeshwa woRhulumente wePhondo okanye owequmrhwana likarhulumente wephondo okanye owelungu lequmrhwana likarhulumente wephondo, kufuneka afake isicelo kumPhathiswa wePhondo ofanelekileyo semvume yokuba nenxaxheba enjalo kwiqumrhu, kwaye imvume iya kufumaneka kuphela kwakubekwa izizathu ezivakalayo.

**Igaty 4**

Igaty 4 limisela ukuba umLawuli-Jikelele aqulunqe kambe abenovimba weenkukacha zayo yonke inxaxheba ebhengezwe ngokwemimiselo yolu wiso-mthetho.

**Igaty 5**

Igaty 5 limisela amanyathelo oluleko amakathatyathelwe umqeshwa kaRhulumente wePhondo okanye owequmrhwana lephondo, nokuba amanyathelo afanelekileyo mawathatyathelwe ukulichasa ilungu lequmrhwana likarhulumente wephondo ukuba nowuphi na kwaba bantu bakhankanyiweyo ngaphambili uthe wasilela ekuthobeleni imimiselo yalo mthetho. Eli gaty likwamisela oko kuya kwenzeka kwiqumrhu xa lithe lasilela ekuthobeleni imimiselo yalo mthetho.

**Igaty 6**

Igaty 6 limisela ukuba umLawuli-Jikelele abe nokudlulisela nayiphi na imisebenzi ayinikiweyo ngokwalo mThetho kumphathi omkhulu kwisebe lephondo.

**Igaty 7**

Igaty 7 limisela indlela yokusebenzisa nawuphi na omnye umthetho olawula ukuthengisa.

**Igaty 8**

Igaty 8 limisela ukuba iNkulumbuso iqulunqe imigaqo.

**Igaty 9**

Igaty 9 limisela isihloko esifutshane nokusungulwa kwalo mthetho.

**4. UKUBONISANA**

ISEBE leNkulumbuso: IiNkonzo zomThetho  
ISEBE leNkulumbuso: ICandelo loPhando oluNzulu  
ICandelo loLawulo-mali lkwiphondo

**5. UKUCHAPHAZELEKA NGOKWEZIMALI**

Iindleko ezongeziweyo zolawulo ezinxulumene nokufezekiswa kolu wiso-mthetho, lwakumiselwa, zibonwa ngokungathi azizokuba nkulu, kwaye ziya kuhlawulelwa ngohlalo lwabiwo-mali olukhoyo kungoku nje. Akuzokufuneka basebenzi bambi.

**6. UKUFANELEKA KWALO MTHETHO**

UmPhathiswa wePhondo wanelisekile ngokuba yonke imimiselo yalo mThetho uYilwayo imiselwe ngokwegunya nokufaneleka kweli Phondo ekuwiseni umthetho.